

Code Sec. 382 and the Evolving Duty to Inquire

By Lewis T. Barr

Lewis Barr discusses how a loss corporation's reliance on the existence or absence of SEC filings to determine if an ownership change has occurred for purposes of Code Sec. 382 is not always sufficient; there are times the loss corporation will need to make further inquiries.

Internal Revenue Code Section ("Code Sec.") 382¹ limits the use of net operating losses following a corporate ownership change.² The current version of Code Sec. 382 was enacted in 1986.

Since their original enactment, the rules of Code Sec. 382 have been periodically interpreted by the IRS. Those interpretations have been published in the form of numerous Regulations (both permanent and temporary), private letter rulings and other pronouncements.

One topic of particular interest to a publicly held loss corporation is the extent to which it must track changes in its ownership. Recently published LTR 200747016 has now provided substantially more guidance on the extent of a loss corporation's duty to inquire.

Overview of Code Sec. 382

An ownership change of a loss corporation triggers the limitations of Code Sec. 382.³ A loss corporation is any corporation that has net operating loss carryovers and/or a net operating loss for the year in which the ownership change occurs.⁴ A corporation

can also be a loss corporation if it has a net unrealized built-in loss.⁵

The net operating loss carryovers and change year net operating loss are "pre-change losses."⁶ Recognized built-in loss is also treated as a pre-change loss.⁷

If a loss corporation has an ownership change, the loss corporation becomes the "new loss corporation" for Code Sec. 382 purposes.⁸

The new loss corporation may only deduct its pre-change losses against a limited amount of the income it earns after the ownership change.⁹ That limited amount of income represents a calculated rate of return on the fair value of the loss corporation. It is called the "Section 382 Limitation."¹⁰

In order to simplify the administrative burden on loss corporations, Congress put a five-percent owner-identification threshold in Code Sec. 382.¹¹ An ownership change depends on whether there have been increases in the percentages of stock owned by shareholders with five percent or more of the loss corporation's stock.¹² This focus on ownership of five percent or more doesn't mean that Code Sec. 382 ignores the other shareholders (called "small shareholders"). Those small shareholders who own less than five percent are grouped together to become one five-percent shareholder.¹³

Generally the transactions that cause an ownership change are stock sales and corporate reorganizations. A stock sale (called an "Owner Shift") comes within

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the purview of Code Sec. 382 if it involves a five-percent shareholder.¹⁴ The corporate reorganizations (called “Equity Structure Shifts”) that fall into Code Sec. 382 are all reorganizations except certain non-acquisitive transactions.¹⁵ If either an Owner Shift or an Equity Structure Shift occurs, the loss corporation must determine whether an ownership change has taken place.¹⁶

Regulations have been published to guide loss corporations through the process of determining whether an ownership change has occurred.¹⁷ They require a determination immediately after each Owner Shift (including Equity Structure Shifts that can also be Owner Shifts).¹⁸ Those determination dates are called “testing dates.”¹⁹ The concept of a testing date is very important in understanding the reporting responsibilities of a loss corporation.

Small shareholders who do not own at least five percent of the stock of the loss corporation are combined into one five-percent shareholder.²⁰ This combination of small shareholders is called a “public group.”²¹ After the initial public group is established, it is possible for a loss corporation to have additional public groups.²² Certain transactions, such as reorganizations, can produce a new public group, which is treated separately from previously existing public groups.²³

An ownership change is determined by comparing the ownership percentage of each five-percent shareholder immediately after the close of the testing date with the shareholder’s lowest ownership percentage at any time during the testing period.²⁴ Normally the testing period will be three years, ending on the date of the Owner Shift or Equity Structure Shift.²⁵ If the aggregate of all of those separate increases in ownership is more than 50 percent, an ownership change has taken place.²⁶

Determining whether an ownership change has occurred is relatively easy for closely held corporations. A closely held corporation usually knows who its shareholders are and what percentages of stock they own. Closely held corporations that still use share certificates rather than electronic records will issue new certificates when stock sales are made. A closely held loss corporation can usually determine whether there has been a change of control of more than 50 percent of its stock within the requisite testing period.

