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Comments Due by: **June 28, 2016**

SC REVENUE RULING #16-x [Draft – May 25, 2016]

SUBJECT: Use of Net Operating Losses Following a Change in Ownership
(Income Tax)

EFFECTIVE DATE: Applies to all periods open under the statute

SUPERSEDES: Technical Advice Memorandum #89-22

REFERENCES: S. C. Code Ann. Section 12-6-580 (2014)
S. C. Code Ann. Section 12-6-40 (Supp. 2015)
S. C. Code Ann. Section 12-6-50 (2014)
S. C. Code Ann. Section 12-6-5020 (2014)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2014)
S. C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

I. INTRODUCTION

This document provides an overview of South Carolina net operating losses (NOLs), the application of Internal Revenue Code (IRC) Section 382 limitations on South Carolina NOL carryforwards, and the application of IRC Section 382 limitations and other NOL use limitations on South Carolina consolidated returns.¹

II. OVERVIEW OF SOUTH CAROLINA NOL CALCULATION

Code Section 12-6-580 provides that a corporation's South Carolina gross income and taxable income are computed as determined under the IRC with certain modifications and subject to

¹ South Carolina's consolidated income is not calculated in the same manner as federal consolidated income. See further discussion in [Overview of South Carolina Consolidated Returns and NOL Limitations for Consolidated Members](#), Part VII.

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allocation and apportionment.² Code Section 12-6-50 provides a list of IRC sections that are specifically not adopted for South Carolina income tax purposes.

With the exception of IRC Section 172(b)(1), relating to NOL carrybacks, which South Carolina does not adopt,³ South Carolina adopts IRC Section 172 for the purpose of calculating NOLs, including the 20 year carryforward period. As a result, a South Carolina NOL deduction is computed in accordance with the IRC as adopted by South Carolina subject to the modifications in Article 9, Chapter 6 of Title 12 of the South Carolina Code of Laws. Additionally, a taxpayer that transacts or conducts business partly within and partly without South Carolina is subject to allocation and apportionment under Article 17, Chapter 6 of Title 12. South Carolina NOLs are apportioned in the year the loss is incurred.

III. SOUTH CAROLINA LIMITATION ON NOL CARRYFORWARDS

A. Overview of the Federal Section 382 Limitation on NOL Carryforwards⁴

IRC Section 382 limits the use of NOL carryforwards of a loss corporation after a change in ownership with respect to the loss corporation.⁵ A change in ownership occurs when the percentage of stock held by one or more 5% shareholders of the loss corporation increases by more than 50 percentage points over the lowest stock ownership held by such shareholders on a particular testing date within a prescribed period (usually a three-year period).⁶ IRC Section 382 places an annual limit on the amount of income that can be offset by NOLs incurred before the ownership change. Any pre-ownership change NOL carryforward that cannot be deducted in the taxable year because of the IRC Section 382 limitation is carried forward to the following year.

The IRC Section 382 limitation is calculated by multiplying the loss corporation's value at the time of the ownership change by the published federal long-term tax-exempt rate.⁷ The value of the loss corporation is generally the fair market value of its stock at the time of the ownership change. This calculation results in the amount of income of the loss corporation that can be offset by a pre-ownership change NOL carryforward each year following the ownership change.⁸

B. South Carolina Section 382 Limitation on NOL Carryforwards

² South Carolina generally adopts the IRC through the immediately preceding December 31st. Code Section 12-6-40, Article 9, Chapter 6, Title 12 contains modifications and Article 17, Chapter 6, Title 12 contains allocation and apportionment provisions.

³ Code Sections 12-6-50(6) and 12-6-1130(4).

⁴ This document provides a brief overview of IRC Section 382. It is not a comprehensive analysis of IRC Section 382.

⁵ IRC Section 382(k)(1) defines a "loss corporation" as a corporation entitled to use an NOL carryover or having an NOL for the taxable year in which the ownership change occurs.

⁶ IRC Section 382(g).

⁷ The federal long-term tax-exempt rate for ownership changes is published monthly in an IRS Revenue Ruling.

⁸ The effect of built-in gains and built-in losses on the use of the NOL carryforward is discussed below.

