

EFFECTIVE DATE OF 1981 AMENDMENT

Section 246(a) of Pub. L. 97-34 provided that: "The amendment made by sections 241 and 242 [amending this section and section 382 of this title] shall apply to any transfer made on or after January 1, 1981."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or proceedings commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96-589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(j)(2) of Pub. L. 95-600, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraph (1) [amending this section] shall apply as if included in section 368(a)(2)(F) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by section 2131(a) of the Tax Reform Act of 1976 [Pub. L. 94-455, title XX, § 2131(a), Oct. 4, 1976, 90 Stat. 1922].

"(B) Clause (viii) of section 368(a)(2)(F) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply only with respect to losses sustained after September 26, 1977.

"(C) Clause (vii) of section 368(a)(2)(F) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply only with respect to transfers made after September 26, 1977."

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2131(f)(1), (2) of Pub. L. 94-455, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to transfers made after February 17, 1976, in taxable years ending after such date.

"(2) The amendment made by subsection (a) shall not apply to transfers made in accordance with a ruling issued by the Internal Revenue Service before February 18, 1976, holding that a proposed transaction would be a reorganization described in paragraph (1) of section 368(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

For effective date of amendment by section 806(f)(1) of Pub. L. 94-455, see section 806(g)(2), (3) of Pub. L. 94-455, formerly set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 1(c) of Pub. L. 91-693 provided that: "The amendments made by this section [amending this section] shall apply to statutory mergers occurring after December 31, 1970."

EFFECTIVE DATE OF 1968 AMENDMENT

Section 1(c) of Pub. L. 90-621 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to statutory mergers occurring after the date of the enactment of this Act [Oct. 22, 1968]."

EFFECTIVE DATE OF 1964 AMENDMENT

Section 218(c) of Pub. L. 88-272 provided that: "The amendments made by this section [amending this section] shall apply with respect to transactions after December 31, 1963, in taxable years ending after such date."

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147

and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

[PART IV—REPEALED]

[§§ 370 to 372. Repealed. Pub. L. 101-508, title XI, § 11801(a)(19), Nov. 5, 1990, 104 Stat. 1388-521]

Section 370, added Pub. L. 96-589, § 4(f), Dec. 24, 1980, 94 Stat. 3404, related to termination of part.

Section 371, acts Aug. 16, 1954, ch. 736, 68A Stat. 121; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1901(a)(50), 90 Stat. 1773, related to reorganization in certain receivership and bankruptcy proceedings.

Section 372, acts Aug. 16, 1954, ch. 736, 68A Stat. 122; Sept. 2, 1958, Pub. L. 85-866, title I, § 95(a), 72 Stat. 1671; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§ 1901(a)(51), (b)(14)(A), 1906(b)(13)(A), 90 Stat. 1773, 1795, 1834, related to basis in connection with certain receivership and bankruptcy proceedings.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

[§ 373. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(52), Oct. 4, 1976, 90 Stat. 1773]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 123; June 29, 1956, ch. 463, § 3, 70 Stat. 403, related to loss not recognized in certain railroad reorganizations.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

[§ 374. Repealed. Pub. L. 101-508, title XI, § 11801(a)(19), Nov. 5, 1990, 104 Stat. 1388-521]

Section, added June 29, 1956, ch. 463, § 1, 70 Stat. 402; amended Mar. 31, 1976, Pub. L. 94-253, § 1(a), (d), 90 Stat. 295, 296; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1901(a)(53), (b)(10)(A), (14)(B), (C), 90 Stat. 1773, 1795, 1796; Nov. 6, 1978, Pub. L. 95-600, title III, § 369(a), 92 Stat. 2857; Apr. 1, 1980, Pub. L. 96-222, title I, § 103(a)(14), 94 Stat. 214; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1899A(9), 100 Stat. 2958, related to nonrecognition of gain or loss in certain railroad reorganizations.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

PART V—CARRYOVERS

Sec.

381. Carryovers in certain corporate acquisitions.
382. Limitation on net operating loss carryforwards and certain built-in losses following ownership change.

- Sec.
383. Special limitations on certain excess credits, etc.
384. Limitation on use of preacquisition losses to offset built-in gains.

AMENDMENTS

1987—Pub. L. 100-203, title X, §10226(b), Dec. 22, 1987, 101 Stat. 1330-415, added item 384.

1986—Pub. L. 99-514, title VI, §621(c)(2), Oct. 22, 1986, 100 Stat. 2266, substituted "Limitation on net operating loss carryforwards and certain built-in losses following ownership change" for "Special limitations on net operating loss carryovers" in item 382 and "Special limitations on certain excess credits, etc." for "Special limitations on unused business credits, research credits, foreign taxes, and capital losses" in item 383.

1984—Pub. L. 98-369, div. A, title IV, §474(r)(12)(C), July 18, 1984, 98 Stat. 842, substituted "unused business credits, research credits, foreign taxes, and capital losses" for "carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses" in item 383.

1981—Pub. L. 97-34, title II, §221(b)(1)(E), title III, §331(d)(1)(E), Aug. 13, 1981, 95 Stat. 246, 295, inserted references to alcohol fuel credits, research credits, and employee stock ownership credits in item 383. For applicability of amendment by section 221(b)(1)(E) to amounts paid or incurred after June 30, 1981, and before Jan. 1, 1986, see section 221(d) of Pub. L. 97-34, set out as an Effective Date note under section 30 of this title.

1977—Pub. L. 95-30, title II, §202(d)(3)(D), May 23, 1977, 91 Stat. 148, inserted "new employee credits," after "work incentive program credits," in item 383.

1971—Pub. L. 92-178, title III, §302(b), Dec. 10, 1971, 85 Stat. 521, added item 383.

§ 381. Carryovers in certain corporate acquisitions

(a) General rule

In the case of the acquisition of assets of a corporation by another corporation—

(1) in a distribution to such other corporation to which section 332 (relating to liquidations of subsidiaries) applies; or

(2) in a transfer to which section 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1),

the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the items described in subsection (c) of the distributor or transferor corporation, subject to the conditions and limitations specified in subsections (b) and (c). For purposes of the preceding sentence, a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met.

(b) Operating rules

Except in the case of an acquisition in connection with a reorganization described in subparagraph (F) of section 368(a)(1)—

(1) The taxable year of the distributor or transferor corporation shall end on the date of distribution or transfer.

(2) For purposes of this section, the date of distribution or transfer shall be the day on

which the distribution or transfer is completed; except that, under regulations prescribed by the Secretary, the date when substantially all of the property has been distributed or transferred may be used if the distributor or transferor corporation ceases all operations, other than liquidating activities, after such date.

(3) The corporation acquiring property in a distribution or transfer described in subsection (a) shall not be entitled to carry back a net operating loss or a net capital loss for a taxable year ending after the date of distribution or transfer to a taxable year of the distributor or transferor corporation.

(c) Items of the distributor or transferor corporation

The items referred to in subsection (a) are:

(1) Net operating loss carryovers

The net operating loss carryovers determined under section 172, subject to the following conditions and limitations:

(A) the taxable year of the acquiring corporation to which the net operating loss carryovers of the distributor or transferor corporation are first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) In determining the net operating loss deduction, the portion of such deduction attributable to the net operating loss carryovers of the distributor or transferor corporation to the first taxable year of the acquiring corporation ending after the date of distribution or transfer shall be limited to an amount which bears the same ratio to the taxable income (determined without regard to a net operating loss deduction) of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For the purpose of determining the amount of the net operating loss carryovers under section 172(b)(2), a net operating loss for a taxable year (hereinafter in this subparagraph referred to as the "loss year") of a distributor or transferor corporation which ends on or before the end of a loss year of the acquiring corporation shall be considered to be a net operating loss for a year prior to such loss year of the acquiring corporation. For the same purpose, the taxable income for a "prior taxable year" (as the term is used in section 172(b)(2)) shall be computed as provided in such section; except that, if the date of distribution or transfer is on a day other than the last day of a taxable year of the acquiring corporation—

(i) such taxable year shall (for the purpose of this subparagraph only) be considered to be 2 taxable years (hereinafter in this subparagraph referred to as the "pre-acquisition part year" and the "post-acquisition part year");

(ii) the pre-acquisition part year shall begin on the same day as such taxable year begins and shall end on the date of distribution or transfer;

(iii) the post-acquisition part year shall begin on the day following the date of dis-

tribution or transfer and shall end on the same day as the end of such taxable year;

(iv) the taxable income for such taxable year (computed with the modifications specified in section 172(b)(2)(A) but without a net operating loss deduction) shall be divided between the pre-acquisition part year and the post-acquisition part year in proportion to the number of days in each;

(v) the net operating loss deduction for the pre-acquisition part year shall be determined as provided in section 172(b)(2)(B), but without regard to a net operating loss year of the distributor or transferor corporation; and

(vi) the net operating loss deduction for the post-acquisition part year shall be determined as provided in section 172(b)(2)(B).