Determining whether an ownership change has taken place may be more difficult for a publicly held corporation. In recognition of the possibility of hundreds or thousands of shareholders, the Regulations under Code Sec. 382 offer certain rules of convenience (ownership presumptions) to be used by the loss corporation.

Code Sec. 382 Reporting Requirements

Generally, the Regulations under Code Sec. 382 require a loss corporation to report any stock sale involving a five-percent shareholder or any corporate reorganization. The loss corporation is required to identify the stock ownership of all direct and indirect five-percent shareholders as of the testing date.²⁷ The loss corporation must de-

termine whether an ownership change has occurred as the result of the transaction.²⁸ The loss corporation must keep records that show each five-percent shareholder and what percentage of loss corporation stock is owned by that five-percent shareholder.²⁹ The loss corporation must also keep records to show whether an ownership change resulted from the transaction.³⁰ The loss corporation must file an information statement with its next tax return.³¹

A loss corporation’s information statement is to be titled “STATEMENT PURSUANT TO §1.382-11T(a) BY [NAME and E.I.N. OF CORPORATION], A LOSS CORPORATION.”³² The statement must show the date of each transaction, the date of the ownership change, and the amount of that loss corporation’s pre-change losses.³³

Ownership Presumptions in the Regulations

The Regulations under Code Sec. 382 provide a number of presumptions that will make it easier for publicly held corporations to determine whether an ownership change has taken place.

Where a loss corporation has multiple public groups, that loss corporation is entitled to a presumption that there is no overlap or inter-relationship between or among the members of those public

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groups.³⁴ This is a very important presumption for a public company since it relieves a loss corporation from having to identify each small shareholder and then compare lists of small shareholders in search of multiple holdings. Caution: this presumption cannot be used by a loss corporation that has actual knowledge of stock ownership.³⁵

The loss corporation can assume that there is no relationship between certain entities and other owners of the loss corporation's stock. Those entities include retirement plans,³⁶ governmental units³⁷ and entity owners of less than five percent of the loss corporation's stock.³⁸ This presumption is also cancelled if the loss corporation has actual knowledge to the contrary or if the ownership was structured intentionally to avoid Code Sec. 382.³⁹

SEC Filings

The most important presumption for a publicly held loss corporation concerns securities filings required by the Securities and Exchange Commission (SEC). Anyone who acquires beneficial ownership of five percent or more must file an information schedule.⁴⁰ This applies to any voting stock that is required to be registered under the Securities and Exchange Act of 1934.⁴¹ The primary filing form is SEC Schedule 13D. However, certain broker-dealers, banks and savings & loans, insurance companies, certain investment companies, investment advisors, certain retirement plans and certain church plans are permitted to file a short-form Schedule 13G instead.⁴²

The Regulations under Code Sec. 382 allow the loss corporation to rely on the existence or absence of those SEC filings in identifying its five-percent shareholders.⁴³ This presumption is available to publicly held loss corporations whose stock is subject to registration under the Securities Exchange Act of 1934.⁴⁴ Presumably the existence of one or more SEC filings should put the loss corporation on notice that a transaction has occurred involving a five-percent shareholder. It should follow that if no such SEC filings have been made, a publicly held loss corporation may presume that no five-percent shareholder acquisition has occurred.

The IRS ruled that the loss corporation was entitled to rely upon the absence of such filings by the economic owners of the stock in determining whether or not an ownership change had occurred.

