

**§ 382. Limitation on net operating loss carryforwards and certain built-in losses following ownership change**

**(a) General rule**

The amount of the taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed the section 382 limitation for such year.

**(b) Section 382 limitation**

For purposes of this section—

**(1) In general**

Except as otherwise provided in this section, the section 382 limitation for any post-change year is an amount equal to—

- (A) the value of the old loss corporation, multiplied by
- (B) the long-term tax-exempt rate.

**(2) Carryforward of unused limitation**

If the section 382 limitation for any post-change year exceeds the taxable income of the new loss corporation for such year which was offset by pre-change losses, the section 382 limitation for the next post-change year shall be increased by the amount of such excess.

**(3) Special rule for post-change year which includes change date**

In the case of any post-change year which includes the change date—

**(A) Limitation does not apply to taxable income before change**

Subsection (a) shall not apply to the portion of the taxable income for such year which is allocable to the period in such year on or before the change date. Except as provided in subsection (h)(5) and in regulations, taxable income shall be allocated ratably to each day in the year.

**(B) Limitation for period after change**

For purposes of applying the limitation of subsection (a) to the remainder of the taxable income for such year, the section 382 limitation shall be an amount which bears the same ratio to such limitation (determined without regard to this paragraph) as—

- (i) the number of days in such year after the change date, bears to
- (ii) the total number of days in such year.

**(c) Carryforwards disallowed if continuity of business requirements not met**

**(1) In general**

Except as provided in paragraph (2), if the new loss corporation does not continue the business enterprise of the old loss corporation at all times during the 2-year period beginning on the change date, the section 382 limitation for any post-change year shall be zero.

**(2) Exception for certain gains**

The section 382 limitation for any post-change year shall not be less than the sum of—

- (A) any increase in such limitation under—
  - (i) subsection (h)(1)(A) for recognized built-in gains for such year, and
  - (ii) subsection (h)(1)(C) for gain recognized by reason of an election under section 338, plus

(B) any increase in such limitation under subsection (b)(2) for amounts described in subparagraph (A) which are carried forward to such year.

**(d) Pre-change loss and post-change year**

For purposes of this section—

**(1) Pre-change loss**

The term “pre-change loss” means—

(A) any net operating loss carryforward of the old loss corporation to the taxable year ending with the ownership change or in which the change date occurs, and

(B) the net operating loss of the old loss corporation for the taxable year in which the ownership change occurs to the extent such loss is allocable to the period in such year on or before the change date.

Except as provided in subsection (h)(5) and in regulations, the net operating loss shall, for purposes of subparagraph (B), be allocated ratably to each day in the year.

**(2) Post-change year**

The term “post-change year” means any taxable year ending after the change date.

**(3) Application to carryforward of disallowed interest**

The term “pre-change loss” shall include any carryover of disallowed interest described in section 163(j)(2) under rules similar to the rules of paragraph (1).

**(e) Value of old loss corporation**

For purposes of this section—

**(1) In general**

Except as otherwise provided in this subsection, the value of the old loss corporation is the value of the stock of such corporation (including any stock described in section 1504(a)(4)) immediately before the ownership change.

**(2) Special rule in the case of redemption or other corporate contraction**

If a redemption or other corporate contraction occurs in connection with an ownership change, the value under paragraph (1) shall be determined after taking such redemption or other corporate contraction into account.

**(3) Treatment of foreign corporations**

Except as otherwise provided in regulations, in determining the value of any old loss corporation which is a foreign corporation, there shall be taken into account only items treated as connected with the conduct of a trade or business in the United States.

**(f) Long-term tax-exempt rate**

For purposes of this section—

**(1) In general**

The long-term tax-exempt rate shall be the highest of the adjusted Federal long-term rates in effect for any month in the 3-calendar-month period ending with the calendar month in which the change date occurs.

**(2) Adjusted Federal long-term rate**

For purposes of paragraph (1), the term “adjusted Federal long-term rate” means the Fed-

eral long-term rate determined under section 1274(d), except that—

(A) paragraphs (2) and (3) thereof shall not apply, and

(B) such rate shall be properly adjusted for differences between rates on long-term taxable and tax-exempt obligations.

**(g) Ownership change**

For purposes of this section—

**(1) In general**

There is an ownership change if, immediately after any owner shift involving a 5-percent shareholder or any equity structure shift—

(A) the percentage of the stock of the loss corporation owned by 1 or more 5-percent shareholders has increased by more than 50 percentage points, over

(B) the lowest percentage of stock of the loss corporation (or any predecessor corporation) owned by such shareholders at any time during the testing period.

**(2) Owner shift involving 5-percent shareholder**

There is an owner shift involving a 5-percent shareholder if—

(A) there is any change in the respective ownership of stock of a corporation, and

(B) such change affects the percentage of stock of such corporation owned by any person who is a 5-percent shareholder before or after such change.

**(3) Equity structure shift defined**

**(A) In general**

The term “equity structure shift” means any reorganization (within the meaning of section 368). Such term shall not include—

(i) any reorganization described in subparagraph (D) or (G) of section 368(a)(1) unless the requirements of section 354(b)(1) are met, and

(ii) any reorganization described in subparagraph (F) of section 368(a)(1).

**(B) Taxable reorganization-type transactions, etc.**

To the extent provided in regulations, the term “equity structure shift” includes taxable reorganization-type transactions, public offerings, and similar transactions.

**(4) Special rules for application of subsection**

**(A) Treatment of less than 5-percent shareholders**

Except as provided in subparagraphs (B)(i) and (C), in determining whether an ownership change has occurred, all stock owned by shareholders of a corporation who are not 5-percent shareholders of such corporation shall be treated as stock owned by 1 5-percent shareholder of such corporation.

**(B) Coordination with equity structure shifts**

For purposes of determining whether an equity structure shift (or subsequent transaction) is an ownership change—

**(i) Less than 5-percent shareholders**

Subparagraph (A) shall be applied separately with respect to each group of share-

holders (immediately before such equity structure shift) of each corporation which was a party to the reorganization involved in such equity structure shift.

**(ii) Acquisitions of stock**

Unless a different proportion is established, acquisitions of stock after such equity structure shift shall be treated as being made proportionately from all shareholders immediately before such acquisition.

**(C) Coordination with other owner shifts**

Except as provided in regulations, rules similar to the rules of subparagraph (B) shall apply in determining whether there has been an owner shift involving a 5-percent shareholder and whether such shift (or subsequent transaction) results in an ownership change.