(2) Earnings and profits

In the case of a distribution or transfer described in subsection (a)—

(A) the earnings and profits or deficit in earnings and profits, as the case may be, of the distributor or transferor corporation shall, subject to subparagraph (B), be deemed to have been received or incurred by the acquiring corporation as of the close of the date of the distribution or transfer; and

(B) a deficit in earnings and profits of the distributor, transferor, or acquiring corporation shall be used only to offset earnings and profits accumulated after the date of transfer. For this purpose, the earnings and profits for the taxable year of the acquiring corporation in which the distribution or transfer occurs shall be deemed to have been accumulated after such distribution or transfer in an amount which bears the same ratio to the undistributed earnings and profits of the acquiring corporation for such taxable year (computed without regard to any earnings and profits received from the distributor or transferor corporation, as described in subparagraph (A) of this paragraph) as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(3) Capital loss carryover

The capital loss carryover determined under section 1212, subject to the following conditions and limitations:

(A) The taxable year of the acquiring corporation to which the capital loss carryover of the distributor or transferor corporation is first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) The capital loss carryover shall be a short-term capital loss in the taxable year determined under subparagraph (A) but shall be limited to an amount which bears the same ratio to the capital gain net income (determined without regard to a short-term capital loss attributable to capital loss carryover), if any, of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For purposes of determining the amount of such capital loss carryover to taxable years following the taxable year determined under subparagraph (A), the capital gain net income in the taxable year determined under subparagraph (A) shall be considered to be an amount equal to the amount determined under subparagraph (B).

(4) Method of accounting

The acquiring corporation shall use the method of accounting used by the distributor or transferor corporation on the date of distribution or transfer unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of computing taxable income adopted pursuant to regulations prescribed by the Secretary.

(5) Inventories

In any case in which inventories are received by the acquiring corporation, such inventories shall be taken by such corporation (in determining its income) on the same basis on which such inventories were taken by the distributor or transferor corporation, unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of taking inventory adopted pursuant to regulations prescribed by the Secretary.

(6) Method of computing depreciation allowance

The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the depreciation allowance under sections 167 and 168 on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.

[7] Repealed. June 15, 1955, ch. 143, §2(1), 69 Stat. 134]

(8) Installment method

If the acquiring corporation acquires installment obligations (the income from which the distributor or transferor corporation reports on the installment basis under section 453) the acquiring corporation shall, for purposes of section 453, be treated as if it were the distributor or transferor corporation.

(9) Amortization of bond discount or premium

If the acquiring corporation assumes liability for bonds of the distributor or transferor corporation issued at a discount or premium, the acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of determining the amount of amortization allowable or includible with respect to such discount or premium.

(10) Treatment of certain mining development and exploration expenses of distributor of transferor corporation

The acquiring corporation shall be entitled to deduct, if it were the distributor or transferor corporation, expenses deferred under section 616 (relating to certain development expenditures) if the distributor or transferor corporation has so elected.

(11) Contributions to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans

The acquiring corporation shall be considered to be the distributor or transferor corporation after the date of distribution or transfer for the purpose of determining the amounts deductible under section 404 with respect to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.

(12) Recovery of tax benefit items

If the acquiring corporation is entitled to the recovery of any amounts previously deducted by (or allowable as credits to) the distributor or transferor corporation, the acquiring corporation shall succeed to the treatment under section 111 which would apply to such amounts in the hands of the distributor or transferor corporation.

(13) Involuntary conversions under section 1033

The acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of applying section 1033.

(14) Dividend carryover to personal holding company

The dividend carryover (described in section 564) to taxable years ending after the date of distribution or transfer.

[(15) Repealed. Pub. L. 101-508, title XI, § 11801(c)(10)(A), Nov. 5, 1990, 104 Stat. 1388-526]

(16) Certain obligations of distributor or transferor corporation

If the acquiring corporation—

(A) assumes an obligation of the distributor or transferor corporation which, after the date of the distribution or transfer, gives rise to a liability, and

(B) such liability, if paid or accrued by the distributor or transferor corporation, would have been deductible in computing its taxable income,

the acquiring corporation shall be entitled to deduct such items when paid or accrued, as the case may be, as if such corporation were the distributor or transferor corporation. A corporation which would have been an acquiring corporation under this section if the date of distribution or transfer had occurred on or after the effective date of the provisions of this subchapter applicable to a liquidation or reorganization, as the case may be, shall be entitled, even though the date of distribution or transfer occurred before such effective date,

to apply this paragraph with respect to amounts paid or accrued in taxable years beginning after December 31, 1953, on account of such obligations of the distributor or transferor corporation. This paragraph shall not apply if such obligations are reflected in the amount of stock, securities, or property transferred by the acquiring corporation to the transferor corporation for the property of the transferor corporation.

(17) Deficiency dividend of personal holding company

If the acquiring corporation pays a deficiency dividend (as defined in section 547(d)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments, be entitled to the deficiency dividend deduction provided in section 547.

(18) Percentage depletion on extraction of ores or minerals from the waste or residue of prior mining

The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of determining the applicability of section 613(c)(3) (relating to extraction of ores or minerals from the ground).

(19) Charitable contributions in excess of prior years' limitation

Contributions made in the taxable year ending on the date of distribution or transfer and the 4 prior taxable years by the distributor or transferor corporation in excess of the amount deductible under section 170(b)(2) for such taxable years shall be deductible by the acquiring corporation for its taxable years which begin after the date of distribution or transfer, subject to the limitations imposed in section 170(b)(2). In applying the preceding sentence, each taxable year of the distributor or transferor corporation beginning on or before the date of distribution or transfer shall be treated as a prior taxable year with reference to the acquiring corporation's taxable years beginning after such date.

[(20), (21) Repealed. Pub. L. 94-455, title XIX, § 1901(a)(54), (b)(16), Oct. 4, 1976, 90 Stat. 1773, 1796]

(22) Successor insurance company

If the acquiring corporation is an insurance company taxable under subchapter L, there shall be taken into account (to the extent proper to carry out the purposes of this section and of subchapter L, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter L in respect of the distributor or transferor corporation.

(23) Deficiency dividend of regulated investment company or real estate investment trust

If the acquiring corporation pays a deficiency dividend (as defined in section 860(f)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such pay-

ments, be entitled to the deficiency dividend deduction provided in section 860.

(24) Credit under section 38

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 38, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 38 in respect of the distributor or transferor corporation.

(25) Credit under section 53

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 53, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 53 in respect of the distributor or transferor corporation.

(26) Enterprise zone provisions

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and subchapter U, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter U in respect of the distributor or transferor corporation.

(d) Operations loss carrybacks and carryovers of life insurance companies

For application of this part to operations loss carrybacks and carryovers of life insurance companies, see section 810.

