

## Part III – Administrative, Procedural, and Miscellaneous

### Initial Guidance Regarding the Application of the Excise Tax on Repurchases of Corporate Stock under Section 4501 of the Internal Revenue Code

Notice 2023-2

#### SECTION 1. OVERVIEW

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue proposed regulations (forthcoming proposed regulations) addressing the application of the new excise tax on repurchases of corporate stock under § 4501 of the Internal Revenue Code (Code).<sup>1</sup> Section 4501 was added to a new chapter 37 of the Code by the enactment of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). To provide taxpayers with interim guidance until publication of the forthcoming proposed regulations, this notice describes certain rules and procedures that the Treasury Department and the IRS intend to include in those regulations. Until the issuance of the forthcoming proposed regulations, taxpayers may rely on the rules described in section 3 of this notice.

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<sup>1</sup> Unless otherwise specified, all “section” or “§” references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

Section 2 of this notice provides a summary of relevant law underlying the guidance set forth in section 3 of this notice. Section 3 of this notice describes certain operating rules for purposes of the excise tax imposed by § 4501, including rules setting forth an exclusive list of transactions that are repurchases and rules for determining the fair market value of stock repurchased in such transactions, that the Treasury Department and the IRS intend to include in the forthcoming proposed regulations. Section 4 of this notice describes the anticipated rules for reporting and paying any liability for the excise tax imposed by § 4501. Section 5 of this notice describes the anticipated applicability date for the forthcoming proposed regulations. Section 6 of this notice requests comments on issues addressed in this notice as well as specific issues not so addressed. Section 7 of this notice provides drafting and contact information.

## SECTION 2. BACKGROUND

### .01 Overview.

(1) Excise tax imposed. Section 4501 imposes on each covered corporation (as defined in § 4501(b)) an excise tax (stock repurchase excise tax) equal to 1 percent of the fair market value of any stock of the corporation that is repurchased (as defined in § 4501(c)(1)) by the corporation during the taxable year. Section 4501(a).

(2) Covered corporation. For purposes of the stock repurchase excise tax, the term covered corporation means any domestic corporation the stock of which is traded on an established securities market (within the meaning of § 7704(b)(1)). Section 4501(b).

(3) No deductions allowed. No deduction is allowed for the payment of the stock repurchase excise tax. See § 275(a)(6) (as amended by § 10201(b) of the IRA to add a

reference to chapter 37 of the Code, which contains § 4501).

.02 Repurchase.

(1) Statutory scope. Section 4501(c)(1) expressly mandates that repurchases of stock of a covered corporation to which the stock repurchase excise tax may apply include the following two types of transactions:

(a) Section 317(b) redemptions. The term repurchase means a redemption within the meaning of § 317(b) with regard to the stock of a covered corporation (§ 317(b) redemption). Section 4501(c)(1)(A).

(b) Transactions economically similar to § 317(b) redemptions. In addition, the term repurchase means any transaction determined by the Secretary of the Treasury or her delegate (Secretary) to be economically similar to a § 317(b) redemption (economically similar transaction). Section 4501(c)(1)(B).

(2) Specified affiliates of covered corporations. Section 4501(c)(2) provides a special rule that treats certain acquisitions of the stock of a covered corporation by its “specified affiliates” as repurchases during the taxable year with respect to which the stock repurchase excise tax may be imposed on the covered corporation.

(a) Specified affiliate. For purposes of the stock repurchase excise tax, the term specified affiliate means, with regard to any corporation, (i) any corporation more than 50 percent of the stock of which is owned (by vote or by value), directly or indirectly, by the corporation, and (ii) any partnership more than 50 percent of the capital interests or profits interests of which is held, directly or indirectly, by the corporation. Section 4501(c)(2)(B).

(b) Deemed repurchase rule. The acquisition of any stock of a covered

corporation by a specified affiliate of the covered corporation, from a person who is not the covered corporation or a specified affiliate of the covered corporation, is treated as a repurchase of the stock of the covered corporation by the covered corporation for purposes of the stock repurchase excise tax. Section 4501(c)(2)(A).

.03 Adjustment to amount taken into account under § 4501(a).

(1) Overview. The stock repurchase excise tax is applied to the fair market value of any repurchases of stock by a covered corporation during its taxable year. The amount of these repurchases is reduced by (i) the fair market value of any repurchases excluded by an exception listed in § 4501(e), and (ii) the fair market value of any issuances of the covered corporation's stock during its taxable year that, under § 4501(c)(3), offset the amount of any repurchases of the covered corporation's stock (netting rule).

(2) Netting rule. The netting rule provides that the amount taken into account under § 4501(a) with respect to any stock repurchased by a covered corporation is reduced by the fair market value of any stock issued by the covered corporation during the taxable year, including the fair market value of any stock issued or provided to employees of the covered corporation or employees of a specified affiliate of the covered corporation during the taxable year (whether or not the stock is issued or provided in response to the exercise of an option to purchase the stock).

.04 Special rules for acquisitions of stock of certain foreign corporations.

(1) Overview. Section 4501(d) provides special rules for acquisitions of stock of applicable foreign corporations and covered surrogate foreign corporations.

(2) Defined terms for special rules. For purposes of § 4501(d):

(a) Applicable foreign corporation. The term applicable foreign corporation means any foreign corporation the stock of which is traded on an established securities market. Section 4501(d)(3)(A).

(b) Covered surrogate foreign corporation. The term covered surrogate foreign corporation means any surrogate foreign corporation (as determined under § 7874(a)(2)(B) by substituting “September 20, 2021” for “March 4, 2003” each place it appears) the stock of which is traded on an established securities market, but only with respect to taxable years that include any portion of the applicable period with respect to such corporation under § 7874(d)(1). Section 4501(d)(3)(B).

(c) Expatriated entity. The term expatriated entity has the meaning given the term by § 7874(a)(2)(A).

(3) Acquisition of stock of applicable foreign corporations.

(a) Scope. Section 4501(d)(1) applies in the case of an acquisition of stock of an applicable foreign corporation by a specified affiliate of the corporation (other than a foreign corporation or a foreign partnership (unless the partnership has a domestic entity as a direct or indirect partner)) from a person that is not the applicable foreign corporation or a specified affiliate of the applicable foreign corporation.

(b) Operative rule. If § 4501(d)(1) applies, then for purposes of the stock repurchase excise tax--

(i) the specified affiliate is treated as a covered corporation with respect to the acquisition,

(ii) the acquisition is treated as a repurchase of stock of a covered corporation by the covered corporation, and

(iii) the adjustment under § 4501(c)(3) (that is, the netting rule) is determined only with respect to stock issued or provided by the specified affiliate to employees of the specified affiliate.

(4) Repurchase of stock of covered surrogate foreign corporations.

(a) Scope. Section 4501(d)(2) applies in the case of--

(i) a repurchase of stock of a covered surrogate foreign corporation by the covered surrogate foreign corporation, or

(ii) an acquisition of stock of a covered surrogate foreign corporation by a specified affiliate of such corporation.

(b) Operative rule. If § 4501(d)(2) applies, then for purposes of the stock repurchase excise tax--

(i) the expatriated entity with respect to the covered surrogate foreign corporation is treated as a covered corporation with respect to the repurchase or acquisition,

(ii) the repurchase or acquisition is treated as a repurchase of stock of a covered corporation by the covered corporation, and

(iii) the adjustment under § 4501(c)(3) is determined only with respect to stock issued or provided by the expatriated entity to employees of the expatriated entity.

.05 Statutory exceptions to the application of § 4501(a).

(1) Overview. Section 4501(e) lists transactions that are statutorily excepted, in whole or in part, from the application of § 4501(a) (each, a statutory exception).

(2) Excepted transaction list. As a result of the statutory exceptions, § 4501(a) does not apply to a repurchase of a covered corporation's stock--

(a) to the extent that the repurchase is part of a reorganization (within the meaning of § 368(a)) and no gain or loss is recognized on the repurchase by the shareholder under chapter 1 of the Code by reason of the reorganization (§ 4501(e)(1)),

(b) in any case in which the stock repurchased is, or an amount of stock equal to the value of the stock repurchased is, contributed to an employer-sponsored retirement plan, employee stock ownership plan, or similar plan (§ 4501(e)(2)),

(c) in any case in which the total value of the stock repurchased during the taxable year does not exceed \$1,000,000 (§ 4501(e)(3)),

(d) under regulations prescribed by the Secretary, in cases in which the repurchase is by a dealer in securities in the ordinary course of business (§ 4501(e)(4)),

(e) to repurchases by a regulated investment company (RIC), as defined in § 851, or by a real estate investment trust (REIT), as defined in § 856(a) (§ 4501(e)(5)),  
or

(f) to the extent that the repurchase is treated as a dividend for purposes of the Code (§ 4501(e)(6)).

.06 Regulations and other guidance.

(1) In general. Under § 4501(f), the Secretary is authorized to prescribe such regulations and other guidance as are necessary or appropriate to carry out, and to prevent the avoidance of, the purposes of the stock repurchase excise tax.

(2) Enumerated examples. Regulations or other guidance described in § 4501(f) may include guidance--

(a) to prevent the abuse of the statutory exceptions,

(b) to address special classes of stock and preferred stock, and

(c) for the application of the special rules for acquisitions of stock of certain foreign corporations under § 4501(d).

.07 Applicability of stock repurchase excise tax provisions.

(1) Repurchases. Except to the extent that a statutory exception applies, the stock repurchase excise tax applies to repurchases after December 31, 2022 (covered repurchases), subject to the netting rule. See § 10201(d) of the IRA.

(2) Netting rule. In contrast to the December 31, 2022, effective date expressly provided by § 10201(d) of the IRA with regard to covered repurchases, the netting rule expressly takes into account any issuances by a covered corporation during the entirety of its taxable year. See generally § 4501(c)(3). Specifically, under the netting rule, the amount taken into account under § 4501(a) with respect to any covered repurchases is “reduced by the fair market value of any stock issued by the covered corporation during the taxable year.” Section 4501(c)(3) (emphasis added). Therefore, solely in the case of a covered corporation that has a taxable year that both begins before January 1, 2023, and ends after December 31, 2022, that covered corporation may, solely with regard to any covered repurchases during that taxable year to which the stock repurchase excise tax applies, apply the netting rule to reduce the fair market value of the covered corporation’s covered repurchases during that taxable year by the fair market value of all issuances of its stock during the entirety of that taxable year.

SECTION 3. INTERIM GUIDANCE REGARDING THE APPLICATION OF § 4501

.01 Purpose. The Treasury Department and the IRS anticipate that the forthcoming proposed regulations will be consistent with the guidance provided in this section 3. The Treasury Department and the IRS are issuing this interim guidance to provide

clarity as to the calculation of the stock repurchase excise tax and the application of § 4501 to certain transactions and other events occurring prior to the issuance of the forthcoming proposed regulations.

.02 Defined Terms. For purposes of this notice:

(1) Acquisitive reorganization. The term acquisitive reorganization means a transaction that qualifies as a reorganization under § 368(a)(1)(A) (A reorganization) (including by reason of § 368(a)(2)(D) or § 368(a)(2)(E)), § 368(a)(1)(C), or § 368(a)(1)(D) (D reorganization) (if the D reorganization satisfies the requirements of § 354(b)(1)).

