INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2025–51
December 15, 2025

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

ADMINISTRATIVE

REG-124791-11, page 852.
This document withdraws a notice of proposed rulemaking regarding the eligibility of tax return preparers to obtain a preparer tax identification number (PTIN).

EMPLOYEE PLANS

Notice 2025-73, page 845.
This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for September 2025 used under § 417(e)(3)(D), the 24-month average segment rates applicable for October 2025, and the 30-year Treasury rates, as reflected by the application of § 430(h)(2)(C)(iv).

Notice 2025-74, page 848.
This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for October 2025 used under § 417(e)(3)(D), the 24-month average segment rates applicable for November 2025, and the 30-year Treasury rates, as reflected by the application of § 430(h)(2)(C)(iv).

ESTATE TAX

T.D. 10038, page 838.
This guidance contains a final rule relating to the imposition of a user fee on authorized persons requesting the issuance of IRS Letter 627, also referred to as an estate tax closing letter. Pursuant to the guidelines in OMB Circular A-25, the IRS has calculated its cost of providing the estate tax closing letter to be $56. REG-107459-24

EXCISE TAX

T.D. 10037, page 788.
Section 10201 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022, enacted section 4501 of the Internal Revenue Code. Section 4501 imposes a one percent excise tax on repurchases of stock of a publicly traded corporation. These final regulations under subpart A of part 58 contain operative rules that provide further clarity regarding the application of the excise tax to corporations that repurchase their stock.

EXEMPT ORGANIZATIONS

Announcement 2025-27, page 851.
Revocation of IRC 501(c)(3) Organizations for failure to meet the code section requirements. Contributions made to the organizations by individual donors are no longer deductible under IRC 170(b)(1)(A).

INCOME TAX

Notice 2025-72, page 840.
This notice describes proposed regulations that Treasury and the IRS intend to issue under section 70352(c)(1)(C) of Public Law 119-21, 139. Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBBA), providing for the allocation of foreign taxes of foreign corporations affected by the repeal of section 898(c)(2). This notice also announces that Treasury and the IRS intend to issue proposed regulations under section 987 that would modify the election to recognize pretransition section 987 gain or loss ratably over the transition period pursuant to §1.987-10(e)(5)(ii)(A).

Finding Lists begin on page ii.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

Part I

26 CFR §§58.4501-1, 58.4501-2, 58.4501-3, 58.4501-4, 58.4501-5, 58.4501-6, and 58.4501-7

T.D. 10037

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 58

Excise Tax on Repurchase of Corporate Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the application of the excise tax on repurchases of corporate stock made after December 31, 2022. The regulations affect certain publicly traded corporations that repurchase their stock or whose stock is acquired by certain specified affiliates.

DATES: *Effective date:* The final regulations are effective on November 24, 2025.

Applicability dates: For dates of applicability, *see* §§1.1275-6(f)(12)(iii)(B), 58.4501-6, 58.4501-7(r), and 58.6011-1(d).

FOR FURTHER INFORMATION CONTACT: Concerning §58.4501-7, Brittany N. Dobi of the Office of Associate Chief Counsel (International) at (202) 317-5469 (not a toll-free number). For all other issues, Kailee H. Hock of the Office of Associate Chief Counsel (Corporate) at (202) 317-3181 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document contains final regulations under sections 1275, 4501, and 6011 of the Internal Revenue Code (Code). These regulations would amend 26 CFR parts 1 (Income Tax Regulations) and 58 (Stock Repurchase Excise Tax Regulations) by providing guidance regarding the application of the excise tax on repurchases of corporate stock (stock repurchase excise tax) enacted as section 10201 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). The additions and amendments to the Income Tax Regulations and Stock Repurchase Excise Tax Regulations are issued pursuant to the express delegations of authority to the Secretary of the Treasury or the Secretary's delegate (Secretary) provided under sections 1275(d), 4501(f), and 7805(a) of the Code.

Section 1275(d) states that the Secretary may prescribe regulations providing that where, by reason of varying rates of interest, put or call options, indefinite maturities, contingent payments, assumptions of debt instruments, or other circumstances, the tax treatment under sections 1271 through 1275 or section 163(e) of the Code does not carry out the purposes of those sections, "such treatment shall be modified to the extent appropriate to carry out the purposes of" those sections.

Section 4501(f) states that "[t]he Secretary shall prescribe such regulations and other guidance as are necessary or appropriate to carry out, and to prevent the avoidance of, the purposes of [section 4501]," including regulations or other guidance (i) to prevent the abuse of the statutory exceptions provided by section 4501(e), (ii) to address special classes of stock and preferred stock, and (iii) for the application of the special rules for acquisitions of stock of certain foreign corporations under section 4501(d).

Section 7805(a) authorizes the Secretary to "prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Background

I. *Overview of Section 4501*

A. *In general*

Section 4501 was added to a new chapter 37 of the Code. Section 4501 imposes on each covered corporation an excise tax (that is, the stock repurchase excise tax) on repurchases of corporate stock made after December 31, 2022. Under section 4501(a), the stock repurchase excise tax is equal to one percent of the fair market value of any stock of the covered corporation that is repurchased by the corporation during the taxable year. Section 4501(b) defines the term "covered corporation" to mean any domestic corporation the stock of which is traded on an established securities market (within the meaning of section 7704(b)(1) of the Code).

Section 4501(c)(1) provides that, for purposes of section 4501, a "repurchase" includes (1) a redemption within the meaning of section 317(b) of the Code with regard to the stock of a covered corporation (section 317(b) redemption), and (2) any transaction determined by the Secretary to be economically similar to a section 317(b) redemption (economically similar transaction).

B. *Specified affiliates*

Section 4501(c)(2)(A) treats the acquisition of 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, as a repurchase of stock of the covered corporation by the covered corporation. Section 4501(c)(2)(B) defines the term "specified affiliate" to mean, 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.

C. *Adjustment to amount taken into account under section 4501(a)*

The stock repurchase excise tax is applied to the fair market value of any stock of the covered corporation repurchased by the covered corporation during its taxable year. However, the "netting rule" of section 4501(c)(3) provides that the amount taken into account under sec-

tion 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).

D. *Special rules for certain acquisitions and repurchases of stock of certain foreign corporations*

Section 4501(d) provides special rules for the imposition of the stock repurchase excise tax on acquisitions of stock of applicable foreign corporations and covered surrogate foreign corporations. Under section 4501(d)(3)(A), the term "applicable foreign corporation" means any foreign corporation the stock of which is traded on an established securities market. Under section 4501(d)(3)(B), the term "covered surrogate foreign corporation" means any surrogate foreign corporation (as determined under section 7874(a)(2)(B) of the Code 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 that corporation under section 7874(d)(1).

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. If section 4501(d)(1) applies, then for purposes of determining 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 the netting rule of section 4501(c)(3) is determined only with respect to stock issued or provided by the specified affiliate to employees of the specified affiliate.

Section 4501(d)(2) applies in the case of either a repurchase of stock of a covered surrogate foreign corporation by the covered surrogate foreign corporation, or an acquisition of stock of a covered surrogate foreign corporation by a specified affiliate of such corporation. If section 4501(d)(2) applies, then for purposes of determining the stock repurchase excise tax: (i) the expatriated entity (within the meaning of section 7874(a)(2)(A)) 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 section 4501(c)(3) is determined only with respect to stock issued or provided by the expatriated entity to employees of the expatriated entity.

E. *Statutory exceptions to the application of section 4501(a)*

Section 4501(e) lists six transactions that are statutorily excepted, in whole or in part, from the application of section 4501(a) to a repurchase of a covered corporation's stock. These exceptions, each of which is referred to as a "statutory exception" in this preamble, are:

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

(2) In any case in which the stock repurchased, 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 (ESOP), or similar plan (section 4501(e)(2));

(3) In any case in which the total value of the stock repurchased during the taxable year does not exceed $1,000,000 (section 4501(e)(3)) (de minimis exception);

(4) Under regulations prescribed by the Secretary, in cases in which the repurchase is by a dealer in securities in the ordinary course of business (section 4501(e)(4));

(5) By a regulated investment company (RIC), as defined in section 851 of the Code, or by a real estate investment trust (REIT), as defined in section 856(a) of the Code (section 4501(e)(5)); or

(6) To the extent that the repurchase is treated as a dividend for purposes of the Code (section 4501(e)(6)).

II. *Prior Guidance*

On January 17, 2023, the Department of the Treasury (Treasury Department) and the IRS published Notice 2023-2, 2023-3 I.R.B. 374, to provide initial guidance regarding the application of the stock repurchase excise tax. On July 24, 2023, the Treasury Department and the IRS published Announcement 2023-18, 2023-30 I.R.B. 366, announcing that taxpayers would not be required to report the stock repurchase excise tax, or to make any payments of the tax, before the time specified in forthcoming regulations.

On April 12, 2024, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-115710-22) in the ***Federal Register*** (89 FR 25980) proposing to add a new part 58 to 26 CFR chapter I and providing proposed regulations in subpart A thereof that would implement the stock repurchase excise tax for repurchases made after December 31, 2022 (proposed computational regulations). On April 12, 2024, the Treasury Department and the IRS also published a separate notice of proposed rulemaking (REG-118499-23) in the same issue of the ***Federal Register*** (89 FR 25829) providing proposed regulations in subpart B of proposed 26 CFR part 58 regarding the reporting and payment of the stock repurchase excise tax (proposed procedural regulations). After taking into account comments received on the proposed procedural regulations, the Treasury Department and the IRS published final regulations (TD 10002) in the ***Federal Register*** (89 FR 55045) on July 3, 2024 (final procedural regulations) adopting the proposed procedural regulations with modifications as subpart B of 26 CFR part 58 (Stock Repurchase Excise Tax Regulations).