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South Carolina adopts IRC Section 382.⁹ However, the South Carolina Section 382 limitation amount will depend on whether the loss corporation conducts its entire business within South Carolina, or conducts its business partly within and partly without South Carolina, during the taxable year that the ownership change occurs. If, during the taxable year that the ownership change occurs, the loss corporation has conducted its entire business within South Carolina, the federal Section 382 limitation and the South Carolina Section 382 limitation generally will be the same.¹⁰

If, during the taxable year that the ownership change occurs, the loss corporation has apportioned its South Carolina income/losses because it has conducted its business partly within and partly without South Carolina, the South Carolina Section 382 limitation is calculated by apportioning the federal Section 382 limitation using the South Carolina apportionment ratio for the taxable year that the ownership change occurs.

For example, assume the following for Company A at the time of ownership change:

- Company A's value is \$5,000,000;
- The applicable federal long-term tax exempt rate is 2.80%;¹¹
- Company A's federal NOL carryforward is \$1,000,000;
- Company A's previously apportioned South Carolina NOL carryforward is \$350,000;
- Company A's South Carolina apportionment ratio for the year of the ownership change is 25%.

Company A's federal Section 382 limitation is \$140,000 ($\$5,000,000 \times 2.8\%$). Accordingly, Company A can use its pre-ownership change federal NOL carryforward to offset up to \$140,000 of its federal taxable income in each year following the ownership change. The South Carolina Section 382 limitation is \$35,000 ($\$5,000,000 \times 2.8\% \times 25\%$). Accordingly, the taxpayer can use its pre-ownership change South Carolina NOL carryforward to offset up to \$35,000 of its South Carolina taxable income in each year following the ownership change.

The Section 382 limitation is an annual limitation on the amount of taxable income that can be offset by a pre-ownership change NOL carryforward (in the above example \$35,000 for South Carolina purposes). The Section 382 limitation amount remains the same each year, except in the case of certain built-in gains discussed below. Any pre-ownership change South Carolina NOL carryforward that cannot be deducted in the taxable year because of the South Carolina Section 382 limitation is carried forward to the following year. The South Carolina NOL remains subject to the maximum 20 year carryforward period.

IV. INTRODUCTION TO BUILT-IN GAINS AND BUILT-IN LOSSES

⁹ Code Section 12-6-40.

¹⁰ For members of a federal consolidated group see Part VII.

¹¹ For this example the rate used was from IRS Revenue Ruling 2015-1, Table 3.

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IRC Section 382(h) requires that on the date of an ownership change, a loss corporation must determine if there is a net unrealized built-in gain (NUBIG) or a net unrealized built-in loss (NUBIL). The NUBIG or NUBIL is the difference between the fair market value of the loss corporation's assets (other than cash and certain cash equivalents) and the aggregate adjusted tax basis of those assets. If a corporation's NUBIG exceeds the federal threshold discussed below, IRC Section 382(h) provides that the IRC Section 382 NOL limitation is increased by certain recognized built-in gains in the year the gain is recognized. If a corporation's NUBIL exceeds the federal threshold, IRC Section 382(h) requires that the pre-ownership change NOL carryforward be increased by certain recognized built-in losses.

Note that a loss corporation benefits from recognized built-in gains which allow it to increase its Section 382 limitation and thereby use a greater amount of its pre-ownership change NOLs. Recognized built-in losses, on the other hand, must be added to the pre-ownership change NOL and those losses are subject to the Section 382 limitation. Accordingly, a loss corporation with NUBIG benefits from meeting the threshold while a loss corporation with NUBIL benefits from failing to meet the threshold.

V. BUILT-IN GAINS

A. Federal Tax Treatment – IRC Section 382(h)(1)(A)

At the time of ownership change, the loss corporation may have substantially appreciated assets despite the existence of an NOL carryforward. Under IRC Section 382(h)(1)(A), if the loss corporation has a “net unrealized built-in gain” (NUBIG)¹² – i.e., on the date of the ownership change the fair market value of its assets (other than cash and certain cash equivalents) exceeds their aggregate adjusted basis – the Section 382 limitation amount is increased by any “recognized built-in gain” (RBIG) during the five-year period after the ownership change.¹³ The Section 382 limitation increase is only in the year that the built-in gain is recognized, and the aggregate increase in the Section 382 limitation during the five-year period after the ownership change cannot exceed the loss corporation's NUBIG.