Absence of a filing may seem inconclusive, but the IRS has illustrated the operation of this presumption in a Private Letter Ruling.⁴⁵ Each of two Investment Advisors held shares of stock in a loss corporation. Each Investment Advisor held title to the stock. Both Investment Advisors represented multiple clients. Those clients had the right to receive dividends and the proceeds of sale of the stock of the loss corporation. Those rights made the clients the "economic owners" of the loss corporation stock.⁴⁶ Each of those clients owned less than five percent of the stock of the loss corporation, but together they owned an aggregate of more than five percent. Each Investment Advisor filed an SEC Schedule 13G. However, none of their clients filed a Schedule 13D or Sched-

ule 13G. The IRS ruled that the loss corporation was entitled to rely upon the absence of such filings by the economic owners of the stock in determining whether or not an ownership change had occurred.

It is the loss corporation's responsibility to know what is being reported in the filed Schedules 13D and 13G. The SEC requires that a copy of Schedule 13D or 13G be sent to the issuer of the security (the loss corporation) by registered or certified mail.⁴⁷ Even if direct mailing to the loss corporation were not required, the information in Schedules 13D and 13G is public record, available for review by anyone.

If five percent or more of the loss corporation's stock is owned by another entity, then the loss corporation can rely on the existence or absence of SEC filings by that other entity.⁴⁸ This is true of an entity owning stock directly in the loss corporation (called a "first tier entity")⁴⁹ and an entity further up the chain of ownership (called a "higher tier entity").⁵⁰ For this purpose, an "entity" includes a corporation, an estate, a trust, an association, a company (including a limited liability company), a partnership, similar organizations and a group operating with a coordinated understanding.⁵¹ Creditors formulating a bankruptcy plan do not constitute an "entity."⁵²

Where SEC Filings Are Not Required

What if SEC filings are *not* required of the owners of the stock of a publicly held loss corporation? This can

occur where there are no five-percent shareholders. This can also (and did) occur when a publicly held loss corporation's stock is not listed on, or is de-listed from, an established stock exchange.

Lack of direct information from the presence or absence of SEC filings does not excuse a publicly held loss corporation's duty of inquiry. The IRS examined a set of facts in which a bankrupt corporation re-issued all of its post-bankruptcy shares to its former bondholders.⁵³ The stock was de-listed and thereafter was not traded on any recognized stock exchange. The loss corporation asserted that its five-percent shareholders would not have been required to file Schedule 13D or Schedule 13G. In the absence of definitive filings to which the presumptions would apply, the loss corporation had to seek information about five-percent shareholders by other means.

The "other means" used by this particular loss corporation included several methods. It made extensive inquiries to the institutions that were holding its shares in street name. It held direct discussions with its own directors who acknowledged ownership of five percent or more. It utilized Internet searches. It used the list of original bondholders who became shareholders in the bankruptcy reorganization. It also made use of information it was able to develop when it circulated a charter amendment proposal to its new shareholders.

The burden is on the loss corporation to determine testing dates and ownership changes. In the context of a publicly held loss corporation that cannot rely on SEC filings, there is a necessity for alternative methods of collecting the information required by Code Sec. 382 and the Regulations thereunder. There is no official or suggested list of acceptable methods. This letter ruling demonstrates that the IRS expects a loss corporation to use a substantial amount of creativity and persistence in fulfilling the information gathering duty.

Sworn Statements

A loss corporation can also presume the accuracy of a statement by any first tier entity or higher tier entity of its ownership changes during the testing period.⁵⁴ The statement must be signed by an officer, director, partner, trustee or executor of the entity, or by

someone with comparable responsibility with respect to the entity.⁵⁵ The statement must be signed under penalties of perjury.⁵⁶ The loss corporation cannot rely upon any statement that it knows to be false.⁵⁷ This presumption does not apply if the first tier entity or higher tier entity (along with its controlled affiliates)⁵⁸ owns 50 percent or more of the loss corporation.⁵⁹

Actual Knowledge

Actual knowledge trumps these presumptions. The loss corporation has to take into account its actual knowledge of the stock ownership of a five-percent shareholder on the testing date.⁶⁰ It must also use its actual knowledge of five-percent stock ownership between the testing date and the date it files its tax return for the year of the testing date.⁶¹ If the loss corporation acquires actual knowledge after its tax return was filed for the year of the testing date, then it "may" take the knowledge into account and file an amended return.⁶²

Being part of the public group is considered a "good thing" from the standpoint of the loss corporation.

