

Proposed regulations address corporate stock buyback excise tax

The Treasury Department and the Internal Revenue Service issued a set of proposed regulations (REG-115710-22 and REG-118499-23) on April 9 relating to the 1 percent excise tax on stock repurchases by certain publicly traded corporations. REG-115710-22 provides guidance regarding the application of the excise tax on repurchases of corporate stock made after December 31, 2022, and REG-118499-23 outlines the reporting and payment of the excise tax.

URL: <https://www.taxnotes.com/research/federal/proposed-regulations/proposed-regs-issued-corporate-stock-buyback-excise-tax/7jds7>

URL: <https://www.taxnotes.com/research/federal/proposed-regulations/proposed-regs-outline-reporting-payment-stock-buyback-excise-tax/7jds8>

Overview

The excise tax is imposed under Internal Revenue Code section 4501, which was enacted as part of the Inflation Reduction Act of 2022 (P.L. 117-169). The government released Notice 2023-2 in December 2022 to provide taxpayers with interim guidance on the rules and procedures of the excise tax until the publication of the proposed regulations.

URL: <https://www.taxnotes.com/research/federal/usc26/4501>

URL: <https://www.taxnotes.com/research/federal/legislative-documents/public-laws-and-legislative-history/inflation-reduction-act-of-2022-%28p.l.-117-169%29/7dybc>

URL: <https://www.taxnotes.com/research/federal/irs-guidance/notices/interim-guidance-issued-for-stock-buyback-tax/7fhtn>

In general, the proposed regulations follow the interim guidance set forth in the notice. Perhaps the most significant change from the notice is with respect to foreign publicly traded corporations, whereby the excise tax generally applies if a US subsidiary repurchases the foreign corporation's stock. The notice contained a *per se* funding rule, which generally assumed that certain intercompany transfers of funds by US subsidiaries within two years of a repurchase of foreign corporation stock were for purposes of avoiding the excise tax, in which case the US subsidiary was treated as repurchasing such stock. The proposed regulations would replace this *per se* funding rule with a principal purpose test relating to avoiding the excise tax and a rebuttable presumption of avoidance that applies in certain circumstances.

Consistent with the notice, the proposed regulations provide that the excise tax must be reported on Form 720, *Quarterly Federal Excise Tax Return*, with Form 7208, *Excise Tax on Repurchase of Corporate Stock*, attached. The preamble to the proposed regulations notes that the final version of Form 7208 will be released prior to the first due date on which the excise tax must be reported and paid.

URL: <https://www.irs.gov/pub/irs-pdf/f720.pdf>

URL: <https://www.irs.gov/pub/irs-dft/f7208--dft.pdf>

In addition, consistent with the notice, the proposed regulations would require the excise tax to be reported only annually on Form 720 for the first full calendar quarter after the taxable year of the corporation, with payment due on the same date as the Form 720 filing. However, for taxable years ending prior to the

publication of final regulations, the excise tax would be reported on the Form 720 that is due for the first full quarter after the date the final regulations are published, with payment due on the same date as the Form 720 filing.

The preamble to the proposed regulations contains examples relating to reporting the excise tax. In one example, if a corporation had a taxable year ending December 31, 2023, and if the final regulations were published on September 16, 2024, the corporation would report the excise tax for the 2023 taxable year on the Form 720 that is due on January 31, 2025 (the due date of the Form 720 for the first full calendar quarter beginning after September 16, 2024, which ends on December 31, 2024). In a second example, if a corporation had a taxable year ending December 31, 2024, and if the final regulations were published on September 16, 2024, the corporation would report the excise tax for the 2024 taxable year on April 30, 2025 (the due date of the Form 720 for the first full calendar quarter beginning after December 31, 2024, which ends on March 31, 2025).

More details to come

Look for a more detailed analysis of the proposed regulations in a forthcoming tax alert from Deloitte Tax LLP.

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