

its income tax return: "THIS IS AN ELECTION TO NOT APPLY §1.382-3(o) (OR §1.382-9(o) AFTER REDESIGNATION) FOR TESTING DATES OCCURRING ON OR AFTER SEPTEMBER 5, 1990, TO APRIL 8, 1992, TO OPTIONS CREATED BY OR UNDER A PLAN OF REORGANIZATION CONFIRMED IN A TITLE 11 OR SIMILAR CASE."

(p) *Effective date for rules relating to section 382(l)(6)*—(1) *In general.* Paragraphs (i), (j), (k), (l), (m)(2), and (n)(2) of this section apply to any ownership change occurring on or after March 17, 1994.

(2) *Ownership change to which section 382(l)(6) applies occurring before March 17, 1994.* In the case of an ownership change occurring before March 17, 1994, the loss corporation may elect to apply the rules of paragraphs (j), (k), (l), (m)(2), and (n)(2) of §1.382-9 in their entirety. The election must be made by the later of the due date (including any extensions of time) of the loss corporation's tax return for the taxable year which includes the change date or the date that the loss corporation files its first tax return after May 16, 1994. The election is made by attaching the following statement to the return: "This is an Election to Apply §§1.382-9 (j), (k), (l), (m)(2), and (n)(2) of the Income Tax Regulations to the Ownership Change Occurring Pursuant to a Plan of Reorganization Confirmed by the Court on [Insert Confirmation Date]." In connection with making this election, on the same return the loss corporation may also elect not to apply section 382(l)(5) to the ownership change under paragraph (i) of this section (if the loss corporation has not already done so pursuant to §301.9100-7T(a) of this chapter). If, under the applicable statute of limitations, the loss corporation may file amended returns for the year of the ownership change and all subsequent years (an open year), an electing loss corporation must file an amended return for each prior affected year to reflect the elections. If, under the applicable statute of limitations, the loss corporation may not file an amended return for the year of the ownership change or any subsequent year (a closed year), an electing loss corporation must file an amended return for each affected open year to reflect the

elections and the section 382 limitation resulting from the ownership change must be appropriately adjusted for the earliest open year (or years) to reflect the difference between the amount of pre-change losses actually used in closed years and the amount of pre-change losses that would have been used in such years applying the rules of paragraphs (j), (k), (l), (m)(2), (n)(2) of this section to the ownership change.

[T.D. 8388, 57 FR 346, Jan. 6, 1992; T.D. 8407, 57 FR 12210, Apr. 9, 1992. Redesignated by T.D. 8440, 57 FR 45712, 45713, Oct. 5, 1992; 57 FR 52827, Nov. 5, 1992; T.D. 8531, 59 FR 12840, Mar. 18, 1994; T.D. 8530, 59 FR 12843, Mar. 18, 1994; T.D. 8529, 59 FR 12846, Mar. 18, 1994]

**§ 1.382-10 Special rules for determining time and manner of acquisition of an interest in a loss corporation.**

(a) *Distributions from qualified trusts*—

(1) *In general.* For purposes of §1.382-2T, if a qualified trust described in section 401(a) (qualified trust) distributes an ownership interest in an entity (as defined in §1.382-3(a)(1)), then for testing dates on or after the date of the distribution, the distributed ownership interest is treated as having been acquired by the distributee on the date and in the manner acquired by the trust and not as having been acquired or disposed of by the trust. The distribution does not cause the day of the distribution to be a testing date.

(2) *Accounting for dispositions*—(i) *General rule.* For purposes of this paragraph (a), in order to determine which ownership interest in an entity is distributed from a qualified trust, a loss corporation must either specifically identify the ownership interests that are the subject of all dispositions by the qualified trust of ownership interests in an entity, or apply the first-in, first-out (FIFO) method to all such dispositions.

(ii) *Special rules.* For purposes of this paragraph (a)(2):

(A) The FIFO method must be applied on a class-by-class basis; and

(B) The term *dispositions* includes distributions, sales, and other transfers.