LTR 200747016

On August 20, 2007, the IRS responded to a request for rulings from a publicly held loss corporation that reviewed filed SEC Schedules. In requesting rulings, the loss corporation described 12 different fact patterns for those filings. In some of the examples the loss corporation voluntarily undertook further inquiry after reviewing the response in a Schedule 13G. The IRS confirmed the loss corporation's extended inquiries in some examples, but implied that more would have been required of the loss corporation in other examples. In making these distinctions, the IRS has identified instances in which a loss corporation may be said to have a duty of inquiry beyond the mere review of Schedules 13D and 13G.

In all 12 examples, SEC Schedules were filed by Investment Advisors. Federal securities law defines an Investment Advisor as a person who "for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investment in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities."⁶³

In each example, the Investment Advisor was the “beneficial owner” of the stock, but not the “economic owner.” A “beneficial owner” has voting power and investment (disposition) power,⁶⁴ whereas an “economic owner” has the rights to dividends and proceeds of sale of the stock.⁶⁵

Item 5 of SEC Schedule 13D is titled “Interest in Securities of the Issuer.” Item 6 of SEC Schedule 13G is titled “Ownership of More than 5 Percent on Behalf of Another Person.” Both Items have instructions that include the following:

If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five percent of the class, such person should be identified.

Thus, the first place the loss corporation in LTR 200747016 looked was Item 6 of the Schedules 13G filed by each of those 12 Investment Advisors.

The first Investment Advisor identified in the Private Letter Ruling answered Item 6 by declaring that the securities were owned “of record” by the Investment Advisor’s clients. This must have referred to the “records” of Investment Advisor 1 (since the shares themselves were titled in the name of the Investment Advisor). This declaration by Investment Advisor 1 meant that it had examined its own records before filing the Schedule 13G. The Item 6 response goes on to acknowledge that those clients have the right to dividends and sale proceeds, but that “no such client is known to have such right or power with respect to more than five percent of this class of securities.” Because Investment Advisor 1 was making this unconditional statement of no five-percent shareholders from an examination of its own records, the IRS agreed with the loss corporation that no further inquiry was needed. The loss corporation was permitted to disregard the filing by Investment Advisor 1 and to treat the clients of Investment Advisor 1 as part of a public group. The ruling suggests at one point that there are multiple public groups of the loss corporation’s small shareholders.

Being part of the public group is considered a “good thing” from the standpoint of the loss corporation. It does not have to track changes in the ownership of the clients of the Investment Advisor. Instead, it

means that all of the stock held by the Investment Advisor is a part of a larger, widely held group of small shareholders. Changes in the ownership of those small shareholders are not considered separately in determining whether an ownership change has occurred. Thus, one small shareholder can transfer his or her stock to another small shareholder without any impact on an ownership change.⁶⁶

The twelfth Investment Advisor also made a straightforward and simple statement in response to the Item 6 question about ownership on behalf of others. In its response and in “additional filings,” Investment Advisor 12 reported that it had beneficial (but not economic) ownership, that none of the economic owners had a more than five-percent interest and that the beneficial interest held by Investment Advisor 12 was less than five percent. This resulted in the IRS including those economic owners in a public group of the loss corporation.

The second and fourth Investment Advisors filed incomplete responses to Item 6, and the loss corporation did not follow up. By contrast, the sixth Investment Advisor also filed an incomplete response, but the loss corporation pursued Investment Advisor 6 with additional inquiries. In those additional inquiries to Investment Advisor 6, the loss corporation asked for and received declarations that none of the Investment Advisor’s “economic owner-clients” owned as much as five percent of the loss corporation’s stock. This was sufficient to allow the IRS to find that those persons would be considered part of a public group of the loss corporation.