(2) Applicable acquiror. The term applicable acquiror means--

(a) a specified affiliate of a covered corporation with regard to an acquisition described in § 4501(c)(2),

(b) an applicable specified affiliate of an applicable foreign corporation with regard to an acquisition described in § 4501(d)(1),

(c) a covered surrogate foreign corporation with regard to a repurchase described in § 4501(d)(2), or

(d) a specified affiliate of a covered surrogate foreign corporation with regard to an acquisition described in § 4501(d)(2).

(3) Applicable foreign corporation. The term applicable foreign corporation has the meaning given the term in section 2.04(2)(a) of this notice.

(4) Applicable specified affiliate. The term applicable specified affiliate means a specified affiliate of an applicable foreign corporation, other than a foreign corporation or a foreign partnership (unless the partnership has a domestic entity as a direct or indirect

partner).

(5) Controlled corporation. The term controlled corporation has the meaning given the term in § 355(a)(1)(A).

(6) Covered corporation. The term covered corporation has the meaning given the term in section 2.01(2) of this notice.

(7) Covered surrogate foreign corporation. The term covered surrogate foreign corporation has the meaning given the term in section 2.04(2)(b) of this notice.

(8) De minimis exception. The term de minimis exception has the meaning given the term in section 3.03(2) of this notice.

(9) Distributing corporation. The term distributing corporation has the meaning given the term in § 355(a)(1)(A).

(10) Economically similar transaction. The term economically similar transaction has the meaning given the term in section 2.02(1)(b) of this notice, as implemented in accordance with section 3.04 of this notice.

(11) Employee. The term employee means an employee as defined in § 3401(c) and § 31.3401(c)-1 of the Collection of Income Tax at Source Regulations (26 CFR part 31), or a former employee, of the covered corporation or specified affiliate, as applicable.

(12) Employer-sponsored retirement plan. The term employer-sponsored retirement plan means a retirement plan maintained by a covered corporation that is qualified under § 401(a), including an employee stock ownership plan described in § 4975(e)(7).

(13) Established securities market. The term established securities market has the

meaning given the term in § 1.7704-1(b).

(14) Expatriated entity. The term expatriated entity has the meaning given the term in section 2.04(2)(c) of this notice.

(15) Netting rule. The term netting rule has the meaning given the term in section 2.03(1) of this notice, as implemented in accordance with section 3.08 of this notice.

(16) Qualifying property exception. The term qualifying property exception has the meaning given the term in section 3.07(2) of this notice.

(17) Qualifying property repurchase. The term qualifying property repurchase has the meaning given the term in section 3.07(2) of this notice.

(18) REIT. The term REIT has the meaning given the term in section 2.05(2)(e) of this notice.

(19) Repurchase. The term repurchase has the meaning given the term in section 2.02(1) of this notice, as implemented in accordance with section 3.04 of this notice.

(20) RIC. The term RIC has the meaning given the term in section 2.05(2)(e) of this notice.

(21) Section 317(b) redemption. The term § 317(b) redemption has the meaning given the term in section 2.02(1)(a) of this notice.

(22) Specified affiliate. The term specified affiliate has the meaning given the term in section 2.02(2)(a) of this notice.

(23) Split-off. The term split-off means a distribution qualifying under § 355 (and so much of § 356 as relates to § 355) by a distributing corporation pursuant to which the shareholders of the distributing corporation exchange stock of the distributing corporation for stock of the controlled corporation and, if applicable, other property

(including securities of the controlled corporation) or money.

(24) Statutory exception. The term statutory exception has the meaning given the term in section 2.05(1) of this notice, as implemented in accordance with section 3.07 of this notice.

(25) Stock. The term stock means any instrument issued by a corporation that is stock or that is treated as stock for Federal tax purposes at the time of issuance, regardless of whether the instrument is traded on an established securities market.

(26) Stock repurchase excise tax. The term stock repurchase excise tax has the meaning given the term in section 2.01(1) of this notice.

(27) Stock repurchase excise tax base. The term stock repurchase excise tax base has the meaning given the term in section 3.03(3)(a) of this notice.

(28) Taxable year. The term taxable year has the meaning given the term in § 7701(a)(23) and may include a fiscal year (as defined in § 7701(a)(24)). See § 7701(a)(23) and (24); see also §§ 441(b) and 443.

### .03 Computation of excise tax liability.

(1) Imposition of tax. Except as provided in section 3.03(2) of this notice (regarding the de minimis exception), the amount of stock repurchase excise tax imposed on a covered corporation equals the product obtained by multiplying--

(a) one percent, by

(b) the stock repurchase excise tax base of the covered corporation determined in accordance with section 3.03(3) of this notice.

(2) De minimis exception.

(a) In general. A covered corporation is not subject to the stock repurchase

excise tax with regard to a taxable year if, during that taxable year, the aggregate fair market value of the covered corporation's repurchases of its stock does not exceed \$1,000,000 (de minimis exception).

(b) Determination. A determination of whether the de minimis exception applies with regard to a taxable year is made before applying--

- (i) any statutory exception under section 3.07 of this notice, and
- (ii) any adjustments under the netting rule under section 3.08 of this notice.

(3) Stock repurchase excise tax base.

(a) In general. With regard to a covered corporation, the term stock repurchase excise tax base means an amount (not less than zero) that is obtained by:

(i) Determining the aggregate fair market value of all repurchases (as determined under sections 3.04 through 3.06 of this notice) of the covered corporation's stock by the covered corporation during its taxable year,

(ii) Reducing the amount determined under section 3.03(3)(a)(i) of this notice by the fair market value of stock of the covered corporation repurchased during its taxable year to the extent any statutory exceptions apply in accordance with section 3.07 of this notice, and then

(iii) Reducing the amount determined under section 3.03(3)(a)(ii) of this notice by the aggregate fair market value of stock of the covered corporation issued or provided by the covered corporation during its taxable year under the netting rule in accordance with section 3.08 of this notice.

(b) Repurchases before January 1, 2023. Repurchases by a covered corporation before January 1, 2023, as determined under section 3.06(1) of this notice,

are not included in the covered corporation's stock repurchase excise tax base.

(c) Taxable year determination. The determinations under section 3.03(3)(a) of this notice are made separately to each covered corporation and to each taxable year of the covered corporation. Reductions under section 3.03(3)(a)(ii) or (iii) of this notice in excess of the amount determined under section 3.03(3)(a)(i) of this notice are not carried forward or backward to preceding or succeeding taxable years of a covered corporation.

#### .04 Redemptions and Economically Similar Transactions.

(1) Overview. This section 3.04 provides rules for determining whether a transaction is a repurchase for purposes of the stock repurchase excise tax. Section 3.04(2) of this notice provides a general rule regarding the scope of the term "repurchase." Section 3.04(3) of this notice provides an exclusive list of transactions that are treated as a § 317(b) redemption but are not repurchases. Section 3.04(4) of this notice provides (i) an exclusive list of transactions that are economically similar transactions, and (ii) a nonexclusive list of transactions that are not economically similar transactions.

(2) Scope of repurchase. For purposes of the stock repurchase excise tax, a repurchase means solely--

(a) a § 317(b) redemption, except as provided in section 3.04(3) of this notice, or

(b) an economically similar transaction described in section 3.04(4) of this notice.

(3) Certain § 317(b) redemptions not repurchases. This section 3.04(3) provides an exclusive list of transactions that are § 317(b) redemptions but are not repurchases.

(a) Section 304(a)(1) transactions.

(i) Rule regarding deemed distributions. If § 304(a)(1) applies to an acquisition of stock by an acquiring corporation (within the meaning of § 304(a)(1)), the acquiring corporation's deemed distribution in redemption of its stock (resulting from the application of § 304(a)(1)) is not a repurchase.

(ii) Scope of rule. The rule described in section 3.04(3)(a)(i) of this notice applies to a transaction described in that section regardless of whether § 302(a) or (d) applies to the acquiring corporation's deemed distribution in redemption of its stock.

(iii) Rule regarding deemed issuances. For the rule addressing the treatment of any stock deemed to be issued by the acquiring corporation as a result of the application of § 304(a)(1), see section 3.08(4)(e) of this notice.

(b) Payment by covered corporation of cash in lieu of fractional shares. A payment by a covered corporation of cash in lieu of a fractional share is not a repurchase if--

(i) the payment is carried out as part of a transaction that qualifies as a reorganization under § 368(a) or as a distribution to which § 355 applies, or pursuant to the settlement of an option or similar financial instrument (for example, a convertible bond or convertible preferred share),

(ii) the cash received by the shareholder entitled to the fractional share is not separately bargained-for consideration (that is, the cash paid by the covered corporation in lieu of the fractional share represents a mere rounding off of the shares issued in the exchange or settlement),

(iii) the payment is carried out solely for administrative convenience (and, therefore, solely for non-tax reasons), and

(iv) the amount of cash paid to the shareholder in lieu of a fractional share does not exceed the value of one full share of the stock of the covered corporation.

(4) Economically similar transactions. Section 3.04(4)(a) of this notice provides an exclusive list of transactions that are economically similar transactions. Section 3.04(4)(b) of this notice provides a nonexclusive list of specific transactions that are not economically similar transactions.

(a) Transactions that are economically similar transactions.

(i) Acquisitive reorganizations. In the case of an acquisition of a target corporation that is a covered corporation or a covered surrogate foreign corporation (as appropriate) in an acquisitive reorganization, the exchange by the target corporation shareholders of their target corporation stock as part of the acquisitive reorganization is a repurchase by the target corporation.

(ii) Reorganizations under § 368(a)(1)(E). In the case of a recapitalization of a covered corporation or a covered surrogate foreign corporation (each, a recapitalizing corporation) that qualifies as a reorganization under § 368(a)(1)(E) (E reorganization), an exchange by the recapitalizing corporation shareholders of their recapitalizing corporation stock as part of the E reorganization is a repurchase by the recapitalizing corporation.

(iii) Reorganizations under § 368(a)(1)(F). In the case of a transaction that qualifies as a reorganization under § 368(a)(1)(F) (F reorganization) in which the transferor corporation (as defined in § 1.368-2(m)(1)) is a covered corporation or a covered surrogate foreign corporation (as appropriate), the exchange by the transferor corporation shareholders of their transferor corporation stock as part of the

F reorganization is a repurchase by the transferor corporation.

(iv) Split-offs. In the case of a split-off by a distributing corporation that is a covered corporation or a covered surrogate foreign corporation (as appropriate), the exchange by the distributing corporation shareholders of their distributing corporation stock for controlled corporation stock and, if applicable, other property (including securities of the controlled corporation) or money is a repurchase by the distributing corporation.

(v) Complete liquidations to which both §§ 331 and 332 apply. In the case of a complete liquidation of a covered corporation or a covered surrogate foreign corporation (as appropriate) to which §§ 331 and 332(a) respectively apply to component distributions of the complete liquidation--

(A) each distribution to which § 331 applies is a repurchase by the covered corporation or the covered surrogate foreign corporation, and

(B) the distribution to which § 332(a) applies is not a repurchase by the covered corporation or the covered surrogate foreign corporation. See section 3.04(4)(b)(i) of this notice.

(b) Transactions that are not economically similar transactions.

