

2003; or (2) to all distributions from qualified trusts after December 31, 1986. Retroactive application will affect a taxpayer's items of income, gain, deduction, or loss only in open years.

Request for Comments and Future Regulations

Treasury and the IRS request comments regarding whether there are other events that, under current rules, are taken into account in determining whether an ownership change occurs, but do not cause the ultimate beneficial ownership of the loss corporation to change. In this regard, Treasury and the IRS have been studying the constructive ownership rules as they apply to members of a family, and the effect of those rules on the determination of whether a loss corporation has an ownership change. Subject to certain exceptions, § 1.382-2T(h)(6)(ii) treats an individual, his spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance), his children, his grandchildren, and his parents as one individual, and aggregates shares owned by those persons for purposes of determining whether a loss corporation has an ownership change. Treasury and the IRS are concerned that, under the current rules, a change in the composition of a family may be interpreted to cause an ownership change. Treasury and the IRS believe that, as in the case of a distribution from a qualified trust, when a change in family composition does not change the ultimate beneficial ownership of the loss corporation, it should not be taken into account in determining whether a loss corporation has an ownership change. For example, a change in family composition that results from a marriage of two individuals does not change the ultimate beneficial ownership of the loss corporation and, therefore, should not cause an ownership change. Accordingly, Treasury and the IRS intend to promulgate regulations to address changes in family composition that result from marriage, birth, adoption, divorce, death, or other events in which an individual joins or leaves a family. It is anticipated that these regulations will be electively retroactive on terms similar to those applicable to the rules regarding distributions from a qualified trust.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. These temporary regulations provide

relief to qualifying loss corporations that might be affected by an unintended consequence of the operation of the statute. The regulations relieve a restriction on the ability of qualified trusts that distribute interests in a loss corporation without causing an ownership change. In addition, it is necessary to provide immediate guidance to taxpayers. Accordingly, good cause is found for dispensing with prior notice and comment pursuant to 5 U.S.C. 553(b) and for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d). For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), see the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**. The IRS and Treasury request comments from small entities that believe they might be adversely affected by these regulations. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal author of these regulations is Martin Huck, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

§ 1.382-1 Table of contents.

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PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.382-10T is also issued under 26 U.S.C. 382(m). * * *

■ **Par. 2.** Section 1.382-1 is amended by adding an entry in numerical order to read as follows:

§ 1.382-10T Special rules for determining time and manner of acquisition of an interest in a loss corporation (temporary).

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■ **Par. 3.** Section 1.382.10T is added to read as follows:

§ 1.382-01 Special rules of determining time and manner of acquisition of an interest in a loss corporation (temporary).

(a) *Distributions from qualified trusts*—(1) *In general.* For purposes of § 1.382-2T, if a qualified trust described in section 401(a) (qualified trust) distributes an ownership interest in an entity (as defined in § 1.382-3(a)(1)), then for testing dates on or after the date of the distribution, the distributed ownership interest is treated as having been acquired by the distributee on the date and in the manner acquired by the trust and not as having been acquired or disposed of by the trust. The distribution does not cause the day of the distribution to be a testing date.

(2) *Accounting for dispositions*—(i) *General rule.* For purposes of this paragraph (a), in order to determine which ownership interest in an entity is distributed from a qualified trust, a loss corporation must either specifically identify the ownership interests that are the subject of all dispositions by the qualified trust of ownership interests in an entity, or apply the first-in, first-out (FIFO) method to all such dispositions.

(ii) *Special rules.* For purposes of this paragraph (a)(2):

(A) The FIFO method must be applied on a class-by-class basis; and

(B) The term dispositions includes distributions, sales, and other transfers.

(3) *Examples.* The following examples illustrate the principles of this paragraph (a). For purposes of these examples, unless otherwise stated, the nomenclature and assumptions of the examples in § 1.382-2T(b) apply, all corporations file separate income tax returns on a calendar year basis, the only 5-percent shareholder of a loss corporation is a public group, and the facts set forth the only acquisitions of stock by any participants in a qualified plan and the only owner shifts with respect to the loss corporation during the testing period. The examples are as follows:

Example 1—(i) *Facts.* In 1994, E, a qualified trust established under Plan F, acquires 10 percent of L stock. A is a participant in Plan F. On January 1, 2002, A acquires 4 percent of L stock, and B, who is not a participant or a beneficiary of a participant in Plan F, acquires 5 percent of L stock. On January 1, 2004, E distributes 2 percent of L stock to A. On July 1, 2004, A acquires 1 percent of L stock.

(ii) *Analysis.* January 1, 2002, is a testing date because B's acquisition of 5 percent of L stock causes an increase in the percentage ownership of B, a 5-percent shareholder. As of the close of that testing date, A is treated as owning only 4 percent of L stock. Therefore, A is treated as a member of the public group of L. In addition, E is treated as owning 10 percent of L stock that it acquired in 1994.