

[Federal Register: March 18, 1994]

DEPARTMENT OF THE TREASURY
26 CFR Parts 1 and 602

[TD 8529]
RIN 1545-AR91

Limitations on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final income tax regulations relating to the determination of whether stock of a loss corporation is owned as a result of being a qualified creditor for purposes of section 382(1)(5)(E) of the Internal Revenue Code of 1986, as amended. These rules will help a loss corporation determine whether it is eligible for the special rules of section 382(1)(5).

DATES: These regulations are effective as of March 18, 1994.

For dates of applicability of these regulations, see the ``Effective date'' paragraph in the SUPPLEMENTARY INFORMATION portion of the preamble.

FOR FURTHER INFORMATION CONTACT: Diana MacKeen Fulton of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:DOM:CORP:5) or telephone 202-622-7550 (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 Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number **1545-1275**. The estimated annual burden per respondent with respect to the Secs. 1.382-9(d)(2)(iii) and (d)(4)(iv) statements varies from 10 minutes to 1 hour, depending on individual circumstances, with an estimated average of 15 minutes. The estimated annual burden per respondent with respect to the Sec. 1.382-9(d)(6)(ii) elections varies from 10 minutes to 2 hours, depending on individual circumstances, with an estimated average of 1 hour.

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, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

This document also amends the table of control numbers in Sec. 602.101 by restoring a control number (1545-1281) for Sec. 1.382-3 that was removed by T.D. 8490 (58 FR 51571 (1993)).

Background

This document contains final regulations to be added to the Income Tax Regulations (26 CFR part 1) under section 382 of the Internal Revenue Code (Code). The final regulations provide rules relating to the determination of whether stock of a loss corporation is owned as a result of being a qualified creditor for purposes of section 382(l)(5)(E) of the Code.

Proposed regulations on this subject were set forth in a notice of proposed rulemaking published in the Federal Register on May 10, 1993. See 58 FR 27498 (1993). (That document also withdrew earlier proposed regulations on this subject that had been published in the Federal Register on September 23, 1991 (56 FR 47921 (1991))). The IRS received comments on the proposed regulations and held a public hearing on July 16, 1993. Having considered the comments and the statements made at the hearing, the IRS and the Treasury Department adopt the proposed regulations as revised by this Treasury decision.

Explanation of Provisions

Section 382(l)(5) of the Code provides special rules for ownership changes resulting from bankruptcy proceedings. A loss corporation that qualifies for the special rules can use its loss carryforwards, after certain reductions, against its post-change income without limitation by section 382(a). A loss corporation qualifies only if its pre-change shareholders and creditors own at least 50 percent of its stock after the ownership change. Section 382(l)(5)(E) provides that stock issued in exchange for indebtedness counts toward the 50 percent threshold of section 382(l)(5) only if the indebtedness (1) was held by the creditor at least 18 months before the bankruptcy filing, or (2) arose in the ordinary course of the trade or business of the loss corporation and was held at all times by the same beneficial owner. The proposed regulations published in the Federal Register on May 10, 1993, contain rules for determining if stock received by creditors counts toward the 50 percent threshold of section 382(l)(5).

The final regulations adopt the proposed regulations with several changes to respond to comments. The changes, as well as certain comments that were not adopted in the final regulations, are discussed below.

A. Treatment of Certain Indebtedness As Continuously Owned by the Same Owner

The proposed regulations include a de minimis rule that allows a loss corporation to treat indebtedness as always having been owned by the beneficial owner of the indebtedness immediately before the ownership change if the beneficial owner is not, immediately after the ownership change, either a 5-percent shareholder or an entity through which a 5-percent shareholder owns an indirect ownership interest in the loss corporation (a 5-percent entity). The de minimis rule does not apply to indebtedness owned by a person whose participation in formulating a plan of reorganization makes evident to the loss

corporation that the person has not owned the indebtedness for the requisite period. This exception applies regardless of whether the participant exchanges the indebtedness for stock pursuant to the plan or transfers the indebtedness to other persons prior to the effective date of the plan.