(Aug. 16, 1954, ch. 736, 68A Stat. 124; June 15, 1955, ch. 143, §2(1), 69 Stat. 134; Jan. 28, 1956, ch. 15, §1, 70 Stat. 7; Pub. L. 85-866, title I, §29(c), Sept. 2, 1958, 72 Stat. 1628; Pub. L. 86-69, §3(c), June 25, 1959, 73 Stat. 139; Pub. L. 87-834, §2(d), Oct. 16, 1962, 76 Stat. 971; Pub. L. 88-272, title II, §§209(d)(2), 225(i)(3), Feb. 26, 1964, 78 Stat. 46, 92; Pub. L. 90-240, §5(d), Jan. 2, 1968, 81 Stat. 778; Pub. L. 91-172, title V, §§504(c)(2), 512(c), 521(f), Dec. 30, 1969, 83 Stat. 633, 639, 654; Pub. L. 92-178, title VI, §601(c)(3), Dec. 10, 1971, 85 Stat. 557; Pub. L. 94-455, title XVI, §1601(e), title XIX, §§1901(a)(54), (b)(16), (17), (21)(B), (33)(N), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1746, 1773, 1796, 1797, 1802, 1834; Pub. L. 95-30, title II, §202(d)(3)(A), May 23, 1977, 91 Stat. 148; Pub. L. 95-600, title III, §362(d)(2), Nov. 6, 1978, 92 Stat. 2851; Pub. L. 96-223, title II, §232(b)(2)(B), Apr. 2, 1980, 94 Stat. 276; Pub. L. 96-471, §2(b)(2), Oct. 19, 1980, 94 Stat. 2253; Pub. L. 96-589, §4(g), Dec. 24, 1980, 94 Stat. 3404; Pub. L. 97-34, title II, §§208, 221(b)(1)(B), title III, §331(d)(1)(B), Aug. 13, 1981, 95 Stat. 226, 246, 294; Pub. L. 97-248, title II, §224(c)(7), Sept. 3, 1982, 96 Stat. 489; Pub. L. 97-448, title I, §§102(h)(3), 103(g)(2)(F), Jan. 12, 1983, 96 Stat. 2372, 2379; Pub. L. 98-369, div. A, title II, §211(b)(4), title IV, §474(r)(11), July 18, 1984, 98 Stat. 754, 841; Pub. L. 99-514, title II, §231(d)(3)(F), title IV, §411(b)(2)(C)(iii), title VII, §701(e)(1), title XVIII, §1812(a)(3), Oct. 22, 1986, 100 Stat. 2179, 2227, 2342, 2833; Pub. L. 100-203, title X, §10202(c)(3), Dec. 22, 1987, 101 Stat. 1330-392; Pub. L. 100-647, title I, §1002(a)(13), Nov. 10, 1988, 102 Stat. 3355; Pub. L. 101-239, title VII,

§7841(d)(10), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 101-508, title XI, §§11801(c)(10)(A), 11812(b)(6), Nov. 5, 1990, 104 Stat. 1388-526, 1388-535; Pub. L. 103-66, title XIII, §13302(e), Aug. 10, 1993, 107 Stat. 556; Pub. L. 104-188, title I, §1704(t)(26), Aug. 20, 1996, 110 Stat. 1888.)

AMENDMENTS

1996—Subsec. (c)(26), (27). Pub. L. 104-188 amended directory language of Pub. L. 101-239. See 1989 Amendment note below.

1993—Subsec. (c)(26). Pub. L. 103-66 added par. (26).

1990—Subsec. (c)(6). Pub. L. 101-508, §11812(b)(6)(A), substituted “sections 167 and 168” for “subsections (b), (j), and (k) of section 167”.

Subsec. (c)(15). Pub. L. 101-508, §11801(c)(10)(A), struck out par. (15) “Indebtedness of certain personal holding companies” which read as follows: “The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of determining the applicability of subsection (c) of section 545, relating to deduction with respect to payment of certain indebtedness.”

Subsec. (c)(24) to (26). Pub. L. 101-508, §11812(b)(6)(B), redesignated pars. (25) and (26) as (24) and (25), respectively, and struck out former par. (24) “Method of computing depreciation deduction” which read as follows: “The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the deduction allowable under section 168(a) on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.”

1989—Subsec. (c)(26), (27). Pub. L. 101-239, as amended by Pub. L. 104-188, redesignated par. (27) as (26).

1988—Subsec. (c)(24). Pub. L. 100-647 substituted “depreciation deduction” for “recovery allowance for recovery property” in heading.

1987—Subsec. (c)(8). Pub. L. 100-203 struck out “or 453A” after “section 453” in two places.

1986—Subsec. (c)(10). Pub. L. 99-514, §411(b)(2)(C)(iii), struck out last sentence which read: “For the purpose of applying the limitation provided in section 617(h), if, for any taxable year, the distributor or transferor corporation was allowed a deduction under section 617(a), the acquiring corporation shall be deemed to have been allowed such deduction.”

Subsec. (c)(12). Pub. L. 99-514, §1812(a)(3), amended par. (12) generally. Prior to amendment, par. (12), recovery of bad debts, prior taxes, or delinquency amounts, read as follows: “If the acquiring corporation is entitled to the recovery of bad debts, prior taxes, or delinquency amounts previously deducted or credited by the distributor or transferor corporation, the acquiring corporation shall include in its income such amounts as would have been includible by the distributor or transferor corporation in accordance with section 111 (relating to the recovery of bad debts, prior taxes, and delinquency amounts).”

Subsec. (c)(25), (26). Pub. L. 99-514, §231(d)(3)(F), redesignated par. (26) as (25). Former par. (25), relating to credit under section 30, was struck out.

Subsec. (c)(27). Pub. L. 99-514, §701(e)(1), added par. (27).

1984—Subsec. (c)(23). Pub. L. 98-369, §474(r)(11)(B), redesignated par. (25) as (23). Former par. (23), relating to credit under section 38 for investment in certain depreciable property, was struck out.

Subsec. (c)(24). Pub. L. 98-369, §474(r)(11)(B), redesignated par. (28) as (24). Former par. (24), relating to credit under section 40 for work incentive program expenses, was struck out.

Subsec. (c)(25). Pub. L. 98-369, §474(r)(11)(B), (C), redesignated par. (29) as (25), and substituted “30” for “44F” wherever appearing in heading and text. Former par. (25) redesignated (23).

Subsec. (c)(26). Pub. L. 98-369, §474(r)(11)(D), added par. (26). Former par. (26), relating to credit under sec-

tion 44B for employment of certain new employees, was struck out.

Subsec. (c)(27). Pub. L. 98-369, § 474(r)(11)(A), struck out par. (27) relating to credit under section 44E for alcohol used as fuel.

Subsec. (c)(28), (29). Pub. L. 98-369, § 474(r)(11)(B), redesignated pars. (28) and (29) as (24) and (25), respectively.

Subsec. (c)(30). Pub. L. 98-369, § 474(r)(11)(A), struck out par. (30) relating to credit under section 44G.

Subsec. (d). Pub. L. 98-369, § 211(b)(4), substituted "section 810" for "section 812(f)".

1983—Subsec. (c)(28), (29). Pub. L. 97-448, § 102(h)(3), redesignated par. (28), relating to credit under section 44F, as (29). Former par. (29) redesignated (30).

Subsec. (c)(30). Pub. L. 97-448, § 103(g)(2)(F), redesignated former par. (29), relating to credit under section 44G, as (30).

1982—Subsec. (a)(1). Pub. L. 97-248 struck out "except in a case in which the basis of the assets distributed is determined under section 334(b)(2)" after "applies".

1981—Subsec. (c)(28). Pub. L. 97-34, § 208, added par. (28) relating to recovery allowance for recovery property.

Pub. L. 97-34, § 221(b)(1)(B), added par. (28) relating to credit under section 44F.

Subsec. (c)(29). Pub. L. 97-34, § 331(d)(1)(B), added par. (29).

1980—Subsec. (a). Pub. L. 96-589, § 4(g)(2), inserted provisions that a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met.

Subsec. (a)(2). Pub. L. 96-589, § 4(g)(1), substituted "subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1)" for "subparagraph (A), (C), (D) (but only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met), or (F) of section 368(a)(1)".

Subsec. (c)(8). Pub. L. 96-471 substituted "reports on the installment basis under section 453 or 453A" for "has elected, under section 453, to report on the installment basis" and "for purposes of section 453 or 453A" for "for purposes of section 453."

Subsec. (c)(27). Pub. L. 96-223 added par. (27).

