

## § 1.382-6

## 26 CFR Ch. I (4-1-10 Edition)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) *Reduction of net operating loss by remaining capital gain.* The amount of net operating loss allocated to each period is reduced (but not below zero) without regard to the section 382 limitation, first by the modified capital gain net income remaining in the same period, and then by the modified capital gain net income remaining in the other period.

(d) *Coordination with rules relating to the allocation of income under § 1.1502-76(b).* If § 1.1502-76 applies (relating to the taxable year of members of a consolidated group), an allocation of items under paragraph (a) or (b) of this section is determined after applying § 1.1502-76. Thus, if a short taxable year under § 1.1502-76 is a change year for which an allocation under this section is to be made, the allocation under this section applies only to the items allocated to that short taxable year under § 1.1502-76.

(e) *Allocation of certain credits.* The principles of this section apply for purposes of allocating, under section 383, excess foreign taxes under section 904(c), current year business credits under section 38, and the minimum tax credit under section 53. The loss corporation must use the same method of allocation (ratable allocation or closing-of-the-books) for purposes of sections 382 and 383.

(f) *Examples.* The rules of this section are illustrated by the following examples:

*Example 1.* (i) Assume that the loss corporation, L, a calendar year taxpayer with a May 26, 1995, change date, determines a section 382 limitation under section 382(b)(1) of \$100,000. Thus, for the change year, its section 382 limitation is  $\$100,000 \times (219/365) = \$60,000$ . L makes the closing-of-the-books election under paragraph (b) of this section.

(ii) Assume that L has a \$150,000 capital loss carryover (from its 1994 taxable year) and a \$300,000 net operating loss carryover (from its 1994 taxable year) to the change year. L recognizes, in the pre-change period, \$200,000 of ordinary loss, and, in the post-change period, \$150,000 of capital gain and \$100,000 of ordinary income. Assume that section 382(h) does not apply to the capital gain or the ordinary income.

(iii) L has a \$100,000 net operating loss for the change year (\$200,000 pre-change loss less \$100,000 post-change income), as determined under paragraph (c)(1)(i) of this section. Be-

cause L has no current year capital losses, L's \$150,000 capital gain recognized in the post-change period is its modified capital gain net income for the change year (as defined at paragraph (g)(4) of this section). L allocates \$100,000 of net operating loss to the pre-change period and \$150,000 of modified capital gain net income to the post-change period.

(iv) Under paragraph (c)(2)(i) of this section, L uses its capital loss carryover to offset its modified capital gain net income allocated to the post-change period, subject to its section 382 limitation. L's section 382 limitation is \$60,000, so L uses \$60,000 of its capital loss carryover to offset \$60,000 of its \$150,000 modified capital gain net income. L has absorbed its entire section 382 limitation for the change year and has \$90,000 of modified capital gain net income remaining in the post-change period.

(v) Under paragraph (c)(2)(ii) of this section, L offsets its \$100,000 net operating loss allocated to the pre-change period by the \$90,000 of modified capital gain net income remaining in the post-change period, without regard to the section 382 limitation, thereby reducing its pre-change net operating loss to \$10,000.

(vi) From its 1994 taxable year, L will carry over \$90,000 of capital loss and \$300,000 of net operating loss to its 1996 taxable year. From its 1995 taxable year, L will carry over \$10,000 of net operating loss subject to the section 382 limitation to its 1996 taxable year.

*Example 2.* (i) Assume the facts of *Example 1*, except that L does not make the closing-of-the-books election under paragraph (b) of this section.

(ii) L ratably allocates its \$100,000 net operating loss and its \$150,000 of modified capital gain net income for the change year. \$40,000 of net operating loss ( $\$100,000 \times (146/365)$ ) and \$60,000 of modified capital gain net income ( $\$150,000 \times (146/365)$ ) are allocated to the pre-change period. \$60,000 of net operating loss ( $\$100,000 \times (219/365)$ ) and \$90,000 of modified capital gain net income ( $\$150,000 \times (219/365)$ ) are allocated to the post-change period.