A public hearing regarding the proposed computational regulations was held on August 27, 2024. As described in the Summary of Comments and Explanation of Revisions, this Treasury decision adopts the proposed computational regulations, with modifications in response to the comments received at the public hearing as well as additional written comments, as subpart A of the Stock Repurchase Excise Tax Regulations and amends the final procedural regulations under section 6011 in subpart B of the Stock Repurchase Excise Tax Regulations. This Treasury decision also amends the Income Tax Regulations under section 1275 by adopting proposed §1.1275-6(f)(12)(iii) without substantive modification.

Summary of Comments and Explanation of Revisions

I. *Application of the Stock Repurchase Excise Tax to Various Types of Stock*

Proposed §58.4501-1(b)(29)(i) generally would define "stock" as 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. However, proposed §58.4501-1(b)(29)(ii) would exclude from the definition of "stock" preferred stock that (i) qualifies as additional tier 1 capital (within the meaning of 12 CFR 3.20(c), 217.20(c), or 324.20(c)), and (ii) does not qualify as common equity tier 1 capital (within the meaning of 12 CFR 3.20(b), 217.20(b), or 324.20(b)) (additional tier 1 preferred stock). The proposed computational regulations otherwise would apply the stock repurchase excise tax to preferred stock (including preferred stock issued prior to the enactment date of the IRA) that is treated as "stock" for Federal tax purposes in the same manner as to common stock.

A. *Preferred stock generally; section 1504(a)(4) preferred stock*

Several commenters recommended excluding redemptions of all preferred stock from the application of the stock repurchase excise tax. The commenters contended that, although preferred stock is treated as "stock" for Federal tax purposes, applying the stock repurchase excise tax to repurchases of such stock would contravene congressional intent that the tax apply solely to repurchases of common stock. Commenters further contended that (i) because repurchases of preferred stock (particularly "plain vanilla" preferred stock described in section 1504(a)(4) of the Code) are more akin to repaying debt, repurchases of such stock do not implicate the policy concerns underlying the stock repurchase excise tax, and (ii) if redemptions of preferred stock were subject to the stock repurchase excise tax, publicly traded corporations might be incentivized to increase their leverage by issuing debt in lieu of preferred stock. Commenters also contended that the grant of authority in section 4501(f) to address special classes of stock and preferred stock essentially directs (or, at the very least, is a statement of congressional intent) that the Secretary issue regulations excluding preferred stock from the stock repurchase excise tax.

The plain language of the definitions and operative rules in section 4501 does not differentiate between common stock and preferred stock, and a repurchase of preferred stock is a "redemption" within the meaning of section 317(b). Additionally, the grant of regulatory authority in section 4501(f) is neither a mandate to exclude all preferred stock from the stock repurchase excise tax nor an indication that Congress intended the Treasury Department and the IRS to provide such an exclusion in regulations. If Congress had intended to exclude all preferred stock, it would have so provided in the statute. Accordingly, these final regulations do not exclude all preferred stock from the stock repurchase excise tax.

However, the Treasury Department and the IRS agree that preferred stock described in section 1504(a)(4) is more akin to debt. Accordingly, the Treasury Department and the IRS do not view repurchases of such stock as implicating the policy concerns underlying the stock repurchase excise tax. Consequently, these final regulations provide that repurchases of preferred stock described in section 1504(a)(4) are not subject to the stock repurchase excise tax. *See* §58.4501-1(b)(34)(iii) (excluding section 1504(a)(4) stock from the definition of "stock" for purposes of the stock repurchase excise tax regulations). As discussed in the remainder of this part I of the Summary of Comments and Explanation of Revisions, these final regulations also provide additional exceptions for special classes of stock and for certain preferred stock under the grant of authority in section 4501(f).

B. *Mandatorily redeemable stock; stock issued prior to enactment of the IRA*

Several commenters recommended that, if the final regulations do not generally exclude preferred stock from the stock repurchase excise tax, the final regulations should provide (i) an additional exception for mandatorily redeemable preferred stock, or (ii) transition relief for repurchases of preferred stock issued prior to the date of enactment of the IRA (that is, August 16, 2022). One commenter recommended excluding all mandatorily redeemable preferred stock from application of the stock repurchase excise tax. Another commenter recommended transition relief for all types of preferred stock issued prior to the date of enactment of the IRA. Still other commenters recommended limiting transition relief to (i) mandatorily redeemable stock (or at least mandatorily redeemable preferred stock), and (ii) stock subject by its terms to unilateral put options of the holders, if such stock was outstanding as of the date of enactment of the IRA. According to the commenters, the requested relief is appropriate because (i) absent such relief, previously established economic entitlements will be undermined, (ii) covered corporations are required to repurchase mandatorily redeemable stock, and (iii) mandatorily redeemable preferred stock may resemble other instruments treated as debt for tax purposes.

The Treasury Department and the IRS agree that transition relief is appropriate for certain types of stock issued prior to the date of enactment of the IRA if the covered corporation no longer has discretion as to whether to repurchase such stock after that date. Accordingly, these final regulations incorporate transition relief for mandatorily redeemable stock and for stock subject by its terms to a unilateral put option of the holder, if such stock was

outstanding prior to August 16, 2022. *See* §58.4501-2(e)(3)(iii).

C. *Additional tier 1 preferred stock*

As previously discussed in this part I of the Summary of Comments and Explanation of Revisions, proposed §58.4501-1(b)(29)(ii) would exclude certain additional tier 1 preferred stock from the definition of "stock" for purposes of the stock repurchase excise tax. The proposed computational regulations would define "additional tier 1 preferred stock" to mean preferred stock that qualifies as additional tier 1 capital (within the meaning of 12 CFR 3.20(c), 217.20(c), or 324.20(c)) and does not qualify as common equity tier 1 capital (within the meaning of 12 CFR 3.20(b), 217.20(b), or 324.20(b)). Consequently, under the proposed computational regulations, additional tier 1 preferred stock described in those regulations would not be subject to the stock repurchase excise tax, and the issuance of that additional tier 1 preferred stock would not be taken into account for purposes of the netting rule.

1. *Farm Credit System Stock; Savings and Loan Holding Companies with Significant Insurance Operations*

Commenters recommended expanding the definition of "additional tier 1 preferred stock" to include preferred stock issued by cooperative banks, agricultural credit associations, Federal land credit associations, and production credit associations in the Farm Credit System, which are collectively referred to as "system entities." According to the commenters, system entities are chartered under the Farm Credit Act of 1971 (Public Law 92-181, 85 Stat. 583) and subject to regulation and oversight by the Farm Credit Administration (FCA). For example, according to the commenters, system entities are subject to regulatory capital requirements prescribed by the FCA and issue and redeem preferred stock governed by 12 CFR 628.20(c) to meet these regulatory capital requirements.

The commenters also noted that, although the stock of cooperatives that are system entities generally is not publicly traded, the preferred stock of such entities occasionally is traded over the counter (OTC), and such trades are reported on the Financial Industry Regulatory Authority OTC Reporting Facility (ORF). The commenters further noted that the U.S. Securities and Exchange Commission (SEC) has designated the ORF as a qualifying electronic quotation system for purposes of the penny stock rules and as an automated interdealer quotation system for purposes of the definition of "penny stock" under 17 CFR 240.3a51-1. Accordingly, the commenters noted that the ORF potentially could qualify as an "established securities market" as defined in proposed §58.4501-1(b)(13).

Another commenter noted that the capital adequacy rules for qualifying preferred stock as additional tier 1 capital are functionally the same for bank holding companies as for savings and loan holding companies with significant insurance operations (savings and loan holding companies). Additional tier 1 capital requirements for savings and loan holding companies are described in 12 CFR 217.608. The commenter requested that preferred stock qualifying as additional tier 1 capital issued by savings and loan holding companies be included in the definition of "additional tier 1 preferred stock."

According to the commenters, the preferred stock issued by system entities and governed by 12 CFR 628.20(c), as well as the preferred stock issued by savings and loan holding companies and governed by 12 CFR 217.608, have the same requirements and restrictions as the additional tier 1 preferred stock governed by 12 CFR 3.20(c), 217.20(c), and 324.20(c). Specifically, the system entity and the savings and loan holding company may not redeem or repurchase the preferred stock without prior approval from the FCA or the Board of Governors of the Federal Reserve System (Board), respectively. Moreover, if such preferred stock is callable by its terms, (i) it may not be called for at least five years, (ii) the system entity or the savings and loan holding company must receive prior approval from the FCA or the Board, respectively, to exercise the call option, and (iii) the system entity or the savings and loan holding company either must replace the instrument with other tier 1 capital or demonstrate to the FCA or the Board, respectively, that it will continue to hold capital commensurate with risk.

The Treasury Department and the IRS agree with the commenters that the requirements and restrictions for certain stock issued by system entities and savings and loan holding companies are similar to the requirements and restrictions for additional tier 1 preferred stock governed by 12 CFR 3.20(c), 217.20(c), and 324.20(c). Accordingly, these final regulations provide an exception to the stock repurchase excise tax for stock of system entities that qualifies as additional tier 1 preferred stock that is not common equity tier 1 capital, as well as for stock of savings and loan holding companies that qualifies as additional tier 1 preferred stock that is not common equity tier 1 capital. *See* §58.4501-1(b)(34)(ii).

