

**Office of Chief Counsel  
Internal Revenue Service  
Memorandum**

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to: Peter C. Tablan  
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(Manhattan Appeals, ATCL Operations)

from: Marie C. Milnes-Vasquez  
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Subject: Sections 168(k)(4) and 383

Issue

Whether a taxpayer's section 168(k)(4) election to increase its alternative minimum tax credit under section 53 is subject to the application of section 383?

Conclusion

Because no regular tax liability of the taxpayer is offset, the refundable alternative minimum tax credit resulting from a section 168(k)(4) election is not subject to section 383.

Facts

On \_\_\_\_\_, Taxpayer had a section 382 ownership change. For its taxable year, Taxpayer had a net operating loss and no regular tax liability. With regard to its \_\_\_\_\_ taxable year, Taxpayer made an election under section 168(k)(4) to increase its alternative minimum tax (AMT) credit under section 53.

Law and Analysis

Section 168(k)(4), as in effect for the \_\_\_\_\_ taxable year, generally allows a corporation to make an election to forego 50 percent additional first year depreciation

and instead to increase its business credit limitation under section 38(c) or AMT limitation under section 53(c). Section 168(k)(4)(F) generally treats the increased credits as refundable credits.

Section 383(a)(1) states that,

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.

The regulations under section 383 provide specific rules implementing the statute. Section 1.383-1(d) states that the “amount of the regular tax liability of a new loss corporation for any post-change year that may be offset by pre-change credits shall not exceed the amount of the section 383 credit limitation for the post-change year.” See also §1.383-1(b) (stating the same rule).

Section 383, as implemented by regulation, applies to limit the use of certain credits available to offset regular tax liability. In this case, section 383 does not apply because the taxpayer has no regular tax liability in the taxable year at issue, and the credits at issue will be refunded, per section 168(k)(4), without offsetting regular tax liability.

#### Procedural Matters

This Chief Counsel Advice responds to your request for assistance and may not be used or cited as precedent. The writing may contain privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-7530 if you have any further questions.

Sincerely,

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