(i) Complete liquidations.

(A) General rule. Except as provided in section 3.04(4)(a)(v) of this notice, a distribution in complete liquidation of a covered corporation or a covered surrogate foreign corporation (as appropriate) to which § 331 or § 332(a) applies is not a repurchase by the covered corporation or the covered surrogate foreign corporation.

(B) Distributions during taxable year of complete liquidation and dissolution.

If a covered corporation or a covered surrogate foreign corporation (as appropriate) completely liquidates and dissolves (within the meaning of § 1.331-1(d)(1)(ii)) during a taxable year (that is, has a final distribution in complete liquidation to which § 331 applies during that taxable year), no distribution by that covered corporation or covered surrogate foreign corporation during that taxable year is a repurchase.

(ii) Divisive transactions under § 355 other than split-offs. A distribution by a distributing corporation of stock of a controlled corporation qualifying under § 355 that is not a split-off is not a repurchase.

.05 Acquisitions by Specified Affiliates, Applicable Specified Affiliates, or Covered Surrogate Foreign Corporations.

(1) Acquisitions of stock of a covered corporation by a specified affiliate. If a specified affiliate of a covered corporation acquires stock of the covered corporation from a person that is not the covered corporation or another specified affiliate of the covered corporation, the acquisition is treated as a repurchase of the stock of the covered corporation by the covered corporation.

(2) Certain acquisitions of foreign corporation stock.

(a) Acquisitions of applicable foreign corporation stock.

(i) In general. If an applicable specified affiliate of an applicable foreign corporation acquires stock of the applicable foreign corporation from a person that is not the applicable foreign corporation or another specified affiliate of such applicable foreign corporation--

(A) the applicable specified affiliate is treated as a covered corporation with regard to the acquisition, and

(B) the acquisition is treated as a repurchase of stock of a covered

corporation by the covered corporation.

(ii) Acquisitions and repurchases funded by applicable specified affiliates.

(A) General rule. For purposes of applying § 4501(d)(1), an applicable specified affiliate is treated as acquiring stock of an applicable foreign corporation if the applicable specified affiliate funds by any means (including through distributions, debt, or capital contributions) the acquisition or repurchase of stock of the applicable foreign corporation by the applicable foreign corporation or a specified affiliate that is not also an applicable specified affiliate, and such funding is undertaken for a principal purpose of avoiding the stock repurchase excise tax. For purposes of the preceding sentence, the fair market value of stock treated as acquired by the applicable specified affiliate is limited to the amount funded by the applicable specified affiliate.

(B) Per se rule. A principal purpose described in section 3.05(2)(a)(ii)(A) of this notice is deemed to exist if the applicable specified affiliate funds by any means, other than through distributions, the applicable foreign corporation or a specified affiliate that is not also an applicable specified affiliate, and such funded entity acquires or repurchases stock of the applicable foreign corporation within two years of the funding.

(b) Repurchases or acquisitions of covered surrogate foreign corporation stock.

If a covered surrogate foreign corporation repurchases its stock, or if a specified affiliate of the covered surrogate foreign corporation acquires stock of the covered surrogate foreign corporation--

(i) the expatriated entity with respect to the covered surrogate foreign corporation is treated as a covered corporation with respect to the repurchase or acquisition, and

(ii) the repurchase or acquisition is treated as a repurchase of stock of a covered corporation by the covered corporation.

.06 Timing and Fair Market Value of Repurchased Stock.

(1) Time of repurchase.

(a) General rule. Stock is treated as repurchased at the time at which, for Federal income tax purposes, ownership of the stock transfers to the covered corporation or to the applicable acquiror (as appropriate).

(b) Repurchase pursuant to certain economically similar transactions. Stock repurchased in an economically similar transaction described in section 3.04(4)(a) of this notice is treated as repurchased at the time the shareholders of the covered corporation or covered surrogate foreign corporation (as appropriate) exchange their stock in the covered corporation or covered surrogate foreign corporation.

(2) Fair market value of repurchased stock. The fair market value of repurchased stock is the market price of the stock on the date the stock is repurchased. That is, if the price at which the repurchased stock is purchased differs from the market price of the stock on the date the stock is repurchased, the fair market value of the stock is the market price on the date the stock is repurchased.

(a) Stock traded on an established securities market. If repurchased stock is traded on an established securities market, the taxpayer must determine the market price of the repurchased stock by applying one of the methods provided in section 3.06(2)(a)(i) of this notice. For purposes of this section 3.06(2), repurchased stock is treated as traded on an established securities market if any stock of the same class and issue of stock is so traded, regardless of whether the shares repurchased are so traded.

(i) Acceptable methods. The following are acceptable methods for determining the market price of repurchased stock traded on an established securities market:

(A) The daily volume-weighted average price as determined on the date the stock is repurchased;

(B) The closing price on the date the stock is repurchased;

(C) The average of the high and low prices on the date the stock is repurchased; or

(D) The trading price at the time the stock is repurchased.

(ii) Date of repurchase not a trading day. For purposes of each method provided in section 3.06(2)(a)(i) of this notice, if the date the stock is repurchased is not a trading day, the date on which the market price is determined is the immediately preceding trading day.

(iii) Consistency requirement. The market price of repurchased stock that is traded on an established securities market must be determined by consistently applying one (but not more than one) of the methods provided in section 3.06(2)(a)(i) of this notice to all repurchases throughout the covered corporation's taxable year. That same method also must be consistently applied to determine the market price of all stock issued under the netting rule throughout the covered corporation's taxable year, other than stock issued to employees. See section 3.08(5)(a)(iii) of this notice.

(b) Stock not traded on an established securities market. If repurchased stock is not traded on an established securities market, the market price of the stock is determined as of the date of repurchase under the principles of § 1.409A-1(b)(5)(iv)(B)(1).

(c) Market price of stock denominated in non-U.S. currency. The market price of any stock that is denominated in a currency other than the United States dollar is converted into United States dollars at the spot rate (as defined in § 1.988-1(d)(1)) on the date that the stock is repurchased.

.07 Statutory Exceptions.

(1) Reduction of covered corporation's stock repurchase excise tax base. The fair market value of stock repurchased by a covered corporation in a repurchase described in this section 3.07 is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base. See section 3.03(3)(a)(ii) of this notice.

(2) Qualifying property exception. The fair market value of stock repurchased by a covered corporation in a repurchase described in section 3.07(2)(a) through (d) of this notice is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base to the extent that such repurchase is for property permitted by § 354 or § 355 to be received without the recognition of gain or loss (each, a qualifying property repurchase):

- (a) A repurchase by a target corporation as part of an acquisitive reorganization;
- (b) A repurchase by a covered corporation or a covered surrogate foreign corporation (as appropriate) as part of an E reorganization;
- (c) A repurchase by a transferor corporation as part of an F reorganization; and
- (d) A repurchase by a distributing corporation as part of a split-off (whether or not part of a D reorganization).

(3) Stock contributions to an employer-sponsored retirement plan.

- (a) In general. The fair market value of stock repurchased by a covered

corporation is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base if the stock that is repurchased, or an amount of stock equal to the fair market value of the stock repurchased, is contributed to an employer-sponsored retirement plan.

(b) Classes of stock contributed to an employer-sponsored retirement plan. This section 3.07(3) applies to a covered corporation's contribution to an employer-sponsored retirement plan of a class of stock that is the same class of stock that was repurchased or a different class than the class of stock that was repurchased.

(c) Determination of the amount of the reduction to the stock repurchase excise tax base. The amount of the reduction under section 3.07(3)(a) of this notice is determined as follows:

(i) Same class of stock repurchased and contributed. If a covered corporation repurchases stock and contributes to an employer-sponsored retirement plan stock of the same class, then the amount of the reduction under section 3.07(3)(a) of this notice is equal to the aggregate fair market value of the stock repurchased during the taxable year (as determined under section 3.06(2) of this notice) divided by the number of shares repurchased multiplied by the number of shares contributed, but not in excess of the aggregate fair market value of the stock of the same class that was repurchased during the taxable year.

(ii) Different class of stock repurchased and contributed. If a covered corporation contributes to an employer-sponsored retirement plan stock of a different class than the class of stock that was repurchased, then the amount of the reduction under section 3.07(3)(a) of this notice is equal to the fair market value of the stock at the

time that the stock is contributed to the employer-sponsored retirement plan. However, the amount of the reduction under section 3.07(3)(a) of this notice must not exceed the aggregate fair market value of stock of a different class repurchased during the taxable year.

(d) Timing of contributions. The reduction in the stock repurchase excise tax base, in accordance with section 3.07(3)(a) of this notice, for a taxable year applies for stock contributions made by a covered corporation to an employer-sponsored retirement plan during or on account of the covered corporation's taxable year. For purposes of the reduction in the stock repurchase excise tax base, a covered corporation may treat stock contributions to an employer-sponsored retirement plan as having been contributed in the prior taxable year if contributed by the filing deadline for the IRS Form 720, Quarterly Federal Excise Tax Return that is due for the first full quarter after the close of the taxpayer's taxable year (see section 4 of this notice) and on account of that taxable year within the meaning of § 404(a)(6). However, stock contributions that are treated as having been contributed in the taxable year to which the Form 720 applies cannot be treated as having been contributed for any other taxable year.

(e) Interaction with netting rule. Stock contributions to an employer-sponsored retirement plan under this section 3.07(3) are not treated as issued or provided to employees of the covered corporation or a specified affiliate under section 3.08 of this notice.

(4) Repurchases by a dealer in securities in the ordinary course of business.

(a) In general. Subject to section 3.07(4)(b) of this notice, the fair market value

of stock repurchased by a covered corporation or an applicable acquiror (as appropriate) that is a dealer in securities (within the meaning of § 475(c)(1)) is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base to the extent the stock is acquired in the ordinary course of the dealer's business of dealing in securities.

(b) Applicability. The reduction described in section 3.07(4)(a) of this notice applies solely to the extent that--

(i) the dealer accounts for the stock as securities held primarily for sale to customers in the dealer's ordinary course of business;

(ii) the dealer disposes of the stock within a period of time that is consistent with the holding of the stock for sale to customers in the dealer's ordinary course of business, taking into account the terms of the stock and the conditions and practices prevailing in the markets for similar stock during the period in which the stock is held; and

(iii) the dealer (if it is a covered corporation) does not sell or otherwise transfer the stock to an applicable acquiror, or the dealer (if it is an applicable acquiror) does not sell or otherwise transfer the stock to the covered corporation or another applicable acquiror, other than in a sale or transfer to a dealer that also satisfies the requirements of this section 3.07(4).

(5) Repurchases by a RIC or REIT. A repurchase by a covered corporation that is a RIC or a REIT is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base.

(6) Repurchase treated as a dividend.

(a) General rule. In accordance with section 3.07(6)(b) of this notice, the fair market value of stock repurchased by a covered corporation is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base to the extent the repurchase is treated as a distribution of a dividend under § 301(c)(1) or § 356(a)(2).

(b) Rebuttable presumption of no dividend equivalence.

(i) Presumption. Subject to section 3.07(6)(b)(ii) of this notice, a repurchase to which § 302 or § 356(a) applies is presumed to be subject to § 302(a) or § 356(a)(1), respectively (and, therefore, is presumed ineligible for the exception in section 3.07(6)(a) of this notice).