**(D) Treatment of worthless stock**

If any stock held by a 50-percent shareholder is treated by such shareholder as becoming worthless during any taxable year of such shareholder and such stock is held by such shareholder as of the close of such taxable year, for purposes of determining whether an ownership change occurs after the close of such taxable year, such shareholder—

(i) shall be treated as having acquired such stock on the 1st day of his 1st succeeding taxable year, and

(ii) shall not be treated as having owned such stock during any prior period.

For purposes of the preceding sentence, the term “50-percent shareholder” means any person owning 50 percent or more of the stock of the corporation at any time during the 3-year period ending on the last day of the taxable year with respect to which the stock was so treated.

**(h) Special rules for built-in gains and losses and section 338 gains**

For purposes of this section—

**(1) In general**

**(A) Net unrealized built-in gain**

**(i) In general**

If the old loss corporation has a net unrealized built-in gain, the section 382 limitation for any recognition period taxable year shall be increased by the recognized built-in gains for such taxable year.

**(ii) Limitation**

The increase under clause (i) for any recognition period taxable year shall not exceed—

(I) the net unrealized built-in gain, reduced by

(II) recognized built-in gains for prior years ending in the recognition period.

**(B) Net unrealized built-in loss**

**(i) In general**

If the old loss corporation has a net unrealized built-in loss, the recognized built-in loss for any recognition period taxable

year shall be subject to limitation under this section in the same manner as if such loss were a pre-change loss.

**(ii) Limitation**

Clause (i) shall apply to recognized built-in losses for any recognition period taxable year only to the extent such losses do not exceed—

(I) the net unrealized built-in loss, reduced by

(II) recognized built-in losses for prior taxable years ending in the recognition period.

**(C) Special rules for certain section 338 gains**

If an election under section 338 is made in connection with an ownership change and the net unrealized built-in gain is zero by reason of paragraph (3)(B), then, with respect to such change, the section 382 limitation for the post-change year in which gain is recognized by reason of such election shall be increased by the lesser of—

(i) the recognized built-in gains by reason of such election, or

(ii) the net unrealized built-in gain (determined without regard to paragraph (3)(B)).

**(2) Recognized built-in gain and loss**

**(A) Recognized built-in gain**

The term “recognized built-in gain” means any gain recognized during the recognition period on the disposition of any asset to the extent the new loss corporation establishes that—

(i) such asset was held by the old loss corporation immediately before the change date, and

(ii) such gain does not exceed the excess of—

(I) the fair market value of such asset on the change date, over

(II) the adjusted basis of such asset on such date.

**(B) Recognized built-in loss**

The term “recognized built-in loss” means any loss recognized during the recognition period on the disposition of any asset except to the extent the new loss corporation establishes that—

(i) such asset was not held by the old loss corporation immediately before the change date, or

(ii) such loss exceeds the excess of—

(I) the adjusted basis of such asset on the change date, over

(II) the fair market value of such asset on such date.

Such term includes any amount allowable as depreciation, amortization, or depletion for any period within the recognition period except to the extent the new loss corporation establishes that the amount so allowable is not attributable to the excess described in clause (ii).

**(3) Net unrealized built-in gain and loss defined**

**(A) Net unrealized built-in gain and loss**

**(i) In general**

The terms “net unrealized built-in gain” and “net unrealized built-in loss” mean, with respect to any old loss corporation, the amount by which—

(I) the fair market value of the assets of such corporation immediately before an ownership change is more or less, respectively, than

(II) the aggregate adjusted basis of such assets at such time.

**(ii) Special rule for redemptions or other corporate contractions**

If a redemption or other corporate contraction occurs in connection with an ownership change, to the extent provided in regulations, determinations under clause (i) shall be made after taking such redemption or other corporate contraction into account.

**(B) Threshold requirement**

**(i) In general**

If the amount of the net unrealized built-in gain or net unrealized built-in loss (determined without regard to this subparagraph) of any old loss corporation is not greater than the lesser of—

(I) 15 percent of the amount determined for purposes of subparagraph (A)(i)(I), or

(II) \$10,000,000,

the net unrealized built-in gain or net unrealized built-in loss shall be zero.

**(ii) Cash and cash items not taken into account**

In computing any net unrealized built-in gain or net unrealized built-in loss under clause (i), except as provided in regulations, there shall not be taken into account—

(I) any cash or cash item, or

(II) any marketable security which has a value which does not substantially differ from adjusted basis.

**(4) Disallowed loss allowed as a carryforward**

If a deduction for any portion of a recognized built-in loss is disallowed for any post-change year, such portion—

(A) shall be carried forward to subsequent taxable years under rules similar to the rules for the carrying forward of net operating losses (or to the extent the amount so disallowed is attributable to capital losses, under rules similar to the rules for the carrying forward of net capital losses), but

(B) shall be subject to limitation under this section in the same manner as a pre-change loss.

**(5) Special rules for post-change year which includes change date**

For purposes of subsection (b)(3)—

(A) in applying subparagraph (A) thereof, taxable income shall be computed without

regard to recognized built-in gains to the extent such gains increased the section 382 limitation for the year (or recognized built-in losses to the extent such losses are treated as pre-change losses), and gain described in paragraph (1)(C), for the year, and

(B) in applying subparagraph (B) thereof, the section 382 limitation shall be computed without regard to recognized built-in gains, and gain described in paragraph (1)(C), for the year.

**(6) Treatment of certain built-in items**

**(A) Income items**

Any item of income which is properly taken into account during the recognition period but which is attributable to periods before the change date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account.

**(B) Deduction items**

Any amount which is allowable as a deduction during the recognition period (determined without regard to any carryover) but which is attributable to periods before the change date shall be treated as a recognized built-in loss for the taxable year for which it is allowable as a deduction.

**(C) Adjustments**

The amount of the net unrealized built-in gain or loss shall be properly adjusted for amounts which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period.

**(7) Recognition period, etc.**

**(A) Recognition period**

The term “recognition period” means, with respect to any ownership change, the 5-year period beginning on the change date.

**(B) Recognition period taxable year**

The term “recognition period taxable year” means any taxable year any portion of which is in the recognition period.

**(8) Determination of fair market value in certain cases**

If 80 percent or more in value of the stock of a corporation is acquired in 1 transaction (or in a series of related transactions during any 12-month period), for purposes of determining the net unrealized built-in loss, the fair market value of the assets of such corporation shall not exceed the grossed up amount paid for such stock properly adjusted for indebtedness of the corporation and other relevant items.