One commentator recommended that the exception to the de minimis rule be deleted because it is unclear and unlikely to work well in practice. The commentator suggested that the speculative investors who are the target of the rule are likely to sell their debt prior to the effective date of the plan. Unless the loss corporation could identify the purchasers of the debt, it would have difficulty applying the exception.

The final regulations retain the exception to the de minimis rule. The loss corporation should not be able to disregard the fact that a creditor has not held its debt for the period required by section 382(l)(5)(E) if that fact is made evident by the creditor's participation in the formulation of the plan of reorganization. The need for the requirement that the loss corporation take these facts into account outweighs any potential difficulty the loss corporation may have in applying the requirement if the creditor that participates in formulating the plan transfers its debt prior to the effective date of the plan.

B. Tacking Rules

The proposed regulations allow the tacking of the ownership periods of a transferee and transferor of debt in certain circumstances for the purpose of determining whether the debt meets the continuous ownership requirement of section 382(l)(5)(E).

The proposed regulations include a rule which permits tacking for a transfer pursuant to a subrogation in which a bank or insurance company acquires a claim against a loss corporation by reason of a payment to the claimant under a letter of credit or insurance policy. Commentators recommended that the rule be expanded to cover transfers pursuant to security arrangements regardless of whether the transferee is a bank or the arrangement is evidenced by a letter of credit. The final regulations adopt this recommendation.

Commentators also recommended that a tacking rule be added to cover factoring transactions. Corporations in certain industries customarily sell (or ``factor'') their accounts receivable as a means of financing their operations. In response to this recommendation, an additional tacking rule has been added to the final regulations. This rule applies to a transfer of an account receivable in a customary commercial factoring transaction made within 30 days after the account arose to a transferee that regularly engages in such transactions.

C. Treatment of Accrued Interest on Qualified Indebtedness

The proposed (and final) regulations generally provide that stock received by a creditor counts toward the 50 percent threshold of section 382(l)(5) only to the extent that the creditor receives the stock in full or partial satisfaction of qualifying indebtedness held for the requisite period. In response to a comment, the final regulations clarify that such indebtedness held by a creditor includes interest accrued thereon.

D. Effective Date

The proposed regulations were to apply to ownership changes occurring on or after the date the Treasury decision adopting the

regulations was filed with the Federal Register. The preamble to the proposed regulations expressed an intent that taxpayers not be disadvantaged by the withdrawal of the earlier proposed regulations and requested comments on ways to achieve that result.

The final regulations apply to ownership changes occurring on or after the date the Treasury decision adopting the proposed regulations is filed with the Federal Register. As commentators recommended, however, the final regulations allow elective retroactive application of the rules of the regulations to ownership changes that occurred on or after January 1, 1987. If the loss corporation elects retroactive application, it may also revoke any prior election made under section 382(l)(5)(H) to not have section 382(l)(5) apply.

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 was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Diana MacKeen Fulton, Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

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

* * * * *

Par. 2. In Sec. 1.382-1, the table of contents is amended by:

1. Continuing to reserve the entry for 1.382-9, paragraph (c).
2. Adding entries for paragraphs (d) through (d)(6)(ii)(C).
3. The additions read as follows:

Sec. 1.382-1 Table of contents.

* * * * *

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

* * * * *

(c) [Reserved]

(d) Rules for determining whether stock of the loss corporation is owned as a result of being a qualified creditor.

(1) Qualified creditor.

(2) General rules for determining whether indebtedness is qualified indebtedness.

(i) Definition.

(ii) Determination of beneficial ownership.

(iii) Duty of inquiry.

(iv) Ordinary course indebtedness.

(3) Treatment of certain indebtedness as continuously owned by the same owner.

(i) In general.

(ii) Operating rules.

(iii) Indebtedness owned by beneficial owner who becomes a 5-percent shareholder or 5-percent entity.

(iv) Example.

(4) Special rule if indebtedness is a large portion of creditor's assets.

(i) In general.

(ii) Applicable period.