(3) *Examples.* The following examples illustrate the principles of this paragraph (a). For purposes of these examples, unless otherwise stated, the nomenclature and assumptions of the examples in § 1.382-2T(b) apply, all corporations file separate income tax returns on a calendar year basis, the only 5-percent shareholder of a loss corporation is a public group, and the facts set forth the only acquisitions of stock by any participants in a qualified plan and the only owner shifts with respect to the loss corporation during the testing period. The examples are as follows:

*Example 1.* (i) *Facts.* In 1994, E, a qualified trust established under Plan F, acquires 10 percent of L stock. A is a participant in Plan F. On January 1, 2002, A acquires 4 percent of L stock, and B, who is not a participant or a beneficiary of a participant in Plan F, acquires 5 percent of L stock. On January 1, 2004, E distributes 2 percent of L stock to A. On July 1, 2004, A acquires 1 percent of L stock.

(ii) *Analysis.* January 1, 2002, is a testing date because B's acquisition of 5 percent of L stock causes an increase in the percentage ownership of B, a 5-percent shareholder. As of the close of that testing date, A is treated as owning only 4 percent of L stock. Therefore, A is treated as a member of the public group of L. In addition, E is treated as owning 10 percent of L stock that it acquired in 1994.

(iii) As a result of the application of paragraph (a)(1) of this section to E's distribution of 2 percent of L stock to A on January 1, 2004, for testing dates on and after January 1, 2004, A is treated as having acquired that 2 percent interest in L in 1994, and E is treated as having acquired only 8 percent of L stock in 1994. Because there are no owner shifts on January 1, 2004, that date is not a testing date.

(iv) July 1, 2004, is a testing date because on that date A, a 5-percent shareholder, acquires 1 percent of L stock. As of the close of that testing date, A's percentage of ownership of L stock is 7 percent, and A's lowest percentage of ownership of L stock at any time within the testing period is 2 percent (deemed acquired in 1994), representing an increase of 5 percentage points. In addition, as of the close of July 1, 2004, B's percentage of ownership of L stock is 5 percent, and B's lowest percentage of ownership of L stock at any time within the testing period is 0 percent, representing an increase of 5 percentage points. Thus, on July 1, 2004, L must take into account an increase of 10 (5 + 5) percentage points in determining whether it has an ownership change.

*Example 2.* (i) *Facts.* E is a qualified trust established under Plan F. L, a publicly traded corporation, has 100x shares of stock outstanding. As of January 1, 2006, C owns 5x shares of L stock and is not a participant or beneficiary of a participant in Plan F. At all times prior to January 1, 2006, E owns no L stock. On January 1, 2006, E acquires 10x shares of L stock from members of the public group of L. On December 1, 2007, E distributes 5x shares of L stock to some of the participants in Plan F. No one participant acquires all 5x shares as a result of the distribution. On February 1, 2008, C purchases 1x shares of L stock from the public group of L.

(ii) *Analysis.* Because E's acquisition of 10x shares of L stock on January 1, 2006, is an owner shift, that date is a testing date. As of the close of that date, E's percentage of stock ownership in L has increased by 10 percentage points.

(iii) As a result of the application of paragraph (a)(1) of this section to E's distribution of 5x shares of L stock to some Plan F participants on December 1, 2007, for testing dates on and after December 1, 2007, those distributees are treated as having acquired those shares of stock on January 1, 2006, from members of the public group of L, and E is not treated as having acquired those shares on that date. E's distribution of the 5x shares is not an owner shift. Therefore, December 1, 2007, is not a testing date.

(iv) February 1, 2008, is a testing date because on that date an owner shift results from C's purchase of 1x shares of L stock. As of the close of that testing date, the distributees of 5x shares of L stock are treated as members of the public group of L having acquired 5x shares of L stock from other members of the public group of L on January 1, 2006. Because those acquisitions are not by 5-percent shareholders, L does not take them into account. In addition, as of the close of February 1, 2008, E's percentage of stock ownership in L is 5 percent, and E's lowest percentage of stock ownership in L at any time within the testing period is 0 percent, representing an increase of 5 percentage points. In addition, as of the close of February 1, 2008, C's percentage of stock ownership in L is 6 percent, and C's lowest percentage of stock ownership in L at any time within the testing period is 5 percent, representing an increase of 1 percentage point. Therefore, on February 1, 2008, L must take into account an increase of 6 (5 + 1) percentage points in determining whether it has an ownership change.