**(9) Tax-free exchanges or transfers**

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection where property held on the change date was acquired (or is subsequently transferred) in a transaction where gain or loss is not recognized (in whole or in part).

**(i) Testing period**

For purposes of this section—

**(1) 3-year period**

Except as otherwise provided in this section, the testing period is the 3-year period ending on the day of any owner shift involving a 5-percent shareholder or equity structure shift.

**(2) Shorter period where there has been recent ownership change**

If there has been an ownership change under this section, the testing period for determining whether a 2nd ownership change has occurred shall not begin before the 1st day following the change date for such earlier ownership change.

**(3) Shorter period where all losses arise after 3-year period begins**

The testing period shall not begin before the earlier of the 1st day of the 1st taxable year from which there is a carryforward of a loss or of an excess credit to the 1st post-change year or the taxable year in which the transaction being tested occurs. Except as provided in regulations, this paragraph shall not apply to any loss corporation which has a net unrealized built-in loss (determined after application of subsection (h)(3)(B)).

**(j) Change date**

For purposes of this section, the change date is—

(1) in the case where the last component of an ownership change is an owner shift involving a 5-percent shareholder, the date on which such shift occurs, and

(2) in the case where the last component of an ownership change is an equity structure shift, the date of the reorganization.

**(k) Definitions and special rules**

For purposes of this section—

**(1) Loss corporation**

The term “loss corporation” means a corporation entitled to use a net operating loss carryover or having a net operating loss for the taxable year in which the ownership change occurs. Such term shall include any corporation entitled to use a carryforward of disallowed interest described in section 381(c)(20). Except to the extent provided in regulations, such term includes any corporation with a net unrealized built-in loss.

**(2) Old loss corporation**

The term “old loss corporation” means any corporation—

(A) with respect to which there is an ownership change, and

(B) which (before the ownership change) was a loss corporation.

**(3) New loss corporation**

The term “new loss corporation” means a corporation which (after an ownership change) is a loss corporation. Nothing in this section shall be treated as implying that the same corporation may not be both the old loss corporation and the new loss corporation.

**(4) Taxable income**

Taxable income shall be computed with the modifications set forth in section 172(d).

**(5) Value**

The term “value” means fair market value.

**(6) Rules relating to stock****(A) Preferred stock**

Except as provided in regulations and subsection (e), the term “stock” means stock other than stock described in section 1504(a)(4).

**(B) Treatment of certain rights, etc.**

The Secretary shall prescribe such regulations as may be necessary—

- (i) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and
- (ii) to treat stock as not stock.

**(C) Determinations on basis of value**

Determinations of the percentage of stock of any corporation held by any person shall be made on the basis of value.

**(7) 5-percent shareholder**

The term “5-percent shareholder” means any person holding 5 percent or more of the stock of the corporation at any time during the testing period.

**(I) Certain additional operating rules**

For purposes of this section—

**(1) Certain capital contributions not taken into account****(A) In general**

Any capital contribution received by an old loss corporation as part of a plan a principal purpose of which is to avoid or increase any limitation under this section shall not be taken into account for purposes of this section.

**(B) Certain contributions treated as part of plan**

For purposes of subparagraph (A), any capital contribution made during the 2-year period ending on the change date shall, except as provided in regulations, be treated as part of a plan described in subparagraph (A).

**(2) Ordering rules for application of section****(A) Coordination with section 172(b) carry-over rules**

In the case of any pre-change loss for any taxable year (hereinafter in this subparagraph referred to as the “loss year”) subject to limitation under this section, for purposes of determining under the 2nd sentence of section 172(b)(2) the amount of such loss which may be carried to any taxable year, taxable income for any taxable year shall be treated as not greater than—

- (i) the section 382 limitation for such taxable year, reduced by
- (ii) the unused pre-change losses for taxable years preceding the loss year.

Similar rules shall apply in the case of any credit or loss subject to limitation under section 383.

**(B) Ordering rule for losses carried from same taxable year**

In any case in which—

- (i) a pre-change loss of a loss corporation for any taxable year is subject to a section 382 limitation, and
- (ii) a net operating loss of such corporation from such taxable year is not subject to such limitation,

taxable income shall be treated as having been offset first by the loss subject to such limitation.

**(3) Operating rules relating to ownership of stock****(A) Constructive ownership**

Section 318 (relating to constructive ownership of stock) shall apply in determining ownership of stock, except that—

- (i) paragraphs (1) and (5)(B) of section 318(a) shall not apply and an individual and all members of his family described in paragraph (1) of section 318(a) shall be treated as 1 individual for purposes of applying this section,
- (ii) paragraph (2) of section 318(a) shall be applied—

(I) without regard to the 50-percent limitation contained in subparagraph (C) thereof, and

(II) except as provided in regulations, by treating stock attributed thereunder as no longer being held by the entity from which attributed,

(iii) paragraph (3) of section 318(a) shall be applied only to the extent provided in regulations,

(iv) except to the extent provided in regulations, an option to acquire stock shall be treated as exercised if such exercise results in an ownership change, and

(v) in attributing stock from an entity under paragraph (2) of section 318(a), there shall not be taken into account—

(I) in the case of attribution from a corporation, stock which is not treated as stock for purposes of this section, or

(II) in the case of attribution from another entity, an interest in such entity similar to stock described in subclause (I).

A rule similar to the rule of clause (iv) shall apply in the case of any contingent purchase, warrant, convertible debt, put, stock subject to a risk of forfeiture, contract to acquire stock, or similar interests.

**(B) Stock acquired by reason of death, gift, divorce, separation, etc.**

If—

- (i) the basis of any stock in the hands of any person is determined—

(I) under section 1014 (relating to property acquired from a decedent),

(II) section 1015 (relating to property acquired by a gift or transfer in trust), or

(III) section 1041(b)(2) (relating to transfers of property between spouses or incident to divorce),

- (ii) stock is received by any person in satisfaction of a right to receive a pecuniary bequest, or

(iii) stock is acquired by a person pursuant to any divorce or separation instrument (within the meaning of section 121(d)(3)(C)),

such person shall be treated as owning such stock during the period such stock was owned by the person from whom it was acquired.

**(C) Certain changes in percentage ownership which are attributable to fluctuations in value not taken into account**

Except as provided in regulations, any change in proportionate ownership which is attributable solely to fluctuations in the relative fair market values of different classes of stock shall not be taken into account.

**(4) Reduction in value where substantial non-business assets**

**(A) In general**

If, immediately after an ownership change, the new loss corporation has substantial nonbusiness assets, the value of the old loss corporation shall be reduced by the excess (if any) of—

- (i) the fair market value of the nonbusiness assets of the old loss corporation, over
- (ii) the nonbusiness asset share of indebtedness for which such corporation is liable.

