CPA
Practice Advisor

regulations eliminate the popular and long-standing section 338 approach that provides ...

Jan. 06, 2020

The American Institute of CPAs (AICPA) has submitted recommendations on guidance related to the changes to section 382(h) of the Tax Cuts and Jobs Act (TCJA). Section 382 limits the ability of a "loss corporation" to use certain losses to offset its taxable income after an ownership change when the losses relate to the pre-change period. Section 382(h) provides for special rules related to built-in gains and losses of a loss corporation, and their impact on the section 382 limitation. The proposed regulations eliminate the popular and long-standing section 338 approach that provides taxpayers with a safe harbor in terms of computing a loss corporation's recognized built-in gains or recognized built-in losses.

A loss corporation is a corporation that is (i) entitled to use a net operating loss

In its letter to the IRS and Treasury, the AICPA recommends that the section 338(h) approach or a similar forgone amortization approach be retained.

In addition, the AICPA provides comments and recommendations these areas related to proposed regulations, including:

i. Cancellation of Indebtedness Income
ii. Definition of Recognized Built-in Gain and Recognized Built-in Loss
ii. Proposed Effective Date

“The recommendations presented address important concerns the AICPA has in relation to the regulations proposed by Treasury and the IRS,” said Christopher Hesse, CPA, Chair of AICPA Tax Executive Committee. “We are pleased Treasury and the IRS continue to seek out suggestions on the implementation of their regulations and we appreciate the opportunity to be part of this process.”