(ii) Condition to rebut presumption. A covered corporation may rebut the presumption described in section 3.07(6)(b)(i) of this notice with regard to a specific shareholder solely by establishing with sufficient evidence that the shareholder treats the repurchase as a dividend on the shareholder's Federal income tax return.

(iii) Sufficient evidence requirement. A covered corporation provides sufficient evidence under section 3.07(6)(b)(ii) of this notice to establish that the shareholder treats the repurchase as a dividend on the shareholder's Federal income tax return if the covered corporation--

(A) provides information reporting, as applicable, to the redeemed shareholder, providing that the repurchase constitutes a dividend;

(B) obtains certification from the shareholder that the repurchase constitutes a redemption treated as a § 301 distribution under § 302(d), or that the repurchase has the effect of the distribution of a dividend under § 356(a)(2), including evidence that applicable withholding occurred if required;

(C) has no knowledge of facts that would indicate that the certification is incorrect; and

(D) demonstrates that the covered corporation has sufficient earnings and profits to treat either the § 301 distribution, or the receipt of money or other property under § 356, as a dividend.

.08 Netting Rule.

(1) In general. The stock repurchase excise tax base with regard to a taxable year of a covered corporation is reduced by the aggregate fair market value of stock of the covered corporation--

(a) issued or provided to employees of the covered corporation or employees of a specified affiliate during the covered corporation's taxable year, and

(b) issued by the covered corporation to persons other than persons described in section 3.08(1)(a) of this notice during the covered corporation's taxable year.

(2) Time of issuance. Stock is treated as issued or provided by a covered corporation at the time at which, for Federal income tax purposes, ownership of the stock transfers to the recipient. See section 3.08(3)(b) of this notice for additional rules regarding the time when stock is considered issued or provided to an employee.

(3) Stock issued or provided to employees.

(a) Arrangements that provide stock to an employee.

(i) In general. This section 3.08(3) applies to any arrangement under which stock is issued or provided to an employee of a covered corporation or of a specified affiliate as compensation for services performed as an employee. Such arrangements include transfers of stock in connection with the performance of services described in

§ 83, including pursuant to a nonqualified stock option, or pursuant to a stock option described in § 421.

(ii) Stock withholding. Stock withheld by a covered corporation or a specified affiliate to satisfy an employer's income tax withholding obligation described in § 3402, or an employer's withholding obligation described in § 3102, is not treated as stock issued or provided to an employee by the covered corporation or specified affiliate.

(iii) Net exercise. Stock withheld by a covered corporation or a specified affiliate to satisfy the exercise price of a stock option is not treated as stock issued or provided by the covered corporation or specified affiliate to an employee.

(iv) Sell-to-cover transactions. If a third party advances to an employee an amount equal to the exercise price of a stock option or pays the exercise price of the stock option on behalf of the employee, any stock transferred by the covered corporation or specified affiliate to the employee or the third party upon exercise of the option is treated as stock issued or provided to the employee. Similarly, if a third party advances to the employee an amount equal to the withholding obligation described in § 3402 or § 3102 or pays an amount equal to that withholding obligation to the covered corporation or specified affiliate on behalf of an employee, any stock transferred by the covered corporation or specified affiliate to the employee or the third party is treated as stock issued or provided to the employee.

(b) Time when stock is considered issued or provided to an employee.

(i) In general. Stock is issued or provided by a covered corporation or a specified affiliate to an employee as of the date that the employee is treated as the beneficial owner of the stock for Federal income tax purposes. In general, an employee

is treated as the beneficial owner of the stock when the stock is transferred by the covered corporation (or the specified affiliate) to the employee and the stock is substantially vested within the meaning of § 1.83-1(b). Thus, stock transferred pursuant to a vested stock award or restricted stock unit is issued or provided when the covered corporation or specified affiliate initiates payment of the stock. Stock transferred that is not substantially vested within the meaning of § 1.83-3(b) is not issued or provided to the employee until it vests, except as provided in section 3.08(3)(b)(iii) of this notice.

(ii) Stock options and stock appreciation rights. Stock transferred to an employee pursuant to an option described in § 1.83-7 or § 421 or a stock appreciation right is issued or provided to the employee as of the date the employee exercises the option or stock appreciation right.

(iii) Stock on which a § 83(b) election is made. Stock that is transferred to an employee that is not substantially vested within the meaning of § 1.83-3(b) but on which the employee makes a valid election under § 83(b) is treated as issued or provided to the employee as of the transfer date.

(c) Fair market value of stock issued or provided to an employee. The fair market value of stock issued or provided to an employee is the fair market value of the stock, as determined under § 83, as of the date the stock is issued or provided to the employee, as described in section 3.08(3)(b) of this notice.

(4) Issuances that are disregarded for purposes of applying the netting rule.

(a) Overview. This section 3.08(4) lists the sole circumstances in which an issuance of stock is disregarded for purposes of the netting rule.

(b) Distributions by a covered corporation of its own stock. Stock of a covered corporation distributed by the covered corporation to its shareholders with respect to its stock is not treated as issued.

(c) Issuances to a specified affiliate. Stock issued by a covered corporation to a specified affiliate of the covered corporation is not treated as issued.

(d) No double benefit for issuances that are part of a transaction to which the qualifying property exception applies. Stock issued as part of a transaction qualifying as a reorganization under § 368(a) or a distribution under § 355 is not treated as issued by the issuing corporation if--

(i) the stock constitutes property permitted to be received under § 354 or § 355 without the recognition of gain,

(ii) the stock is used by a covered corporation to repurchase its stock in a transaction that is a repurchase under section 3.04(4)(a)(i), (ii), (iii), or (iv) of this notice, and

(iii) the repurchase is not included in the covered corporation's stock repurchase excise tax base because that repurchase is a qualifying property repurchase.

(e) Deemed issuances under § 304(a)(1). Any stock treated as issued by the acquiring corporation by reason of the application of § 304(a)(1) to a transaction (as more fully described in section 3.04(3)(a) of this notice) is not treated as issued.

(f) Deemed issuance of a fractional share. Any fractional share deemed to be issued for Federal income tax purposes (in a payment described in section 3.04(3)(b) of this notice) is not treated as issued.

(g) Issuance by a covered corporation that is a dealer in securities. Any stock issued by a covered corporation that is a dealer in securities is not treated as issued to the extent the stock is issued, or otherwise is used to satisfy obligations to customers arising, in the ordinary course of the dealer's (or an applicable acquiror's) business of dealing in securities.

(h) Issuance by the target corporation in a transaction qualifying under § 368(a)(2)(E). Any target corporation stock that is issued by the target corporation to the merged corporation (within the meaning of § 368(a)(2)(E)) in exchange for consideration that includes the stock of the controlling corporation (within the meaning of § 368(a)(2)(E)) in a transaction qualifying as an A reorganization by reason of § 368(a)(2)(E) is not treated as issued.

(5) Fair market value of issued stock. With respect to the issuance of stock that is not subject to section 3.08(3)(c) of this notice, the fair market value of stock issued is the market price of the stock on the date the stock is issued.

(a) Stock traded on an established securities market. If stock issued is traded on an established securities market, the taxpayer must determine the market price of the issued stock by applying one of the methods provided in section 3.08(5)(a)(i) of this notice.

(i) Acceptable methods. The following are acceptable methods for determining the market price of stock issued that is traded on an established securities market:

(A) The daily volume-weighted average price as determined on the date the stock is issued;

(B) The closing price on the date the stock is issued;

(C) The average of the high and low prices on the date the stock is issued; or

(D) The trading price at the time the stock is issued.

(ii) Date of issuance not a trading day. For purposes of each method provided in section 3.08(5)(a)(i) of this notice, if the date the stock is issued is not a trading day, the date on which the market price is determined is the immediately preceding trading day.

(iii) Consistency requirement. The market price of stock issued that is traded on an established securities market must be determined by consistently applying one (but not more than one) of the methods provided in section 3.08(5)(a)(i) of this notice to all stock issued throughout the covered corporation's taxable year. That same method also must be consistently applied to determine the market price of all stock repurchased throughout the covered corporation's taxable year. See section 3.06(2)(a)(iii) of this notice.

(b) Stock not traded on an established securities market. If stock issued is not traded on an established securities market, the market price of the stock is determined as of the date the stock is issued under the principles of § 1.409A-1(b)(5)(iv)(B)(1).

(c) Market price of stock denominated in non-U.S. currency. The market price of any stock that is denominated in a currency other than the United States dollar is converted into United States dollars at the spot rate (as defined in § 1.988-1(d)(1)) on the date that the stock is issued.

.09 Examples. The following examples illustrate the application of this section 3. For purposes of the following examples, unless otherwise stated: Each of Corporation X and unrelated Target is a covered corporation that is organized in State A

and is a calendar-year taxpayer; Corporation X's and Target's only outstanding stock is a single class of common stock that is traded on an established securities market; any shareholder whose stock is redeemed in a § 317(b) redemption qualifies for sale or exchange treatment under § 302(a); and the receipt of money or other property by any shareholder whose stock is repurchased in an acquisitive reorganization or an E reorganization is not treated as having the effect of a distribution of a dividend under § 356(a)(2).

(1) Example 1: Redemption of preferred stock--(a) Facts. Corporation X has outstanding common stock that is traded on an established securities market, as well as mandatorily redeemable preferred stock that is not traded on an established securities market. The preferred stock is stock for Federal tax purposes. On January 1, 2023, Corporation X redeems the preferred stock pursuant to its terms.

(b) Analysis. The redemption by Corporation X of its mandatorily redeemable preferred stock is a repurchase because (i) Corporation X redeemed an instrument that is stock for Federal tax purposes (that is, mandatorily redeemable preferred stock issued by Corporation X), and (ii) the redemption by Corporation X is a § 317(b) redemption. See section 3.04(2)(a) of this notice.

(2) Example 2: Valuation of repurchase--(a) Facts. On April 15, 2023, when Corporation X's common stock is trading at \$0.70x per share, Corporation X purchases 50x shares of its common stock for \$35x from one of its shareholders.

(b) Analysis. Corporation X's purchase of 50x shares of Corporation X common stock is a repurchase because the transaction is a § 317(b) redemption. See section 3.04(2)(a) of this notice. For purposes of calculating Corporation X's stock repurchase excise tax base, the fair market value of the 50x shares of common stock repurchased on April 15, 2023, is the aggregate market price of those shares on that repurchase date, or \$35x ( $\$0.70x \text{ per share} \times 50x \text{ shares} = \$35x$ ). See section 3.06(2)(a) of this notice. Accordingly, the repurchase by Corporation X increases its stock repurchase excise tax base for the 2023 taxable year by \$35x.