(iii) Under paragraph (c)(2)(i) of this section, L uses its capital loss carryovers to offset modified capital gain net income. The capital loss carryovers offset the \$60,000 modified capital gain net income allocated to the pre-change period without limitation. Subject to the section 382 limitation, the remaining \$90,000 of capital loss carryovers offset the modified capital gain net income allocated to the post-change period. Accordingly, L uses \$60,000 of its capital loss carryovers to offset \$60,000 of its \$90,000 modified capital gain net income allocated to the post-change period. L has absorbed its entire section 382 limitation for the change year.

(iv) Under paragraph (c)(2)(ii) of this section, L's \$60,000 net operating loss allocated

## § 1.382-7

to the post-change period is offset by its remaining \$30,000 of post-change modified capital gain net income, reducing its post-change net operating loss to \$30,000.

(v) From its 1994 taxable year, L will carry over \$30,000 of capital loss and \$300,000 of net operating loss to its 1996 taxable year. From its 1995 taxable year, L will carry over \$70,000 of net operating loss (\$40,000 pre-change +\$30,000 post-change) to its 1996 taxable year. The \$40,000 pre-change portion of that carry-over is subject to the section 382 limitation.

(g) *Definitions and nomenclature.* The terms and nomenclature used in this section and not otherwise defined herein have the same meanings as in sections 382 and 383 and the regulations thereunder. For purposes of this section:

(1) *Change year.* A loss corporation's taxable year that includes the change date is its *change year*.

(2) *Pre-change period.* The *pre-change period* is the portion of the change year ending on the close of the change date.

(3) *Post-change period.* The *post-change period* is the portion of the change year beginning with the day after the change date.

(4) *Modified capital gain net income.* A loss corporation's *modified capital gain net income* is the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges for the change year, determined by excluding any short-term capital losses under section 1212.

(h) *Effective date.* This section applies to ownership changes occurring on or after June 22, 1994.

[T.D. 8546, 59 FR 32080, June 22, 1994, as amended by T.D. 9264, 71 FR 30607, May 30, 2006; T.D. 9329, 72 FR 32808, June 14, 2007]

## § 1.382-7 Built-in gains and losses. [Reserved]

### § 1.382-7T Built-in gains and losses (temporary).

(a) *Treatment of prepaid income.* For purposes of section 382(h), prepaid income is not recognized built-in gain. The term *prepaid income* means any amount received prior to the change date that is attributable to performance occurring on or after the change date. Examples to which this paragraph (a) will apply include, but are not limited to, income received prior to the change date that is deferred

## 26 CFR Ch. I (4-1-10 Edition)

under section 455, §1.451-5, or Rev. Proc. 2004-34 (2004-1 CB 991) (or any successor revenue procedure) (see § 601.601(d)(2) of this chapter).

(b) *Effective/applicability date.* (1) This section applies to loss corporations that have undergone an ownership change on or after June 14, 2007.

(2) The applicability of this section expires on June 14, 2010.

[T.D. 9330, 72 FR 32794, June 14, 2007; 72 FR 41890, Aug. 1, 2007]

## § 1.382-8 Controlled groups.

(a) *Introduction.* This section provides rules to adjust the value of a loss corporation that is a member of a controlled group of corporations on a change date so that the same value is not included more than once in computing the limitations under section 382 for the loss corporations that are members of the controlled group. In general, the adjustment is made under paragraph (c) of this section by reducing the value of the loss corporation by the value of the stock of each component member of the controlled group that the loss corporation owns immediately after the ownership change. The loss corporation's value may, however, be increased under paragraph (c) of this section by any amount of value that the other member elects to restore to the loss corporation.

(b)(1) *Controlled group loss and controlled group with respect to a controlled group loss—(1) In general.* A controlled group loss is a pre-change loss (or a net unrealized built-in loss) of a loss corporation that is attributable to a taxable year of the corporation with respect to which the corporation is a component member of a controlled group (as defined by paragraphs (e)(2) and (3) of this section). The controlled group with respect to each controlled group loss is composed of the loss corporation and each other corporation that is a component member of a controlled group that includes the loss corporation both—

(1)(i) With respect to the taxable year to which the controlled group loss is attributable; and

(1)(ii) On the date the loss corporation has an ownership change.