Federal NUBIG Threshold Requirement. For federal tax purposes, the Section 382 limitation adjustment allowed under IRC Section 382(h) applies only if the loss corporation meets the statutory NUBIG threshold requirement. The loss corporation's NUBIG must exceed either (1) 15% of the fair market value of the loss corporation's assets (other than cash and certain cash equivalents) on the date of ownership change or (2) \$10 million.¹⁴ If the loss corporation's NUBIG does not exceed the statutory threshold, no Section 382 limitation adjustment is allowed.

¹² IRC Section 382(h)(3)(A).

¹³ IRC Section 382(h)(1)(A)(i). The RBIG must be recognized during the statutory “recognition period.” Under IRC Section 382(h)(7)(A), the recognition period is the five-year period beginning on ownership change date. For example, if the change date is October 1, Year 1, the recognition period is the five-year period beginning on October 1, Year 1, and ending on September 30, Year 6. No Section 382 limitation adjustments are allowed for built-in gains recognized after the recognition period.

¹⁴ IRC Section 382(h)(3)(B).

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B. South Carolina Tax Treatment¹⁵

For South Carolina income tax purposes, a loss corporation's South Carolina NUBIG must meet the South Carolina NUBIG threshold requirement in order to qualify for the South Carolina Section 382 limitation adjustment. The analysis for determining the loss corporation's South Carolina NUBIG and South Carolina NUBIG threshold depends on whether the loss corporation has met the federal NUBIG threshold requirement.¹⁶

1. If Loss Corporation Has Met Federal NUBIG Threshold

If the loss corporation has met the federal NUBIG threshold requirement on a separate company basis, then the loss corporation will be deemed to have met the South Carolina NUBIG threshold requirement. The loss corporation must then calculate its South Carolina NUBIG using one of two available methods:

a. Simplified Method. Under the simplified method, the loss corporation's South Carolina NUBIG is calculated by multiplying the loss corporation's federal NUBIG amount, calculated on a separate company basis, by the South Carolina apportionment ratio for the year the ownership change occurs.

b. Detailed Method. Under the detailed method, the loss corporation's South Carolina NUBIG is calculated, on a separate company basis, using South Carolina income tax modifications and allocation and apportionment provisions. This method is explained in detail below.

2. If Loss Corporation Has Not Met Federal NUBIG Threshold

South Carolina NUBIG Threshold Requirement. If the loss corporation has not met the federal NUBIG threshold requirement on a separate company basis, the loss corporation may still meet the South Carolina NUBIG threshold requirement if the loss corporation's detailed South Carolina NUBIG (explained below) exceeds either (1) 15% of the fair market value of the loss corporation's assets (other than cash and certain cash equivalents) multiplied by the loss corporation's South Carolina apportionment ratio for the year that the ownership change occurs or (2) \$10 million multiplied by the loss corporation's South Carolina apportionment ratio for the year that the ownership change occurs, then the loss corporation will have met the South Carolina NUBIG threshold requirement.

Detailed South Carolina NUBIG Calculation. The loss corporation's detailed South Carolina NUBIG is calculated using South Carolina income tax modifications and allocation and apportionment provisions. For example, South Carolina's modification provisions do not allow

¹⁵ See Exhibit A for flow chart of built-in gains.

¹⁶ See Part VII for corporations filing federal consolidated returns.

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bonus depreciation under IRC Section 168(k).¹⁷ As a result, a taxpayer must adjust the federal basis of the property for South Carolina purposes to reflect that bonus depreciation was not used. South Carolina's allocation provisions provide the gain from the sale of real property located in South Carolina is allocated to South Carolina.¹⁸ Therefore, any built-in gain must reflect this allocation. After allocating any applicable built-in gain or loss, the remainder of the built-in gain or loss will be apportioned to South Carolina using the apportionment ratio for the year that the ownership change occurs.