2. *Foreign Additional Tier 1 Preferred Stock*

Another commenter recommended expanding the definition of "additional tier 1 preferred stock" to include instruments issued by foreign-parented banks that issue additional tier 1 capital pursuant to their own local rules implementing the Basel III Accord. According to the commenter, the Basel III Accord established numerous requirements that an instrument must meet to qualify as additional tier 1 capital, including that: (i) the issuer must obtain supervisory approval prior to repurchasing or redeeming the instrument; (ii) the instrument may be callable only after a minimum of five years; and (iii) the issuer may not exercise a call option unless it either (A) replaces the called instrument with capital of the same or better quality, or (B) demonstrates that its capital position is well above the minimum capital requirements after the call option is exercised. *See* Basel Committee on Banking Supervision, *Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems*, at 16 (rev. June 2011). The commenter noted that such requirements are reflected in the framework for the rules and regulations adopted by the United States with respect to an instrument's qualification as additional tier 1 capital under 12 CFR 3.20(c), 217.20(c), and 324.20(c).

These final regulations do not include an exception for additional tier 1 preferred stock of a foreign issuer. As described in part VIII.B of this Summary of Comments and Explanation of Revisions, these final regulations do not adopt the proposed funding rule. Moreover, the commenter did not identify any regulatory reason why an applicable specified affiliate would acquire additional tier 1 preferred stock of a foreign parent. By contrast, it is common for a U.S. issuer of additional tier 1 preferred stock to repurchase or redeem its stock in order to manage its compliance with U.S. regulatory rules. Accordingly, the reasons for providing an exception for U.S. additional tier 1 preferred stock do not apply to additional tier 1 preferred stock of a foreign issuer.

II. *Becoming or Ceasing to Be a Covered Corporation*

Under the proposed computational regulations, a corporation generally would be treated as (i) becoming a covered corporation at the beginning of the date on which its stock begins to be traded on an established securities market (initiation date), and (ii) ceasing to be a covered corporation at the end of the date on which all of its stock ceases to be traded on an established securities market (cessation date). *See* proposed §§58.4501-1(b)(3) and (16) and 58.4501-2(d)(1) and (d)(2)(i). Proposed §58.4501-4(b)(2) would provide that stock issued by a covered corporation or provided by a specified affiliate before the initiation date or after the cessation date is not taken into account in computing the covered corporation's stock repurchase excise tax base.

However, proposed §58.4501-2(d)(2)(ii) would provide an exception for certain repurchases after the cessation date. Under this exception, if a corporation ceased to be a covered corporation pursuant to a plan that included a repurchase, and if the cessation date preceded the date of any repurchase undertaken pursuant to the plan, the corporation would continue to be a covered corporation with regard to each repurchase pursuant to the plan until the end of the date of the last repurchase pursuant to the plan. For example, all repurchases of target covered corporation stock in an acquisitive reorganization pursuant to the plan of reorganization would be subject to the stock repurchase excise tax (if no exception applied), even if all the target covered corporation's stock ceased to be traded on an established securities market prior to the last repurchase made pursuant to the plan of reorganization.

One commenter recommended narrowly tailoring this exception to apply only in situations in which (i) there is a binding commitment to execute a series of steps that include a cessation date and a repurchase, (ii) the repurchase and cessation of publicly traded status are part of the same series of steps, and (iii) the repurchase relates to the shares outstanding at the time the covered corporation entered into the plan. Commenters also recommended expanding the exception to include issuances that occur as a part of a "take private" plan for purposes of the netting rule. For example, one commenter noted that certain "take private" transactions are structured to include both issuances to new shareholders and repurchases from other shareholders, and that the timing of the issuances may not always precede the date that a corporation ceases to have stock that is traded on an established securities market. The commenter recommended that, if a corporation continues to be treated as a covered corporation after the cessation date, its status as a covered corporation should be respected for both repurchases and issuances. A commenter also recommended clarifying whether a corporation is treated as a covered corporation until the date of the final repurchase (i) only for purposes of repurchases made pursuant to the plan, or (ii) for all purposes.

These final regulations do not include an exception for certain repurchases after the cessation date because, as discussed in parts III and IV.C of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS have concluded that section 4501 does not apply to "take private" transactions (including but not limited to acquisitive reorganizations). *See* §58.4501-2(e)(3)(ii) and (e)(5)(v). For the same reason, these final regulations do not provide an exception for issuances after the cessation date.

III. *Target-Sourced Cash in Take-Private Transactions*

Under the proposed computational regulations, unless an exception applies, the target-corporation-funded portion of the consideration in a leveraged buyout or other "take private" transaction would be treated as a repurchase for purposes of computing the target corporation's stock repurchase excise tax base. *See* proposed §58.4501-2(e)(2); *see also* Rev. Rul. 78-250, 1978-1 C.B. 83 (disregarding the creation and merger of a transitory corporation into an existing corporation and treating the cashing out of the existing corporation's minority shareholders as a redemption subject to section 302).

To determine the target-corporation-funded portion of the consideration used to pay shareholders in such transactions, one commenter recommended against applying a tracing rule and, instead, recommended a rule treating cash on a target corporation's balance sheet or cash borrowed by the target corporation as being used to satisfy the target corporation's liabilities in order of seniority (similar to the priority of claims on a corporation's assets in an insolvency or bankruptcy under title 11 of the U.S. Code) before being distributed to its shareholders. Under this approach, cash on the target corporation's balance sheet or borrowed at the target corporation level would not be treated as resulting in a repurchase to the extent there were transaction expenses, accrued cash amounts owed to employees, or target corporation debt that was being repaid, as any of these liabilities would be senior to shareholders' rights to payment.

In a prior comment received with respect to Notice 2023-2, a stakeholder also contended that taxable acquisitions generally should not be subject to the stock repurchase excise tax because, like other M&A transactions, taxable acquisitions generally do not bear the traditional hallmarks of conventional, often opportunistic stock repurchase transactions and programs that, in the stakeholder's view, were the intended target of the stock repurchase excise tax. In other words, taxable acquisitions are not single-company transactions that distribute corporate value to shareholders in exchange for the surrender of corporate stock.

The Treasury Department and the IRS agree with the commenter that Congress generally did not intend for the stock repurchase excise tax to apply to transactions, such as leveraged buyouts and other "take private" transactions, that fundamentally restructure corporate ownership or control through combinations of separate business entities. Accordingly, these final regulations provide that redemptions by a covered corporation that occur as part of a transaction in which the covered corporation ceases to be a covered corporation are not treated as repurchases for purposes of the stock repurchase excise tax. *See* §58.4501-2(e)(3)(ii). Because the Treasury Department and the IRS have concluded that since section 4501 does not apply to transactions that fundamentally restructure corporate ownership or control through combinations or separate business entities, the Treasury Department and the IRS have determined that it is not necessary for these final regulations to address how to determine the target-corporation-funded portion of the consideration in such transactions.

IV. *Economically Similar Transactions*

Consistent with section 4501(c)(1), proposed §58.4501-2(e)(2) would define a "repurchase" to mean solely (i) a section 317(b) redemption (unless otherwise excluded under proposed §58.4501-2(e)(3)), or (ii) an economically similar transaction. Proposed §58.4501-2(e)(4) would provide an exclusive list of transactions that are economically similar transactions, including: (i) an acquisitive reorganization under section 368(a)(1)(A) (including by reason of section 368(a)(2)(D) and (E)), section 368(a)(1)(C), or section 368(a)(1)(D) or (G) (if the reorganization satisfies the requirements of section 354(b)(1) of the Code) in which the target corporation is a covered corporation; (ii) a reorganization under section 368(a)(1)(E) (E reorganization) in which the recapitalizing corporation is a covered corporation; (iii) a reorganization under section 368(a)(1)(F) (F reorganization) in which the transferor corporation is a covered corporation; (iv) a split-off under section 355 of the Code by a distributing corporation that is a covered corporation; (v) a distribution to which section 331 of the Code applies if the distribution is part of a complete liquidation of a covered corporation to which both sections 331 and 332(a) of the Code apply; and (vi) certain forfeitures and clawbacks of stock of a covered corporation.

A. *List of economically similar transactions*

Several commenters recommended that any transactions added to the exclusive list of economically similar transactions in future guidance should be subject to the stock repurchase excise tax only on a prospective basis, in order to provide clarity and certainty.

As stated in the preamble to the proposed computational regulations, the Treasury Department and the IRS anticipate that most transactions treated as economically similar transactions in future regulations would be treated as such only on a prospective basis. *See* section 7805(b)(1), which generally limits the retroactive application of temporary, proposed, or final regulations under the Code.

However, under section 7805(b)(3), the Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse. The Treasury Department and the IRS decline to preemptively provide that future regulations will not retroactively treat any additional transactions as economically similar transactions, as such retroactive treatment may be necessary in certain situations to prevent abuse. Accordingly, these final regulations do not adopt this recommendation.