(iii) Determination of ownership change.

(iv) Reliance on statement.

(5) Tacking of ownership periods.

(i) Transferee treated as owning indebtedness for period owned by transferor.

(ii) Qualified transfer.

(iii) Exception.

(iv) Debt-for-debt exchanges.

(6) Effective date.

(i) In general.

(ii) Elections and amended returns.

(A) Election to apply this paragraph (d) retroactively.

(B) Election to revoke section 382(1)(5)(H) election.

(C) Amended returns.

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Par. 3. Section 1.382-9 is amended by:

1. Revising the last sentence of paragraph (a).

2. Adding paragraph (d).

3. Revising the second sentence of paragraph (e)(1).

4. The revisions and additions read as follows:

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

(a) * * * Terms and nomenclature used in this section, and not otherwise defined herein (including the nomenclature and assumptions in Sec. 1.382-2T(b) relating to the examples) have the same respective meanings as in section 382 and the regulations thereunder.

* * * * *

(d) Rules for determining whether stock of the loss corporation is owned as a result of being a qualified creditor--(1) Qualified creditor. A qualified creditor is the beneficial owner, immediately before the ownership change, of qualified indebtedness of the loss corporation. A qualified creditor owns stock of the new loss corporation (or a controlling corporation) as a result of being a qualified creditor only to the extent that the qualified creditor receives stock in full or partial satisfaction of qualified indebtedness (including interest accrued on such indebtedness) in a transaction that is ordered by the court or is pursuant to a plan approved by the court in a title 11 or similar case. For purposes of this paragraph (d)(1), ownership of stock after the ownership change is determined without applying the attribution rules generally applicable under section 382(l)(3)(A) or Sec. 1.382-2T(h).

(2) General rules for determining whether indebtedness is qualified indebtedness--(i) Definition. Indebtedness of the loss corporation is qualified indebtedness if it--

(A) Has been owned by the same beneficial owner since the date that is 18 months before the date of the filing of the title 11 or similar case; or

(B) Arose in the ordinary course of the trade or business of the loss corporation and has been owned at all times by the same beneficial owner.

(ii) Determination of beneficial ownership. For purposes of paragraph (d)(2)(i) of this section, beneficial ownership of indebtedness is determined without applying attribution rules.

(iii) Duty of inquiry. The loss corporation must determine that indebtedness that the loss corporation treats as qualified indebtedness, other than indebtedness to which paragraph (d)(3)(i) of this section applies, has been owned for the requisite period by the beneficial owner who owns the indebtedness immediately before the ownership change. The loss corporation may rely on a statement, signed under penalties of perjury, by a beneficial owner regarding the amount of indebtedness the beneficial owner owns and the length of time that the beneficial owner has owned the indebtedness.

(iv) Ordinary course indebtedness. For purposes of this paragraph (d)(2), indebtedness arises in the ordinary course of the loss corporation's trade or business only if the indebtedness is incurred by the loss corporation in connection with the normal, usual, or customary conduct of business, determined without regard to whether the indebtedness funds ordinary or capital expenditures of the loss corporation. For example, indebtedness (other than indebtedness acquired for a principal purpose of being exchanged for stock) arises in the ordinary course of the loss corporation's trade or business if it is trade debt; a tax liability; a liability arising from a past or present employment relationship, a past or present business relationship with a supplier, customer, or competitor of the loss corporation, a tort, a breach of warranty, or a breach of statutory duty; or indebtedness incurred to pay an expense deductible under section 162 or included in the cost of goods sold. A claim that arises upon the rejection of a burdensome contract or lease pursuant to the title 11 or similar case is treated as arising in the ordinary course of the loss corporation's trade or business if the contract or lease so arose.

