

## Internal Revenue Code Section 362(e)(2)

### Basis to corporations

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#### (e) Limitations on built-in losses.

##### (1) Limitation on importation of built-in losses.

(A) In general. If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b) ) be its fair market value immediately after such transaction.

(B) Property described. For purposes of subparagraph (A) , property is described in this subparagraph if-

(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

(C) Importation of net built-in loss. For purposes of subparagraph (A) , there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph ) exceed the fair market value of such property immediately after such transaction.



##### (2) Limitation on transfer of built-in losses in section 351 transactions.

(A) In general. If-

(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection , and

(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph ) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a) , the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

(B) Allocation of basis reduction. The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

(C) Election to apply limitation to transferor's stock basis.

(i) In general. If the transferor and transferee of a transaction described in subparagraph (A) both elect the application of this subparagraph -

(I) subparagraph (A) shall not apply, and

(II) the transferor's basis in the stock received for property to which subparagraph (A) does not apply by reason of the election shall not exceed its fair market value immediately after the transfer.

(ii) Election. Any election under clause (i) shall be made at such time and in such form and manner as the Secretary may prescribe, and, once made, shall be irrevocable.