2022 Limitations On Corporate Tax Attributes: An Analysis Of Section 382 And Related Provisions

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Many corporations are finding themselves with unprecedented investment and operation losses due to the economic recession caused by the COVID-19 pandemic. Many economically profitable businesses also find themselves with tax losses due to the availability of deducting the full costs of equipment under the bonus depreciation rules

These losses can result in the creation of tax attributes for the corporation that can be used as deductions against past or future profits. However, corporations with such attributes have to fully understand the rules that limit the use of these tax attributes.

This paper discusses the limitation rules of section 382 of the Internal Revenue Code, of 1986, as amended (the "Code"), which limits the use of tax attributes after an ownership change. The paper also discusses the other rules that can apply to limit a corporation's use of its tax attributes (sections 382, 383, 384 and SRLY) separately.

Sections 382 and 383 together limit the use of net operating losses (NOLs), and certain other tax attributes, by corporations.

Section 384, a provision that shares many concepts with sections 382 and 383, limits the use of NOLs (and certain other tax attributes) by corporations.

The separate return limitation year (SRLY) limitation rules limit the use of NOLs (and certain other tax attributes) by a consolidated group. The SRLY rules also share concepts with sections 382 and 383.

The legislative and regulatory rules and IRS guidance listed above have varying effective dates. The paper generally discusses the rules that apply to 2019 and later taxable years (and carrybacks from such taxable years and carryforwards to such taxable years). However, with respect to carryforwards, rules that existed for testing periods, testing dates, change dates, etc. before January 1, 2012 are not generally described in this paper. For transactions before that date, the reader is advised to check the effective date to determine if the rules apply to the transaction.

The Treasury Department and the IRS have issued extensive regulations concerning the determination as to whether a loss corporation has undergone an ownership change. These regulations are discussed in detail in Sections II through IV of this paper.

Sections V through VII of this paper are concerned with the effects of an ownership change on a corporation.

Section VIII of this paper describes the extensive consolidated return regulations that have been promulgated to provide guidance on the application of sections 382 and 383.

Section IX of this paper describes section 384.

Section X of this paper describes the SRLY limitation rules contained within the consolidated return regulations.

An appendix to this paper lists specialized terms and acronyms that are used throughout this paper. All references to a section in this paper are to a section of the Code, unless otherwise indicated.

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