**(B) Corporation having substantial nonbusiness assets**

For purposes of subparagraph (A)—

**(i) In general**

The old loss corporation shall be treated as having substantial nonbusiness assets if at least  $\frac{1}{3}$  of the value of the total assets of such corporation consists of nonbusiness assets.

**(ii) Exception for certain investment entities**

A regulated investment company to which part I of subchapter M applies, a real estate investment trust to which part II of subchapter M applies, or a REMIC to which part IV of subchapter M applies, shall not be treated as a new loss corporation having substantial nonbusiness assets.

**(C) Nonbusiness assets**

For purposes of this paragraph, the term “nonbusiness assets” means assets held for investment.

**(D) Nonbusiness asset share**

For purposes of this paragraph, the nonbusiness asset share of the indebtedness of the corporation is an amount which bears the same ratio to such indebtedness as—

- (i) the fair market value of the nonbusiness assets of the corporation, bears to
- (ii) the fair market value of all assets of such corporation.

**(E) Treatment of subsidiaries**

For purposes of this paragraph, stock and securities in any subsidiary corporation

shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets. For purposes of the preceding sentence, a corporation shall be treated as a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, and 50 percent or more of the total value of shares of all classes of stock.

**(5) Title 11 or similar case**

**(A) In general**

Subsection (a) shall not apply to any ownership change if—

- (i) the old loss corporation is (immediately before such ownership change) under the jurisdiction of the court in a title 11 or similar case, and
- (ii) the shareholders and creditors of the old loss corporation (determined immediately before such ownership change) own (after such ownership change and as a result of being shareholders or creditors immediately before such change) stock of the new loss corporation (or stock of a controlling corporation if also in bankruptcy) which meets the requirements of section 1504(a)(2) (determined by substituting “50 percent” for “80 percent” each place it appears).

**(B) Reduction for interest payments to creditors becoming shareholders**

In any case to which subparagraph (A) applies, the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed as if no deduction was allowable under this chapter for the interest paid or accrued by the old loss corporation on indebtedness which was converted into stock pursuant to title 11 or similar case during—

- (i) any taxable year ending during the 3-year period preceding the taxable year in which the ownership change occurs, and
- (ii) the period of the taxable year in which the ownership change occurs on or before the change date.

**(C) Coordination with section 108**

In applying section 108(e)(8) to any case to which subparagraph (A) applies, there shall not be taken into account any indebtedness for interest described in subparagraph (B).

**(D) Section 382 limitation zero if another change within 2 years**

If, during the 2-year period immediately following an ownership change to which this paragraph applies, an ownership change of the new loss corporation occurs, this paragraph shall not apply and the section 382 limitation with respect to the 2nd ownership change for any post-change year ending after the change date of the 2nd ownership change shall be zero.

**(E) Only certain stock taken into account**

For purposes of subparagraph (A)(ii), stock transferred to a creditor shall be taken into account only to the extent such stock is

transferred in satisfaction of indebtedness and only if such indebtedness—

(i) was held by the creditor at least 18 months before the date of the filing of the title 11 or similar case, or

(ii) arose in the ordinary course of the trade or business of the old loss corporation and is held by the person who at all times held the beneficial interest in such indebtedness.

**(F) Title 11 or similar case**

For purposes of this paragraph, the term “title 11 or similar case” has the meaning given such term by section 368(a)(3)(A).

**(G) Election not to have paragraph apply**

A new loss corporation may elect, subject to such terms and conditions as the Secretary may prescribe, not to have the provisions of this paragraph apply.

**(6) Special rule for insolvency transactions**

If paragraph (5) does not apply to any reorganization described in subparagraph (G) of section 368(a)(1) or any exchange of debt for stock in a title 11 or similar case (as defined in section 368(a)(3)(A)), the value under subsection (e) shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditors' claims in the transaction.

**(7) Coordination with alternative minimum tax**

The Secretary shall by regulation provide for the application of this section to the alternative tax net operating loss deduction under section 56(d).

**(8) Predecessor and successor entities**

Except as provided in regulations, any entity and any predecessor or successor entities of such entity shall be treated as 1 entity.

**(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.

**(n) Special rule for certain ownership changes**

**(1) In general**

The limitation contained in subsection (a) shall not apply in the case of an ownership change which is pursuant to a restructuring plan of a taxpayer which—

(A) is required under a loan agreement or a commitment for a line of credit entered into with the Department of the Treasury under the Emergency Economic Stabilization Act of 2008, and

(B) is intended to result in a rationalization of the costs, capitalization, and capacity with respect to the manufacturing workforce of, and suppliers to, the taxpayer and its subsidiaries.

**(2) Subsequent acquisitions**

Paragraph (1) shall not apply in the case of any subsequent ownership change unless such ownership change is described in such paragraph.

**(3) Limitation based on control in corporation**

**(A) In general**

Paragraph (1) shall not apply in the case of any ownership change if, immediately after such ownership change, any person (other than a voluntary employees' beneficiary association under section 501(c)(9)) owns stock of the new loss corporation possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or of the total value of the stock of such corporation.

**(B) Treatment of related persons**

**(i) In general**

Related persons shall be treated as a single person for purposes of this paragraph.

**(ii) Related persons**

For purposes of clause (i), a person shall be treated as related to another person if—

(I) such person bears a relationship to such other person described in section 267(b) or 707(b), or

(II) such persons are members of a group of persons acting in concert.

(Aug. 16, 1954, ch. 736, 68A Stat. 129; Pub. L. 88-554, §4(b)(3), Aug. 31, 1964, 78 Stat. 763; Pub. L. 94-455, title VIII, §806(e), Oct. 4, 1976, 90 Stat. 1599; Pub. L. 96-589, §2(d), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 97-34, title II, §242, Aug. 13, 1981, 95 Stat. 255; Pub. L. 98-369, div. A, title I, §62(b)(1), July 18, 1984, 98 Stat. 583; Pub. L. 99-514, title VI, §621(a), (e)(1), Oct. 22, 1986, 100 Stat. 2254, 2266; Pub. L. 100-203, title X, §10225(a), (b), Dec. 22, 1987, 101 Stat. 1330-413; Pub. L. 100-647, title I, §1006(d)(1)(A)-(C), (2)-(10), (17)(A), (18)-(28)(A), (29), (t)(22)(A), title IV, §4012(a)(3), (b)(1)(B), title V, §5077(a), Nov. 10, 1988, 102 Stat. 3395-3400, 3426, 3656, 3657, 3683; Pub. L. 101-73, title XIV, §1401(a)(2), Aug. 9, 1989, 103 Stat. 548; Pub. L. 101-239, title VII, §§7205(a), 7304(d)(1), 7811(c)(5)(A), 7815(h), 7841(d)(11), Dec. 19, 1989, 103 Stat. 2335, 2354, 2407, 2420, 2428; Pub. L. 103-66,