However, the clients of the second and fourth Investment Advisors did not qualify for inclusion in the loss corporation’s public group of small shareholders. Investment Advisor 2 failed to indicate that no person (other than the Investment Advisor) had economic ownership of more than five percent. Investment Advisor 4 failed to indicate that it did not have economic ownership itself. The contrast between Investment Advisors 2 and 4 on one hand, and Investment Advisor 6 on the other hand, suggests that the loss corporation should have addressed further inquiries to Investment Advisors 2 and 4 as well. **The loss corporation should seek information that responds fully to Item 6 in Schedule 13G: Did any of the economic interest owners own five percent or more? Did the beneficial owner have any economic interest?**

The third Investment Advisor had filed a joint Schedule 13G with a bank. Apparently both the

Investment Advisor and the bank were members of a related group. Separately, the Investment Advisor was the beneficial owner of less than five percent, and the bank was the beneficial owner of less than five percent. Together their joint holdings were more than five percent. Their joint filing declared that the shares were held in trust accounts for the beneficiaries of those accounts. Although there was no reference to possible overlap in ownership, the IRS concluded that it appeared that no economic owner owned as much as five percent of the loss corporation. Therefore, those persons were all included in a public group of the loss corporation.

The fifth Investment Advisor made the same kind of omission as Investment Advisor 4. Investment Advisor 5 also failed to declare that it had a beneficial interest, but no economic interest. The loss corporation did not follow up, so the IRS required the loss corporation to take Investment Advisor 5's Schedule 13G "into account." The owners of those shares are not considered a part of an existing public group.

The seventh Investment Advisor also failed to declare that it had no economic interest. However, in this instance the loss corporation followed up with inquiries to Investment Advisor 7. Those inquiries produced a response from Investment Advisor 7 to the effect that it was only a beneficial owner for persons who held less than a five-percent interest, and that it was not an economic interest owner itself. This resulted in the IRS confirming that those less than five-percent interest owners were a part of a public group of the loss corporation.

The eighth Investment Advisor put an "X" in a checkbox in response to Item 6. The loss corporation made another inquiry of Investment Advisor 8. The Investment Advisor's response confirmed that none of its clients owned five percent and that the Investment Advisor itself (together with its principals) owned less than five percent of the loss corporation. The IRS declared that, although the initial answer to Item 6 was "ambiguous," the responses to the follow-up were sufficient to verify that there were no five-percent shareholders among Investment Advisor 8 and its clients. Therefore they could all be included in a public group of the loss corporation.

The ninth Investment Advisor responded to Item 6 of its filed Schedule 13G reporting that no person had a five-percent ownership interest. Investment Advisor 9 also added exhibits making clear that it was a beneficial owner (but not the economic

owner) of most of the shares and that the remainder of those shares was less than five percent. The IRS thought that the initial statement of no five-percent economic interest owner was "not absolutely clear" but gave credit for the exhibits that confirmed that the Investment Advisor itself did not own a five-percent economic interest. Investment Advisor 9 and all of its clients were included as part of a public group of the loss corporation.

The tenth Investment Advisor also participated in a joint filing. This joint filing was with an Investment Company that was being advised by Investment Advisor 10. The joint filing covered more than five percent of the stock of the loss corporation and the Investment Company itself reported ownership of more than five percent. However, when the Investment Company's ownership was subtracted from the joint filing total, the remainder (presumably the only portion owned by Investment Advisor 10) was less than five percent. The loss corporation did not follow up, but the IRS ruled that the ownership of the Investment Advisor, being less than five percent, could be included as a part of a public group of the loss corporation. However, the Investment Company was identified as a first tier entity, whose ownership must be separately taken into account for purposes of determining whether or not there has been an ownership change in the loss corporation. **The useful lesson from this example is the willingness of the IRS to consider separately the components of the joint filing to determine that the Investment Advisor's clients owned less than five percent and could be part of a public group.**

