

percent lead by weight in the metal and candles with such wicks are hazardous substances and banning such wicks and candles with such wicks. 15 U.S.C. 1262(a)(2) and 1261(q)(2). These procedures provide that once the Commission issues a final rule, persons who would be adversely affected by the rule have a period of thirty (30) days in which to file objections and request a public hearing on those objections. 21 U.S.C. 371(e)(2). If no objections are filed and no hearing is requested, the regulations become effective on the date specified in the regulations as issued. 21 U.S.C. 371(e)(1); 16 CFR 1502.14(a). If this is the case, after the thirty day period has run, the Commission publishes a notice in the **Federal Register** confirming the effective date. 16 CFR 1502.14(b). Accordingly, since no objections were filed and no hearing was requested during the thirty day period, the Commission confirms that the effective date of the final regulations published on April 15, 2003 at 68 FR 19147-8 declaring that metal-cored candlewicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances and banning such wicks and candles with such wicks is October 15, 2003.

Dated: June 20, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9063]

RIN 1545-BB99

Distributions of Interests in a Loss Corporation From Qualified Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 382 of the Internal Revenue Code of 1986. The temporary regulations affect loss corporations and provide guidance on whether a loss corporation has an ownership change where a qualified trust described in section 401(a) distributes an ownership interest in an entity. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the

notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective June 27, 2003.

Applicability Date: For dates of applicability see § 1.382-10T(a)(4).

FOR FURTHER INFORMATION CONTACT: Martin Huck (202) 622-7750 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

Section 382 in General

Section 382 limits the amount of taxable income that may be offset by certain loss carryovers and recognized built-in losses following an ownership change of a loss corporation. Section 382(g) defines an ownership change as a change in the percentage of ownership of the loss corporation's stock owned by the 5-percent shareholders of more than 50 percentage points (by value) over a 3-year period. Congress intended the section 382 limitation to apply when new shareholders that did not bear the economic burden of the losses acquire a controlling interest in the loss corporation. See H.R. Rep. No. 99-426, 1986-3 C.B. (Vol. 2) 256; S. Rep. No. 99-313 1986-3 C.B. (Vol. 3) 232.

Constructive Ownership Rules

Section 382(l)(3) provides that in determining the ownership of stock of a loss corporation, the constructive ownership rules of section 318 apply, with certain exceptions. Section 382 (by reference to the rules of section 318) and the regulations thereunder generally attribute stock owned by an entity such as a corporation or a partnership to its shareholders or partners, respectively. Therefore, if a corporation makes a pro rata distribution of an interest in a loss corporation to its shareholders, the distribution does not result in an acquisition of that interest by the shareholders that must be taken into account in determining whether the loss corporation has an ownership change. On the other hand, section 382 and the regulations thereunder do not attribute stock owned by a qualified trust described in section 401(a) (qualified trust) to participants in the qualified plan under which the trust is established. In particular, although section 318(a)(2) provides for attribution of stock owned by a trust to its beneficiaries, it excepts qualified trusts from the application of this rule. Moreover, § 1.382-2T(h)(2)(iii) provides that a qualified trust is treated as an individual unrelated to any other direct or indirect owner of the loss corporation. Accordingly, the

participants under a qualified plan are not treated as owning any interest in a loss corporation owned by the trust. Therefore, if a qualified trust owns directly 5 percent or more of a loss corporation, a distribution of an interest in the loss corporation from the trust to plan participants (or their beneficiaries) results in an acquisition of that interest by the participants (or their beneficiaries) that must be taken into account in determining whether the loss corporation has an ownership change.

Explanation of Provisions

In General

Treasury and the IRS are concerned that, under the current rules, a distribution of an ownership interest in an entity from a qualified trust may cause an ownership change, even though that event may not change the ultimate beneficial ownership of the loss corporation. To prevent this result, these temporary regulations set forth new rules.

Distributions From Qualified Trusts

The temporary regulations provide that if a qualified trust distributes an ownership interest in an entity, then for testing dates on or after the date of the distribution, the distributed ownership interest will be treated as having been acquired by the distributee on the date and in the manner acquired by the trust. Furthermore, the distribution itself does not give rise to a testing date. Because the rule applies only for testing dates on or after the date of the distribution, a distribution does not retroactively cause (or undo) an owner shift that would (or would not) have occurred if the distributee had actually acquired the ownership interest on the date and in the manner acquired by the qualified trust.

To determine which ownership interests have been distributed, the loss corporation must account for all dispositions of ownership interests by the qualified trust either by specifically identifying the ownership interest disposed of, or by using a first-in, first-out (FIFO) method. The loss corporation, however, must apply the same method to all dispositions by the qualified trust.

Effective Dates

The temporary regulations apply to all distributions from qualified trusts after June 27, 2003. The loss corporation may choose to apply the rules retroactively in one of two ways: (1) To all distributions from qualified trusts on or before June 27, 2003 and within a testing period that includes June 27,