B. *Complete liquidations*

Under proposed §58.4501-2(e)(5), a distribution in complete liquidation of a covered corporation to which either section 331 or 332 (but not both) applies would not be a repurchase and, thus, would not be subject to the stock repurchase excise tax. However, under proposed §58.4501-2(e)(4)(v)(A), if sections 331 and 332 both apply to a complete liquidation, then (i) the distribution to the 80-percent distributee (*see* section 332(b)(1)) would not be subject to the stock repurchase excise tax, but (ii) each distribution to which section 331 applies (that is, the surrender of covered corporation stock by each minority shareholder) would be subject to the stock repurchase excise tax. Such a complete liquidation is substantively similar to an upstream reorganization of the liquidating subsidiary into the 80-percent distributee in which the minority shareholders receive only non-qualifying property in exchange for their stock in the liquidating subsidiary.

As discussed in parts IV.C.1 and 4 of this Summary of Comments and Explanation of Revisions, the Treasury Department and IRS have concluded that section 4501 does not apply to upstream reorganizations and other acquisitive reorganizations. Accordingly, to provide consistency, these final regulations also provide that complete liquidations to which sections 331 and 332 both apply are not subject to the stock repurchase excise tax. *See* §58.4501-2(e)(5)(i).

C. *Acquisitive reorganizations*

In the case of an acquisitive reorganization in which the target corporation is a covered corporation, proposed §58.4501-2(e)(4)(i) would treat the exchange by the target corporation shareholders of their target corporation stock pursuant to the plan of reorganization as a repurchase by the target corporation. Under proposed §58.4501-2(c)(1)(i) and (e)(4)(i), the effect of an acquisitive reorganization on a target corporation's stock repurchase excise tax base would be computed by first including in that tax base the fair market value of all target corporation stock exchanged in the transaction (regardless of the type of consideration for which the stock is exchanged) (gross repurchase amount). Under proposed §58.4501-2(c)(1)(ii), the gross repurchase amount then would be reduced under the statutory exception in section 4501(e)(1) (reorganization exception) by the fair market value of the target corporation stock exchanged for property permitted to be received by the target corporation shareholders without recognition of gain or loss under section 354 or 355 (that is, qualifying property). Thus, under the foregoing approach, the target corporation generally would have been subject to the stock repurchase excise tax only to the extent of the fair market value of target corporation stock exchanged for property that is non-qualifying property.

1. *Acquisitive Reorganizations as Economically Similar Transactions*

Several commenters recommended excluding acquisitive reorganizations from the stock repurchase excise tax in whole or in part. The commenters disagreed with subjecting all exchanges of target corporation stock as part of an acquisitive reorganization to the stock repurchase excise tax. According to the commenters, a multi-step analysis is required to ensure the properly tailored application of the stock repurchase excise tax to merger and acquisition (M&A) transactions: (i) first, there must be a threshold determination that a "repurchase" (as defined in section 4501(c)(1)) has occurred; (ii) second, the repurchase must be determined to be part of a section 368(a) reorganization; and (iii) third, the reorganization exception must be applied to determine the extent to which the repurchase is excluded from the stock repurchase excise tax.

One commenter asserted that, if Congress had intended the exchange of target corporation stock in connection with any type of reorganization under section 368(a) to be treated as a repurchase, Congress could have provided explicit language to that effect in the statute. In a prior comment received with respect to Notice 2023-2, a stakeholder also contended that acquisitive reorganizations should not be subject to the stock repurchase excise tax because acquisitive reorganizations and other M&A transactions do not bear the traditional hallmarks of conventional, often opportunistic stock repurchase transactions and programs that, in the stakeholder's view, were the intended target of the stock repurchase excise tax.

The Treasury Department and the IRS agree with the commenters that Congress generally did not intend for the stock repurchase excise tax to apply to transactions, such as acquisitive reorganizations, that fundamentally restructure corporate ownership or control through combinations of separate business entities. In other words, as noted by one commenter, reorganizations are not single-company transactions that distribute corporate value to shareholders in exchange for the surrender of corporate stock. Moreover, as discussed in parts III and IV.B of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS have concluded that section 4501 does not apply to a covered corporation that ceases to be a covered corporation (for example, through a merger or a liquidation for Federal income tax purposes) as a result of the reorganization. Accordingly, in the case of an acquisitive reorganization in which the target corporation is a covered corporation prior to the transaction, these final regulations do not treat the exchange by the target corporation shareholders of their target corporation stock pursuant to the plan of reorganization as a repurchase by the target corporation. *See* §58.4501-2(e)(5)(v).

2. *Sourcing Approach to Acquisitive Reorganizations*

Several commenters recommended that, if the final regulations do not wholly exempt acquisitive reorganizations from the stock repurchase excise tax, this tax should apply solely to the extent that any non-qualifying property is sourced from the target corporation (sourcing approach). Under the proposed computational regulations, a sourcing approach would apply to taxable acquisitions involving partial redemptions using cash sourced from the target corporation, but not to acquisitive reorganizations. According to the commenters, this disparate treatment of taxable transactions and acquisitive reorganizations is contrary to the plain language of section 4501(c)(1) and extending the sourcing approach would strike a better balance between the statutory language of section 4501 and the types of single-entity corporate contractions to which, in the commenters' view, the excise tax was intended to apply.

Another commenter recommended applying a sourcing approach to cash paid to dissenting shareholders. Under this approach, the stock repurchase excise tax would apply to the extent cash sourced from the target corporation was used to satisfy dissenting shareholders' claims.

By concluding that section 4501 does not apply to acquisitive reorganizations, these final regulations have addressed this comment.

3. *Reverse Triangular Mergers*

One commenter recommended that, if the foregoing recommendations regarding acquisitive reorganizations are not adopted, the stock repurchase excise tax base should exclude any non-qualifying property sourced from the acquiring corporation and paid to target shareholders in connection with a reorganization qualifying under section 368(a)(1)(A) by means of section 368(a)(2)(E) (reverse triangular merger). According to the commenter, a reverse triangular merger (like a reorganization under section 368(a)(1)(B) (B reorganization)) is a stock-based reorganization that does not involve an actual or a deemed redemption within the meaning of section 317(b). Another commenter recommended providing an overlap rule for reverse triangular mergers that also qualify as B reorganizations (because the consideration provided includes only qualifying property). Under this overlap rule, such transactions would be treated as B reorganizations and would not be subject to the stock repurchase excise tax.

By concluding that section 4501 does not apply to acquisitive reorganizations, these final regulations have addressed this comment.

4. *Upstream Reorganizations*

One commenter requested clarification as to whether an actual or deemed upstream reorganization of a specified affiliate into a covered corporation in a transaction that qualifies under section 368(a)(1)(A) or (C) is a "repurchase" for purposes of the stock repurchase excise tax. *See* Rev. Rul. 69-617, 1969-2 C.B. 57. For Federal income tax purposes, the transaction would be treated as if (i) the specified affiliate's assets were transferred to the covered corporation in exchange for covered corporation stock in an exchange that qualifies for nonrecognition under section 361(a), and then (ii) the specified affiliate transferred the covered corporation stock back to the covered corporation in exchange for the specified affiliate's stock (that is, the covered corporation is treated as acquiring its own stock) in an exchange that qualifies for nonrecognition treatment to the covered corporation under section 354 and to the specified affiliate under section 361(c).

Under the proposed computational regulations, the deemed exchange described in clause (ii) of the prior sentence may

implicate the stock repurchase excise tax, because the acquiring covered corporation is deemed to acquire its stock from the specified affiliate in exchange for property (that is, stock of the specified affiliate). Additionally, the reorganization exception would not apply, because that exception is limited to situations where a covered corporation is the target corporation. The commenter recommended providing that such transactions are not repurchases for purposes of the stock repurchase excise tax if the target corporation is not also a covered corporation.

By concluding that section 4501 does not apply to acquisitive reorganizations, these final regulations have addressed this comment.

D. *Single-entity reorganizations*

1. *In General*

Under proposed §58.4501-2(e)(4)(ii) and (iii), respectively, E reorganizations and F reorganizations would be treated as economically similar transactions in the same manner as other reorganizations for purposes of the stock repurchase excise tax. Accordingly, a recapitalizing corporation in an E reorganization or the transferor corporation in an F reorganization would have a repurchase to the extent of the fair market value of the shares exchanged by its shareholders in the transaction. However, under proposed §58.4501-3(c)(2) and (3) (applying the reorganization exception to E reorganizations and F reorganizations, respectively), the fair market value of the repurchased shares exchanged for qualifying property (that is, property permitted to be received by the shareholders without recognition of gain or loss under section 354) would reduce the corporation's gross repurchase amount. As a result, the corporation would be subject to the stock repurchase excise tax only to the extent of the fair market value of its shares repurchased with non-qualifying property (if any). Additionally, stock issued by the recapitalizing corporation in the E reorganization, or by the resulting corporation in the F reorganization, would be disregarded for purposes of the netting rule under the "no double benefit rule." *See* proposed §58.4501-4(f)(3).

A distribution of non-qualifying property by the transferor corporation in an F reorganization is treated as a separate transaction (for example, under section 302) for Federal income tax purposes. *See* §1.368-2(m)(3)(iii) (providing that any distribution of money or other property from either the transferor corporation or the resulting corporation, including any money or other property exchanged for shares, in an F reorganization is treated as an unrelated, separate transaction from the reorganization). The proposed computational regulations would not have changed the application of this rule for purposes of the stock repurchase excise tax.