title XIII, §13226(a)(2)(A), Aug. 10, 1993, 107 Stat. 487; Pub. L. 104-188, title I, §1621(b)(3), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 108-357, title VIII, §835(b)(2), Oct. 22, 2004, 118 Stat. 1593; Pub. L. 111-5, div. B, title I, §1262(a), Feb. 17, 2009, 123 Stat. 343; Pub. L. 113-295, div. A, title II, §221(a)(30)(D), Dec. 19, 2014, 128 Stat. 4042; Pub. L. 115-97, title I, §§11051(b)(3)(F), 13301(b)(2), (3), Dec. 22, 2017, 131 Stat. 2090, 2121.)

### Editorial Notes

#### REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (n)(1)(A), is div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§5201 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

#### AMENDMENTS

2017—Subsec. (d)(3). Pub. L. 115-97, §13301(b)(2), added par. (3).

Subsec. (k)(1). Pub. L. 115-97, §13301(b)(3), inserted after first sentence “Such term shall include any corporation entitled to use a carryforward of disallowed interest described in section 381(c)(20).”

Subsec. (l)(3)(B)(iii). Pub. L. 115-97, §11051(b)(3)(F), substituted “section 121(d)(3)(C)” for “section 71(b)(2)”.

2014—Subsec. (l)(5)(F) to (H). Pub. L. 113-295 redesignated subpars. (G) and (H) as (F) and (G), respectively, and struck out former subpar. (F) which related to a special rule for certain financial institutions for certain equity structure shifts and transactions occurring before May 10, 1989.

2009—Subsec. (n). Pub. L. 111-5 added subsec. (n).

2004—Subsec. (l)(4)(B)(ii). Pub. L. 108-357 substituted “or a REMIC to which part IV of subchapter M applies,” for “a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies.”

1996—Subsec. (l)(4)(B)(ii). Pub. L. 104-188 substituted “a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies” for “or a REMIC to which part IV of subchapter M applies”.

1993—Subsec. (l)(5)(C). Pub. L. 103-66 amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows:

“(i) IN GENERAL.—In any case to which subparagraph (A) applies, 50 percent of the amount which, but for the application of section 108(e)(10)(B), would have been applied to reduce tax attributes under section 108(b) shall be so applied.

“(ii) CLARIFICATION WITH SUBPARAGRAPH (B).—In applying clause (i), there shall not be taken into account any indebtedness for interest described in subparagraph (B).”

1989—Subsec. (h)(3)(B)(i). Pub. L. 101-239, §7205(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “If the amount of the net unrealized built-in gain or net unrealized built-in loss (determined without regard to this subparagraph) of any old loss corporation is not greater than 25 percent of the amount determined for purposes of subparagraph (A)(i)(I), the net unrealized built-in gain or net unrealized built-in loss shall be zero.”

Subsec. (h)(6)(B). Pub. L. 101-239, §7811(c)(5)(A)(i), inserted “(determined without regard to any carryover)” after “during the recognition period”.

Subsec. (h)(6)(C). Pub. L. 101-239, §7811(c)(5)(A)(ii), substituted “which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period” for “treated as recognized built-in gains or losses under this paragraph”.

Subsec. (l)(3)(B)(i)(III). Pub. L. 101-239, §7841(d)(11), substituted “incident to divorce,” for “incident to divorce.”

Subsec. (l)(3)(C). Pub. L. 101-239, §7304(d)(1), redesignated subpar. (D) as (C) and struck out former subpar. (C) which related to special rule for employee stock ownership plans.

Subsec. (l)(3)(C)(ii). Pub. L. 101-239, §7815(h), substituted “For purposes of subclause (III),” for “for purposes of subclause (III),” in concluding provisions.

Subsec. (l)(3)(D). Pub. L. 101-239, §7304(d)(1), redesignated subpar. (D) as (C).

Subsec. (l)(5)(F). Pub. L. 101-73 substituted “on or after May 10, 1989” for “after December 31, 1989” in last sentence.

1988—Subsec. (e)(2). Pub. L. 100-647, §1006(d)(1)(A), inserted “or other corporate contraction” after “redemption” in heading and in two places in text.

Subsec. (e)(3). Pub. L. 100-647, §1006(d)(17)(A), added par. (3).

Subsec. (g)(1)(A). Pub. L. 100-647, §1006(d)(21)(A), struck out “new” after “stock of the”.

Subsec. (g)(1)(B). Pub. L. 100-647, §1006(d)(21)(B), struck out “old” after “stock of the”.

Subsec. (g)(4)(C). Pub. L. 100-647, §1006(d)(2), inserted “rules similar to” after “provided in regulations.”

Subsec. (h)(1)(C). Pub. L. 100-647, §1006(d)(3)(A), substituted “Special rules for certain section 338 gains” for “Section 338 gain” in heading and amended text generally. Prior to amendment, text read as follows: “The section 382 limitation for any taxable year in which gain is recognized by reason of an election under section 338 shall be increased by the excess of—

“(i) the amount of such gain, over

“(ii) the portion of such gain taken into account in computing recognized built-in gains for such taxable year.”

Subsec. (h)(3)(A)(ii). Pub. L. 100-647, §1006(d)(28)(A), inserted “to the extent provided in regulations,” after “an ownership change.”

Pub. L. 100-647, §1006(d)(1)(B), inserted “or other corporate contractions” after “redemptions” in heading and “or other corporate contraction” after “redemption” in two places in text.

Subsec. (h)(3)(B)(ii). Pub. L. 100-647, §1006(d)(26), inserted “except as provided in regulations,” after “under clause (i).”

Subsec. (h)(4). Pub. L. 100-647, §1006(d)(20), substituted “allowed as a carryforward” for “treated as a net operating loss” in heading and inserted “(or to the extent the amount so disallowed is attributable to capital losses, under rules similar to the rules for the carrying forward of net capital losses)” after “net operating losses” in subpar. (A).