(c) Application of netting rule. The facts are the same as in section 3.09(2)(a) of this notice (this Example 2), except that, on August 1, 2023, Corporation X issues 20x shares of its common stock to an unrelated party, at which time ownership of the stock transfers to the unrelated party for Federal income tax purposes. On that date, the common stock of Corporation X is trading at \$0.50x per share. For purposes of calculating Corporation X's stock repurchase excise tax base, Corporation X is treated as issuing its 20x shares of common stock on August 1, 2023 (the date on which

ownership of the stock transfers to the recipient for Federal income tax purposes). See section 3.08(2) of this notice. In addition, the fair market value of that issued stock is its aggregate market price on the date of issuance by Corporation X, or \$50x (\$0.50x per share x 20x shares = \$10x). See sections 3.03(3)(a) and 3.08(5)(a) of this notice. Accordingly, the net increase in Corporation X's stock repurchase excise tax base for its 2023 taxable year is \$25x (\$35x repurchase - \$10x issuance = \$25x). See section 3.08(1) of this notice.

(3) Example 3: Acquisition partially funded by the target corporation--(a) Facts. On May 30, 2023, Corporation X acquires all of Target's outstanding stock (Target Stock Acquisition). To effectuate the Target Stock Acquisition, Corporation X causes the following transaction steps to occur: (i) Corporation X contributes \$40x to a newly formed corporation (Merger Sub); and (ii) Merger Sub merges into Target, with Target surviving the merger (Subsidiary Merger). At the time of the Subsidiary Merger, the stock of Target has an aggregate fair market value of \$100x. In the Subsidiary Merger, Target's shareholders exchange all their Target stock for \$100x of cash, of which \$60x is funded by Target and \$40x is funded by Corporation X. For Federal income tax purposes, the transitory existence of Merger Sub is disregarded, and Target is treated as if Target redeemed 60% of its outstanding stock for \$60x as part of the Subsidiary Merger. (This treatment results from the fact that Target funded \$60x of the consideration received by Target's shareholders in exchange for their Target stock.)

(b) Analysis. Target's redemption of 60% of its outstanding stock is a § 317(b) redemption. In addition, Target's redemption is not included in the exclusive list of transactions under section 3.04(3) of this notice that are treated as a § 317(b) redemption but are not a repurchase. Accordingly, the redemption is a repurchase. See section 3.04(2)(a) of this notice. Therefore, as a result of the Target Stock Acquisition, Target's stock repurchase excise tax base for its 2023 taxable year is increased by \$60x. See section 3.03(3)(a) of this notice.

(4) Example 4: Leveraged buyout--(a) Facts. The facts are the same as in section 3.09(3)(a) of this notice (Example 3), except that \$60x of the consideration received by Target's shareholders in exchange for their Target stock is funded by a \$60x loan to Merger Sub from an unrelated lender (Loan). In the Subsidiary Merger, Target assumes Merger Sub's obligation on the \$60x Loan. As a result of the disregarded transitory existence of Merger Sub, the Target Stock Acquisition is treated for Federal income tax purposes as though Target (i) directly borrowed \$60x from the unrelated lender, and then (ii) used the Loan proceeds to redeem \$60x of its stock from the Target shareholders.

(b) Analysis. The analysis and Federal income tax consequences are the same as in Example 3.

(5) Example 5: Pro rata stock split--(a) Facts. On October 1, 2023, Corporation X distributes three shares of Corporation X common stock with respect to each existing share of its outstanding common stock (Corporation X Stock Split).

(b) Analysis. The common stock distributed by Corporation X to its shareholders through the Corporation X Stock Split is not an issuance because Corporation X distributed the stock to its shareholders with respect to its outstanding common stock. See section 3.08(4)(b) of this notice. Therefore, the stock distributed by Corporation X is not taken into account for purposes of the netting rule. See section 3.08(4)(a) of this notice (disregarding such types of issuances). Accordingly, Corporation X's stock repurchase excise tax base for its 2023 taxable year is not reduced by the Corporation X Stock Split.

(6) Example 6: Acquisition of a target corporation in an acquisitive reorganization--  
(a) Facts. On October 1, 2023, Target merges into Corporation X (Target Merger). The Target Merger qualifies as an A reorganization. On the date of the Target Merger, the fair market value of Target's outstanding stock is \$100x. In the Target Merger, Target's shareholders exchange \$60x of their Target stock for Corporation X common stock, and \$40x of their Target stock for \$40x of cash.

(b) Analysis regarding repurchase treatment, timing, and amount. The exchange by the Target shareholders of their Target stock for the consideration received in the Target Merger is a repurchase by Target because that exchange is an economically similar transaction. See section 3.04(4)(a)(i) of this notice. This repurchase occurs on October 1, 2023 (that is, the date on which the Target shareholders exchange their Target shares as part of the Target Merger). See section 3.06(1)(b) of this notice. The amount of this repurchase by Target is \$100x, which equals the aggregate fair market value of the Target stock at the time that stock is exchanged by the Target shareholders as part of the Target Merger (that is, October 1, 2023). See section 3.06(2)(a) of this notice.

(c) Analysis regarding impact of Target Merger on Target's stock repurchase excise tax base. Target's stock repurchase excise tax base for its 2023 taxable year is initially increased by \$100x on account of the Target Merger. Under the qualifying property exception, the fair market value of the Target stock exchanged by the Target shareholders for Corporation X stock in the Target Merger (that is, \$60x of Target stock) is a qualifying property repurchase that reduces Target's stock repurchase excise tax base. See sections 3.03(3)(a) and 3.07(2)(a) of this notice (regarding acquisitive reorganizations). However, the fair market value of the Target stock exchanged by the Target shareholders for the \$40x of cash in the Target Merger does not qualify for the qualifying property exception. See sections 3.03(3)(a) and 3.07(2)(a) of this notice. Therefore, Target's stock repurchase excise tax base for its 2023 taxable year is increased by \$40x (\$100x repurchase - \$60x exception = \$40x).

(d) Analysis regarding Corporation X's stock repurchase excise tax base. Corporation X's transfer of Corporation X stock to Target in the Target Merger is not an issuance for purposes of the netting rule because Corporation X's issuance of that stock is part of a transaction to which the qualifying property exception applies. See generally section 3.08(4)(d) of this notice. Specifically, Corporation X's transfer of Corporation X

stock to Target is not an issuance for purposes of the netting rule because (i) the Corporation X stock constitutes property permitted to be received under § 354 without the recognition of gain, (ii) the Corporation X stock is used by a covered corporation (that is, Target) to repurchase its stock in a transaction that is a repurchase under section 3.04(4)(a)(i) of this notice, and (iii) the repurchase by Target is not included in Target's stock repurchase excise tax base because it is a qualifying property repurchase. See section 3.08(4)(d) of this notice. Therefore, Corporation X does not take into account any of the \$60x of its stock transferred to Target in the Target Merger to reduce its stock repurchase excise tax base for Corporation X's 2023 taxable year. See section 3.08(4)(a) of this notice (disregarding such types of issuances).

(7) Example 7: Cash paid in lieu of fractional shares--(a) Facts. The facts are the same as in section 3.09(6)(a) of this notice (Example 6). Additionally, the exchange ratio in the Target Merger is 1.25 shares of Corporation X stock for each share of Target stock. As part of the Target Merger, Shareholder A, who owns two shares of Target stock, receives two shares of Corporation X stock as well as additional cash in lieu of a 0.5 fractional share in Corporation X. The payment by Corporation X to Shareholder A of cash in lieu of a fractional share of Corporation X stock (i) was not separately bargained-for consideration (that is, the cash paid by Corporation X in lieu of a fractional Corporation X share represented a mere rounding off of the two Corporation X shares issued in the exchange), (ii) was carried out solely due to administrative necessity (and therefore, solely for non-tax reasons), and (iii) was for an amount of cash with regard to a fractional share of Corporation X stock that did not exceed the value of one share.

(b) Analysis. The payment by Corporation X of cash to Shareholder A in lieu of a fractional share of Corporation X stock is treated for Federal income tax purposes as though the 0.5 fractional share were (i) distributed by Corporation X to Shareholder A as part of the Target Merger, and then (ii) redeemed by Corporation X for cash. Corporation X's deemed redemption of the fractional share treated as received by Shareholder A in the Target Merger is not a repurchase because, in addition to the facts described in section 3.09(7)(a) of this notice (this Example 7), the payment of cash by Corporation X is carried out as part of a transaction that qualifies as an acquisitive reorganization (that is, the Target Merger). See section 3.04(3)(b) of this notice. In addition, Corporation X's deemed issuance of the fractional share to Shareholder A is not taken into account for purposes of the netting rule. See section 3.08(4)(f) of this notice.

(8) Example 8: Two-step asset acquisition--(a) Facts. Corporation X acquires the assets of Target through the following transactions, each of which occurs pursuant to an integrated plan to effect the acquisition. First, on September 30, 2023, Corporation X contributes \$60x of Corporation X stock and \$40x of cash to a newly formed subsidiary (Merger Sub). Second, on October 1, 2023, Merger Sub merges into Target in a statutory merger, with Target surviving (Reverse Merger). Third, on October 15, 2023, Target merges into Corporation X in a statutory merger (Upstream Merger). On the date of the Reverse Merger, the fair market value of Target's outstanding stock is \$100x. In the Reverse Merger, \$60x of Target stock is exchanged for Corporation X

stock, and \$40x of Target stock is exchanged for \$40x of cash. For Federal income tax purposes, the Reverse Merger and the Upstream Merger are integrated into a single statutory merger of Target into Acquiring that qualifies as an A reorganization.

(b) Analysis. The analysis is the same as in section 3.09(6) of this notice (Example 6).

(9) Example 9: E reorganization--(a) Facts. On November 1, 2023, Corporation X issues new common stock, with an aggregate fair market value of \$100x (New Common Stock), to Corporation X's shareholders in exchange for their outstanding common stock in Corporation X (Old Common Stock). The exchange (Recapitalization) qualifies as an E reorganization. At the time of the Recapitalization, the fair market value of Corporation X's outstanding common stock is \$100x.

(b) Analysis regarding repurchase treatment, timing, and amount. The exchange by the Corporation X shareholders of their Corporation X stock (that is, the Old Common Stock) for New Common Stock is a repurchase by Corporation X because that exchange is an economically similar transaction. See section 3.04(4)(a)(ii) of this notice. This repurchase occurs on November 1, 2023 (that is, the date on which the Target shareholders exchange their Old Common Stock as part of the Recapitalization). See section 3.06(1)(b) of this notice. The amount of this repurchase by Corporation X is \$100x, which equals the aggregate fair market value of the Old Common Stock at the time that stock is exchanged by the Corporation X shareholders as part of the Recapitalization (that is, November 1, 2023). See section 3.06(2) of this notice.

(c) Analysis regarding impact of repurchase of Old Common Stock on Corporation X's stock repurchase excise tax base. Corporation X's stock repurchase excise tax base for its 2023 taxable year is initially increased by \$100x on account of the Recapitalization. Under the qualifying property exception, the fair market value of the Old Common Stock exchanged by the Corporation X shareholders for New Common Stock in the Recapitalization (that is, \$100x of Old Common Stock) is a qualifying property repurchase that reduces Corporation X's stock repurchase excise tax base. See sections 3.03(3)(a) and 3.07(2)(b) of this notice (regarding E reorganizations). Consequently, because all the Old Common Stock was exchanged by the Corporation X shareholders for New Common Stock, the Recapitalization does not increase Corporation X's stock repurchase excise tax base for its 2023 taxable year (\$100x repurchase - \$100x exception = \$0).