Several commenters contended that an exchange of stock for qualifying property in an E reorganization or an F reorganization should not be subject to the stock repurchase excise tax. Stated differently, commenters recommended that E reorganizations and F reorganizations should not give rise to a repurchase unless and to the extent that shareholders receive non-qualifying property. One commenter contended that stock issued by a covered corporation is not "property" for purposes of section 317(b). Therefore, according to the commenter, the issuance of qualifying property in exchange for stock in an E reorganization or an F reorganization should not be treated as an economically similar transaction that results in a repurchase for purposes of section 4501(a). A commenter recommended analyzing the distribution of non-qualifying property separately under section 301 and/or section 302 of the Code for purposes of the stock repurchase excise tax, consistent with general principles of Federal income tax law. The commenter also requested clarification as to whether all E reorganizations and F reorganizations are covered, or only those in which an "exchange" occurs in form.

The Treasury Department and the IRS agree with the commenters that the issuance of qualifying property in exchange for stock in an E reorganization or an F reorganization should not be treated as an economically similar transaction. Accordingly, these final regulations provide that E reorganizations are treated as repurchases for purposes of the stock repurchase excise tax only if and to the extent that (i) shareholders receive non-qualifying property (that is, property not permitted to be received by the shareholders without recognition of gain or loss under section 354), and (ii) the receipt of such property is not treated as a distribution under section 301 (either by reason of §1.301-1(j), 1.305-7(c)(2), or 1.368-2(e)(5)). *See* §58.4501-2(e)(4)(i). As a result, E reorganizations in which the recapitalizing corporation's shareholders receive only qualifying property (i) are not treated as repurchases for purposes of the de minimis exception, and (ii) do not need to be reported on the stock repurchase excise tax return under §58.6011-1(a).

Because any distribution of money or other property from either the transferor corporation or the resulting corporation in an F reorganization is treated as an unrelated, separate transaction (*see* §1.368-2(m)(3)(iii)), and because such a distribution to the corporation's shareholders in exchange for their stock in the corporation constitutes a section 317(b) redemption (*see* §58.4501-5(b)(10) (*Example 10*)), these final regulations do not include an explicit rule treating F reorganizations in which the transferor corporation's shareholders receive non-qualifying property as economically similar transactions. *See* §58.4501-2(e)(4). As is the case with E reorganizations, F reorganizations in which the transferor corporation's shareholders receive only qualifying property (i) are not treated as repurchases for purposes of the de minimis exception, and (ii) do not need to be reported on the stock repurchase excise tax return under §58.6011-1(a).

2. *Debt-for-Debt Exchanges*

The proposed computational regulations provided that the stock repurchase excise tax would apply to E reorganizations only if there is an exchange by the recapitalizing corporation shareholders of their recapitalizing corporation stock. *See* proposed §58.4501-2(e)(4)(ii); *see also* proposed §§58.4501-1(a) (excise tax is imposed on "any stock of the corporation that is repurchased"); 58.4501-1(b)(29) (definition of "stock"); 58.4501-2(c)(1) (determination of stock repurchase excise tax base). Nevertheless, one commenter recommended clarifying that the stock repurchase excise tax does not apply to E reorganizations in which there is no

exchange of recapitalizing corporation stock (for example, in a recapitalization solely with respect to debt securities). Accordingly, although these final regulations continue to provide that the stock repurchase excise tax applies to E reorganizations only if there is an exchange by the recapitalizing corporation shareholders of their recapitalizing corporation stock (*see* §58.4501-2(e)(4)(i)), these final regulations also include an example illustrating that such debt-for-debt exchanges are not subject to the stock repurchase excise tax. *See* §58.4501-5(b)(2) (*Example 2*).

3. *Preferred Stock with Dividends in Arrears*

Another commenter recommended that, to the extent shares are repurchased in an E reorganization in exchange for qualifying property, the fair market value of those repurchased shares should be a reduction to the excise tax base, regardless of whether any shares (that is, qualifying property) issued are treated as distributed under sections 301 and 305(b) of the Code pursuant to section 305(c) and §1.305-7(c)(1)(ii). (Section 305(c) concerns certain transactions that are treated as distributions, and §1.305-7(c)(1)(ii) provides that a recapitalization is deemed to result in a distribution to which section 305(c) and §1.305-7 apply if a shareholder owning preferred stock with dividends in arrears exchanges the stock for other stock and, as a result, increases the shareholder's proportionate interest in the assets or earnings and profits (E&P) of the corporation.) In other words, the commenter recommended that the reorganization exception apply to the entire repurchase in connection with the E reorganization, and not just to the part of the repurchase that is not treated as a distribution under sections 301 and 305(b).

The Treasury Department and the IRS agree that the fair market value of shares exchanged in an E reorganization attributable to dividends in arrears should not be subject to the stock repurchase excise tax. As discussed in part IV.D.1 of this Summary of Comments and Explanation of Revisions, these final regulations treat E reorganizations as repurchases for purposes of the stock repurchase excise tax only if and to the extent (i) shareholders receive non-qualifying property, and (ii) the receipt of such property is not treated as a distribution under section 301 by reason of §1.305-7(c)(2) or 1.368-2(e)(5). Accordingly, these final regulations have addressed this comment through narrowing the scope of what constitutes a repurchase, which has the added benefit of eliminating the reporting burden for such exchanges.

E. *Split-offs*

Proposed §58.4501-2(e)(4)(iv) would provide that, in the case of a split-off qualifying under section 355 (or so much of section 356 of the Code as relates to section 355) by a distributing corporation that is a covered corporation, the exchange by the distributing corporation shareholders of their distributing corporation stock is a repurchase by the distributing corporation. Thus, under the proposed computational regulations, a split-off that involves the exchange of distributing corporation stock solely for qualifying property would be taken into account for purposes of the de minimis exception and would be required to be reported on the stock repurchase excise tax return. However, under proposed §58.4501-3(c), the distributing corporation would be able to reduce its repurchase amount pursuant to the reorganization exception (*see* part V.A of this Summary of Comments and Explanation of Revisions for a discussion of the reorganization exception).

The Treasury Department and the IRS have concluded that section 4501 applies to the exchange by the distributing corporation shareholders of their distributing corporation stock for the stock of a controlled corporation in a split-off. Accordingly, these final regulations continue to treat the acquisition by a distributing corporation that is a covered corporation of its stock in a split-off as a repurchase by the distributing corporation. *See* §58.4501-2(e)(4)(ii).

V. *Statutory Exceptions*

A. *Reorganization exception*

With respect to the reorganization exception, the proposed computational regulations would adopt a consideration-based approach to the requirement in section 4501(e)(1) that no gain or loss is recognized on the repurchase by the shareholder under chapter 1 by reason of the reorganization. The approach would focus on whether the target corporation shareholders receive property permitted to be received without the recognition of gain or loss under section 354 or 355 (that is, qualifying property). *See* proposed §58.4501-3(c). This approach would be consistent with the interpretation of similar requirements elsewhere in subchapter C of chapter 1 of the Code (subchapter C). *See*, for example, §§1.306-2(b)(2) (interpreting the exception to section 306(a) for a disposition of section 306 stock in which no gain or loss is recognized); 1.355-3(b)(4)(i) (interpreting the requirement under section 355(b)(2)(C) and (D) that an active trade or business not be acquired direct or indirectly within the five-year period preceding the distribution in a transaction in which gain or loss was recognized in whole or in part).

A commenter recommended that the determination of whether a shareholder recognized gain or loss also should take into account whether, and the extent to which, a shareholder receiving non-qualified property actually recognized gain (that is, whether the amount realized by the shareholder exceeds the shareholder's basis). According to the commenter, this interpretation is closer to the language of the statute than the proposed consideration-based approach. However, in prior comments provided with respect to section 4501, a different stakeholder expressed the view that the consideration-based approach is superior from a policy perspective.

The Treasury Department and the IRS disagree with the commenter that the determination of whether the reorganization exception applies should take into account the basis and amount realized in the transaction of each shareholder of a covered corporation. Congress overlaid the stock repurchase excise tax on top of the provisions and principles of subchapter C. As specifically applicable to the reorganization exception, Congress defined a "repurchase" in section 4501(c)(1) to mean solely a section 317(b) redemption (and any transaction determined by the

Secretary to be economically similar to a section 317(b) redemption), and then provided an exception in section 4501(e)(1) to the extent that the repurchase is part of a reorganization (within the meaning of section 368(a)) and no gain or loss is recognized on the repurchase by the shareholder under chapter 1 by reason of the reorganization. The Treasury Department and the IRS have determined that, consistent with the interpretation of similar provisions of subchapter C (and taking into account the narrowed scope of economically similar transactions), the reorganization exception in these final regulations applies only if section 355 prevents the shareholder of a covered corporation from recognizing gain or loss on the exchange of the covered corporation's stock (that is, if the shareholder receives only qualifying property). This interpretation gives effect to the statutory language "by reason of such reorganization."

The consideration-based approach also is consistent with the Treasury Department's and the IRS's view that the reorganization exception should be available to the extent shareholders' interests in the covered corporation are preserved. Moreover, basing the application of the reorganization exception on whether shareholders actually recognized gain as an economic matter would be inconsistent with the statutory structure of section 4501, because the general statutory definition of "repurchase" in section 4501(c)(1) includes any section 317(b) redemption or economically similar transaction regardless of whether the shareholder recognizes gain or loss in an economic sense.

In addition, the Treasury Department and the IRS continue to be of the view that the consideration-based approach not only implements the plain language of the reorganization exception but also provides a rule that is readily administrable by taxpayers and the IRS. In contrast, an approach that focuses on whether each shareholder of a covered corporation actually recognized gain or loss would impose an unreasonable administrative burden on taxpayers and the IRS. Therefore, these final regulations do not adopt the commenter's recommendation.