1978—Subsec. (c)(25). Pub. L. 95-600 substituted "regulated investment company or real estate investment trust" for "real estate investment trust" in heading, and in text "section 860(f)" for "section 859(d)" and "section 860" for "section 859".

1977—Subsec. (c)(26). Pub. L. 95-30 added par. (26).

1976—Subsec. (b)(2). Pub. L. 94-455, § 1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(3). Pub. L. 94-455, § 1901(b)(33)(N), substituted in subpars. (B) and (C) "capital gain net income" for "net capital gain".

Subsec. (c)(4), (5). Pub. L. 94-455, § 1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(10). Pub. L. 94-455, § 1901(b)(21)(B), among other changes, substituted reference to section 616 (relating to certain development expenditures) if the distributor or transferor corporation has so elected for reference to sections 615 and 616 (relating to pre-1970 exploration expenditures and development expenditures, respectively) if the distributor or transferor corporation has so elected and struck out provisions that if, for any taxable year, the distributor or transferor corporation was allowed or made the election of the deduction under section 615 of this title, the acquiring corporation shall be deemed to have been allowed or to have made such election of the deduction under section 615 of this title.

Subsec. (c)(15). Pub. L. 94-455, § 1901(b)(17), substituted "subsection (c)" for "subsections (b)(7) and (c)".

Subsec. (c)(20). Pub. L. 94-455, § 1901(a)(54), struck out par. (20) which related to carry-over of unused pension trust deductions in certain cases.

Subsec. (c)(21). Pub. L. 94-455, § 1901(b)(16), struck out par. (21) which related to pre-1954 adjustments resulting from change in method of accounting.

Subsec. (c)(22) to (24). Pub. L. 94-455, § 1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(25). Pub. L. 94-455, § 1601(e), added par. (25).

1971—Subsec. (c)(24). Pub. L. 92-178 added par. (24). 1969—Subsec. (b)(3). Pub. L. 91-172, § 512(c), substituted "a net operating loss or a net capital loss" for "a net operating loss".

Subsec. (c)(6). Pub. L. 91-172, § 521(f), substituted "subsections (b), (j) and (k) of section 167" for "paragraphs (2), (3) and (4) of section 167(b)" and inserted reference to adjusted basis in the hand of the distributor or transferor corporation.

Subsec. (c)(10). Pub. L. 91-172, § 504(c)(2), substituted "Treatment of certain mining exploration and development expenses of distributor or transferor corporation" for "Treatment of certain expenses deferred by the election of distributor or transferor corporation" in heading, limited deduction of expenses deferred under sections 615 and 616 of this title by the acquiring corporation as if it were the distributor or transferor corporation to pre-1970 exploration and development expenditures, and inserted provision that if distributor or transferor corporation, for any taxable year, was allowed the deduction in sections 615(a) or 617(a) of this title or made the election provided in section 615(b) of this title, acquiring corporation shall be deemed to have been allowed such deduction or deductions or to have made such election, as the case may be, for the purpose of applying the limitation provided in section 617 of this title.

1968—Subsec. (c)(22). Pub. L. 90-240 substituted successor insurance companies for successor life insurance companies as the business enterprise covered, substituted reference to insurance companies taxable under subchapter L for reference to life insurance companies as defined in section 801(a), and substituted reference to the purposes of this section and of subchapter L for reference to the purposes of this section and part I of subchapter L.

1964—Subsec. (c)(15). Pub. L. 88-272, § 225(i)(3), substituted "subsections (b)(7) and (c) of section 545, relating to deductions with respect to payment of certain indebtedness" for "section 545(b)(7), relating to a deduction for payment of certain indebtedness incurred before Jan. 1, 1934".

Subsec. (c)(19). Pub. L. 88-272, § 209(d)(2), permitted deductions for contributions made in the taxable year and in 4 prior taxable years, instead of one prior taxable year, and provided that each taxable year beginning on or before the distribution or transfer date shall be treated as a prior taxable year with reference to the acquiring corporation's taxable years beginning after such date.

1962—Subsec. (c)(23). Pub. L. 87-834 added par. (23).

1959—Subsec. (c)(22). Pub. L. 86-69, § 3(c)(1), added par. (22).

Subsec. (d). Pub. L. 86-69, § 3(c)(2), added subsec. (d).

1958—Subsec. (c)(21). Pub. L. 85-866 added par. (21).

1956—Subsec. (c)(20). Act Jan. 28, 1956 added par. (20).

1955—Subsec. (c)(7). Act June 15, 1955, repealed par. (7) which related to carryover of prepaid income.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(6) of Pub. L. 101-508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99-514, see section 11812(c) of Pub. L. 101-508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to dispositions in taxable years beginning after Dec. 31, 1987,

with special rules for nondealers and coordination with Tax Reform Act of 1986, see section 10202(e)(1), (3), (5) of Pub. L. 100-203, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 231(d)(3)(F) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99-514, set out as a note under section 41 of this title.

Amendment by section 411(b)(2)(C)(iii) of Pub. L. 99-514 applicable, except as otherwise provided, to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, see section 411(c) of Pub. L. 99-514, set out as a note under section 263 of this title.

Amendment by section 701(e)(1) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1812(a)(3) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 211(b)(4) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(11) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97-248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 208 of Pub. L. 97-34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97-34, set out as an Effective Date note under section 168 of this title.

Amendment by section 221(b)(1)(B) of Pub. L. 97-34 applicable to amounts paid or incurred after June 30, 1981, see section 221(d) of Pub. L. 97-34, as amended, set out as an Effective Date note under section 41 of this title.

Amendment by section 331(d)(1)(B) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97-34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96-589 applicable to bankruptcy cases or similar judicial proceeding commencing after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or proceeding commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96-589, set out as a note under section 108 of this title.

For effective date of amendment by Pub. L. 96-471, see section 6(a)(1) of Pub. L. 96-471, set out as an Effective Date note under section 453 of this title.

Amendment by Pub. L. 96-223 applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96-223, set out as an Effective Date note under section 40 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95-600, set out as an Effective Date note under section 860 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95-30, set out as an Effective Date note under section 51 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1601(e) of Pub. L. 94-455, see section 1608(a) of Pub. L. 94-455, set out as a note under section 857 of this title.

Amendment by section 1901(a)(54), (b)(16), (17), (21)(B), (33)(N) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 601(f) of Pub. L. 92-178 provided that: "The amendments made by this section [enacting sections 40, 50A, and 50B of this title and amending this section and sections 56, 6411, 6501, 6511, 6601, and 6611 of this title] shall apply to taxable years beginning after December 31, 1971."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 504(c)(2) of Pub. L. 91-172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91-172, set out as a note under section 243 of this title.

Amendment by section 512(c) of Pub. L. 91-172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91-172, set out as a note under section 1212 of this title.

Amendment by section 521(f) of Pub. L. 91-172 applicable with respect to taxable years ending after July 24, 1969, see section 521(g) of Pub. L. 91-172, set out as a note under section 167 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-240 applicable to taxable years beginning after Dec. 31, 1966, see section 5(e) of Pub. L. 90-240, set out as a note under section 832 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 225(i)(3) of Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l) of Pub. L. 88-272 set out as a note under section 316 of this title.

Amendment by section 209(d)(2) of Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, with respect to contributions paid or treated as paid under section 170(a)(2) of this title, in taxable years beginning after Dec. 31, 1961, see section 209(f)(2) of Pub. L. 88-272, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87-834, set out as an Effective Date note under section 46 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 4 of Pub. L. 86-69 provided that: "Except as otherwise provided in this Act, the amendments made by this Act [amending this section, part I (§801 et seq.) of subchapter L, and sections 841, 842, 891, 1016, 1201, 1232, 1504, 4371, and 6501 of this title] shall apply only with respect to taxable years beginning after December 31, 1957."