(d) Analysis regarding impact of issuance of New Common Stock on Corporation X's stock repurchase excise tax base. Corporation X's issuance of the New Common Stock is not an issuance for purposes of the netting rule because Corporation X's issuance of that stock is part of a transaction to which the qualifying property exception applies. See generally section 3.08(4)(d) of this notice. Specifically, Corporation X's issuance of its New Common Stock to Corporation X's shareholders is not an issuance for purposes of the netting rule because (i) the New Common Stock constitutes property permitted to be received under § 354 without the recognition of gain, (ii) the New

Common Stock is used by a covered corporation (that is, Corporation X) to repurchase its stock in a transaction that is a repurchase under section 3.04(4)(a)(ii) of this notice, and (iii) the repurchase by Corporation X is not included in Corporation X's stock repurchase excise tax base for its 2023 taxable year because it is a qualifying property repurchase. See section 3.08(4)(d) of this notice. Therefore, Corporation X does not take into account any of the \$100x of New Common Stock issued to Corporation X's shareholders to reduce its stock repurchase excise tax base for Corporation X's 2023 taxable year. See section 3.08(4)(a) of this notice (disregarding such types of issuances).

(10) Example 10: F reorganization--(a) Facts. In order to reorganize under the laws of State B, on November 15, 2023, Corporation X forms Corporation Y, a State B corporation, and merges into Corporation Y (Corporation X Merger). The Corporation X Merger qualifies as an F Reorganization. On the date of the Corporation X Merger, the fair market value of Corporation X's stock is \$100x. Shareholder A owns \$25x of Corporation X's outstanding stock. In the Corporation X Merger, Shareholder A transfers its \$25x of Corporation X stock to Corporation X in exchange for \$25x of cash, which is treated for Federal income tax purposes as an unrelated, separate transaction from the F Reorganization to which § 302(a) applies (Shareholder A Redemption). See § 1.368-2(m)(3)(iii). The remaining Corporation X shareholders exchange their Corporation X stock for Corporation Y stock as part of the F Reorganization.

(b) Analysis regarding repurchase treatment, timing, and amount. The exchange by Shareholder A of their Corporation X stock is a repurchase by Corporation X in the amount of \$25x because it is a § 317(b) redemption. See section 3.04(2)(a) of this notice. In addition, the exchange by Corporation X's other shareholders of their Corporation X stock for Corporation Y stock is a repurchase by Corporation X in the amount of \$75x because that exchange is an economically similar transaction. See section 3.04(4)(a)(iii) of this notice. These repurchases occur on November 15, 2023 (that is, the date on which the Corporation X shareholders transfer their Corporation X stock to Corporation X as part of the Corporation X Merger). See section 3.06(1)(a) and (b) of this notice. The total amount of these repurchases by Corporation X is \$100x, which equals the sum of (i) the fair market value of the Corporation X stock redeemed in the Shareholder A Redemption on the date of the redemption, and (ii) the aggregate fair market value of the Corporation X stock at the time that stock is exchanged by the Corporation X shareholders as part of the F Reorganization (that is, November 15, 2023). See section 3.06(2)(a) of this notice.

(c) Analysis regarding impact of Shareholder A Redemption and F Reorganization on Corporation X's stock repurchase excise tax base. Corporation X's stock repurchase excise tax base for its 2023 taxable year is initially increased by \$100x on account of the Shareholder A Redemption and F Reorganization. Under the qualifying property exception, the fair market value of the Corporation X stock exchanged by the Corporation X shareholders for Corporation Y stock in the F Reorganization (that is, \$75x of Corporation X stock) is a qualifying property repurchase that reduces Corporation X's stock repurchase excise tax base. See

sections 3.03(3)(a) and 3.07(2)(c) of this notice. Accordingly, Corporation X's stock repurchase excise tax base for its 2023 taxable year is increased by \$25x ( $\$25x \text{ repurchase} + (\$75x \text{ repurchase} - \$75x \text{ exception}) = \$25x$ ).

(d) Analysis regarding Corporation Y's stock repurchase excise tax base. Corporation Y's transfer of the \$75x of its stock to Corporation X in the Corporation X Merger is not an issuance for purposes of the netting rule because Corporation Y's issuance of that stock is part of a transaction to which the qualifying property exception applies. See generally section 3.08(4)(d) of this notice. Specifically, Corporation Y's transfer of its stock to Corporation X is not an issuance for purposes of the netting rule because (i) the Corporation Y stock constitutes property permitted to be received under § 354 without the recognition of gain, (ii) the Corporation Y stock is used by a covered corporation (that is, Corporation X) to repurchase its stock in a transaction that is a repurchase under section 3.04(4)(a)(iii) of this notice, and (iii) the repurchase by Corporation X is not included in Corporation X's stock repurchase excise tax base for its 2023 taxable year because it is a qualifying property repurchase. See section 3.08(4)(d) of this notice. Therefore, Corporation Y does not take into account any of the \$75x of its stock transferred to Corporation X to reduce its stock repurchase excise tax base for Corporation Y's 2023 taxable year. See section 3.08(4)(a) of this notice (disregarding such types of issuances).

(11) Example 11: Section 355 split-off--(a) Facts. A covered corporation (Distributing) has outstanding common stock that is traded on an established securities market. Distributing owns all the stock of a preexisting subsidiary (Controlled). On December 1, 2023, Distributing distributes all the stock of Controlled and \$20x of cash to certain of its shareholders (Participating Shareholders) in exchange for \$100x of Distributing stock in a split-off (Participating Shareholders Split-Off). On the date of the Participating Shareholders Split-Off, the Distributing stock has a fair market value of \$100x.

(b) Analysis regarding repurchase treatment, timing, and amount. The exchange by the Participating Shareholders of their Distributing stock for the \$80x of Controlled stock and \$20x of cash in the Participating Shareholders Split-Off is a repurchase by Distributing because that exchange is an economically similar transaction. See section 3.04(4)(a)(iv) of this notice. This repurchase occurs on December 1, 2023 (that is, the date on which the Participating Shareholders exchange their Distributing shares as part of the Participating Shareholders Split-Off). See section 3.06(1)(b) of this notice. The amount of this repurchase by Distributing is \$100x, which equals the aggregate fair market value of the Distributing stock at the time that stock is exchanged by the Participating Shareholders in the Participating Shareholders Split-Off (that is, December 1, 2023). See section 3.06(2)(a) of this notice.

(c) Analysis regarding impact of Distribution on Distributing's stock repurchase excise tax base. Distributing's stock repurchase excise tax base for its 2023 taxable year is initially \$100x on account of the Participating Shareholders Split-Off. However, under the qualifying property exception, the fair market value of the Distributing stock

exchanged by the Participating Shareholders for Controlled stock in the Participating Shareholders Split-Off (that is, \$80x of Distributing Stock) is a qualifying property repurchase that reduces Distributing's stock repurchase excise tax base. See sections 3.03(3)(a) and 3.07(2)(d) of this notice. However, the fair market value of the Distributing stock exchanged by the Participating Shareholders for the \$20x of cash in the Participating Shareholders Split-Off does not qualify for the qualifying property exception. See sections 3.03(3)(a) and 3.07(2)(d) of this notice. Therefore, Distributing's stock repurchase excise tax base for its 2023 taxable year is increased by \$20x.

(12) Example 12: Section 355 split-off as part of a D reorganization--(a) Facts. The facts are the same as in section 3.09(11)(a) of this notice (Example 11), except that the Participating Shareholders Split-Off is carried out as part of a transaction qualifying as a D reorganization in which Distributing transfers assets to Controlled.

(b) General analysis. Except as provided in section 3.09(12)(c) of this notice, the analysis and Federal income tax consequences are the same as in section 3.09(11) of this notice (Example 11).

(c) Analysis regarding Controlled's stock repurchase excise tax base. Controlled's transfer of the \$80x of its stock to Distributing in the Participating Shareholders Split-Off is not an issuance for purposes of the netting rule because Controlled's issuance of that stock is part of a transaction to which the qualifying property exception applies. See generally section 3.08(4)(d) of this notice. Specifically, Controlled's transfer of its stock to Distributing is not an issuance for purposes of the netting rule because (i) the Controlled stock constitutes property permitted to be received under § 355 without the recognition of gain, (ii) the Controlled stock is used by a covered corporation (that is, Distributing) to repurchase its stock in a transaction that is a repurchase under section 3.04(4)(a)(iv) of this notice, and (iii) the repurchase by Distributing is not included in Distributing's stock repurchase excise tax base for its 2023 taxable year because it is a qualifying property repurchase. See section 3.08(4)(d) of this notice. Therefore, Controlled does not take into account any of the \$80x of its stock transferred to Distributing to reduce Controlled's stock repurchase excise tax base for Controlled's 2023 taxable year. See section 3.08(4)(a) of this notice (disregarding such types of issuances).

(13) Example 13: Spin-off--(a) Facts. The facts are the same as in section 3.09(11)(a) of this notice (Example 11), except that Distributing distributes the Controlled stock to its shareholders pro rata without the shareholders exchanging any Distributing stock (Spin-Off).

(b) Analysis. The Spin-Off is not an economically similar transaction. See section 3.04(4)(b)(ii) of this notice. Therefore, the Spin-Off is not a repurchase by Distributing.

(14) Example 14: Section 355 spin-off as part of a D reorganization--(a) Facts.

The facts are the same as in section 3.09(13)(a) of this notice (Example 13), except that the Spin-Off is carried out as part of a transaction qualifying as a D reorganization.

(b) Analysis. The analysis and Federal income tax consequences are the same as in section 3.09(13) of this notice (Example 13).

(15) Example 15: Repurchase pursuant to an accelerated share repurchase agreement--(a) Facts. On October 10, 2022, Corporation X entered into an accelerated share repurchase (ASR) agreement with an investment bank (Bank). Under the terms of the ASR agreement, Bank agrees to deliver a number of shares of Corporation X stock to Corporation X during the term of the ASR, in an amount determined by reference to the price of Corporation X stock on specified days during the term of the ASR. Pursuant to the terms of the ASR agreement, Corporation X paid Bank a prepayment amount. Bank borrowed 80x shares of Corporation X stock on the open market. Pursuant to the terms of the ASR agreement, Bank then delivered 80x shares of Corporation X stock to Corporation X on October 12, 2022. On final settlement of the ASR, Bank may be required to deliver additional shares of Corporation X stock to Corporation X or Corporation X may be required to make a payment to Bank. The terms of the ASR agreement and the facts and circumstances cause ownership of the 80x shares to transfer from Bank to Corporation X for Federal income tax purposes at the time of delivery (that is, October 12, 2022). The agreement will settle in 2023. On February 1, 2023, Bank delivers an additional 20x shares to Corporation X in final settlement of the ASR agreement. For Federal income tax purposes, ownership of those 20x shares is treated as transferring from Bank to Corporation X at the time of delivery (that is, February 1, 2023).