Instead, consistent with the views expressed by the other stakeholder, these final regulations maintain an approach based on the type of consideration provided in the reorganization, and, thus, similar to the applicability of the "no recognition of gain or loss" rules in section 355. Relatedly, however, and as previously discussed in part IV of this Summary of Comments and Explanation of Revisions, the reorganization exception in these final regulations also reflects the narrower scope of reorganizations that are economically similar transactions for purposes of section 4501.

B. *Stock contribution exception*

Section 4501(e)(2) provides an exception to the application of the stock repurchase excise tax "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."

One commenter recommended that, to better reflect the reality of group employee plans and align with congressional intent, the final regulations should exempt a stock repurchase from the stock repurchase excise tax if the repurchase is related to either (i) the granting of stock to employees as part of a long-term incentive plan, or (ii) a cancellation of stock triggered by a previous capital increase carried out as part of an employee shareholder program. The commenter also requested exempting all repurchases made in connection with employee stock plans if (i) such repurchases are made using trust assets by a grantor trust established in connection with unfunded deferred compensation arrangements (commonly referred to as a "rabbi trust"), and (ii) the shares continue to be held by the rabbi trust for use in connection with those employee stock plans.

These final regulations do not adopt the commenter's recommendations. The Treasury Department and the IRS are of the view that the stock contribution exception should not be used to encourage executive compensation arrangements. The definition of an "employer-sponsored retirement plan" in proposed §58.4501-1(b)(11) is limited to plans that are qualified under section 401(a) of the Code (including ESOPs). These final regulations do not broaden this term to include executive compensation arrangements.

C. *RIC/REIT exception*

To implement the exception for repurchases by a RIC or a REIT in section 4501(e)(5), proposed §58.4501-3(f) would provide that 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. These final regulations retain this rule. *See* §58.4501-3(f).

A commenter recommended extending the exception for RICs to all funds registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et. seq*., including funds that do not qualify as RICs for Federal income tax purposes (non-RIC funds). The commenter suggested that Congress's rationale for excepting RICs from the stock repurchase excise tax also applies to non-RIC funds, because the organizational structure, operations, applicable securities laws, and accounting standards are the same for those funds as for funds that are RICs for Federal income tax purposes. The commenter indicated that the majority of non-RIC funds affected by the stock repurchase excise tax fail to qualify as RICs solely because their investments in publicly traded partnerships exceed the limits in section 851(b)(3). According to the commenter, those investments do not distinguish these funds from RICs in any way relevant to the stock repurchase excise tax. The commenter also noted that most non-RIC funds are required to redeem shares at the demand of a shareholder, which means that the stock repurchase excise tax will not deter repurchases. Moreover, the commenter noted that because shares of non-RIC funds are priced based on net asset value, such funds are incapable of using stock repurchases to artificially increase their share value.

The Treasury Department and the IRS agree that certain non-RIC funds are obligated to redeem shares at the demand of a shareholder and, therefore, are limited in their ability to use stock repurchases for other purposes, such as artificially increasing share value. Accordingly, under the grant of authority in section 4501(f), these final regulations provide an exception for certain non-RIC funds that parallels the exception for RICs in §58.4501-3(f). Under these final regulations, the excep-

tion applies only to a covered corporation that is described in section 851(a)(1)(A) but that has not elected to be a RIC under section 851(b) (non-RIC '40 Act fund) and that is either: (i) an "open-end company" as defined in section 5(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-5); or (ii) a "closed-end company" as defined in section 5(a) of the Investment Company Act of 1940, if the repurchase occurs as part of a periodic repurchase offer of the closed-end non-RIC '40 Act fund (sometimes referred to as an "interval fund") pursuant to SEC Rule 23c-3 (17 CFR 270.23c-3).

D. *Dividend exception*

To implement the "dividend exception" of section 4501(e)(6), proposed §58.4501-3(g)(1) generally would provide that 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 section 301(c)(1) or 356(a)(2).

Proposed §58.4501-3(g)(2)(i) would provide a rebuttable presumption that a repurchase to which section 302 or 356(a) applies is subject to section 302(a) or 356(a)(1), respectively (and, therefore, is ineligible for the dividend exception). Under proposed §58.4501-3(g)(2)(ii), a covered corporation would be permitted to rebut this presumption with regard to a specific shareholder solely by establishing with sufficient evidence (sufficient evidence requirement) that the shareholder treats the repurchase as a dividend on the shareholder's Federal income tax return.

Proposed §58.4501-3(g)(2)(iii) would provide that, to satisfy the sufficient evidence requirement, the covered corporation must obtain the shareholder's certification, in accordance with proposed §58.4501-3(g)(3), that the repurchase either (i) constitutes a redemption treated as a distribution to which section 301 applies, or (ii) has the effect of the distribution of a dividend under section 356(a)(2). The covered corporation also would be required to (i) treat the repurchase consistent with the shareholder certification, (ii) have no knowledge of facts indicating that the shareholder certification is incorrect, and (iii) demonstrate sufficient E&P to treat as a dividend either the redemption under section 302 or the receipt of money or other property under section 356.

Several commenters recommended adopting a sufficient evidence requirement that does not require shareholder certification (at least in certain circumstances). According to commenters, covered corporations may be unable to compel their shareholders to provide a certification in accordance with proposed §58.4501-3(g)(3), and obtaining certification from foreign shareholders that do not file U.S. tax returns and otherwise have no U.S. tax nexus may be difficult. Accordingly, one commenter recommended requiring shareholder certification only if the covered corporation lacks sufficient evidence to determine that a repurchase should be treated as a dividend.

Several commenters also recommended adopting a sufficient evidence requirement that does not require shareholders to treat the repurchase as a dividend on their Federal income tax return, because some shareholders are not required to file a Federal income tax return. One commenter recommended modifying the sufficient evidence requirement to permit U.S. companies to provide IRS Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, to show payment of a dividend to foreign shareholders in lieu of obtaining certifications from those shareholders.

The Treasury Department and the IRS agree with the commenters that the sufficient evidence requirement should be modified to facilitate administrability and reduce taxpayer burden. Accordingly, under these final regulations, the sufficient evidence requirement no longer requires shareholders to treat a repurchase as a dividend on their Federal income tax return. Instead, a covered corporation may rebut the presumption of no dividend equivalence in §58.4501-3(g)(2)(i) with regard to a specific shareholder by establishing with sufficient evidence that the covered corporation and the shareholder treat the repurchase as a dividend for Federal income tax purposes. *See* §58.4501-3(g)(2)(ii).

Moreover, the sufficient evidence requirement no longer requires a shareholder certification, although the final regulations continue to allow covered corporations to satisfy this requirement by obtaining a shareholder certification. Instead, the sufficient evidence requirement may be satisfied if the covered corporation: (i) establishes, based on information known to the covered corporation (for example, through legal documentation of share ownership, publicly available information, the pro rata nature of the repurchase, or the shareholder certification safe harbor), that the repurchase either (A) is a redemption that is treated as a distribution to which section 301 applies by reason of section 302(d), or (B) has the effect of the distribution of a dividend under section 356(a)(2); (ii) has no knowledge of facts indicating that the treatment described in clause (i) of this sentence is incorrect; (iii) treats the repurchase consistent with such treatment, including by withholding the applicable amounts if required; and (iv) demonstrates sufficient E&P to treat as a dividend either the redemption under section 302 or the receipt of money or other property under section 356. *See* §58.4501-3(g)(3).

Like the aforementioned documentation requirement in §58.4501-3(c)(4) for the reorganization exception, §58.4501-3(g)(4) requires a covered corporation to retain the evidence described in §58.4501-3(g)(3), make that evidence available for inspection to the IRS if any of the evidence becomes material in the administration of any internal revenue law, and retain records of all information necessary to document and substantiate such evidence.

The Treasury Department and the IRS continue to be of the view that reliance solely on the Form 1042-S does not provide sufficient evidence that a shareholder treats a repurchase as a dividend. The Form 1042-S is based on the presumption that share repurchases are dividends subject to withholding tax. Consequently, reliance solely on the Form 1042-S for purposes of substantiating the dividend exception could overstate the amount of repurchases that qualify for this exception.

VI. *Netting Rule*

A. *Overview*

Proposed §58.4501-4 would provide rules implementing the netting rule. In

general, under proposed §58.4501-4(b)(1), the stock repurchase excise tax base with regard to a taxable year of a covered corporation would be reduced by the aggregate fair market value of stock of the covered corporation: (i) issued by the covered corporation during its taxable year in connection with the performance of services for the covered corporation by employees or other service providers of the covered corporation; (ii) provided by a specified affiliate of the covered corporation in connection with the performance of services for the specified affiliate by an employee of the specified affiliate during the covered corporation's taxable year; or (iii) issued by the covered corporation during the covered corporation's taxable year not in connection with the performance of services.

Proposed §58.4501-4(c) would provide additional rules regarding stock issued or provided to an employee of a covered corporation or specified affiliate as compensation for services performed as an employee, including transfers of stock in connection with the performance of services described in section 83 of the Code (such as pursuant to a nonqualified stock option or pursuant to a stock option described in section 421 of the Code).