(3) Treatment of certain indebtedness as continuously owned by the same owner--(i) In general. For purposes of paragraph (d)(2) of this section, a loss corporation may treat indebtedness as always having been owned by the beneficial owner of the indebtedness immediately before the ownership change if the beneficial owner is not, immediately

after the ownership change, either a 5-percent shareholder or an entity through which a 5-percent shareholder owns an indirect ownership interest in the loss corporation (a 5-percent entity). This paragraph (d)(3)(i) does not apply to indebtedness beneficially owned by a person whose participation in formulating a plan of reorganization makes evident to the loss corporation (whether or not the loss corporation had previous knowledge) that the person has not owned the indebtedness for the requisite period.

(ii) Operating rules. For purposes of paragraph (d)(3)(i) of this section: (A) If a loss corporation has actual knowledge of a coordinated acquisition of its indebtedness by a group of persons, through a formal or informal understanding among themselves, for a principal purpose of exchanging the indebtedness for stock, the indebtedness (and any stock received in exchange therefor) is treated as owned by an entity. A principal element in determining if an understanding exists among members of a group is whether the investment decision of each member is based upon the investment decision of one or more other members.

(B) If the loss corporation has actual knowledge regarding stock ownership described in Sec. 1.382-2T(k)(2), the loss corporation must take that ownership into account in determining which beneficial owners of indebtedness are, immediately after the ownership change, 5-percent shareholders or 5-percent entities. The loss corporation is not required to take into account an ownership interest described in Sec. 1.382-2T(k)(4) unless the loss corporation has actual knowledge of the ownership interest.

(C) The term 5-percent shareholder includes any person who is a 5-percent shareholder of the loss corporation within the meaning of Sec. 1.382-2T(g), without regard to the option attribution rules of section 382(l)(3)(A) or Sec. 1.382-4(d) (or, if applicable, Sec. 1.382-2T(h)(4)).

(D) Paragraph (d)(3)(i) of this section does not apply to indebtedness if the loss corporation has actual knowledge immediately after the ownership change that the exercise of an option to acquire or dispose of stock of the loss corporation would cause the beneficial owner of the indebtedness immediately before the ownership change to be, after the ownership change, either a 5-percent shareholder or a 5-percent entity. An interest that is treated as an option under Sec. 1.382-4(d)(9) (or Sec. 1.382-2T(h)(4)(v) if applicable) is treated as an option for purposes of this paragraph (d)(3)(ii)(D).

(iii) Indebtedness owned by beneficial owner who becomes a 5-percent shareholder or 5-percent entity. If the beneficial owner of indebtedness immediately before the ownership change is a 5-percent shareholder or 5-percent entity immediately after the ownership change, the general rules of paragraph (d)(2) of this section apply to determine whether the indebtedness has been owned for the requisite period by the beneficial owner.

(iv) Example. The following example illustrates paragraph (d)(3) of this section.

(A)(1) L is a loss corporation in a title 11 case. The plan of reorganization of L approved by the bankruptcy court provides for the satisfaction of claims by the issuance of new L common stock to its creditors as follows:

A--2 percent

B--7.5 percent

C--2.5 percent

P1--3 percent

P2--10 percent
P3--4.9 percent
P4--4.9 percent
P5--4.9 percent

(2) P2 is owned by Public P2. B owns 10 percent of the stock of P1 and L has no actual knowledge of this ownership. L has actual knowledge that D owns P3, P4 and P5. In addition, L has actual knowledge, immediately after the ownership change, that C owns an option to acquire newly-issued stock of L that, if exercised, would increase C's percentage ownership of L stock from 2.5 percent to 8 percent. An ownership change of L occurs on the date the plan becomes effective.

(B) Under paragraph (d)(3)(i) of this section, L may treat the indebtedness owned by A and P1 immediately before the ownership change as always having been owned by A and P1. Neither A nor P1 is a 5-percent shareholder immediately after the ownership change. Further, because P1 owns less than 5 percent of the L stock (and L has no actual knowledge of B's ownership interest in P1), P1 is treated as an individual, and the L stock owned by P1 is not attributed to any other person, including B. See Sec. 1.382-2T(h)(2)(iii). Therefore, P1 is not a 5-percent entity.

