



TaxNewsFlash

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Notice of withdrawal of proposed regulations under Subchapter C

The U.S. Treasury Department and IRS today released for publication in the Federal Register a notice of withdrawal of proposed regulations from 2009.

The proposed regulations (2009) concerned the recovery of stock basis in distributions of property made by a corporation to a shareholder and certain transactions treated as dividend-equivalents, as well as the determination of gain and the basis of stock or securities received in certain transactions.

The [notice of withdrawal of the proposed regulations](#) [PDF 225 KB] will be published in the Federal Register on March 28, 2019.

According to today's withdrawal notice, the 2009 proposed regulations would have:

- Provided a single model for stock basis recovery by a shareholder that receives a distribution to which section 301 applies and a single model for sale and exchange transactions to which section 302(a) applies, including certain elements of an exchange in pursuance of a plan of reorganization under section 368
- Defined the scope of the exchange that must be analyzed under particular Code provisions
- Provided a methodology for determining gain under section 356 and stock basis under section 358

Today's release explains that Treasury and the IRS received many comments regarding the 2009 proposed regulations, including that the approach taken represented "an unwarranted departure from current law as a result of which minor changes to an overall business transaction could cause meaningful changes to the tax consequences, thereby elevating the form of the transaction over its substance."

The 2009 proposed regulations are being withdrawn because Treasury and the IRS determined "it is unlikely" that the approach of the 2009 proposed regulations can be implemented in comprehensive final regulations without significant modifications, and that Treasury and the IRS will continue to study

issues addressed in the 2009 proposed regulations, with a particular focus on issues concerning sections 301(c)(2) and 304, and Reg. section 1.302-2(c).

Today's release concludes that Treasury and the IRS:

...continue to believe that under current law, the results of a section 301 distribution should derive from the consideration received by a shareholder in respect of each share of stock, notwithstanding designations otherwise...[and] also continue to believe that, under current law, with respect to redemptions governed by section 302(d), any unrecovered basis in the redeemed stock of a shareholder may be shifted to other stock only if such an adjustment is a proper adjustment within the meaning of §1.302-2(c). Not all shifts of a redeemed shareholder's unrecovered basis result in proper adjustments, and certain basis adjustments can lead to inappropriate results.

KPMG observation

Note that [proposed regulations](#) [PDF 234 KB] under section 301 were published in the Federal Register yesterday.

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