EXAMPLE¹⁹

Federal NUBIG Calculation

<u>Asset</u>	<u>FMV</u>	<u>Adjusted Basis</u>	<u>Unrealized BIG</u>
Land in SC	\$100,000	\$75,000	\$25,000
Land in VA	\$50,000	\$30,000	\$20,000
§ 168(k) Asset	\$100,000	\$0	\$100,000
Other Asset	\$200,000	\$40,000	\$160,000
Federal NUBIG			\$305,000

Simplified South Carolina NUBIG Calculation

(Assume the SC apportionment factor is 25% for Year of Ownership Change)

<u>Federal NUBIG</u>	<u>SC Apportionment Ratio</u>	<u>South Carolina NUBIG</u>
\$305,000	25%	\$76,250

Detailed South Carolina NUBIG Calculation

(Assume the SC apportionment factor is 25% for Year of Ownership Change)

<u>Asset</u>	<u>FMV</u>	<u>Adjusted Basis</u>	<u>Unrealized BIG</u>
Land in SC	\$100,000	\$75,000	\$25,000 – allocated to SC
Land in VA	\$50,000	\$30,000	\$20,000 – allocated to VA
§ 168(k) Asset	\$100,000	\$50,000	\$50,000 – apportioned
Other Asset	\$200,000	\$40,000	\$160,000 – apportioned

Unrealized BIG Allocated to SC	\$25,000
Unrealized BIG Apportioned to SC [(50,000+160,000) x 25%]	\$52,500
South Carolina NUBIG	<u>\$77,500</u>

¹⁷ Code Section 12-6-50(4).

¹⁸ Code Section 12-6-2220(4). The amount of gain which represents the return of amounts deducted as depreciation is allocated to South Carolina to the extent of depreciation previously deducted in computing South Carolina taxable income. Gain in excess of recaptured depreciation is allocated to the state where the real property is located whether or not the real property was used in or connected with the taxpayer's trade or business.

¹⁹ Numbers presented are in 1000s.

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3. South Carolina RBIG

A loss corporation that meets the South Carolina NUBIG threshold requirement as provided above can increase its South Carolina Section 382 limitation by any South Carolina RBIG recognized during the five-year recognition period following the ownership change. The increase is allowed only in the year that the built-in gain is recognized, and the aggregate increase in the South Carolina Section 382 limitation cannot exceed the South Carolina NUBIG calculated at the time of the ownership change.

The South Carolina RBIG is calculated in the same manner that the detailed South Carolina NUBIG was calculated. In other words, the South Carolina RBIG is computed using South Carolina modifications and is subject to allocation and apportionment using the apportionment ratio for the tax year that the ownership change occurs. For example, if a loss corporation has a South Carolina RBIG of \$20,000 in Year 3 following the ownership change, then the loss corporation's South Carolina Section 382 limitation is increased by \$20,000 for Year 3.

Note: The South Carolina RBIG is calculated under the detailed method regardless of whether the loss corporation calculated its South Carolina NUBIG under the simplified method or the detailed method.

VI. BUILT-IN LOSSES

A. Federal Tax Treatment – IRC Section 382(h)(1)(B)

IRC Section 382(h) also addresses the treatment of the loss corporation's pre-ownership change built-in losses. Under IRC Section 382(h)(1)(B), if the loss corporation has a "net unrealized built-in loss" (NUBIL)²⁰ – i.e., on the date of the ownership change the aggregate adjusted basis of the loss corporation's assets (other than cash and certain cash equivalents) exceeds the assets' fair market value – any "recognized built-in loss" (RBIL)²¹ of the loss corporation during the five-year period after the ownership change is subject to the Section 382 limitation in the same manner as if it were a pre-ownership change NOL carryforward.²² The total amount of RBIL subject to the Section 382 limitation under this rule is limited to the loss corporation's NUBIL at the time of ownership change.²³

Federal NUBIL Threshold Requirement. As in the case of built-in gains, the Section 382 limitation on RBILs applies only if the loss corporation meets a statutory threshold requirement. The loss corporation's NUBIL must exceed either (1) 15% of the fair market value of the loss corporation's assets (other than cash and certain cash equivalents) on the date of ownership

²⁰ IRC Section 382(h)(3)(A).

²¹ RBIL is any loss recognized during the five-year recognition period on the disposition of any asset that was held by the loss corporation immediately before the ownership change. IRC Section 382(h)(2)(B).

²² IRC Section 382(h)(1)(B)(i).

²³ IRC Section 382(h)(1)(B)(ii).

