



**BDO Seidman, LLP**  
Accountants and Consultants

# Corporate Tax Alert

---

## ISSUE:

### MAXIMIZING SEC. 382 BUILT-IN GAIN OR MINIMIZING SEC. 382 BUILT-IN LOSS

---

## AFFECTING:

C corporations with an NOL carryforward that is subject to an annual Section 382 limitation as a result of a Section 382 ownership change within the last 8 years.

## EFFECTIVE DATES:

Notice 2003-65 is applicable to all open years. Accordingly, tax returns may be amended to take advantage of the Notice.

## DETAILS:

Section 382 ownership changes that occurred during the past 8 years should be re-examined to determine whether, in the case of a net unrealized built-in gain (“NUBIG”), the annual Section 382 limitation may be increased, or, in the case of a net unrealized built-in loss (“NUBIL”), deduction items can be eliminated from treatment as a recognized built-in loss (“RBIL”). RBILs are subject to the Section 382 limitation.

In the case of a NUBIG, if at the ownership change date the corporation had appreciated intangible (e.g., goodwill) or tangible property, recognized built-in gain (“RBIG”) and the annual Section 382 limitation will be increased during the 5-year period following the ownership change even without a sale of the appreciated property. In the case of a NUBIL, deduction items that were treated as an RBIL during the 5-year period following the ownership change may be eliminated from treatment as an RBIL if such items would not have constituted an accrued deduction to an accrual method taxpayer prior to the ownership change date. After recalculating the loss corporation’s annual Section 382 limitation consistent with Notice 2003-65, the amount of the Section 382 limitation not used in prior years increases the Section 382 limitation available for the current and future years.

## RECOMMENDED ACTION:

If the corporation had a NUBIG at the ownership change date, recalculate the corporation’s RBIG and its Section 382 limitation, consistent with IRS Notice 2003-65. If the corporation had a NUBIL at the ownership change date, consistent with the Notice, recalculate the corporation’s RBIL that had been determined, in addition to the NOL carryforward, to be subject to the annual Section 382 limitation.

---

*Material Discussed in this newsletter is meant to provide general information and should not be acted on without obtaining professional advice tailored to your individual needs*

The Tax Practice at BDO Seidman, LLP is among the largest tax advisory practices in the U.S. With 35 offices and 250 independent alliance firm locations in the U.S., **BDO Seidman, LLP** has the bench strength and coverage to serve you.

As a member firm of BDO International, **BDO Seidman, LLP** belongs to a worldwide network of independent professional firms that combined offer 22,000 partners and staff operating in 99 countries and 600 offices.

---

## FOR MORE INFORMATION & NAMES OF LOCAL BDO SEIDMAN PRACTITIONERS

Please contact:  
Jack Frame  
330 Madison Ave  
New York, NY 10017  
Phone: 212-885-8125  
Fax: 707-982-0633  
Email: [jframe@bdo.com](mailto:jframe@bdo.com)

---