

SUPPORTING STATEMENT
Internal Revenue Service
OMB#1545-1324

Final Regulations T.D. 8530 (CO-88-90)

Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change; Special Rule for Value of a Loss Corporation Under the Jurisdiction of a Court in a Title 11 Case

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 382(l)(5)(H) of the Internal Revenue Code provides that a loss corporation may elect not to have section 382(l)(5) apply. If a loss corporation elects not to have section 382(l)(5) apply, section 382(l)(6) will apply. The election required by section 382(l)(5)(H) and implemented by section 1.382-9(i) of the regulations is necessary to assure that the proper amount of carryover attributes are used by a loss corporation following specified types of ownership changes. Similarly, the election under section 1.382-9(p)(2) of the regulations to apply the regulations retroactively was necessary to assure that the proper amount of carryover attributes were used by a loss corporation following specified types of ownership changes.

2. USE OF DATA

For purposes of electing not to have section 382(l)(5) of the Code apply to an ownership change, a loss corporation must attach the following statement to the tax return of the loss corporation for the taxable year in which the ownership change occurs: "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]." Section 382(l)(5) will determine the amount and utilization of certain corporate tax attributes after an ownership change if the loss corporation does not timely file such an election and section 382(l)(5) otherwise applies.

For purposes of electing to have the provisions of the final regulations apply before the general effective date of the final regulations (March 17, 1994), a loss corporation was required to attach the following statement to the loss corporation's tax return for the taxable year which included the change date or the date that the loss corporation filed its first tax return after May 16, 1994: "THIS IS AN ELECTION TO APPLY §§1.382-3(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]."

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998. There is no plan to offer electronic filing for this collection due to the low volume of filers.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

There are no methods to minimize burden on small businesses or other small entities.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

A less frequent collection would result in the IRS unable to determine the election treatment of the entity thereby engendering the inability of IRS to meet its mission.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

In response to the **Federal Register Notice** dated March 9, 2017 (82 FR 13204), we received no comments during the comment period regarding CO-88-90.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents..

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the " Business Master File (BMF) ", "Corporate Data Initiative (CDI)" system and Privacy Act System of Records notices (SORN) has been issued for these systems under Treasury/IRS 24.030-Customer Account Data Engine Individual Master File; Treasury/IRS 24.046-Business Master File and IRS 34.037-IRS Audit Trail and Security Records System, Treasury/IRS 42.001-Examination Administrative File; Treasury/IRS 42.021-Compliance Programs and Project Files. The Department of Treasury PIAs can be found at [tps://www.irs.gov/uac/Privacy-Impact-Assessments-PIA](https://www.irs.gov/uac/Privacy-Impact-Assessments-PIA)

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns,

statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.382-9(i) requires that a loss corporation electing not to have section 382(l)(5) of the Code apply to an ownership change must file a statement evidencing this election with its tax return. It is estimated that 250 respondents will spend 15 minutes each to file the election. The reporting burden for this requirement is 63 hours.

Section 1.382-9(p)(2) requires that a loss corporation electing to apply the provisions of the regulations retroactively must file a statement evidencing this election with its tax return. This election is no longer available. Therefore, there is no continuing requirement and no reporting burden.

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
1-382-9(i)	Elect not to have 382(l)(5)	250	1	250		63
Totals				250	.25	63

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no start-up costs associated with this collection.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There are no known annualized costs to the federal government.

15. REASONS FOR CHANGE IN BURDEN

Section 1.382-9(p)(2) requires that a loss corporation electing to apply the provisions of the regulations retroactively must file a statement evidencing this election with its tax return. This election is no longer available. Therefore, there is no continuing requirement and no reporting burden. This results in a decrease of 3,000 responses and 750 burden hours.

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses	250	0	-3,000	0	0	3,250
Annual Time Burden (Hr)	63	0	-750	0	0	813

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.