

## Notice of Proposed Rulemaking and Notice of Public Hearing

### Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups

**CO-26-96**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Withdrawal of prior proposed rule, notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing.

**SUMMARY:** On January 29, 1991, proposed rules under section 382 of the Internal Revenue Code of 1986 (relating to limitations on net operating loss carryforwards and certain built-in losses following an ownership change) were filed with the Office of the **Federal Register** (CO-77-90; see 56 FR 4183; 1991-1 C.B. 749). The January, 1991, proposed rules are withdrawn and these proposed rules are issued in their place.

In TD 8679, page 4 in this issue of the Bulletin, the IRS is issuing temporary regulations relating to the application of section 382 in short taxable years and with respect to controlled groups. These regulations comply with the statutory direction under section 382(m) to prescribe such regulations. Additional rules amend certain aspects of § 1.382-2T relating principally to the separate tracking of the stock ownership of loss corporations that cease to exist following a merger or similar transactions.

The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

**DATES:** Written comments must be received by Wednesday, September 25, 1996. Outlines of topics to be discussed at the public hearing scheduled for Thursday, October 17, 1996, at 10 a.m. must be received by Thursday, September 26, 1996.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (CO-26-96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to:

CC:DOM:CORP:R (CO-26-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, David B. Friedel, (202) 622-7550; concerning submissions and the hearing, Evangelista Lee, (202) 622-7190 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### *Paperwork Reduction Act*

The collection of information contained in this notice of proposed rulemaking has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under the control number 1545-1434. Proposed § 1.382-8(h) requires a response from certain corporations that are members of controlled groups. The IRS requires this information to assure compliance with section 382(m)(5) so that the value of a loss corporation that is a member of a controlled group is not taken into account more than once in computing a section 382 limitation.

Comments concerning the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP. Washington, DC, 20224. Comments on the collection of information should be received by Monday, August 26, 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Proposed § 1.382-8(h) provides that the loss corporation must file a statement signed by it and any other member of the controlled group that elects to restore value to it indicating relevant information regarding the election. The likely respondents and/or recordkeepers are corporations that are members of certain controlled groups. Responses to this collection of information are re-

quired to obtain a benefit (relating to the restoration of value for section 382 purposes).

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Estimated total annual reporting burden: 875 hours. The estimated annual burden per respondent varies from ten to thirty minutes, depending on individual circumstances, with an estimated average of fifteen minutes. Estimated number of respondents: 21,000. Estimated frequency of responses: once every six years.

##### *Background*

Temporary regulations in TD 8679, page 4 amend the Income Tax Regulations (26 CFR Part 1) under section 382 of the Internal Revenue Code of 1986. Among other changes, those regulations add temporary regulations §§ 1.382-5T and 1.382-8T, and amend § 1.382-2T(f). The final regulations that are proposed to be based on these proposed regulations would be added to part 1 of title 26 of the Code of Federal Regulations. Those final regulations would provide rules relating to limitations on net operating loss carryforwards and certain built-in losses following an ownership change under section 382.

For the text of these new temporary regulations, see TD 8679. The preamble to the temporary regulations explains the regulations.

##### *Special Analyses*

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

##### *Comments and Public Hearing*

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, October 17, 1996, at 10 a.m. in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by Wednesday, September 25, 1996, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Thursday, September 26, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

##### *Drafting Information*

The principal author of the temporary regulations is David B. Friedel of the Office of Assistant Chief Counsel (Corporate), IRS. Other personnel from the IRS and Treasury participated in their development.

##### *Withdrawal of Notice of Proposed Rulemaking*

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published on January 29, 1991 (56 FR 4183) is withdrawn.

\* \* \* \* \*

##### *Proposed Amendments to the Regulations*

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for § 1.382-2T and adding citations for § § 1.382-5 and 1.382-8 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.382-2T also issued under 26 U.S.C. 382(g)(4)(C), (i), (k)(1) and (6), (l)(3), (m), and 26 U.S.C. 383.\* \* \*

Section 1.382-5 also issued under 26 U.S.C. 382(m).\* \* \*

Section 1.382-8 also issued under 26 U.S.C. 382(m).\* \* \*

Par. 2. Section 1.382-1 is amended by revising the entries for § 1.382-2(a)(1)(iv), and adding § § 1.382-5 and 1.382-8 to read as follows:

§ 1.382-1 Table of contents.

\* \* \* \* \*

§ 1.382-2 General rules for ownership change.

(a) \* \* \*

(1) \* \* \*

(iv) End of separate accounting for losses and credits of distributor or transferor loss corporation.

\* \* \* \* \*

§ 1.382-5 Section 382 limitation.

(a) Scope.

(b) Computation of value.

(c) Short taxable year.

(d) Successive ownership changes and absorption of a section 382 limitation.

(1) In general.

(2) Recognized built-in gains and losses.

(3) Effective date.

(e) Controlled groups.

(f) Effective date.

\* \* \* \* \*

§ 1.382-8 Controlled groups.

(a) Introduction.

(b) Controlled group loss and controlled group with respect to a controlled group loss.

(c) Computation of value.

(1) Reduction in value.

(2) Restoration of value.

(3) Reduction in value by the amount restored.

(4) Appropriate adjustments.

(5) Certain reductions in the value of members of a controlled group.

(d) No double reduction.

(e) Definitions and nomenclature.

(1) Definitions in § 1.382-2T.

(2) Controlled group.

(3) Component member.

(4) Predecessors and successors.

(f) Coordination between consolidated groups and controlled groups.

(g) Examples.

(h) Time and manner of filing election to restore.

(1) Statement required.

(2) Revocation of election.

(3) Filing by component member.

(i) [Reserved]

(j) Effective date.

(1) In general.

(2) Transition rule.

(3) Corporations that are not members on January 29, 1991.

(4) Amended returns.

Par. 3. Section 1.382-2 is amended as follows:

§ 1.382-2 General rules for ownership change.

[The text of the proposed amendments to paragraphs (e)(2)(iv), (f)(1)(i), (ii) and (iii), (f)(4), (f)(5), and (f)(18)(i) is the same as the text of the amendments to paragraphs (e)(2)(iv), (f)(1)(i), (ii) and (iii), (f)(4), (f)(5), and (f)(18)(i) of § 1.382-2T, published in TD 8679, page 4, in this issue of the Bulletin.]

Par. 4. Sections 1.382-5 and 1.382-8 are added to read as follows:

[The text of these proposed sections is the same as the text of § § 1.382-5T and 1.382-8T published in TD 8679, page 4, in this issue of the Bulletin.]

Margaret Milner Richardson,  
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on June 26, 1996, 8:45 a.m., and published in the issue of the Federal Register on June 27, 1996, 61 F.R. 33391)

Notice of Proposed Rulemaking and Notice of Public Hearing

Arbitrage Restrictions on Tax-Exempt Bonds

FI-28-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations on the arbitrage restrictions applicable to tax-exempt bonds issued by state and local governments. Changes to applicable law were made by the Tax Reform Act of 1986. These proposed regulations affect issu-