Subsec. (h)(5)(A). Pub. L. 100-647, §1006(d)(3)(B), substituted “recognized built-in gains to the extent such gains increased the section 382 limitation for the year (or recognized built-in losses to the extent such losses are treated as pre-change losses)” for “recognized built-in gains and losses”.

Subsec. (h)(6). Pub. L. 100-647, §1006(d)(22), substituted “Treatment of certain built-in items” for “Secretary may treat certain deductions as built-in losses” in heading and amended text generally. Prior to amendment, text read as follows: “The Secretary may by regulation treat amounts which accrue on or before the change date but which are allowable as a deduction after such date as recognized built-in losses.”

Subsec. (h)(9). Pub. L. 100-647, §1006(d)(23), substituted “was acquired (or is subsequently transferred)” for “is transferred”.

Subsec. (i)(3). Pub. L. 100-647, §1006(d)(4), inserted “the earlier of” after “not begin before” and “or the taxable year in which the transaction being tested occurs” after “1st post-change year”.

Subsec. (k)(1). Pub. L. 100-647, §1006(d)(5)(A), inserted “or having a net operating loss for the taxable year in which the ownership change occurs” after “operating loss carryover”.

Subsec. (k)(2). Pub. L. 100-647, §1006(d)(5)(B), amended par. (2) generally. Prior to amendment, par. (2) read as



follows: “The term ‘old loss corporation’ means any corporation with respect to which there is an ownership change—

“(A) which (before the ownership change) was a loss corporation, or

“(B) with respect to which there is a pre-change loss described in subsection (d)(1)(B).”

Subsec. (l)(3)(A)(iv), (v). Pub. L. 100-647, § 1006(d)(6), added cls. (iv) and (v) and struck out former cl. (iv) which read as follows: “except to the extent provided in regulations, paragraph (4) of section 318(a) shall apply to an option if such application results in an ownership change.”

Subsec. (l)(3)(C)(ii). Pub. L. 100-647, § 5077(a), added subcl. (III) and concluding provisions.

Subsec. (l)(4)(B)(ii). Pub. L. 100-647, § 1006(t)(22)(A), substituted “REMIC” for “real estate mortgage pool”.

Subsec. (l)(5)(A)(ii). Pub. L. 100-647, § 1006(d)(25), substituted “stock of a controlling corporation” for “stock of controlling corporation”.

Pub. L. 100-647, § 1006(d)(7), substituted “after such ownership change and as a result of being shareholders or creditors immediately before such change” for “immediately after such ownership change”.

Subsec. (l)(5)(B). Pub. L. 100-647, § 1006(d)(27), substituted “the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed” for “the net operating loss deduction under section 172(a) for any post-change year shall be determined”.

Subsec. (l)(5)(C). Pub. L. 100-647, § 1006(d)(18), substituted “tax attributes” for “carryforwards” in heading and amended text generally. Prior to amendment, text read as follows: “In any case to which subparagraph (A) applies, the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed as if 50 percent of the amount which, but for the application of section 108(e)(10)(B), would have been includible in gross income for any taxable year had been so included.”

Subsec. (l)(5)(E). Pub. L. 100-647, § 1006(d)(19), substituted “taken into account” for “of creditors taken into account” in heading and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: “For purposes of subparagraph (A)(ii), stock transferred to a creditor in satisfaction of indebtedness shall be taken into account only if such indebtedness—”.

Subsec. (l)(5)(F). Pub. L. 100-647, § 4012(a)(3), substituted “1989” for “1988” in last sentence.

Subsec. (l)(5)(F)(i)(I). Pub. L. 100-647, § 1006(d)(8)(A), inserted “‘1504(a)(2)(B)’ for ‘1504(a)(2)’ and” after “by substituting”.

Subsec. (l)(5)(F)(ii)(III). Pub. L. 100-647, § 1006(d)(8)(B), substituted “the amount of deposits in the new loss corporation immediately after the change” for “deposits described in subclause (II)”.

Subsec. (l)(5)(F)(iii)(I). Pub. L. 100-647, § 4012(b)(1)(B), inserted “(as modified by section 368(a)(3)(D)(iv))” after “section 368(a)(3)(D)(ii)”.

Pub. L. 100-647, § 1006(d)(29), which directed amendment of subcl. (I) by substituting “section 368(a)(3)(D)(ii)” for “section 368(a)(D)(ii)”, could not be executed because “section 368(a)(3)(D)(ii)” appeared and “section 368(a)(D)(ii)” did not appear.

Subsec. (l)(6). Pub. L. 100-647, § 1006(d)(9), substituted “shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditors’ claims in the transaction” for “shall be the value of the new loss corporation immediately after the ownership change”.

Subsec. (l)(8). Pub. L. 100-647, § 1006(d)(10), added par. (8).

Subsec. (m)(4). Pub. L. 100-647, § 1006(d)(1)(C), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: “providing for the treatment of corporate contractions as redemptions for purposes of subsections (e)(2) and (h)(3)(A), and”.

Subsec. (m)(5). Pub. L. 100-647, § 1006(d)(24), added par. (5).

Pub. L. 100-647, § 1006(d)(1)(C), redesignated former par. (5) as (4).

1987—Subsec. (g)(4)(D). Pub. L. 100-203, § 10225(a), added subpar. (D).

Subsec. (h)(2)(B). Pub. L. 100-203, § 10225(b), inserted at end “Such term includes any amount allowable as depreciation, amortization, or depletion for any period within the recognition period except to the extent the new loss corporation establishes that the amount so allowable is not attributable to the excess described in clause (ii).”

1986—Pub. L. 99-514, § 621(a), in amending section generally, in subsec. (a), substituted provisions setting forth general rule that amount of taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed section 382 limitation for such year for provisions relating to change in ownership of corporation and change in its business, description of persons owning corporation, attribution of ownership, and definition of “purchase”, in subsec. (b), substituted provisions relating to section 382 limitation for provisions relating to change in ownership as result of reorganization, in subsec. (c), substituted provisions relating to disallowance of carryforwards if continuity of business requirements are not met for provisions defining stock as all shares except nonvoting stock which is limited and preferred as to dividends, and added subsecs. (d) to (m).

Pub. L. 99-514, § 621(e)(1), repealed amendment by Pub. L. 94-455, § 806(e). See 1976 Amendment note below.

1984—Subsec. (b)(1). Pub. L. 98-369, in section as amended by Pub. L. 94-455, substituted “subparagraph (A), (B), (C), or (F) of section 368(a)(1) or subparagraph (D) or (G) of section 368(a)(1) (but only if the requirements of section 354(b)(1) are met)” for “section 368(a)(1)(A), (B), (C), (D) (but only if the requirements of section 354(b)(1) are met, or (F))”.