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change or (2) \$10 million.²⁴ If the loss corporation's NUBIL does not exceed the statutory threshold, then the loss corporation's federal RBILs are not subject to the Section 382 limitation.

B. South Carolina Tax Treatment²⁵

For South Carolina income tax purposes, the South Carolina Section 382 limitation on South Carolina RBIL is triggered only if the loss corporation meets the South Carolina NUBIL threshold. As in the case of built-in gains, the analysis for determining the loss corporation's South Carolina NUBIL and South Carolina NUBIL threshold depends on whether the loss corporation has met the federal NUBIL threshold requirement.

1. If Loss Corporation Has Not Met Federal NUBIL Threshold

If the loss corporation's federal NUBIL does not exceed the federal statutory threshold – i.e., none of the loss corporation's federal RBILs is subject to the Section 382 limitation – then none of the loss corporation's South Carolina RBILs is subject to the South Carolina Section 382 limitation. Accordingly, the loss corporation does not need to calculate its detailed South Carolina NUBIL or NUBIL threshold.

2. If Loss Corporation Has Met Federal NUBIL Threshold

South Carolina NUBIL Threshold. If the loss corporation's federal NUBIL exceeds the federal statutory threshold – i.e., the loss corporation's federal RBILs are subject to the Section 382 limitation – the loss corporation must first calculate its South Carolina NUBIL threshold. The loss corporation's South Carolina NUBIL threshold is the lesser of either (1) 15% of the fair market value of the loss corporation's assets (other than cash and certain cash equivalents) multiplied by the loss corporation's South Carolina apportionment ratio for the year that the ownership change occurs or (2) \$10 million multiplied by the loss corporation's South Carolina apportionment ratio for the year that the ownership change occurs.

Detailed South Carolina NUBIL Calculation. After determining its South Carolina NUBIL threshold, the loss corporation must then calculate its South Carolina NUBIL using the detailed method. The loss corporation's detailed South Carolina NUBIL is calculated in the same manner as the loss corporation's detailed South Carolina NUBIG. That is, the loss corporation calculates its detailed South Carolina NUBIL using South Carolina income tax modification and allocation and apportionment provisions using the apportionment factor in the year of the ownership change. If the loss corporation's detailed South Carolina NUBIL does not exceed the loss corporation's South Carolina NUBIL threshold, then none of the loss corporation's South Carolina RBILs is subject to the South Carolina Section 382 limitation. If the loss corporation's detailed South Carolina NUBIL exceeds its South Carolina NUBIL threshold, then the loss

²⁴ IRC Section 382(h)(3)(B).

²⁵ See Exhibit B for flow chart of built-in losses.

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corporation's South Carolina RBILs become part of the prechange NOL and subject to the South Carolina Section 382 limitation.

EXAMPLE²⁶

Federal NUBIL Calculation

<u>Asset</u>	<u>FMV</u>	<u>Adjusted Basis</u>	<u>Unrealized BIL</u>
Land in SC	\$100,000	\$170,000	(\$70,000)
Land in VA	\$50,000	\$130,000	(\$80,000)
§ 168(k) Asset	\$50,000	\$0	\$50,000
Other Asset	\$75,000	\$100,000	(\$25,000)
Federal NUBIL			(\$125,000)

Detailed South Carolina NUBIL Calculation

(Assume the SC apportionment factor is 25% for Year of Ownership Change)

<u>Asset</u>	<u>FMV</u>	<u>Adjusted Basis</u>	<u>Unrealized BIL</u>
Land in SC	\$100,000	\$170,000	(\$70,000) – allocated to SC
Land in VA	\$50,000	\$130,000	(\$80,000) – allocated to VA
§ 168(k) Asset	\$50,000	\$35,000	\$15,000 – apportioned
Other Asset	\$75,000	\$100,000	(\$25,000) – apportioned

Unrealized BIL Allocated to SC	(\$70,000)
Unrealized BIL Apportioned to SC [(\$15,000 - \$25,000) x .25]	<u>(\$2,500)</u>
South Carolina NUBIL:	<u>(\$72,500)</u>

3. South Carolina RBIL

If the loss corporation's detailed South Carolina NUBIL exceeds the loss corporation's South Carolina NUBIL threshold, then the loss corporation's South Carolina RBIL during the five-year recognition period following the ownership change is treated as a pre-ownership change South Carolina NOL carryforward subject to the South Carolina Section 382 limitation. The aggregate amount of the South Carolina RBIL subject to the South Carolina Section 382 limitation under this rule is limited to the loss corporation's detailed South Carolina NUBIL at the time of ownership change. The South Carolina RBIL that is recognized during the five-year recognition period is subject to the South Carolina Section 382 limitation for all periods open under the carryforward.