Proposed §58.4501-4(f)(3) contains the "no double benefit rule" under which stock issued by a covered corporation as part of a transaction qualifying as a reorganization under section 368(a) or a distribution under section 355 would be disregarded for purposes of the netting rule if: (i) the stock is qualifying property; (ii) the stock is used by another covered corporation (second covered corporation) to repurchase stock of the second covered corporation in an acquisitive reorganization, an E reorganization, an F reorganization, or a split-off; and (iii) the repurchase described in clause (ii) of this sentence is not included in the second covered corporation's stock repurchase excise tax base because that repurchase is a qualifying property repurchase.

B. *No double benefit rule; issuances in E reorganizations, F reorganizations, and section 355 transactions*

Commenters agreed with the proposed exclusion of stock issued by a recapitalizing corporation in an E reorganization or a resulting corporation in an F reorganization for purposes of the netting rule. *See* proposed §58.4501-4(f)(3). One commenter agreed with the end result under the proposed regulations but recommended that, because a corporation's own stock is not "property" for purposes of section 317(b), a special rule should be added to disregard such issuances for purposes of the netting rule.

Another commenter queried whether the "no double benefit rule" would apply to an E reorganization. As noted previously, this rule applies to disregard the issuance of stock by a covered corporation if, among other conditions, the stock is "used by another covered corporation (second covered corporation) to repurchase stock of the second covered corporation." However, the commenter noted that there is no second corporation in an E reorganization.

These final regulations do not include the "no double benefit rule," because that rule is no longer necessary in light of other changes under these final regulations. For example, as discussed in part IV.D.1 of this Summary of Comments and Explanation of Revisions, these final regulations (i) treat E reorganizations as repurchases only if and to the extent that non-qualifying property is distributed by the recapitalizing corporation to its shareholders in exchange for their stock, and (ii) treat a distribution of non-qualifying property by the transferor corporation in an F reorganization as a separate transaction. Moreover, as discussed in part IV.C.1 of this Summary of Comments and Explanation of Revisions, the exchange by target corporation shareholders of their target corporation stock pursuant to the plan of reorganization in an acquisitive reorganization is not a repurchase by the target corporation under these final regulations.

Additionally, these final regulations adopt the comment recommending the addition of a special rule providing that stock issued by the recapitalizing corporation in an E reorganization or the resulting corporation in an F reorganization is not taken into account for purposes of the netting rule. *See* §58.4501-4(f)(3). These final regulations also provide that stock issued by a covered corporation that is a controlled corporation in a distribution qualifying under section 355 (or so much of section 356 as relates to section 355) is disregarded for purposes of the netting rule. *See* §58.4501-4(f)(9).

C. *Issuances in acquisitive reorganizations*

One commenter recommended against treating qualifying property issued by the acquiring corporation in connection with an acquisitive reorganization as being issued in a redemption or as resulting in an increase in the target corporation's stock repurchase excise tax base. Instead, the commenter recommended allowing a reduction by the acquiring corporation for purposes of its stock repurchase excise tax base.

Because these final regulations eliminate the "no double benefit rule," the acquiring corporation is no longer prohibited from reducing its stock repurchase excise tax base under the netting rule for its stock issued in an acquisitive reorganization.

D. *Instruments not in the legal form of stock*

The proposed computational regulations would provide an anti-avoidance rule to address the issuance or provision of instruments of a covered corporation that are treated as stock for Federal tax purposes but are not in the legal form of stock (non-stock instruments). For example, a taxpayer seeking to avoid the application of the stock repurchase excise tax might issue deep-in-the-money call options (which the taxpayer treats as stock for Federal tax purposes) to accommodation parties with the mutual understanding that such options never would be exercised.

Under proposed §58.4501-4(f)(13), the issuance or provision of a non-stock instrument (including certain deep-in-the-money options) would be disregarded for purposes of the netting rule unless and until the instrument is repurchased, and the amount of the issuance for purposes of the netting rule would be limited to the lesser of the fair market value of the instrument at the time of issuance or repurchase. To prevent taxpayers from taking inconsistent positions with respect to comparable non-stock instruments, proposed

§58.4501-4(f)(13)(ii)(D) would provide that a taxpayer that fails to timely report a repurchase of a non-stock instrument may not take into account any issuances for purposes of the netting rule for comparable non-stock instruments repurchased within the five taxable years ending on the last day of the repurchase year, unless the failure to timely report the earlier repurchase was due to reasonable cause.

Consistent with the general application of the stock repurchase excise tax to all instruments treated as stock for Federal tax purposes, the proposed computational regulations would not exclude the acquisition of non-stock instruments from the definition of a "repurchase."

Several commenters recommended removing the special netting rule for non-stock instruments so that all instruments of a covered corporation treated as stock for Federal tax purposes, regardless of legal form, are treated alike for purposes of the stock repurchase excise tax. One commenter noted that the value of stock issued to closely related parties (which would be the most likely to accommodate non-economic abusive behavior) already is excluded for the purpose of the netting rule. *See* proposed §58.4501-4(f)(13)(ii)(A). Another commenter noted that taxpayers would be unlikely to engage in transactions involving accommodation parties, because those transactions would be subject to substance-based challenges by the IRS and would face other legal and non-tax impediments discouraging non-economic activity. A commenter also contended that the proposed rule may encourage taxpayers to strategically choose the legal form of equity issuances to obtain preferable treatment with regard to the stock repurchase excise tax, thereby engaging in non-economic activity strictly for Federal tax benefits.

The commenters also suggested alternatives if the special netting rule for non-stock instruments is retained. One commenter suggested that, if the rule is not removed, it should be expanded to apply to equity instruments that are limited and preferred as to dividends and do not participate in corporate growth, or at least expanded to incorporate preferred equity that is mandatorily redeemable or redeemable at a specified time. Other commenters suggested applying the rule only to specific cases in which the non-stock instrument is issued to an accommodation party and subject to a binding repurchase agreement.

These final regulations adopt the commenters' view that non-stock instruments generally should be treated the same as stock for purposes of the netting rule, except in certain potentially abusive transactions. Under these final regulations, the issuance or provision of non-stock instruments generally is regarded at the time of issuance. However, to address certain potentially abusive transactions, these final regulations retain a limited version of the proposed special netting rule that applies only to non-stock instruments that are (i) not a non-stock instrument the offer and sale of which was registered with the SEC, and (ii) issued to a person that owns (or, under the attribution rules of section 318 of the Code, is considered to own) at least 10 percent of the stock of the covered corporation, either by vote or value, but only if the covered corporation has knowledge of facts that would indicate such ownership, including through legal documentation of share ownership, publicly available information, or any other means at the time of issuance by the covered corporation or at the time of the provision by the specified affiliate of the covered corporation. *See* §58.4501-4(f)(13).

The changes to the special netting rule for non-stock instruments under these final regulations are intended to avoid the potential application of the rule to situations that are not abusive, while still applying to situations in which taxpayers seek to avoid the application of the stock repurchase excise tax. Consistent with this intent, these final regulations would not subject public offerings of non-stock instruments to the special netting rule. In addition, in light of commenters' suggestion that abusive transactions are likely to involve accommodation parties, these final regulations limit the application of the rule to situations in which there is a direct or indirect ownership relationship between the covered corporation and the holder of the non-stock instrument. Finally, these final regulations remove the proposed consistency requirement and the proposed fair market value rule in order to simplify the application of the rule. Taken together, these changes are intended to exclude non-tax motivated issuances of non-stock instruments, thereby facilitating administrability and reducing taxpayer burden in the application of the special netting rule for non-stock instruments.

E. *Stock issued or provided to non-employee service providers of a specified affiliate*

Under the proposed computational regulations, a covered corporation's stock repurchase excise tax base would be reduced by the aggregate fair market value of stock of the covered corporation provided by a specified affiliate of the covered corporation in connection with the performance of services for the specified affiliate by an employee of the specified affiliate during the covered corporation's taxable year. *See* proposed §58.4501-4(b)(1)(ii). Under proposed §58.4501-4(f)(2)(iv), stock of a covered corporation issued by the covered corporation in connection with the performance of services for a specified affiliate would not be treated as "issued" for purposes of the netting rule. However, a transfer of stock of a covered corporation described in §1.83-6(d) by a specified affiliate to an employee (but not a non-employee service provider) of the specified affiliate would be treated as "provided" by the specified affiliate under proposed §58.4501-4(b)(1)(ii).

Commenters recommended applying the netting rule when a covered corporation issues its stock to any service provider (employee or non-employee) of a specified affiliate of the covered corporation in connection with services performed for the specified affiliate. Similarly, commenters recommended that the result should be the same when the specified affiliate provides stock of a covered corporation to its employee or non-employee service provider as compensation for services rendered (or when such transfer is deemed to occur under §1.83-6(d)).

The Treasury Department and the IRS agree with the commenters that the netting rule should apply to stock provided by a specified affiliate to a non-employee service provider (other than the covered corporation or a specified affiliate of the covered corporation) in connection with the performance of services for the specified affiliate. Accordingly, these final reg-

ulations provide that 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 provided by a specified affiliate of the covered corporation in connection with the performance of services for the specified affiliate by an employee or other service provider of the specified affiliate during the covered corporation's taxable year. *See* §58.4501-4(b)(1)(ii) and (f)(2)(iv).

