

to any option with respect to stock of the loss corporation.

(C) *Time and manner of making the election.* The election described in paragraph (h)(2)(vi)(A) of this section is made by attaching a statement to the loss corporation's income tax return for the first taxable year ending after November 4, 1992, in which a testing date (within the meaning of §1.382-2T(a)(2)(i)) occurs, or if such return is filed on or before May 17, 1994, with its first return filed after May 17, 1994. However, a loss corporation that is under the jurisdiction of a court in a title 11 or similar case filed on or before May 17, 1994, may make the election described in paragraph (h)(2)(vi)(A) by attaching a statement to its tax return for its first taxable year ending after that date. The statement must say "THIS IS AN ELECTION UNDER §1.382-4(h)(2)(vi) TO APPLY §1.382-2T(h)(4) ON OR AFTER NOVEMBER 5, 1992." Any amended returns required by paragraph (h)(2)(vi)(D) of this section must accompany the return with which the election is made. An election under paragraph (h)(2)(vi)(A) of this section is irrevocable.

(D) *Amended returns.* If an election under this paragraph (h)(2)(vi) affects the amount of taxable income or loss for a prior taxable year, 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 effect of the election.

(3) *Special rule for options subject to attribution under §1.382-2T(h)(4).* Section §1.382-2T(h)(4)(i) does not apply to any option designated by the Internal Revenue Service in the Internal Revenue Bulletin as being excepted from the operation of §1.382-2T(h)(4)(i).

[T.D. 8531, 59 FR 12837, Mar. 18, 1994, as amended by T.D. 8825, 64 FR 36178, July 2, 1999]

§ 1.382-5 Section 382 limitation.

(a) *Scope.* Following an ownership change, the section 382 limitation for any post-change year is an amount equal to the value of the loss corporation multiplied by the long-term tax-exempt rate that applies with respect

to the ownership change, and adjusted as required by section 382 and the regulations thereunder. See, for example, section 382(b)(2) (relating to the carryforward of unused section 382 limitation), section 382(b)(3)(B) (relating to the section 382 limitation for the post-change year that includes the change date), section 382(m)(2) (relating to short taxable years), and section 382(h) (relating to recognized built-in gains and section 338 gains).

(b) *Computation of value.* [Reserved]

(c) *Short taxable year.* The section 382 limitation for any post-change year that is less than 365 days is the amount that bears the same ratio to the section 382 limitation determined under section 382(b)(1) as the number of days in the post-change year bears to 365. The section 382 limitation, as so determined, is adjusted as required by section 382 and the regulations thereunder. This paragraph (c) does not apply to a 52-53 week taxable year that is less than 365 days unless a return is required under section 443 (relating to short periods) for such year.

(d) *Successive ownership changes and absorption of a section 382 limitation—(1) In general.* If a loss corporation has two (or more) ownership changes, any losses attributable to the period preceding the earlier ownership change are treated as pre-change losses with respect to both ownership changes. Thus, the later ownership change may result in a lesser (but never in a greater) section 382 limitation with respect to such losses. In any case, the amount of taxable income for any post-change year that can be offset by pre-change losses may not exceed the section 382 limitation for such ownership change, reduced by the amount of taxable income offset by pre-change losses subject to any earlier ownership change(s).

(2) *Recognized built-in gains and losses.* [Reserved]

(3) *Effective date.* This paragraph (d) applies to taxable years of a loss corporation beginning on or after January 1, 1997.

(e) *Controlled groups.* See §1.382-8 for rules for determining the value of a loss corporation that is a member of a controlled group.

(f) *Effective date.* Except as otherwise provided, this section applies to a loss

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corporation that has an ownership change to which section 382(a), as amended by the Tax Reform Act of 1986, applies.

[T.D. 8679, 61 FR 33316, June 27, 1996, as amended by T.D. 8825, 64 FR 36178, July 2, 1999]

§ 1.382-6 Allocation of income and loss to periods before and after the change date for purposes of section 382.

(a) *General rule.* Except as provided in paragraphs (b) and (d) of this section, a loss corporation must allocate its net operating loss or taxable income (see section 382(k)(4)), and its net capital loss (see section 1222(10)) or modified capital gain net income (as defined in paragraph (g)(4) of this section), for the change year between the pre-change period and the post-change period by ratably allocating an equal portion to each day in the year.

(b) *Closing-of-the-books election*—(1) *In general.* Subject to paragraphs (b)(3)(ii) and (d) of this section, a loss corporation may elect to allocate its net operating loss or taxable income and its net capital loss or modified capital gain net income for the change year between the pre-change period and the post-change period as if the loss corporation's books were closed on the change date. An election under this paragraph (b)(1) does not terminate the loss corporation's taxable year as of the change date (e.g., the change year is a single tax year for purposes of section 172).

(2) *Making the closing-of-the-books election*—(i) *Time and manner.* A loss corporation makes the closing-of-the-books election by including the following statement on the information statement required by § 1.382-11(a) for the change year: "THE CLOSING-OF-THE-BOOKS ELECTION UNDER § 1.382-6(b) IS HEREBY MADE WITH RESPECT TO THE OWNERSHIP CHANGE OCCURRING ON [INSERT DATE]." The election must be made on or before the due date (including extensions) of the loss corporation's income tax return for the change year.

(ii) *Election irrevocable.* An election under this paragraph (b) is irrevocable.

(3) *Special rules relating to consolidated and controlled groups*—(i) *Consolidated*

groups. If an election under this paragraph (b) is made with respect to an ownership change occurring in a consolidated return year, all allocations under this section with respect to that ownership change must be consistent with the election.

(ii) *Controlled groups.* If paragraph (b)(3)(i) of this section does not apply, and if, as part of the same plan or arrangement, two or more members of a controlled group (as defined in section 1563(a), determined by substituting "50 percent" for "80 percent" each place that it appears, and without regard to section 1563(a)(4)), have ownership changes and continue to be members of the controlled group (or become members of the same other controlled group), a closing-of-the-books election applies only if the election is made by all members having the ownership changes.

(c) *Operating rules for determining net operating loss, taxable income, net capital loss, modified capital gain net income, and special allocations.* For purposes of this section, for the change year—

(1) *In general*—(i) Net operating loss or taxable income is determined without regard to gains or losses on the sale or exchange of capital assets; and

(ii) Net operating loss or taxable income and net capital loss or modified capital gain net income are determined without regard to the section 382 limitation and do not include the following items, which are allocated entirely to the post-change period—

(A) Any income, gain, loss, or deduction to which section 382(h)(5)(A) applies; and

(B) Any income or gain recognized on the disposition of assets transferred to the loss corporation during the post-change period for a principal purpose of ameliorating the section 382 limitation.

(2) *Adjustment to net operating loss*—(i) *Determination of remaining capital gain.* The amount of modified capital gain net income (defined in paragraph (g)(4) of this section) allocated to each period is offset by capital losses to which section 382(h)(5)(A) applies and capital loss carryovers, subject to the section 382 limitation (in the case of modified capital gain net income allocated to the post-change period).