

above, by substituting “1980” for “1978”, with certain elections.

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

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

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

“(1) The delegation of authority to the Secretary of the Treasury under section 382(m) of the Internal Revenue Code of 1986 does not authorize the Secretary to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Excess credits

(1) In general

Under regulations, if an ownership change occurs with respect to a corporation, the amount of any excess credit for any taxable year which may be used in any post-change

year shall be limited to an amount determined on the basis of the tax liability which is attributable to so much of the taxable income as does not exceed the section 382 limitation for such post-change year to the extent available after the application of section 382 and subsections (b) and (c) of this section.

(2) Excess credit

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

(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 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 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

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