(C) Paragraph (d)(3)(i) of this section does not apply to the indebtedness owned by B, C, P2, P3, P4, or P5. B is a 5-percent shareholder immediately after the ownership change. L has actual knowledge immediately after the ownership change that the exercise of C's option would cause C to be a 5-percent shareholder immediately after the ownership change. (L does not take into account the effect of the exercise of the option, however, in determining the percentage stock ownership of any person other than C because the deemed exercise would not cause any other person to be a 5-percent shareholder or a 5-percent entity after the ownership change.) P2 is a 5-percent entity, because Public P2, a 5-percent shareholder, owns an indirect ownership interest in L through P2. P3, P4, and P5 are 5-percent entities because D, a 5-percent shareholder, owns an indirect ownership interest in L through P3, P4, and P5. Because L has actual knowledge that D would be a 5-percent shareholder but for the application of Sec. 1.382-2T(h)(2)(iii), that section does not apply to P3, P4, or P5. See Sec. 1.382-2T(k)(2). Thus, under Sec. 1.382-2T(h)(2)(i), the L stock owned by P3, P4, and P5 is attributed to D, and D is a 5-percent shareholder. Because paragraph (d)(3)(i) of this section does not apply to the indebtedness owned by B, C, P2, P3, P4, and P5, L may treat as qualified indebtedness only indebtedness that it determines had been owned by such persons for the requisite period. See paragraph (d)(2)(iii) of this section.

(4) Special rule if indebtedness is a large portion of creditor's assets--(i) In general. Indebtedness is not qualified indebtedness if--

(A) The beneficial owner of the indebtedness is a corporation or other entity that had an ownership change on any day during the applicable period;

(B) The indebtedness represents more than 25 percent of the fair market value of the total gross assets (excluding cash or cash equivalents) of the beneficial owner on its change date; and

(C) The beneficial owner is a 5-percent entity immediately after the ownership change of the loss corporation (determined by applying the rules of paragraph (d)(3) of this section).

(ii) Applicable period. For purposes of paragraph (d)(4)(i) of this

section, the term applicable period means the period beginning on the day 18 months before the filing of the title 11 or similar case (or the day on which the beneficial owner acquired the indebtedness, if later) and ending with the change date of the loss corporation.

(iii) Determination of ownership change. For purposes of paragraph (d)(4)(i) of this section, the determination whether a beneficial owner of indebtedness has an ownership change is made under the principles of section 382 and the regulations thereunder, without regard to whether the beneficial owner is a loss corporation and by beginning the testing period no earlier than the latest of the day three years before the change date, the day 18 months before the filing of the title 11 or similar case, or the day on which the beneficial owner acquired the indebtedness.

(iv) Reliance on statement. Paragraph (d)(4)(i) of this section does not apply to indebtedness if the loss corporation obtains a statement, signed under penalties of perjury, by the beneficial owner of the indebtedness that states that paragraph (d)(4)(i) of this section does not apply to the indebtedness.

(5) Tacking of ownership periods--(i) Transferee treated as owning indebtedness for period owned by transferor. To determine whether indebtedness transferred in a qualified transfer is qualified indebtedness, the transferee is treated as having owned the indebtedness for the period that it was owned by the transferor.

(ii) Qualified transfer. For purposes of paragraph (d)(5)(i) of this section, a transfer of indebtedness is a qualified transfer if--

(A) The transfer is between parties who bear a relationship to each other described in section 267(b) or 707(b) (substituting at least 80 percent for more than 50 percent each place it appears in section 267(b) (and section 267(f)(1)) or 707(b));

(B) The transfer is a transfer of a loan within 90 days after its origination, pursuant to a customary syndication transaction;

(C) The transfer is a transfer of newly incurred indebtedness by an underwriter that owned the indebtedness for a transitory period pursuant to an underwriting;

(D) The transferee's basis in the indebtedness is determined under section 1014 or 1015 or with reference to the transferor's basis in the indebtedness;

(E) The transfer is in satisfaction of a right to receive a pecuniary bequest;

(F) The transfer is pursuant to any divorce or separation instrument (within the meaning of section 71(b)(2));

(G) The transfer is pursuant to a subrogation in which the transferee acquires a claim against the loss corporation by reason of a payment to the claimant pursuant to an insurance policy or a guarantee, letter of credit or similar security arrangement; or

(H) The transfer is a transfer of an account receivable in a customary commercial factoring transaction made within 30 days after the account arose to a transferee that regularly engages in such transactions.