(b) Analysis. Corporation X is treated as repurchasing 80x shares of Corporation X stock on October 12, 2022 (that is, the date on which ownership of the 80x shares delivered by Bank transferred from Bank to Corporation X for Federal income tax purposes). See section 3.06(1)(a) of this notice. However, the repurchase by Corporation X of the 80x shares of Corporation X stock does not increase Corporation X's stock repurchase excise tax base for its 2023 taxable year because the repurchase occurred prior to January 1, 2023. See section 3.03(3)(b) of this notice; see also § 10201(d) of the IRA (providing that the stock repurchase excise tax applies to repurchases after December 31, 2022). The delivery by Bank to Corporation X of 20x shares of Corporation X stock on February 1, 2023, constitutes a repurchase because, for Federal income tax purposes, the terms of the ASR agreement and the facts and circumstances cause ownership of those shares to transfer from Bank to Corporation X on that date. See section 3.06(1)(a) of this notice. Therefore, the repurchase by Corporation X of those 20x shares of Corporation X stock increases Corporation X's stock repurchase excise tax base for its 2023 taxable year.

(16) Example 16: Distribution in complete liquidation of a covered corporation--(a) Facts. Corporation X adopts a plan of complete liquidation that becomes effective on March 1, 2023 (Corporation X Liquidation). Corporation X has 100x shares of common stock outstanding. On April 1, 2023, all shareholders of Corporation X receive a

liquidating distribution by Corporation X in full payment for their Corporation X common stock. At the time at which Corporation X distributes all of its corporate assets to its shareholders in complete liquidation (that is, April 1, 2023), Corporation X stock trades at \$1x per share. Each distribution in complete liquidation is subject to § 331.

(b) Analysis. A distribution in complete liquidation of a covered corporation (that is, Corporation X) to which § 331 (but not § 332(a)) applies is not a repurchase by the covered corporation. See section 3.04(4)(b)(i) of this notice. Therefore, none of the distributions by Corporation X in complete liquidation is a repurchase by Corporation X, and Corporation X's stock repurchase excise tax for its 2023 taxable year is not increased as a result of the Corporation X Liquidation.

(17) Example 17: Complete liquidation of a covered corporation to which both §§ 331 and 332(a) apply--(a) Facts. The facts are the same as in section 3.09(16)(a) of this notice (Example 16), except that one of Corporation X's shareholders is a corporation (Corporation Z). As of the date of adoption of the plan of liquidation of Corporation X (that is March 1, 2023), Corporation Z has continued to be at all times until the receipt of the Corporation X liquidating distribution the owner of 80x shares of Corporation X common stock. In other words, Corporation Z has continued to be at all times until the receipt of the Corporation X liquidating distribution the owner of stock in Corporation X meeting the requirements of § 1504(a)(2) (that is, Corporation Z is an 80-percent distributee within the meaning of § 337(c)). Therefore, the liquidating distribution by Corporation X to Corporation Z as part of the Corporation X Liquidation qualifies as a liquidation under § 332(a). The liquidating distributions by Corporation X to the other shareholders described in section 3.09(16)(a) of this notice (Example 16) are distributions in liquidation subject to § 331.

(b) Analysis. In the case of a complete liquidation of a covered corporation, if §§ 331 and 332(a), respectively, apply to component distributions of the complete liquidation, (i) a distribution to which § 331 applies is a repurchase by the covered corporation, and (ii) the distribution to which § 332(a) applies is not a repurchase by the covered corporation. See section 3.04(4)(a)(v) of this notice. Therefore, as a result of the component liquidating distributions of the Corporation X Liquidation to which § 331 applies, Corporation X repurchased 20x shares of its stock on April 1, 2023. Accordingly, the Corporation X Liquidation results in a \$20x increase in Corporation X's stock repurchase excise tax base for its 2023 taxable year because the fair market value of Corporation X's stock at the time of repurchase (that is, April 1, 2023) was \$1x per share (20x shares x \$1x = \$20x). See section 3.06(2)(a) of this notice.

(18) Example 18: Acquisition by disregarded entity--(a) Facts. Corporation X owns all the interests in LLC, a domestic limited liability company that is disregarded as an entity separate from its owner for Federal tax purposes (disregarded entity) under § 301.7701-3 of the Procedure and Administration Regulations (26 CFR part 301). On May 31, 2023, LLC purchases shares of Corporation X's stock for cash from an unrelated shareholder.

(b) Analysis. Because LLC is a disregarded entity, the May 31, 2023, acquisition of Corporation X stock is treated as an acquisition by Corporation X. Accordingly, the acquisition is a § 317(b) redemption and is therefore a repurchase. See section 3.04(2) of this notice. Section 301.7701-2(c)(2)(v) (treating disregarded entities as corporations for purposes of certain excise taxes) does not apply to treat LLC as a corporation because § 4501 is not described in § 301.7701-2(c)(2)(v)(A).

(19) Example 19: Acquisitive reorganization qualifying under § 368(a)(2)(E)--(a) Facts. On October 1, 2023, Corporation X acquires all of Target's outstanding stock (Target Stock Acquisition). To effectuate the Target Stock Acquisition, Corporation X causes the following transaction steps to occur: (i) Corporation X contributes \$80x of Corporation X common stock and \$20x of cash (Merger Consideration) to a newly formed corporation (Merger Sub); and (ii) Merger Sub merges into Target in a statutory merger, with Target surviving (Reverse Merger). The Reverse Merger qualifies as an A reorganization by reason of § 368(a)(2)(E). On the date of the Reverse Merger, the fair market value of Target's outstanding stock is \$100x. In the Reverse Merger, \$80x of Target stock is exchanged for Corporation X stock, and \$20x of Target stock is exchanged for \$20x of cash.

(b) Analysis regarding repurchase treatment, timing, and amount. The exchange by the Target shareholders of their Target stock for the consideration received in the Reverse Merger is a repurchase by Target because that exchange is an economically similar transaction. See section 3.04(4)(a)(i) of this notice. This repurchase occurs on October 1, 2023 (that is, the date on which the Target shareholders exchange their Target shares as part of the Reverse Merger). See section 3.06(1)(b) of this notice. The amount of this repurchase by Target is \$100x, which equals the aggregate fair market value of the Target stock at the time that stock is exchanged by the Target shareholders as part of the Reverse Merger (that is, October 1, 2023). See section 3.06(2)(a) of this notice.

(c) Analysis regarding impact of Reverse Merger on Target's stock repurchase excise tax base. Target's stock repurchase excise tax base for its 2023 taxable year is initially increased by \$100x on account of the Reverse Merger. Under the qualifying property exception, the fair market value of the Target stock exchanged by the Target shareholders for Corporation X stock in the Reverse Merger (that is, \$80x of Target stock) is a qualifying property repurchase that reduces Target's stock repurchase excise tax base. See sections 3.03(3)(a) and 3.07(2)(a) of this notice (regarding acquisitive reorganizations). However, the fair market value of the Target stock exchanged by the Target shareholders for the \$20x of cash in the Reverse Merger does not qualify for the qualifying property exception. See sections 3.03(3)(a) and 3.07(2)(a) of this notice. In addition, any Target stock that is deemed to be issued by Target to Merger Sub in exchange for the Merger Consideration is not treated as issued for purposes of computing Target's stock repurchase excise tax base. See section 3.08(4)(h) of this notice. Therefore, Target's stock repurchase excise tax base for its 2023 taxable year is increased by \$20x (\$100x repurchase - \$80x exception = \$20x).

(d) Analysis regarding Corporation X's stock repurchase excise tax base.

Corporation X's issuance of Corporation X stock in the Reverse Merger is not an issuance for purposes of the netting rule because Corporation X's issuance of that stock is part of a transaction to which the qualifying property exception applies. See generally section 3.08(4)(d) of this notice. Specifically, Corporation X's issuance of Corporation X stock is not an issuance for purposes of the netting rule because (i) the Corporation X stock constitutes property permitted to be received under § 354 without the recognition of gain, (ii) the Corporation X stock is used by a covered corporation (that is, Target) to repurchase its stock in a transaction that is a repurchase under section 3.04(4)(a)(i) of this notice, and (iii) the repurchase by Target is not included in Target's stock repurchase excise tax base because it is a qualifying property repurchase. See section 3.08(4)(d) of this notice. Therefore, Corporation X does not take into account any of the \$80x of its stock issued in the Reverse Merger to reduce its stock repurchase excise tax base for Corporation X's 2023 taxable year. See section 3.08(4)(a) of this notice (disregarding such types of issuances).

(20) Example 20: Multiple repurchases and contributions of same class of stock--

(a) Facts. On January 15, 2023, Corporation X repurchases 100x shares of its Class A stock that have an aggregate fair market value of \$1,000x. Corporation X repurchases 50x shares of its Class A stock on September 15, 2023, that have an aggregate fair market value of \$200x. Corporation X contributes to its employee stock ownership plan 75x shares of its Class A stock on March 15, 2023, and 75x shares of its Class A stock on October 15, 2023.

(b) Analysis. The amount of the reduction to Corporation X's stock repurchase excise tax base is determined by dividing the aggregate fair market value of shares of Class A stock repurchased by the number of shares repurchased ( $\$1,200x/150x \text{ shares} = \$8/\text{share}$ ) and multiplying the number of shares contributed by the average price of repurchased shares ( $150x \text{ shares} \times \$8/\text{share} = \$1,200x$ ). See section 3.07(3)(c)(i) of this notice. Therefore, Corporation X's stock repurchase excise tax base for its 2023 taxable year is \$0 ( $\$1,200x \text{ repurchase} - \$1,200x \text{ exception} = \$0$ ).

(21) Example 21: Multiple repurchases and contributions of different class from repurchased shares--(a) Facts. On January 15, 2023, Corporation X repurchases 100x shares of its Class A stock that have an aggregate fair market value of \$1,000x. Corporation X repurchases 50x shares of its Class A stock on September 15, 2023, that have an aggregate fair market value of \$200x. Corporation X contributes to its employee stock ownership plan 75x shares of its Class B stock on October 15, 2023, that have an aggregate fair market value of \$1,000x. Corporation X contributes to its employee stock ownership plan 25x shares of its Class B stock on December 15, 2023, that have an aggregate fair market value of \$500x.

(b) Analysis. The amount of the reduction to Corporation X's stock repurchase excise tax base is equal to the sum of the fair market values of the different class of stock at the time that the stock is contributed to the employer-sponsored retirement plan ( $\$1,000x + \$500x = \$1,500x$ ). However, the amount of the reduction must not exceed

the aggregate fair market value of stock of a different class repurchased during the taxable year by Corporation X (that is, \$1,200x). See section 3.07(3)(c)(ii) of this notice. Therefore, Corporation X's stock repurchase excise tax base for its 2023 taxable year is \$0 (\$1,200x repurchase - \$1,200x exception = \$0).

(22) Example 22: Restricted stock provided to employee--(a) Facts. Employee M is an employee of Corporation X. In 2024, as compensation for Employee M's services, Corporation X transfers to Employee M 100x shares of Corporation X restricted stock, when the fair market value of each share is \$50x. The shares vest in 2027. Employee M does not make an election under § 83(b). In 2027, when the shares vest, the shares have a fair market value of \$70x per share. In 2027, Corporation X withholds from Employee M's other wages amounts that are required to pay its income tax and employment tax withholding obligations arising from the stock transfer.

(b) Analysis. 100x shares of Corporation X stock are treated as issued or provided to Employee M when they become substantially vested in 2027. See section 3.08(3)(b)(i) of this notice. Therefore, Corporation X's stock repurchase excise tax base for its 2027 taxable year is reduced by \$7,000x (100x shares x \$70x per share = \$7,000x).