The South Carolina RBIL that is subject to the South Carolina Section 382 limitation is calculated in the same manner that the detailed South Carolina NUBIL was calculated. In other words, the South Carolina RBIL is computed using South Carolina modifications and is subject

²⁶ These numbers are in 1000s.

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to allocation and apportionment using the apportionment ratio for the tax year of the ownership change.

VII. OVERVIEW OF SOUTH CAROLINA CONSOLIDATED RETURNS AND NOL LIMITATIONS FOR CONSOLIDATED MEMBERS

A. Overview of South Carolina Consolidated Returns

A South Carolina “consolidated” return (also called a “combined return”) is permitted for entities doing business in South Carolina that share at least 80% ownership of the total combined voting power of all classes of stock.²⁷ A corporation doing business entirely within South Carolina may consolidate with a corporation doing a multistate business and two or more corporations doing a multistate business may file a consolidated return.²⁸ A South Carolina consolidated return is not prepared in the same manner as a federal consolidated return. South Carolina has not adopted the federal consolidation rules in IRC Sections 1501 through 1505²⁹ (or the regulations thereunder). South Carolina taxable income or loss is computed separately for each corporation. Income is allocated separately for each corporation, and income is apportioned separately for each corporation.³⁰ There are no elimination adjustments for intercompany transactions such as those required for federal consolidated returns. The separately computed South Carolina income or loss for each participating member of the group is added together to arrive at the South Carolina income or loss for the consolidated group and reported on a single return for the consolidated group.³¹

B. Calculation of South Carolina Section 382 Limitations for Consolidated Members

For federal income tax purposes, the IRC Section 382 limitation is computed on a consolidated basis. However, because South Carolina does not have a federal type consolidated return, the South Carolina Section 382 limitation must be computed separately for each member of the South Carolina consolidated group. In order to calculate a member’s South Carolina Section 382 limitation, the member must first compute its separate value at the time of ownership change. Then the member’s value must be apportioned using the South Carolina apportionment ratio for that member for the year of the ownership change.

C. Built-In Gains and Losses on South Carolina Consolidated Returns

²⁷ Code Section 12-6-5020(A).

²⁸ Code Section 12-6-5020(C).

²⁹ Code Section 12-6-50(15).

³⁰ Code Section 12-6-5020(D).

³¹ Code Section 12-6-5020(D).

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For South Carolina purposes both net unrealized built-in gains/losses and recognized built-in gains/losses must be calculated separately for each member in the South Carolina consolidated group in the same manner as discussed in Parts V and VI above.

D. Separate Return Limitation Years (SRLY)

For federal income tax purposes, the SRLY rules apply to the use of NOLs in a consolidated group. If a corporation with NOL carryforwards becomes a member of a consolidated group, the SRLY rules limit the amount of the consolidated group's taxable income that may be offset by NOL carryforwards that the acquired corporation brings into the consolidated group. In general, the SRLY rules limit the consolidated group's use of separate return limitation year losses to the amount of income generated by the acquired corporation after it becomes a member of the group.³² South Carolina has not adopted the SRLY rules.³³ The provisions of IRC Section 382, along with other IRC sections adopted by South Carolina (e.g., IRC Sections 269 and 384), provide the safeguards to prevent the abusive use of NOLs in South Carolina.

³² For federal purposes, generally SRLY NOL limitations will not apply to corporations joining a consolidated group within six months before or after an IRC Section 382 ownership change. In that case only the IRC Section 382 rules will apply. IRC Reg. 1.1502-21(g).

³³ In 1989, the Department issued Technical Advice Memorandum (TAM) #89-22 which at least suggests that South Carolina follows the SRLY rules even though South Carolina does not adopt the consolidated return provisions of the IRC or IRC regulations. Code Section 12-6-50(15). In 1995, *Anonymous Taxpayer v. South Carolina Department of Revenue*, 95-ALJ-17-0228, was heard by the South Carolina Administrative Law Court (ALC). The Department argued and the ALC agreed that the SRLY rules did not apply in South Carolina since those provisions of the IRC were not adopted by South Carolina.