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85-866, see section 29(d) of Pub. L. 85-866, set out as a note under section 481 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act Jan. 28, 1956, provided that: "The amendments made by the first section of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 of act June 15, 1955, provided that: "The amendments made by this Act [amending this section and repealing sections 452 and 462 of this title] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

Section 4 of act June 15, 1955, as amended by act Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095, provided:

"(a) FILING OF STATEMENT.—If—

"(1) the amount of any tax required to be paid for any taxable year ending on or before the date of the enactment of this Act [June 15, 1955] is increased by reason of the enactment of this Act [amending this section and repealing sections 452 and 462], and

"(2) the last date prescribed for payment of such tax (or any installment thereof) is before December 15, 1955, then the taxpayer shall, on or before December 15, 1955, file a statement which shows the increase in the amount of such tax required to be paid by reason of the enactment of this Act.

"(b) FORM AND EFFECT OF STATEMENT.—

"(1) FORM OF STATEMENT, ETC.—The statement required by subsection (a) shall be filed at the place fixed for filing the return. Such statement shall be in such form, and shall include such information necessary or appropriate to show the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act, as the Secretary of the Treasury or his delegate shall by regulations prescribe.

"(2) TREATMENT AS AMOUNT SHOWN ON RETURN.—The amount shown on a statement filed under subsection (a) as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act shall, for all purposes of the internal revenue laws, be treated as tax shown on the return. Notwithstanding the preceding sentence, that portion of the amount of increase in tax for any taxable year which is attributable to a decrease (by reason of the enactment of this Act) in the net operating loss for a succeeding taxable year shall not be treated as tax shown on the return.

"(3) WAIVER OF INTEREST IN CASE OF PAYMENT ON OR BEFORE DECEMBER 15, 1955.—If the taxpayer, on or before December 15, 1955, files the statement referred to in subsection (a) and pays in full that portion of the amount shown thereon for which the last date pre-

scribed for payment is before December 15, 1955, then for purposes of computing interest (other than interest on overpayments) such portion shall be treated as having been paid on the last date prescribed for payment. This paragraph shall not apply if the amount shown on the statement as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act is greater than the actual increase unless the taxpayer establishes, to the satisfaction of the Secretary of the Treasury or his delegate, that his computation of the greater amount was based upon a reasonable interpretation and application of sections 452 and 462 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [sections 452 and 462 of this title], as those sections existed before the enactment of this Act.

"(c) SPECIAL RULES.—

"(1) INTEREST FOR PERIOD BEFORE ENACTMENT.—Interest shall not be imposed on the amount of any increase in tax resulting from the enactment of this Act for any period before the day after the date of the enactment of this Act [June 15, 1955].

"(2) ESTIMATED TAX.—Any addition to the tax under section 294(d) of the Internal Revenue Code of 1939 [section 294(d) of former Title 26, Internal Revenue Code], shall be computed as if this Act had not been enacted. In the case of any installment for which the last date prescribed for payment is before December 15, 1955, any addition to the tax under section 6654 of the Internal Revenue Code of 1986 [section 6654 of this title], shall be computed as if this Act had not been enacted.

"(3) TREATMENT OF CERTAIN PAYMENTS WHICH TAXPAYER IS REQUIRED TO MAKE.—If—

"(A) the taxpayer is required to make a payment (or an additional payment) to another person by reason of the enactment of this Act, and

"(B) the Internal Revenue Code of 1986 [this title] prescribes a period, which expires after the close of the taxable year, within which the taxpayer must make such payment (or additional payment) if the amount thereof is to be taken into account (as a deduction or otherwise) in computing taxable income for such taxable year,

then, subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, if such payment (or additional payment) is made on or before December 15, 1955, it shall be treated as having been made within the period prescribed by such Code.

"(4) TREATMENT OF CERTAIN DIVIDENDS.—Subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, for purposes of section 561(a)(1) of the Internal Revenue Code of 1986 [section 561(a)(1) of this title], dividends paid after the 15th day of the third month following the close of the taxable year and on or before December 15, 1955, may be treated as having been paid on the last day of the taxable year, but only to the extent (A) that such dividends are attributable to an increase in taxable income for the taxable year resulting from the enactment of this Act, and (B) elected by the taxpayer.

"(5) DETERMINATION OF DATE PRESCRIBED.—For purposes of this section, the determination of the last date prescribed for payment or for filing a return shall be made without regard to any extension of time therefor and without regard to any provision of this section.

"(6) REGULATIONS.—For requirement that the Secretary of the Treasury or his delegate shall prescribe all rules and regulations as may be necessary by reason of the enactment of this Act, see section 7805(a) of the Internal Revenue Code of 1986 [section 7805(a) of this title]."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(1) of Pub. L. 99-514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provi-

sion that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 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.

(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 Federal 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 shareholders (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 ex-

cept 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. 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 71(b)(2)),

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 non-business assets of the old loss corporation, over

(ii) the nonbusiness asset share of indebtedness for which such corporation is liable.

(B) Corporation having substantial non-business 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 non-business 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 non-business 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) Special rule for certain financial institutions

(i) In general

In the case of any ownership change to which this subparagraph applies, this paragraph shall be applied—

(I) by substituting “1504(a)(2)(B)” for “1504(a)(2)” and “20 percent” for “50 percent” in subparagraph (A)(ii), and

(II) without regard to subparagraphs (B) and (C).

(ii) Special rule for depositors

For purposes of applying this paragraph to an ownership change to which this subparagraph applies—

(I) a depositor in the old loss corporation shall be treated as a stockholder in such loss corporation immediately before the change,

(II) deposits which, after the change, become deposits of the new loss corporation shall be treated as stock of the new loss corporation, and

(III) the fair market value of the outstanding stock of the new loss corporation shall include the amount of deposits in the new loss corporation immediately after the change.

(iii) Changes to which subparagraph applies

This subparagraph shall apply to—

(I) an equity structure shift which is a reorganization described in section 368(a)(3)(D)(ii)¹ (as modified by section 368(a)(3)(D)(iv)),¹ or

(II) any other equity structure shift (or transaction to which section 351 applies) which occurs as an integral part of a transaction involving a change to which subclause (I) applies.

This subparagraph shall not apply to any equity structure shift or transaction occurring on or after May 10, 1989.

(G) 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).

(H) 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

¹ See References in Text note below.

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.)

REFERENCES IN TEXT

Section 368(a)(3)(D), referred to in subsec. (l)(5)(F)(iii)(I), was amended generally by Pub. L. 99-514, title IX, §904(a), Oct. 22, 1986, 100 Stat. 2385, and, as so amended, does not contain a cl. (ii) or (iv).

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

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.

“(i) 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.

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 AMENDMENTS

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.

Section 7304(d)(2) of Pub. L. 101-239 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.

Section 1401(c)(2) of Pub. L. 101-73 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

Section 1006(d)(1)(D) of Pub. L. 100-647 provided that: “The amendments made by this paragraph [amending this section] shall apply with respect to ownership changes after June 10, 1987.”

Section 1006(d)(17)(B) of Pub. L. 100-647 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.”

Section 1006(d)(28)(B) of Pub. L. 100-647 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.

Section 4012(b)(1)(C)(ii) of Pub. L. 100-647 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.”

Section 5077(b) of Pub. L. 100-647 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

Section 10225(c) of Pub. L. 100-203 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

Section 621(f) of Pub. L. 99-514, 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 bene-

fit of an institution described in the preceding sentence), shall not be treated as acquiring any stock of such corporation by reason of a firm commitment underwriting to the extent the stock is disposed of pursuant to the offering (but in no event later than 60 days after the initial offering).

“(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 sen-

tence 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).”

[Section 6277(c) of Pub. L. 100-647 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

Section 62(b)(2) of Pub. L. 98-369 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

Section 2(d) of Pub. L. 96-589 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

Section 806(g)(2), (3) of Pub. L. 94-455, 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

Section 621(d) of Pub. L. 99-514 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—

- (A) any unused general business credit of the corporation under section 39, and
- (B) any unused minimum tax credit of the corporation under section 53.

(b) Limitation on net capital loss

If an ownership change occurs with respect to a corporation, the amount of any net capital loss under section 1212 for any taxable year before the 1st post-change year which may be used in any post-change year shall be limited under regulations which shall be based on the principles applicable under section 382. Such regulations shall provide that any such net capital loss used in a post-change year shall reduce the section 382 limitation which is applied to pre-change losses under section 382 for such year.