1981—Subsec. (b)(7). Pub. L. 97-34 designated existing provisions as subpar. (A) and added subpar. (B).

1980—Subsec. (b)(7). Pub. L. 96-589 added par. (7).

1976—Pub. L. 94-455, § 806(e), which amended section generally, substituting provisions relating to special limitations on net operating loss carryovers based on continuity of trade or business conducted, for provisions relating to special limitations on net operating loss carryovers based on continuity of ownership, was repealed by Pub. L. 99-514, § 621(e)(1). See Effective Date of 1986 and 1976 Amendment notes below.

1964—Subsec. (a)(3). Pub. L. 88-554 inserted reference to section 318(a)(3)(C) of this title.

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11051(b)(3)(F) of Pub. L. 115-97 applicable to any divorce or separation instrument (as defined in former section 71(b)(2) of this title as in effect before Dec. 22, 2017) executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115-97 applies to such modification, see section 11051(c) of Pub. L. 115-97, set out as a note under section 61 of this title.

Amendment by section 13301(b)(2), (3) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 13301(c) of Pub. L. 115-97, set out as a note under section 163 of this title.

### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

### EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-5, div. B, title I, § 1262(b), Feb. 17, 2009, 123 Stat. 344, provided that: “The amendment made by this section [amending this section] shall apply to ownership changes after the date of the enactment of this Act [Feb. 17, 2009].”

## EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108-357, set out as a note under section 56 of this title.

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104-188, set out as a note under section 26 of this title.

## EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to stock transferred after Dec. 31, 1994, in satisfaction of any indebtedness, except that such amendment inapplicable to stock transferred in satisfaction of any indebtedness if such transfer is in a title 11 or similar case filed on or before Dec. 31, 1993, see section 13226(a)(3) of Pub. L. 103-66, set out as a note under section 108 of this title.

## EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7205(a) of Pub. L. 101-239 applicable, except as otherwise provided, to ownership changes and acquisitions after Oct. 2, 1989, in taxable years ending after such date, see section 7205(c) of Pub. L. 101-239, set out as a note under section 56 of this title.

Pub. L. 101-239, title VII, § 7304(d)(2), Dec. 19, 1989, 103 Stat. 2354, provided that: “The amendments made by this subsection [amending this section] shall apply to acquisitions of employer securities after July 12, 1989, except that such amendments shall not apply to acquisitions after July 12, 1989, pursuant to a written binding contract in effect on July 12, 1989, and at all times thereafter before such acquisition.”

Amendment by sections 7811(c)(5)(A) and 7815(h) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

Pub. L. 101-73, title XIV, § 1401(c)(2), Aug. 9, 1989, 103 Stat. 550, provided that: “The amendment made by subsection (a)(2) [amending this section] shall apply to transactions on or after May 10, 1989.”

## EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, § 1006(d)(1)(D), Nov. 10, 1988, 102 Stat. 3395, provided that: “The amendments made by this paragraph [amending this section] shall apply with respect to ownership changes after June 10, 1987.”

Pub. L. 100-647, title I, § 1006(d)(17)(B), Nov. 10, 1988, 102 Stat. 3398, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to any ownership change after June 10, 1987. For purposes of the preceding sentence, any equity structure shift pursuant to a plan of reorganization adopted on or before June 10, 1987, shall be treated as occurring when such plan was adopted.”

Pub. L. 100-647, title I, § 1006(d)(28)(B), Nov. 10, 1988, 102 Stat. 3400, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply in the case of ownership changes on or after June 21, 1988.”

Amendment by section 1006(d)(2)-(10), (18)-(27), (29), (t)(22)(A) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Pub. L. 100-647, title IV, § 4012(b)(1)(C)(ii), Nov. 10, 1988, 102 Stat. 3657, provided that: “The amendment made by subparagraph (B) [amending this section] shall apply to any ownership change occurring after the date of the enactment of this Act [Nov. 10, 1988] and before January 1, 1990.”

Pub. L. 100-647, title V, § 5077(b), Nov. 10, 1988, 102 Stat. 3683, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] 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.”

## EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title X, § 10225(c), Dec. 22, 1987, 101 Stat. 1330-413, provided that:

“(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply in the case of stock treated as becoming worthless in taxable years beginning after December 31, 1987.

“(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply in the case of ownership changes (as defined in section 382 of the Internal Revenue Code of 1986 as amended by subsection (a)) after December 15, 1987; except that such amendment shall not apply in the case of any ownership change pursuant to a binding written contract which was in effect on December 15, 1987, and at all times thereafter before such ownership change.”

## EFFECTIVE DATE OF 1986 AMENDMENT; SAVINGS PROVISIONS

Pub. L. 99-514, title VI, § 621(f), Oct. 22, 1986, 100 Stat. 2266, as amended by Pub. L. 100-647, title I, § 1006(d)(11)-(16), title VI, § 6277(a), (b), Nov. 10, 1988, 102 Stat. 3397, 3398, 3753, 3754, provided that:

“(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) [amending this section and sections 318 and 383 of this title] 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 [section 806 of Pub. L. 94-455]) shall not apply to any increase in percentage points occurring after December 31, 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) [repealing amendments by Pub. L. 94-455, § 806(e), (f), amending this section and sections 108, 368, and 383 of this title] and the amendment made by subsection (e)(2) [repealing section 806(g)(2), (3) of Pub. L. 94-455, formerly set out as an Effective Date of 1976 Amendment note below] shall take effect on January 1, 1986.

“(B) ELECTION TO HAVE AMENDMENTS APPLY.—

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

amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 [amending this section and sections 108, 368, and 383 of this title] 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) APPLICATION OF OLD RULES TO CERTAIN DEBT.—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—

“(i) 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 in 1986, and

“(ii) the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 shall not apply to such debt restructuring, except that the amendment treated as part of such subsections under section 59(b) of the Tax Reform Act of 1984 (relating to qualified workouts) shall apply to such debt restructuring.

“(D) 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 806 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 TRANSITION RULES.—The amendments made by subsections (a), (b), and (c) shall not apply to any—

“(A) stock-for-debt exchanges 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 1983, 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 un-

derwriting to the extent the stock is disposed of pursuant to the offering (but in no event later than 60 days after the initial offering).