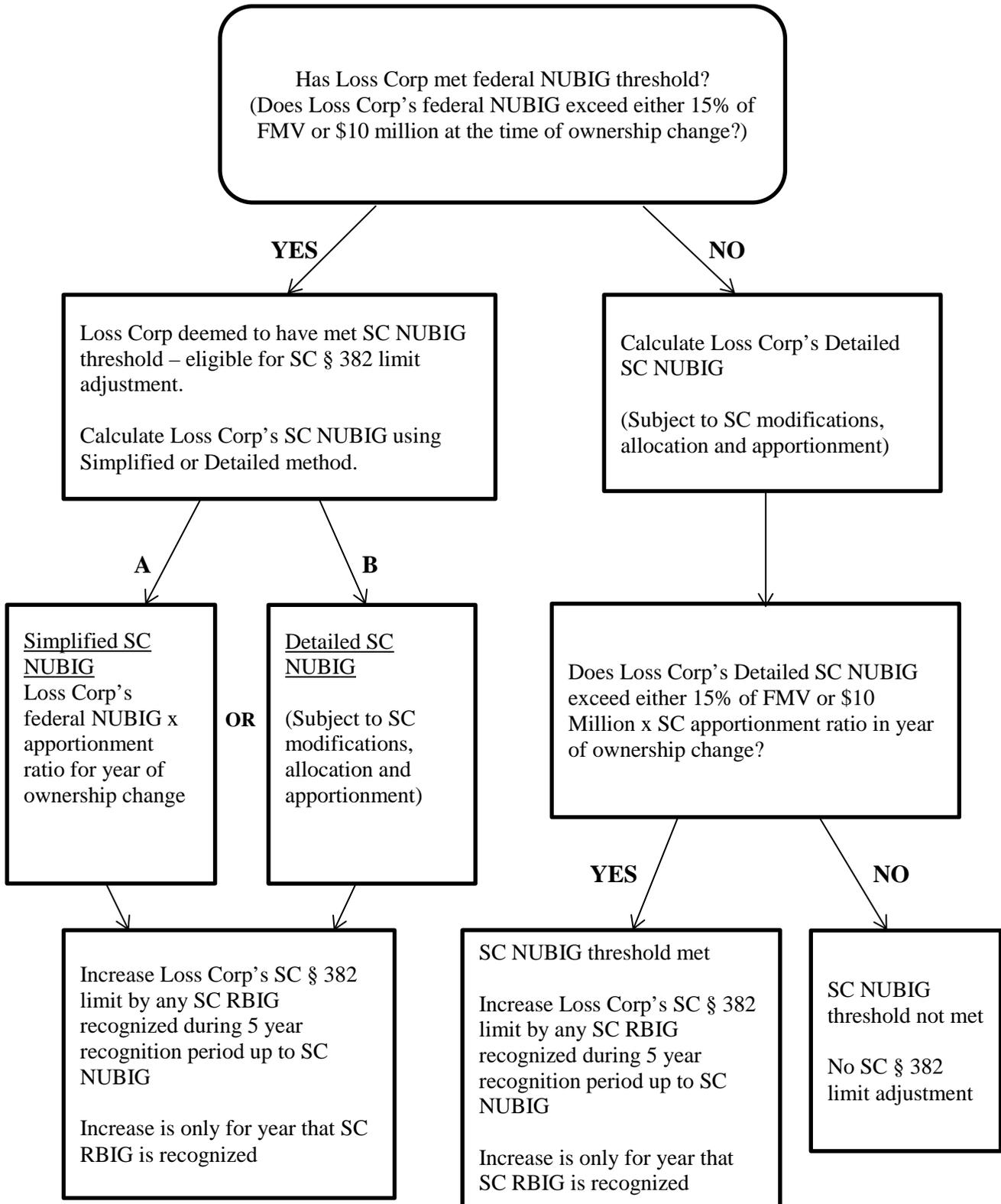
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EXHIBIT A

BUILT-IN GAINS



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EXHIBIT B

BUILT-IN LOSSES