The eleventh Investment Advisor filed jointly with an individual. Although the filing did not show the relationship between the two joint filers, someone (the loss corporation?) performed an Internet search that identified the individual as the head of the portfolio management team of Investment Advisor 11. The joint filing said that the two joint filers shared beneficial ownership, that the clients of Investment Advisor 11 had the economic interest in the stock of the loss corporation and that none of those individuals owned five percent. Based on the filings and the Internet search, the IRS said that those clients are considered part of a public group of the loss corporation. **Although the IRS did not identify who conducted the Internet search, a publicly held loss corporation should consider that it has the responsibility to determine the relationship between joint filers.**

Conclusion: What is the Loss Corporation's Duty?

LTR 200747016 provides two clear lessons and additional implications for loss corporations and their shareholders.

First, it is clear that the IRS expects SEC Schedules 13D and 13G to respond to the question of whether or not the filer owns shares of the loss corporation "on behalf of others." If the answer to that question is not clearly and unambiguously stated in the response to Item 5 (Schedule 13D) or Item 6 (Schedule 13G), then the IRS expects the loss corporation to make further inquiry.

Second, it is clear that the IRS expects SEC Schedules 13D and 13G to cover the question of whether or not any beneficial owner or economic owner owns five percent or more of the loss corporation's stock. If the answer to that question is not clearly and unambiguously stated in the responses, IRS expects the loss corporation to make further inquiry.

LTR 200747016 also makes a point to Investment Advisors and others who acquire stock of publicly held loss corporations. Those who file SEC Schedules 13D or 13G should be aware of the need to be specific and complete in responding to Item 5 or Item 6, respectively. It is of ultimate benefit to the

stockholder to make its ownership known to the loss corporation. The IRS is not going to consider the economic owners to be a part of the loss corporation's public group unless it is clear that there are no five-percent shareholders among them. In the long run, it is most often advantageous to the loss corporation to be able to combine as many of its shareholders as possible into as few public groups as possible. This helps to reduce the likelihood of an inadvertent ownership change that can reduce the on-going value of the loss corporation's pre-change losses.

Finally, a loss corporation faced with no answers or vague answers in Schedules 13D or 13G has a new and evolving burden. It must pursue each filer to provide more specific information about the nature of the filer's ownership and the identity and quantity of holdings of anyone for whom the filer has acquired the loss corporation's stock. Internet inquiries may aid in the process of discovery of ownership and relationships, but the best source is the filer itself. The loss corporation cannot simply fall back on the flush language of the Regulations to the effect that it may "rely upon" the existence or absence of filing of Schedules 13D or 13G. If those filings are not definitive enough to answer the questions of who and how much, the loss corporation has a duty to inquire.

ENDNOTES

¹ All further references to the Code will appear as "Code Sec."

² For Code Sec. 382 purposes, an ownership change is a change in ownership of more than 50 percent of the stock of the loss corporation. "Stock" of the loss corporation includes all of its stock except true preferred stock. "True preferred stock" doesn't vote, is limited and preferred as to dividends, has a limited redemption price and is not convertible.

³ This article only examines the duty of inquiry. There are many elements in Code Sec. 382. The discussion that follows is not intended to explain the entire complex of Code Sec. 382 rules. A more exhaustive discussion of Code Sec. 382 is contained in the author's previous publication, *Net Operating Losses and Other Tax Attributes—Sections 381, 382, 383, 384 and 269, 780 TAX MGT PORTFOLIO* (BNA).

⁴ Code Sec. 382(k)(1).

⁵ The subjects of net unrealized built-in gain and loss and realized built-in gain and loss will not be discussed in this article. For definitions and more information, see the

Tax Management Portfolio cited in footnote 3, above.