“(5) BANKRUPTCY PROCEEDINGS.—Unless the taxpayer elects not to have the provisions of this paragraph apply, in the case of a reorganization described in subparagraph (G) of section 368(a)(1) of the Internal Revenue Code of 1986 or an exchange of debt for stock in a title 11 or similar case, as defined in section 368(a)(3) of such Code, the amendments made by subsections (a), (b), and (c) shall not apply to any ownership change resulting from such a reorganization or proceeding if a petition in such case was filed with the court before August 14, 1986. The determination as to whether an ownership change has occurred during the period beginning January 1, 1987, and ending on the final settlement of any reorganization or proceeding described in the preceding sentence shall be redetermined 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 is 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 May 17, 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 enhanced oil recovery operations in California, merged in furtherance of a plan of reorganization adopted by a board of directors vote 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, to a stock savings and loan association pursuant to the rules and regulations of the Federal Home Loan Bank Board.

“(7) OWNERSHIP CHANGE OF 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 (excluding 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) or retirement 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 later of March 31, 1987, or such 90th day. The aggregate reduction 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 1st 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 incorporated 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 (whether resulting from 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) DEFINITIONS.—Except as otherwise provided, terms used 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).”

[Pub. L. 100-647, title VI, § 6277(c), Nov. 10, 1988, 102 Stat. 3754, provided that: “The amendments made by this section [amending section 621(f) of Pub. L. 99-514, set out above] shall take effect as if included in section 621(f)(5) of the Tax Reform Act of 1986 [Pub. L. 99-514].”]

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, § 62(b)(2), July 18, 1984, 98 Stat. 583, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 4 of the Bankruptcy Tax Act of 1980 [Pub. L. 96-589].”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to any transfer made on or after Jan. 1, 1981, see section 246(a) of Pub. L. 97-34, set out as a note under section 368 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-589, § 2(d), Dec. 24, 1980, 94 Stat. 3396, provided that the amendment made by section 2(b) of Pub. L. 96-589 is to subsec. (b) as in effect before its amendment by section 806 of the Tax Reform Act of 1976, Pub. L. 94-455.

Amendment by Pub. L. 96-589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or before Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979, in a specified manner, see section 7(a)(1), (f) of Pub. L. 96-589, set out as a note under section 108 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title VIII, § 806(g)(2), (3), Oct. 4, 1976, 90 Stat. 1605, 1606, as amended by Pub. L. 95-600, title III, § 368(a), Nov. 6, 1978, 92 Stat. 2857; Pub. L. 95-615, § 8, Nov. 8, 1978, 92 Stat. 3098; Pub. L. 96-167, § 9(e), Dec. 29, 1979, 93 Stat. 1279; Pub. L. 97-119, title I, § 111, Dec. 29, 1981, 95 Stat. 1640; Pub. L. 98-369, div. A, title I, § 62(a), July 18, 1984, 98 Stat. 583, which provided an effective date for the amendments made by section 806(e), (f) of Pub. L. 94-455 for purposes of applying sections 382(a) and 383 (as it relates to section 382(a)) of this title, was repealed by Pub. L. 99-514, title VI, § 621(e)(2), (f)(2), Oct. 22, 1986, 100 Stat. 2266, eff. Jan. 1, 1986.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendment shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88-554, set out as a note under section 318 of this title.

#### DELAY IN EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 95-600, title III, § 368, Nov. 6, 1978, 92 Stat. 2857, provided for delaying the effective date established by section 806(g)(2), (3) of Pub. L. 94-455, formerly set out above, by substituting “1980” for “1978”, with certain elections.

#### CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE

Pub. L. 111-5, div. B, title I, § 1261, Feb. 17, 2009, 123 Stat. 342, provided that:

“(a) FINDINGS.—Congress finds as follows:

“(1) The delegation of authority to the Secretary of the Treasury under section 382(m) of the Internal

Revenue Code of 1986 does not authorize the Secretary to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers.

“(2) Internal Revenue Service Notice 2008-83 is inconsistent with the congressional intent in enacting such section 382(m).

“(3) The legal authority to prescribe Internal Revenue Service Notice 2008-83 is doubtful.

“(4) However, as taxpayers should generally be able to rely on guidance issued by the Secretary of the Treasury legislation is necessary to clarify the force and effect of Internal Revenue Service Notice 2008-83 and restore the proper application under the Internal Revenue Code of 1986 of the limitation on built-in losses following an ownership change of a bank.

“(b) DETERMINATION OF FORCE AND EFFECT OF INTERNAL REVENUE SERVICE NOTICE 2008-83 EXEMPTING BANKS FROM LIMITATION ON CERTAIN BUILT-IN LOSSES FOLLOWING OWNERSHIP CHANGE.—

“(1) IN GENERAL.—Internal Revenue Service Notice 2008-83—

“(A) shall be deemed to have the force and effect of law with respect to any ownership change (as defined in section 382(g) of the Internal Revenue Code of 1986) occurring on or before January 16, 2009, and

“(B) shall have no force or effect with respect to any ownership change after such date.

“(2) BINDING CONTRACTS.—Notwithstanding paragraph (1), Internal Revenue Service Notice 2008-83 shall have the force and effect of law with respect to any ownership change (as so defined) which occurs after January 16, 2009, if such change—

“(A) is pursuant to a written binding contract entered into on or before such date, or

“(B) is pursuant to a written agreement entered into on or before such date and such agreement was described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required by reason of such ownership change.”

#### REPORT ON DEPRECIATION AND BUILT-IN DEDUCTIONS; REPORT ON BANKRUPTCY WORKOUTS

Pub. L. 99-514, title VI, § 621(d), Oct. 22, 1986, 100 Stat. 2266, directed Secretary of the Treasury or his delegate to, not later than Jan. 1, 1989, conduct a study and report to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate with respect to treatment of depreciation, amortization, depletion, and other built-in deductions for purposes of sections 382 and 383 of this title, and, not later than Jan. 1, 1988, conduct a study and report to committees referred to above with respect to treatment of informal bankruptcy workouts for purposes of sections 108 and 382 of this title, prior to repeal by Pub. L. 101-508, title XI, § 11832(3), Nov. 5, 1990, 104 Stat. 1388-559.

### § 383. Special limitations on certain excess credits, etc.

#### (a) Excess credits

##### (1) In general

Under regulations, if an ownership change occurs with respect to a corporation, the amount of any excess credit for any taxable year which may be used in any post-change year shall be limited to an amount determined on the basis of the tax liability which is attributable to so much of the taxable income as does not exceed the section 382 limitation for such post-change year to the extent available after the application of section 382 and subsections (b) and (c) of this section.

##### (2) Excess credit

For purposes of paragraph (1), the term “excess credit” means—