(c) Foreign tax credits

If an ownership change occurs with respect to a corporation, the amount of any excess foreign taxes under section 904(c) for any taxable year before the 1st post-change taxable year shall be limited under regulations which shall be consistent with purposes of this section and section 382.

(d) Pro ration rules for year which includes change

For purposes of this section, rules similar to the rules of subsections (b)(3) and (d)(1)(B) of section 382 shall apply.

(e) Definitions

Terms used in this section shall have the same respective meanings as when used in section 382, except that appropriate adjustments shall be made to take into account that the limitations of this section apply to credits and net capital losses.

(Added Pub. L. 92-178, title III, §302(a), Dec. 10, 1971, 85 Stat. 521; amended Pub. L. 94-455, title VIII, §806(f)(2), title X, §1031(b)(5), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1605, 1623, 1834; Pub. L. 95-30, title II, §202(d)(3)(B), (C), May 23, 1977, 91 Stat. 148; Pub. L. 96-222, title I, §103(a)(6)(G)(xiii), Apr. 1, 1980, 94 Stat. 211; Pub. L. 96-223, title II, §232(b)(2)(C), (D), Apr. 2, 1980, 94 Stat. 276; Pub. L. 97-34, title II, §221(b)(1)(C), (D), title III, §331(d)(1)(C), (D), Aug. 13, 1981, 95 Stat. 246, 294; Pub. L. 98-369, div. A, title IV, §474(r)(12)(A), (B), July 18, 1984, 98 Stat. 841; Pub. L. 99-514, title VI, §621(b), (e)(1), Oct. 22, 1986, 100 Stat. 2265, 2266.)

AMENDMENTS

1986—Pub. L. 99-514, §621(b), amended section generally. Prior to amendment, section read as follows: “If—

- “(1) the ownership and business of a corporation are changed in the manner described in section 382(a)(1), or
 - “(2) in the case of a reorganization specified in paragraph (2) of section 381(a), there is a change in ownership described in section 382(b)(1)(B),
- then the limitations provided in section 382 in such cases with respect to the carryover of net operating losses shall apply in the same manner, as provided under regulations prescribed by the Secretary, with respect to any unused business credit of the corporation which can otherwise be carried forward under section

39, to any unused credit of the corporation which could otherwise be carried forward under section 30(g)(2), to any excess foreign taxes of the corporation which could otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212.”

Pub. L. 99-514, §621(e)(1), repealed amendment by Pub. L. 94-455, §806(f)(2). See 1976 Amendment note below.

1984—Pub. L. 98-369, §474(r)(12)(A)(ii), in catchline of section 383, as in effect prior to amendment by Pub. L. 94-455, §806(f)(2), as related to section 382(a) of this title, substituted “Special limitations on unused business credits, research credits, foreign taxes, and capital losses” for “Special limitations on carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses”.

Pub. L. 98-369, §474(r)(12)(B)(ii), in catchline of section 383, as amended by Pub. L. 94-455, §806(f)(2), as related to section 382(b) of this title, substituted “business credits, research credits” for “investment credits, work incentive program credits”.

Pub. L. 98-369, §474(r)(12)(B)(ii), in catchline of section 383, as amended by Pub. L. 94-455, §806(f)(2), as related to section 382(a) of this title, substituted “business credits” for “investment credits” and struck out references to work incentive program credits, new employee credits, alcohol fuel credits, and employee stock ownership credits.

Pub. L. 98-369, §474(r)(12)(A)(i), in section 383, as in effect prior to amendment by Pub. L. 94-455, §806(f)(2), as related to section 382(a) of this title, substituted “with respect to any unused business credit of the corporation which can otherwise be carried forward under section 39, to any unused credit of the corporation which could otherwise be carried forward under section 30(g)(2), to any excess foreign taxes of the corporation which could otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212” for “with respect to any unused investment credit of the corporation which can otherwise be carried forward under section 46(b), to any unused work incentive program credit of the corporation which can otherwise be carried forward under section 50A(b), to any unused new employee credit of the corporation which could otherwise be carried forward under section 53(b), to any unused credit of the corporation which could otherwise be carried forward under section 44E(e)(2), to any unused credit of the corporation which could otherwise be carried forward under section 44F(g)(2), to any unused credit of the corporation which could otherwise be carried forward under section 44G(b)(2), to any excess foreign taxes of the corporation which can otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212”.

Pub. L. 98-369, §474(r)(12)(B)(i), in section 383, as amended by Pub. L. 94-455, §806(f)(2), as related to section 382(b) of this title, substituted “with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212” for “with respect to any unused investment credit of the corporation under section 46(b), to any unused work incentive program credit of the corporation under section 50A(b), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212”.

Pub. L. 98-369, §474(r)(12)(B)(i), in section 383, as amended by Pub. L. 94-455, §806(f)(2), as related to section 382(a) of this title, substituted “with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212” for “with re-

spect to any unused investment credit of the corporation under section 46(b), to any unused work incentive program credit of the corporation under section 50A(b), to any unused new employee credit of the corporation under section 53(b), to any unused credit of the corporation under section 44E(e)(2), to any unused credit of the corporation under section 44F(g)(2), to any unused credit of the corporation under section 44G(b)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212”.

1981—Pub. L. 97-34, §331(d)(1)(C)(ii), (D)(ii), in catchlines of sections 383, as related to section 382(a) of this title, before and after amendment by Pub. L. 94-455, §806(f)(2), inserted reference to employee stock ownership credits.

Pub. L. 97-34, §331(d)(1)(D)(i), in section 383, as in effect prior to amendment by Pub. L. 94-455, §806(f)(2), as related to section 382(a) of this title, inserted “to any unused credit of the corporation which could otherwise be carried forward under section 44G(b)(2).”

Pub. L. 97-34, §331(d)(1)(C)(i), in section 383, as amended by Pub. L. 94-455, §806(f)(2), as related to section 382(a) of this title, inserted “to any unused credit of the corporation under section 44G(b)(2).”

Pub. L. 97-34, §221(b)(1)(C)(ii), (D)(ii), in catchlines of sections 383, as related to section 382(a) of this title, before and after amendment by Pub. L. 94-455, §806(f)(2), inserted reference to research credits.

Pub. L. 97-34, §221(b)(1)(D)(i), in section 383, as in effect prior to amendment by Pub. L. 94-455, §806(f)(2), as related to section 382(a) of this title, inserted “to any unused credit of the corporation which could otherwise be carried forward under section 44F(g)(2),” after “section 44E(e)(2).”

Pub. L. 97-34, §221(b)(1)(C)(i), in section 383, as amended by Pub. L. 94-455, §806(f)(2), as related to section 382(a) of this title, inserted “to any unused credit of the corporation under section 44F(g)(2),” after “section 44E(e)(2).”

1980—Pub. L. 96-223, §232(b)(2)(D), in section 383, as in effect prior to amendment by Pub. L. 94-455, §806(f)(2), as related to section 382(a) of this title, inserted reference to unused alcohol fuel credits in section catchline and reference to any unused credit of the corporation which could otherwise be carried forward under section 44E(e)(2) in text.

Pub. L. 96-223, §232(b)(2)(C), in section 383, as amended by Pub. L. 94-455, §806(f)(2), as related to section 382(a) of this title, inserted reference to unused alcohol fuel credits in section catchline and reference to any unused credit of the corporation under section 44E(e)(2) in text.

Pub. L. 96-222, in sections 383, as related to section 382(a) of this title, before and after amendment by Pub. L. 94-455, §806(f)(2), substituted “section 53(b)” for “section 53(c)”.

1977—Pub. L. 95-30, §202(d)(3)(C), in section 383, as in effect prior to amendment by Pub. L. 94-455, §806(f)(2), as related to section 382(a) of this title, inserted “to any unused new employee credit of the corporation which could otherwise be carried forward under section 53(c)” in text and “new employee credits,” in catchline.

Pub. L. 95-30, §202(d)(3)(B), in section 383, as amended by Pub. L. 94-455, §806(f)(2), as related to section 382(a) of this title, inserted “to any unused new employee credit of the corporation under section 53(c)” in text and “new employee credits,” in section catchline.