(iii) Exception. A transfer of indebtedness is not a qualified transfer for purposes of paragraph (d)(5)(i) of this section if the transferee acquired the indebtedness for a principal purpose of benefiting from the losses of the loss corporation by--

(A) Exchanging the indebtedness for stock of the loss corporation pursuant to the title 11 or similar case; or

(B) Selling the indebtedness at a profit that reflects the expectation that, by reason of section 382(l)(5), section 382(a) will not apply to any ownership change resulting from the title 11 or similar case.

(iv) Debt-for-debt exchanges. If the loss corporation satisfies its

indebtedness with new indebtedness, either through an exchange of new indebtedness for old indebtedness or a change in the terms of indebtedness that results in an exchange under section 1001--

(A) The owner of the new indebtedness is treated as having owned that indebtedness for the period that it owned the old indebtedness; and

(B) The new indebtedness is treated as having arisen in the ordinary course of the trade or business of the loss corporation if the old indebtedness so arose.

(6) Effective date--(i) In general. This paragraph (d) applies to ownership changes occurring on or after March 17, 1994.

(ii) Elections and amended returns--(A) Election to apply this paragraph (d) retroactively. A loss corporation may elect to apply this paragraph (d) to an ownership change occurring prior to March 17, 1994. This 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 Sec. 1.382-9(d) Retroactively with Respect to the Ownership Change on [Insert Date of Ownership Change] That Occurred in Connection with the Title 11 or Similar Case filed on [Insert Date of Filing].'' This statement must be accompanied by the amended returns described in paragraph (d)(6)(ii)(C) of this section. An election under this paragraph (d)(6) is irrevocable.

(B) Election to revoke section 382(l)(5)(H) election. A loss corporation may elect to revoke a prior election made under section 382(l)(5)(H) with respect to an ownership change occurring before March 17, 1994 by including the following statement with its election to apply Sec. 1.382-9(d) retroactively: ``This is an Election to Revoke a Prior Election Made Under Section 382(l)(5)(H) With Respect to the Ownership Change on [Insert Date of Ownership Change] That Occurred in Connection With the Title 11 or Similar Case Filed on [Insert Date of Filing].''

(C) Amended returns. If the retroactive application of this paragraph (d) affects the amount of taxable income or loss for a prior taxable year, then, except as precluded by the applicable statute of limitations, the loss corporation (or the common parent of any consolidated group of which the loss corporation was a member for the year) must file an amended return for the year that reflects the effects of the retroactive application of the rules of this paragraph (d). If the statute of limitations precludes the filing of an amended return for one or more such prior taxable years, the loss corporation (or the common parent) must make appropriate adjustments under the principles of section 382(l)(2)(A) in subsequent taxable years to reflect the difference between the losses and credits actually used in such prior taxable years and the amount that would have been used in those years applying the rules of this paragraph (d).

(e) Option attribution for purposes of determining stock ownership under section 382(l)(5)(A)(ii)--(1) In general. * * * An option that is owned as a result of being a pre-change shareholder or qualified creditor and that, if exercised, would result in the ownership of stock by a pre-change shareholder or qualified creditor is not treated as exercised under this paragraph (e). * * *

* * * * *

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by revising the entries for 1.382-3 and 1.382-9 to read as follows:

Sec. 602.101 OMB Control numbers.

* * * * *
(c) * * *

CFR part or section where identified and described	Current OMB control No.

1.382-3.....	1545-1281 1545-1345

1.382-9.....	1545-1260 1545-1120 1545-1275 1545-1324

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: February 24, 1994.
Leslie Samuels,
Assistant Secretary of the Treasury (Tax Policy).
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