(4) *Effective dates.* This section applies to all distributions after June 23, 2006. For distributions on or before

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June 23, 2006, see § 1.382-10T as contained in 26 CFR part 1, revised April 1, 2006.

(b) [Reserved]

[T.D. 9269, 71 FR 36677, June 28, 2006]

### § 1.382-11 Reporting requirements.

(a) *Information statement required.* A loss corporation must include a statement entitled, "STATEMENT PURSUANT TO § 1.382-11(a) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF TAXPAYER], A LOSS CORPORATION," on or with its income tax return for each taxable year that it is a loss corporation in which an owner shift, equity structure shift or other transaction described in § 1.382-2T(a)(2)(i) occurs. The statement must include the date(s) of any owner shifts, equity structure shifts, or other transactions described in § 1.382-2T(a)(2)(i), the date(s) on which any ownership change(s) occurred, and the amount of any attributes described in § 1.382-2(a)(1)(i) that caused the corporation to be a loss corporation. A loss corporation may also be required to include certain elections on this statement, including—

(1) An election made under § 1.382-2T(h)(4)(vi)(B) to disregard the deemed exercise of an option if the actual exercise of that option occurred within 120 days of the ownership change; and

(2) An election made under § 1.382-6(b)(2) to close the books of the loss corporation for purposes of allocating income and loss to periods before and after the change date for purposes of section 382.

(b) *Effective/applicability date.* This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.382-2T as contained in 26 CFR part 1 in effect on April 1, 2006.

[T.D. 9329, 72 FR 32803, June 14, 2007]

### § 1.383-0 Effective date.

(a) The regulations under section 383 (other than the regulations described in paragraph (b) of this section) reflect the amendments made to sections 382 and 383 by the Tax Reform Act of 1986. See § 1.383-1(j) for effective date rules.

(b) Sections 1.383-1A, 1.383-2A, and 1.383-3A do not reflect the amendments made to sections 382 and 383 by the Tax Reform Act of 1986.

[T.D. 8352, 56 FR 29434, June 27, 1991]

### § 1.383-1 Special limitations on certain capital losses and excess credits.

(a) *Outline of topics.* In order to facilitate the use of this section, this paragraph lists the paragraphs, subparagraphs and subdivisions contained in this section.

- (a) Outline of topics.
- (b) In general.
- (c) Definitions.
  - (1) Coordination with definitions and nomenclature used in section 382.
  - (2) Pre-change capital loss.
  - (3) Pre-change credit.
  - (4) Pre-change loss.
  - (5) Regular tax liability.
  - (6) Section 383 credit limitation.
- (i) Definition.
- (ii) Example.
- (d) Limitation on use of pre-change losses and pre-change credits.
  - (1) In general.
  - (2) Ordering rules for utilization of pre-change losses and pre-change credits and for absorption of the section 382 limitation and the section 383 credit limitation.
  - (3) Coordination with other limitations.
- (i) In general.
- (ii) Examples.
- (e) Carryforward of unused section 382 limitation.
  - (1) Computation of carryforward amount.
  - (2) Section 383 credit reduction amount.
  - (3) Computation of section 383 credit reduction amount; illustration using tax rates and brackets in effect for calendar year 1988.
  - (4) Special rules for determining the section 383 credit reduction amount.
- (i) Ordering rules.
- (ii) Special rule for credits under section 38(a).
- (f) Examples.
- (g) Coordination with section 382 and the regulations thereunder.
- (h) Alternative minimum tax.
- (i) [Reserved]
- (j) Effective date.
- (k) Transitional rules regarding information statements