1976—Pub. L. 94-455, §§1031(b)(5), 1906(b)(13)(A), struck out “or his delegate” after “Secretary”, and substituted “section 904(c)” for “section 904(d)”, respectively, in section 383 set out first.

Pub. L. 94-455, §806(f)(2), which substituted, in sections 383 as related to section 382(a) and (b) of this title, provisions that the net operating loss limitations in section 382 shall apply to unused investment credits under section 46(b), to unused work incentive program credits under section 50A(b), to excess foreign taxes under section 904(d) and to net capital losses under section 1212 for provisions that the net operating loss

carryover limitations in section 382 shall apply, in the case of ownership changes described in section 382(a)(1) or reorganizations specified in section 381(a)(2) resulting in ownership changes described in section 382(b)(1)(B), to unused investment credits under section 46(b), to unused work incentive program credits under section 50A(B), to excess foreign taxes under section 904(c), and to net capital losses under section 1212, was repealed by Pub. L. 99-514, §621(e)(1). See Effective Date of 1986 and 1976 Amendment notes below.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 621(b) of Pub. L. 99-514 applicable to any ownership change after Dec. 31, 1986, except as otherwise provided, see section 621(f) of Pub. L. 99-514, as amended, set out as a note under section 382 of this title.

Repeal of amendment by section 806(f)(1) of Pub. L. 94-455 effective Jan. 1, 1986, with certain exceptions, see section 621(f)(2) of Pub. L. 99-514, set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 221(b)(1)(C), (D) of Pub. L. 97-34 applicable to amounts paid or incurred after June 30, 1981, see section 221(d) of Pub. L. 97-34, as amended, set out as an Effective Date note under section 41 of this title.

Amendment by section 331(d)(1)(C), (D) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97-34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96-223 applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96-223, set out as an Effective Date note under section 40 of this title.

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, Nov. 6, 1978, 92 Stat. 2763, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1031(b)(5) of Pub. L. 94-455, see section 1031(c) of Pub. L. 94-455, set out as a note under section 904 of this title.

For purposes of applying this section (as it relates to section 382(a) of this title) as amended by section 806(e), (f) of Pub. L. 94-455, the amendments made by section 806(e), (f) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1985, with specified provisions for determining the beginning of the taxable years specified in section 382(a)(1)(B)(ii) of this title, and this section (as it relates to section 382(b) of this title) as amended by section 806(e), (f) of Pub. L. 94-455 to apply (and such sections as in effect prior to such amendment not to apply) to reorganizations pursuant to a plan of reorganization adopted by one or more of the parties thereto on or after Jan. 1, 1986, see section 806(g)(2), (3) of Pub. L. 94-455, as amended, formerly set out as a note under section 382 of this title.

EFFECTIVE DATE

Section 302(c) of Pub. L. 92-178 provided that: “The amendments made by this section [enacting this section] shall be applicable only with respect to reorganizations and other changes in ownership occurring after the date of enactment of this Act [Dec. 10, 1971] pursuant to a plan of reorganization or contract entered into on or after September 29, 1971.”

DELAY IN EFFECTIVE DATE OF 1976 AMENDMENT

For election by taxpayer for application of prior law with respect to any acquisition or reorganization occurring before the end of the taxpayer's first taxable year beginning after June 30, 1978, see section 368 of Pub. L. 95-600, set out as a Delay in Effective Date of 1976 Amendment note under section 382 of this title.

§ 384. Limitation on use of preacquisition losses to offset built-in gains

(a) General rule

If—

(1)(A) a corporation acquires directly (or through 1 or more other corporations) control of another corporation, or

(B) the assets of a corporation are acquired by another corporation in a reorganization described in subparagraph (A), (C), or (D) of section 368(a)(1), and

(2) either of such corporations is a gain corporation,

income for any recognition period taxable year (to the extent attributable to recognized built-in gains) shall not be offset by any preacquisition loss (other than a preacquisition loss of the gain corporation).

(b) Exception where corporations under common control

(1) In general

Subsection (a) shall not apply to the preacquisition loss of any corporation if such corporation and the gain corporation were members of the same controlled group at all times during the 5-year period ending on the acquisition date.

(2) Controlled group

For purposes of this subsection, the term “controlled group” means a controlled group of corporations (as defined in section 1563(a)); except that—

(A) “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears,

(B) the ownership requirements of section 1563(a) must be met both with respect to voting power and value, and

(C) the determination shall be made without regard to subsection (a)(4) of section 1563.

(3) Shorter period where corporations not in existence for 5 years

If either of the corporations referred to in paragraph (1) was not in existence throughout the 5-year period referred to in paragraph (1), the period during which such corporation was in existence (or if both, the shorter of such periods) shall be substituted for such 5-year period.

(c) Definitions

For purposes of this section—

(1) Recognized built-in gain

(A) In general

The term “recognized built-in gain” means any gain recognized during the recognition period on the disposition of any asset except to the extent the gain corporation (or, in

any case described in subsection (a)(1)(B), the acquiring corporation) establishes that—

(i) such asset was not held by the gain corporation on the acquisition date, or

(ii) such gain exceeds the excess (if any) of—

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

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

(B) Treatment of certain income items

Any item of income which is properly taken into account for any recognition period taxable year but which is attributable to periods before the acquisition date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account and shall be taken into account in determining the amount of the net unrealized built-in gain.

(C) Limitation

The amount of the recognized built-in gains for any recognition period taxable year shall not exceed—

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

(ii) the recognized built-in gains for prior years ending in the recognition period which (but for this section) would have been offset by preacquisition losses.

(2) Acquisition date

The term “acquisition date” means—

(A) in any case described in subsection (a)(1)(A), the date on which the acquisition of control occurs, or

(B) in any case described in subsection (a)(1)(B), the date of the transfer in the reorganization.

(3) Preacquisition loss

(A) In general

The term “preacquisition loss” means—

(i) any net operating loss carryforward to the taxable year in which the acquisition date occurs, and

(ii) any net operating loss for the taxable year in which the acquisition date occurs to the extent such loss is allocable to the period in such year on or before the acquisition date.

Except as provided in regulations, the net operating loss shall, for purposes of clause (ii), be allocated ratably to each day in the year.

(B) Treatment of recognized built-in loss

In the case of a corporation with a net unrealized built-in loss, the term “preacquisition loss” includes any recognized built-in loss.

(4) Gain corporation

The term “gain corporation” means any corporation with a net unrealized built-in gain.

(5) Control

The term “control” means ownership of stock in a corporation which meets the requirements of section 1504(a)(2).

(6) Treatment of members of same group

Except as provided in regulations and except for purposes of subsection (b), all corporations

which are members of the same affiliated group immediately before the acquisition date shall be treated as 1 corporation. To the extent provided in regulations, section 1504 shall be applied without regard to subsection (b) thereof for purposes of the preceding sentence.

(7) Treatment of predecessors and successors

Any reference in this section to a corporation shall include a reference to any predecessor or successor thereof.

(8) Other definitions

Except as provided in regulations, the terms “net unrealized built-in gain”, “net unrealized built-in loss”, “recognized built-in loss”, “recognition period”, and “recognition period taxable year”, have the same respective meanings as when used in section 382(h), except that the acquisition date shall be taken into account in lieu of the change date.

(d) Limitation also to apply to excess credits or net capital losses

Rules similar to the rules of subsection (a) shall also apply in the case of any excess credit (as defined in section 383(a)(2)) or net capital loss.

(e) Ordering rules for net operating losses, etc.

(1) Carryover rules

If any preacquisition loss may not offset a recognized built-in gain by reason of this section, such gain shall not be taken into account in determining under section 172(b)(2) the amount of such loss which may be carried to other taxable years. A similar rule shall apply in the case of any excess credit or net capital loss limited by reason of subsection (d).

(2) Ordering rule for losses carried from same taxable year

In any case in which—

(A) a preacquisition loss for any taxable year is subject to limitation under subsection (a), and

(B) a net operating loss from such taxable year is not subject to such limitation,

taxable income shall be treated as having been offset 1st by the loss subject to such limitation.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to ensure that the purposes of this section may not be circumvented through—

(1) the use of any provision of law or regulations (including subchapter K of this chapter), or

(2) contributions of property to a corporation.