⁶ Code Sec. 382(d)(1).

⁷ Code Sec. 382(h)(1)(B)(i).

⁸ Code Sec. 382(k)(3).

⁹ Code Sec. 382(a).

¹⁰ Code Sec. 382(b).

¹¹ Code Sec. 382(k)(7).

¹² Code Sec. 382(g)(1) and (g)(2).

¹³ Code Sec. 382(g)(4)(A).

¹⁴ Code Sec. 382(g)(2).

¹⁵ Code Sec. 382(g)(3).

¹⁶ Code Sec. 382(g)(1).

¹⁷ Hereinafter the Regulations under Code Sec. 382 will be referred to as "Reg. §1.382-".

¹⁸ Reg. §1.382-2(a)(2) and Temporary Reg. §1.382-2T(e)(2)(iii).

¹⁹ *Id.*

²⁰ Code Sec. 382(g)(4)(A).

²¹ Temporary Reg. §1.382-2T(f)(13).

²² Code Sec. 382(g)(4)(B)(1).

²³ Temporary Reg. §1.382-2T(j)(2)(iii).

²⁴ Temporary Reg. §1.382-2T(a)(1).

²⁵ Code Sec. 382(i).

²⁶ *Id.*

²⁷ Temporary Reg. §1.382-2T(k)(3).

²⁸ Temporary Reg. §1.382-2T(a)(2).

²⁹ Temporary Reg. §1.382-2T(a)(2)(iii).

³⁰ Temporary Reg. §1.382-2T(a)(2)(i).

³¹ Reg. §1.382-11.

³² *Id.*

³³ *Id.*

³⁴ Temporary Reg. §1.382-2T(j)(1)(iii).

³⁵ Temporary Reg. §1.382-2T(k)(2).

³⁶ Temporary Reg. §1.382-2T(h)(2)(iii)(B).

³⁷ Temporary Reg. §1.382-2T(h)(2)(iii)(C).

³⁸ Temporary Reg. §1.382-2T(h)(2)(iii)(A).

³⁹ Temporary Reg. §1.382-2T(k)(2) and (k)(4).

⁴⁰ SEC Rule 13d-1(a), 17 CFR §240.13d-1.

⁴¹ The Securities Exchange Act of 1934 is found at 15 USC §§78a-78lll.

⁴² SEC Rule 13d-1(b), 17 CFR §240.13d-1.

⁴³ Temporary Reg. §1.382-2T(k)(1)(i).

⁴⁴ SEC Rule 13d-1(i).

⁴⁵ LTR 200713015 (Dec. 20, 2006).

⁴⁶ The concepts of "beneficial" and "economic" ownership are discussed later in this article under the heading of "LTR 200747016".

⁴⁷ SEC Rule 13d-7, 17 CFR §240.13d-7.

⁴⁸ *Id.*

⁴⁹ Temporary Reg. §1.382-2T(f)(9).

⁵⁰ Temporary Reg. §1.382-2T(f)(14).

⁵¹ Regs. §1.382-3(a)(1).

⁵² *Id.*

⁵³ LTR 200622013 (Jan. 27, 2006).

⁵⁴ Temporary Reg. §1.382-2T(k)(1)(ii).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Temporary Reg. §1.382-2T(k)(1)(ii).

⁵⁸ Applying the rules of Code Sec. 267(f).

⁵⁹ Temporary Reg. §1.382-2T(k)(1)(ii).

⁶⁰ Temporary Reg. §1.382-2T(k)(2).

⁶¹ *Id.*

⁶² *Id.*

⁶³ 15 USC §80b-2(a)(11).

⁶⁴ SEC Rule 13d-3(a), 17 CFR §240.13d-3.

⁶⁵ LTR 200713015 (Dec. 20, 2006).

⁶⁶ Temporary Reg. §1.382-2T(e)(1)(ii).

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