(23) Example 23: Restricted stock provided to employee with § 83(b) election--(a) Facts. The facts are the same as in section 3.09(22) of this notice (Example 22), except that Employee M elects under § 83(b) to include the fair market value of the shares of restricted stock in gross income when the shares are transferred.

(b) Analysis. 100x shares of Corporation X stock are treated as issued or provided to Employee M when the shares are transferred in 2024. See section 3.08(3)(b)(iii) of this notice. Therefore, Corporation X's stock repurchase excise tax base for its 2024 taxable year is reduced by \$5,000x (100x shares x \$50x per share = \$5,000x). No shares of Corporation X stock are treated as issued or provided to Employee M when the shares vest in 2027.

(24) Example 24: Vested stock provided to an employee with share withholding--(a) Facts. Employee N is an employee of Corporation X. In 2024, as compensation for Employee N's services, Corporation X grants Employee N 100x restricted stock units (RSUs). Pursuant to the RSUs, if Employee N remains employed by Corporation X through December 31, 2026, Corporation X will transfer 100x shares of Corporation X stock to Employee N in January 2027. Employee N remains employed by Corporation X through December 31, 2026. In January 2027, when the shares have a fair market value of \$50x per share, Corporation X initiates the transfer of 60x shares of Corporation X stock to Employee N and withholds 40x shares to satisfy its income tax and employment tax withholding obligations.

(b) Analysis. 60x shares of Corporation X stock are treated as issued or provided to Employee N when the shares are transferred in 2027. See section 3.08(3)(a)(ii) of this notice. Therefore, Corporation X's stock repurchase excise tax

base for its 2027 taxable year is reduced by \$3,000x (60x shares x \$50x per share = \$3,000x).

(25) Example 25: Stock option net exercise--(a) Facts. Employee O is an employee of Corporation X. In 2024, Corporation X transfers to Employee O options to purchase 100x shares of Corporation X stock with an exercise price of \$40x per share. The options are described in § 1.83-7 and do not have a readily ascertainable fair market value. Employee O exercises the option to purchase 100x shares in 2025 when the fair market value is \$50x per share. Corporation X withholds 80x shares to pay the exercise price.

(b) Analysis. 20x shares of Corporation X stock are treated as issued or provided to Employee O when the options are exercised in 2025. See section 3.08(3)(a)(iii) of this notice. Therefore, Corporation X's stock repurchase excise tax base for its 2025 taxable year is reduced by \$1,000x (20x shares x \$50x per share = \$1,000x).

(26) Example 26: Broker-assisted net exercise--(a) Facts. The facts are the same as section 3.09(25) of this notice (Example 25), except that instead of Corporation X withholding shares to pay the exercise price, a third-party broker pays an amount equal to the exercise price to Corporation X. Corporation X transfers 100x shares of Corporation X stock to the third-party broker, who then deposits the 100x shares into Employee O's account. The third-party broker then immediately sells 80x shares to recover the exercise price paid to Corporation X.

(b) Analysis. 100x shares of Corporation X stock are treated as issued or provided to Employee O when the shares are transferred to the broker in 2025. See section 3.08(3)(a)(iv) of this notice. Therefore, Corporation X's stock repurchase excise tax base for its 2025 taxable year is reduced by \$5,000x (100x shares x \$50x per share = \$5,000x).

#### SECTION 4. REPORTING AND PAYMENT OF STOCK REPURCHASE EXCISE TAX

The Treasury Department and the IRS anticipate that the forthcoming proposed regulations will provide that the stock repurchase excise tax must be reported on IRS Form 720, Quarterly Federal Excise Tax Return. To facilitate the computation of the stock repurchase excise tax, the IRS also intends to issue an additional form that taxpayers will be required to attach to the Form 720.

Although the Form 720 is filed quarterly, the Treasury Department and the IRS expect the forthcoming proposed regulations to provide that the stock repurchase

excise tax will be reported once per taxable year on the Form 720 that is due for the first full quarter after the close of the taxpayer's taxable year. For example, a taxpayer with a taxable year ending on December 31, 2023, would report its stock repurchase excise tax on the Form 720 for the first quarter of 2024, due on April 30, 2024. The Treasury Department and the IRS expect the forthcoming proposed regulations to provide that the deadline for payment of the stock repurchase excise tax is the same as the filing deadline, and that no extensions are permitted for reporting or paying the stock repurchase excise tax owed.

## SECTION 5. APPLICABILITY DATES

.01 In general. It is anticipated that the forthcoming proposed regulations will provide that rules consistent with the rules described in section 3 of this notice generally apply to repurchases of stock of a covered corporation made after December 31, 2022, and to issuances of stock made during a taxable year ending after December 31, 2022.

.02 Funded Purchases. It is anticipated that the forthcoming proposed regulations will provide that rules consistent with the rules described in section 3.05(2)(a)(ii) of this notice apply to repurchases and acquisitions of stock made after December 31, 2022, that are funded on or after **[INSERT DATE OF PUBLIC RELEASE]**.

.03 Reliance. Until the date of issuance of the forthcoming proposed regulations, a taxpayer may rely on the rules set forth in section 3 of this notice.

## SECTION 6. REQUEST FOR COMMENTS

.01 Comments regarding rules included in notice. The Treasury Department and the IRS request comments on the rules described in this notice. In particular, the Treasury Department and the IRS request comments that address the following specific

questions:

(1) Are there circumstances under which special rules should be provided for redeemable preferred stock or other special classes of stock or debt (including debt with features that allow the debt, whether by the issuer, the holder, or otherwise, to be converted into stock)? If so, please provide objectively verifiable criteria that such special rules should incorporate to provide certainty for taxpayers and the IRS.

(2) Should the fair market value of stock repurchased be an amount other than the market price of such stock in determining the amount of a covered corporation's repurchases?

(3) For purposes of the netting rule, should the fair market value of stock issued or provided be an amount other than the market price of such stock in determining the amount of a covered corporation's issuances?

(4) Should the definition of an employer-sponsored retirement plan include plans other than plans that are qualified under § 401(a)?

(5) With regard to contributions of repurchased stock by a covered corporation to an employer-sponsored retirement plan, what additional provisions (if any) would be helpful to address fact patterns in which multiple classes of stock are both repurchased and contributed by that covered corporation?

(6) Should a method be provided for determining the market price of stock that is traded on multiple established securities markets? If so, what modifications to the rules in sections 3.06(2)(a)(i) and 3.08(5)(a)(i) of this notice would be required?

(7) Should there be additional methods to rebut the presumption in section 3.07(6)(b)(i) of this notice? If so, what modifications to section 3.07(6)(b) of this notice would be required?

.02 Comments regarding rules not included in notice. The Treasury Department and the IRS request comments on other questions arising under § 4501 that should be addressed in guidance. Commenters are encouraged to specify the issues on which guidance is needed most quickly as well as the most important issues on which guidance is needed. In addition to general comments regarding § 4501, the Treasury Department and the IRS request comments that address the following questions that are anticipated to be addressed in the forthcoming proposed regulations:

(1) What factors should the Treasury Department and the IRS consider in developing guidance regarding indirect ownership for purposes of determining whether a corporation or a partnership is a specified affiliate?

(2) When should a corporation be treated as becoming or ceasing to be a covered corporation, and how should repurchases and issuances by a corporation during a taxable year that are prior to the date the corporation becomes a covered corporation or after the date the corporation ceases to be a covered corporation be treated?

(3) Should special rules be provided for bankrupt or troubled companies? For example, should a § 317(b) redemption occurring as part of a restructuring of a bankrupt or troubled company be excluded from the definition of “repurchase”?

(4) Should any additional rules with regard to financial arrangements, such as options or other similar financial instruments, be added to prevent avoidance of the stock repurchase excise tax? If so, please describe how such additional rules should

apply consistently for purposes of determining a covered corporation's repurchases and issuances.

(5) How should the stock repurchase excise tax be allocated among expatriated entities if there are multiple expatriated entities treated as a covered corporation with respect to a covered surrogate foreign corporation? Are other special rules necessary or appropriate in such a case?

(6) If the applicable specified affiliate is a foreign partnership that has a domestic entity as a direct or indirect partner and is treated as a covered corporation:

(a) Should the foreign partnership or its domestic entity partner, or both, be required to file Form 720?

(b) Should the foreign partnership or its domestic entity partner be required to pay the stock repurchase excise tax? If the foreign partnership is required to pay the tax, should special rules or procedures apply to collect the tax?

(c) Should other special rules or procedures apply in this case, including if there are multiple domestic entities that are direct or indirect partners?

(7) What factors should the Treasury Department and the IRS consider in determining whether a domestic entity is an indirect partner in a foreign partnership?

(8) For purposes of the special netting rules in § 4501(d):

(a) Should stock issued or provided to any employees of the foreign partnership be taken into account, or should the netting rule be limited to stock issued or provided only to employees of the domestic entity that is a direct or indirect partner, in cases of a foreign partnership that is the applicable specified affiliate?

(b) Are there any circumstances in which stock of the applicable specified affiliate

or expatriated entity, as relevant, should be taken into account in addition to, or in lieu of, stock of the applicable foreign corporation or covered surrogate foreign corporation, respectively?

(9) Should the definition of “established securities market” be revised to clarify which regulatory requirements under the Securities Exchange Act of 1934 are most relevant to the determination of whether a foreign securities market is treated as an established securities market? If so, what type of U.S. securities exchange (including which tier of an exchange with multiple tiers) should be the baseline for comparison?

(10) How should the trading of stock through depository receipts be treated for purposes of determining whether a corporation is a covered corporation, or whether repurchased stock is traded on an established securities market?

### .03 Procedures for submitting comments.

(1) Deadline. Written comments should be submitted by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION]**. Consideration will also be given to any written comment submitted after **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION]**, though such comments may not be considered in the development of the forthcoming proposed regulations if such consideration would delay the issuance of the forthcoming proposed regulations

(2) Form and manner. The subject line for the comments should include a reference to Notice 2023-2. All commenters are strongly encouraged to submit comments electronically. Comments may be submitted in one of two ways:

(a) Electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (type IRS-2023-0002 in the search field on the [www.regulations.gov](http://www.regulations.gov) homepage to find

this notice and submit comments); or

(b) By mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2023-2), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044.

(3) Publication of comments. The Treasury Department and the IRS will publish for public availability any comment submitted electronically and on paper to its public docket on [www.regulations.gov](http://www.regulations.gov).

## SECTION 7. DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Samuel G. Trammell of the Office of the Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in its development. For further information on rules concerning stock issued or provided to employees under § 4501(c)(3), please contact William L. McNally of the Office the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317-5600 (not a toll-free number). For further information on rules concerning § 4501(d), please contact Arielle M. Borsos of the Office the Associate Chief Counsel (International) at (202) 317-6937 (not a toll-free number). For further information on rules concerning § 4501(e)(2), please contact Naomi Lehr of the Office the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317-4102 (not a toll-free number). For further information on rules concerning § 4501(e)(4) and (5), please contact Jonathan A. LaPlante of the Office the Associate Chief Counsel (Financial Institutions & Products) at (202) 317-5102 (not a toll-free number). For further information on all other rules, please contact Mr. Trammell at (202) 317-5024 (not a toll-free number).