(Added Pub. L. 100-203, title X, § 10226(a), Dec. 22, 1987, 101 Stat. 1330-414; amended Pub. L. 100-647, title II, § 2004(m)(1)-(4), Nov. 10, 1988, 102 Stat. 3606, 3607; Pub. L. 101-239, title VII, § 7812(c)(1), Dec. 19, 1989, 103 Stat. 2412.)

AMENDMENTS

1989—Subsec. (e)(1). Pub. L. 101-239 substituted “built-in gain” for “build-in gain”.

1988—Subsec. (a). Pub. L. 100-647, § 2004(m)(1)(A), amended subsec. (a) generally, making changes in substance and structure.

Subsec. (b). Pub. L. 100-647, § 2004(m)(3), substituted “corporations under common control” for “50 percent of gain corporation held” in heading and amended text generally. Prior to amendment, text read as follows: “Subsection (a) shall not apply if more than 50 percent of the stock (by vote and value) of the gain corporation was held throughout the 5-year period ending on the acquisition date—

“(1) in any case described in subsection (a)(1), by members of the affiliated group referred to in subsection (a)(1), or

“(2) in any case described in subsection (a)(2), by the acquiring corporation or members of such acquiring corporation’s affiliated group.

For purposes of the preceding sentence, stock described in section 1504(a)(4) shall not be taken into account.”

Subsec. (c)(1)(A). Pub. L. 100-647, § 2004(m)(1)(D), substituted “subsection (a)(1)(B)” for “subsection (a)(2)”.

Subsec. (c)(2). Pub. L. 100-647, § 2004(m)(1)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The term ‘acquisition date’ means the date on which the gain corporation becomes a member of the affiliated group or, in any case described in subsection (a)(2), the date of the distribution or transfer in the liquidation or reorganization.”

Subsec. (c)(4) to (8). Pub. L. 100-647, § 2004(m)(1)(B), redesignated par. (4) as (8) and added pars. (4) to (7).

Subsecs. (e), (f). Pub. L. 100-647, § 2004(m)(2), (4), substituted “a corporation” for “the gain corporation” in subsec. (e)(2), redesignated subsec. (e) as (f), and added subsec. (e).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section 10226(c) of Pub. L. 100-203 provided that: “The amendments made by this section [enacting this section] shall apply in cases where the acquisition date (as defined in section 384(c)(2) of the Internal Revenue Code of 1986 as added by this section) is after December 15, 1987; except that such amendments shall not apply in the case of any transaction pursuant to—

“(1) a binding written contract in effect on or before December 15, 1987, or

“(2) a letter of intent or agreement of merger signed on or before December 15, 1987.”

ELECTION TO HAVE AMENDMENTS BY PUB. L. 100-647 NOT APPLY

Section 2004(m)(5) of Pub. L. 100-647 provided that: “In any case where the acquisition date (as defined in section 384(c)(2) of the 1986 Code as amended by this subsection) is before March 31, 1988, the acquiring corporation may elect to have the amendments made by this subsection not apply. Such an election shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe and shall be made not later than the later of the due date (including extensions) for filing the return for the taxable year of the acquiring corporation in which the acquisition date occurs or the date 120 days after the date of the enactment of this Act [Nov. 10, 1989]. Such an election, once made, shall be irrevocable.”

PART VI—TREATMENT OF CERTAIN CORPORATE INTERESTS AS STOCK OR INDEBTEDNESS

Sec.
385. Treatment of certain interests in corporations as stock or indebtedness.

AMENDMENTS

1969—Pub. L. 91-172, title IV, §415(a), Dec. 30, 1969, 83 Stat. 613, added part heading and analysis of sections.

§ 385. Treatment of certain interests in corporations as stock or indebtedness

(a) Authority to prescribe regulations

The Secretary is authorized to prescribe such regulations as may be necessary or appropriate to determine whether an interest in a corporation is to be treated for purposes of this title as stock or indebtedness (or as in part stock and in part indebtedness).

(b) Factors

The regulations prescribed under this section shall set forth factors which are to be taken into account in determining with respect to a particular factual situation whether a debtor-creditor relationship exists or a corporation-shareholder relationship exists. The factors so set forth in the regulations may include among other factors:

- (1) whether there is a written unconditional promise to pay on demand or on a specified date a sum certain in money in return for an adequate consideration in money or money's worth, and to pay a fixed rate of interest,
- (2) whether there is subordination to or preference over any indebtedness of the corporation,
- (3) the ratio of debt to equity of the corporation,
- (4) whether there is convertibility into the stock of the corporation, and
- (5) the relationship between holdings of stock in the corporation and holdings of the interest in question.

(c) Effect of classification by issuer

(1) In general

The characterization (as of the time of issuance) by the issuer as to whether an interest in a corporation is stock or indebtedness shall be binding on such issuer and on all holders of such interest (but shall not be binding on the Secretary).

(2) Notification of inconsistent treatment

Except as provided in regulations, paragraph (1) shall not apply to any holder of an interest if such holder on his return discloses that he is treating such interest in a manner inconsistent with the characterization referred to in paragraph (1).

(3) Regulations

The Secretary is authorized to require such information as the Secretary determines to be necessary to carry out the provisions of this subsection.

(Added Pub. L. 91-172, title IV, §415(a), Dec. 30, 1969, 83 Stat. 613; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834;

Pub. L. 101-239, title VII, §7208(a)(1), Dec. 19, 1989, 103 Stat. 2337; Pub. L. 102-486, title XIX, §1936(a), Oct. 24, 1992, 106 Stat. 3032.)

AMENDMENTS

- 1992—Subsec. (c). Pub. L. 102-486 added subsec. (c).
- 1989—Subsec. (a). Pub. L. 101-239 inserted “(or as in part stock and in part indebtedness)” before period at end.
- 1976—Subsec. (a). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1936(b) of Pub. L. 102-486 provided that: “The amendment made by subsection (a) [amending this section] shall apply to instruments issued after the date of the enactment of this Act [Oct. 24, 1992].”

REGULATIONS NOT TO BE APPLIED RETROACTIVELY

Section 7208(a)(2) of Pub. L. 101-239 provided that: “Any regulations issued pursuant to the authority granted by the amendment made by paragraph (1) [amending this section] shall only apply with respect to instruments issued after the date on which the Secretary of the Treasury or his delegate provides public guidance as to the characterization of such instruments whether by regulation, ruling, or otherwise.”

[PART VII—REPEALED]

[§ 386. Repealed. Pub. L. 100-647, title I, § 1006(e)(8)(A), Nov. 10, 1988, 102 Stat. 3401]

Section, added Pub. L. 98-369, div. A, title I, §75(a), July 18, 1984, 98 Stat. 594; amended Pub. L. 99-514, title XVIII, §1805(c)(1), Oct. 22, 1986, 100 Stat. 2810, related to transfers of partnership and trust interests by corporations.

EFFECTIVE DATE OF REPEAL

Repeal 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 an Effective Date of 1988 Amendment note under section 1 of this title.

[§§ 391 to 395. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(55), Oct. 4, 1976, 90 Stat. 1773]

Section 391, acts Aug. 16, 1954, ch. 736, 68A Stat. 131; Sept. 2, 1958, Pub. L. 85-866, title I, §22(a), 72 Stat. 1620, related to effective date of section 301 et seq. of this title.

Section 392, act Aug. 16, 1954, ch. 736, 68A Stat. 131, related to effective date of section 331 et seq. of this title.

Section 393, act Aug. 16, 1954, ch. 736, 68A Stat. 132, related to effective date of section 351 et seq. of this title.

Section 394, act Aug. 16, 1954, ch. 736, 68A Stat. 133, related to effective date of section 381 et seq. of this title.

Section 395, act Aug. 16, 1954, ch. 736, 68A Stat. 133, related to special rules for application of this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

Subchapter D—Deferred Compensation, Etc.

- Part I. Pension, profit-sharing, stock bonus plans, etc.
- II. Certain stock options.
- III. Rules relating to minimum funding standards and benefit limitations.¹

¹ Period editorially supplied.