



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-143686-07]

RIN 1545-BH35

The Allocation of Consideration and Allocation and Recovery of Basis in Transactions Involving Corporate Stock or Securities; Withdrawal.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking containing proposed regulations under numerous sections of the Internal Revenue Code (Code).

The proposed regulations being withdrawn would have provided guidance on the recovery of stock basis in distributions of property made by a corporation to a shareholder and certain transactions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 guidance regarding the determination of gain and the basis of stock or securities received in certain transactions. The proposed regulations being withdrawn would have affected shareholders and security holders of corporations.

DATES: As of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the notice of proposed rulemaking that was published in the **Federal Register** (74 FR 3509) on January 21, 2009, with corrections published in the **Federal Register** (74 FR 9575) on March 5, 2009, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Kevin M. Jacobs at (202) 317-5332 or Aglaia Ovtchinnikova at (202) 317-6975 (neither a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 21, 2009, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-143686-07) in the **Federal Register** (74 FR 3509) containing proposed regulations under sections 301, 302, 304, 351, 354, 355, 356, 358, 368, 861, 1001, and 1016 of the Code. On March 5, 2009, the Treasury Department and the IRS published corrections to the notice of proposed rulemaking in the **Federal Register** (74 FR 9575) (collectively, the 2009 Proposed Regulations).

The 2009 Proposed Regulations generally 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. The 2009 Proposed Regulations also would have defined the scope of the exchange that must be analyzed under particular Code provisions and provided a methodology for determining gain under section 356 and stock basis under section 358.

The 2009 Proposed Regulations responded to comments received by the Treasury Department and the IRS regarding the then-recently published section 358 regulations. These comments included suggestions to expand the tracing rules of the section 358 regulations to stock transfers that are subject to section 351 but do not

qualify as reorganizations, as well as questions regarding whether (and, if so, to what extent) shareholder elections constitute terms of an exchange and whether the terms of an exchange control for purposes of qualifying a transaction as a reorganization under section 368.

Finally, the 2009 Proposed Regulations included amendments to the current regulations under section 304 that would have updated those regulations to reflect statutory amendments to that section. See section 226 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248 (96 Stat. 325, 490) (September 3, 1982), section 712(l) of the Deficit Reduction Act of 1984, Pub. L. 98–369 (98 Stat. 494, 953–55) (July 18, 1984), section 1875(b) of the Tax Reform Act of 1986, Pub. L. 99–514 (100 Stat. 2085, 2894) (October 22, 1986), and section 1013 of the Taxpayer Relief Act of 1997, Pub. L. 105–34 (111 Stat. 788, 918) (August 5, 1997).

The Treasury Department and the IRS received many comments regarding the 2009 Proposed Regulations. The chief concern raised by commenters was that the approach taken in the 2009 Proposed Regulations 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.

After thoroughly considering the comments received, the Treasury Department and the IRS have determined that it is unlikely that the approach of the 2009 Proposed Regulations can be implemented in comprehensive final regulations without significant modifications. As a result, the Treasury Department and the IRS have decided to withdraw the 2009 Proposed Regulations. The Treasury Department and the IRS are

continuing to study the issues addressed in the 2009 Proposed Regulations, with a particular focus on issues surrounding sections 301(c)(2) and 304, and §1.302-2(c) of the Income Tax Regulations.

The Treasury Department 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. See *Johnson v. United States*, 435 F.2d 1257 (4th Cir. 1971). The Treasury Department and the IRS 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. See, e.g., Notice 2001-45, 2001-33 I.R.B. 129.

Drafting Information

The principal author of this withdrawal notice is Aglaia Ovtchinnikova of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the Treasury Department and the IRS withdraw the notice of proposed rulemaking (REG-143686-07) that was published in the **Federal Register** (74 FR 3509) on January 21, 2009, with corrections that were published in the **Federal Register** (74 FR 9575) on March 5, 2009.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

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