VII. *Constructive Specified Affiliate Acquisitions*

Under proposed §58.4501-2(f)(3), an acquisition by a covered corporation of a corporation or partnership that owns stock in the covered corporation generally would be treated as a repurchase of covered corporation stock (constructive specified affiliate acquisition rule). More specifically, shares of stock of a covered corporation would be treated as repurchased by the covered corporation to the extent that: (i) the target corporation or partnership becomes a specified affiliate of the covered corporation; and (ii) at the time the target corporation or partnership becomes a specified affiliate, it owns stock of the covered corporation (A) representing more than one percent of the fair market value of the assets of the target corporation or partnership (constructive acquisition de minimis threshold), and (B) that was acquired after December 31, 2022. Shares of covered corporation stock previously treated as repurchased under the constructive specified affiliate acquisition rule would not be subject to the rule a second time (no double detriment rule).

Several commenters asserted that the constructive specified affiliate acquisition rule is overly broad. For example, rather than just address transactions in which the covered corporation and a potential specified affiliate are acting in concert to facilitate avoidance of the stock repurchase excise tax, this rule would encompass non-abusive transactions in which (i) the potential specified affiliate's acquisition of covered corporation stock is entirely unrelated to the transaction in which it becomes a specified affiliate, (ii) the covered corporation does not know in advance that its stock is owned by the potential specified affiliate, and/or (iii) the potential specified affiliate owns only a small amount of covered corporation stock. As a result, according to commenters, this rule effectively could add unexpected transaction costs to ordinary M&A transactions.

Accordingly, commenters recommended limiting the application of this rule. For example, one commenter recommended applying this rule only in situations in which either (i) the potential specified affiliate's acquisition of covered corporation stock occurs pursuant to a binding agreement, or (ii) the covered corporation stock held by the potential specified affiliate exceeds a certain threshold. Additionally, commenters recommended increasing the constructive acquisition de minimis threshold from one percent to five percent. (One commenter further recommended changing this threshold from one percent of the fair market value of the assets of the target corporation or partnership to five percent of the covered corporation's stock; another commenter recommended clarifying the meaning of "fair market value of the assets.") A commenter also recommended broadening the no double detriment rule and providing additional examples to illustrate its application.

The Treasury Department and the IRS agree with the commenters that the constructive specified affiliate acquisition rule is overly broad. Accordingly, these final regulations do not adopt the constructive specified affiliate acquisition rule.

VIII. *Section 4501(d)–Acquisition of Stock of Certain Foreign Corporations*

A. *In general*

Proposed §58.4501-7 would provide rules that relate to the application of section 4501(d) to the acquisition of stock of certain foreign corporations (section 4501(d) proposed regulations). The section 4501(d) proposed regulations generally would apply based on related rules in proposed §§58.4501-2 through 58.4501-4, with modifications as appropriate to reflect differences in the operation of section 4501(d). *See* part I.D of the Background. Among other differences, section 4501(d) provides special rules for the imposition of the stock repurchase excise tax on specified affiliates treated as covered corporations under section 4501(d)(1)(A) and expatriated entities treated as covered corporations under section 4501(d)(2)(A) (each, a section 4501(d) covered corporation under the section 4501(d) proposed regulations). In addition, the netting rule applies only to stock issued or provided by the specified affiliate or expatriated entity, as applicable, to its employees under section 4501(d)(1)(C) and (d)(2)(C), respectively.

B. *Funding rule*

1. *Proposed Funding Rule*

The proposed funding rule would provide that an applicable specified affiliate of an applicable foreign corporation is treated as acquiring stock of the applicable foreign corporation to the extent the applicable specified affiliate funds by any means (including through distributions, debt, or capital contributions), directly or indirectly, an AFC repurchase (as defined in proposed §58.4501-7(b)(2)(i)) or an acquisition of stock of an applicable foreign corporation by a relevant entity (as defined in proposed §58.4501-7(b)(2)(xiv)) (such repurchase or acquisition, a covered purchase) with a principal purpose of avoiding the section 4501(d) excise tax. *See* proposed §58.4501-7(e)(1). If a principal purpose of a funding is to fund, directly or indirectly, a covered purchase, then with respect to that funding, there is a principal purpose of avoiding the section 4501(d) excise tax. A principal purpose described in proposed §58.4501-7(e)(1) would be presumed to exist if the applicable specified affiliate funds by any means, directly or indirectly, a downstream relevant entity (as defined in proposed §58.4501-7(b)(2)(xi)), and the funding occurs within two years of a covered purchase by or on behalf of the downstream relevant entity.

2. *Comments to Withdraw or Revise the Proposed Funding Rule*

Several commenters requested that the proposed funding rule be withdrawn or revised for various reasons, including the following: (i) the rule could be burdensome to comply with, given its potential

to apply to common business transactions (such as when an applicable foreign corporation has a pattern of redeeming its own stock, which was established before Congress enacted the stock repurchase excise tax, and an applicable specified affiliate makes regular dividend distributions to the applicable foreign corporation); (ii) it is unclear (A) when to determine whether the applicable specified affiliate has a principal purpose of funding a covered purchase, and (B) whose purpose to avoid the stock repurchase excise tax is relevant; (iii) there is insufficient clarity (and examples) surrounding the application of the rule; and (iv) the priority rule for covered fundings provided in proposed §58.4501-7(e)(6) does not take into account that the foreign group may have a variety of funding sources.

Some commenters either supported the proposed funding rule or agreed that the Treasury Department and the IRS have the authority to promulgate the rule. Other commenters supported a narrower application of the proposed funding rule and suggested applying it to acquisitions of stock of an applicable foreign corporation by a downstream relevant entity when the acquisition is funded by an applicable specified affiliate as well as other transactions structured to avoid section 4501(d). Commenters also noted that it is uncommon for an applicable specified affiliate, and by extension a downstream relevant entity, to acquire the stock of an applicable foreign corporation.

Taking into account all comments, these final regulations do not adopt the proposed funding rule.

C. *Section 4501(d) netting rule*

1. *Overview*

Section 4501(d)(1)(C) and (d)(2)(C) provide that the adjustment in section 4501(c)(3) is determined only with respect to stock issued or provided by the section 4501(d) covered corporation to employees of the section 4501(d) covered corporation (section 4501(d) netting rule). Proposed §58.4501-7(n) would clarify that the section 4501(d) netting rule applies only to stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, that is issued or provided by a section 4501(d) covered corporation to an employee in connection with the employee's performance of services in the employee's capacity as an employee of the section 4501(d) covered corporation. Consequently, the section 4501(d) proposed regulations would provide that the section 4501(d) netting rule applies only with respect to stock issued or provided by the section 4501(d) covered corporation to its own employees in connection with the performance of services.

2. *Stock Issued or Provided to Non-employee Service Providers*

Commenters requested clarification that the section 4501(d) netting rule applies to stock issued or provided by a specified affiliate to a non-employee service provider (other than the covered corporation or a specified affiliate of the covered corporation) in connection with services provided for the specified affiliate. These final regulations do not adopt this comment. The Treasury Department and the IRS are of the view that the section 4501(d) netting rule does not apply to non-employee service providers. Section 4501(d)(1)(C) explicitly states that the adjustment under section 4501(c)(3) is determined only with respect to stock issued or provided by a specified affiliate to employees of the specified affiliate. Accordingly, the section 4501(d) netting rule precludes the reduction of the section 4501(d) excise tax base when the section 4501(d) covered corporation issues or provides shares to someone other than employees of the section 4501(d) covered corporation.

3. *Other Comments Related to the Section 4501(d) Netting Rule*

Commenters recommended that the section 4501(d) netting rule apply to treat all members of a consolidated group as one corporation, rather than the proposed entity-by-entity approach. Other commenters recommended extending the section 4501(d) netting rule to cover employees of all specified affiliates (that is, all employees in the affiliated group, rather than the employees of an applicable specified affiliate), because, in the commenters' view, this rule is otherwise discriminatory against inbound companies. A commenter also recommended exempting from the section 4501(d) excise tax stock repurchases that are (i) related to either (A) stock grants to employees as part of a long-term incentive plan, or (B) a cancellation of stock triggered by a previous capital increase carried out as part of an employee shareholder program, or (ii) made in connection with employee stock plans using trusts' assets established in connection with unfunded deferred compensation arrangements (that is, rabbi trusts) where (A) such shares are held for use in connection with employee stock plans, and (B) such trusts and associated plans were established prior to the effective date of the final regulations. Some commenters also suggested changes to the section 4501(d) netting rule if the proposed funding rule applies.

These final regulations do not adopt these comments. The Treasury Department and the IRS have determined that the recommendations related to consolidated groups and additional exclusions from the section 4501(d) netting rule are inconsistent with the plain language of section 4501(d), and it is not appropriate to expand the section 4501(d) netting rule beyond its statutory scope. Moreover, as discussed in part VIII.B.2 of this Summary of Comments and Explanation of Revisions, these final regulations do not adopt the proposed funding rule.

D. *Foreign partnerships as applicable specified affiliates*

Under section 4501(d)(1), if a foreign partnership that is a specified affiliate of an applicable foreign corporation has a direct or indirect partner that is a domestic entity, then the foreign partnership is an applicable specified affiliate of the applicable foreign corporation. Proposed §58.4501-7(h) would provide rules for determining if a foreign partnership is an applicable specified affiliate, including treating a domestic entity as an indirect partner with respect to a foreign partnership if the domestic entity owns an interest in the foreign partnership through: (i) one or more foreign partnerships; (ii) one or more foreign corporations controlled by one or more domestic entities (domestic control requirement); or (iii) an ownership chain with one or more

entities described in the preceding clauses (i) and (ii). *See* proposed §58.4501-7(h)(2)(ii). The section 4501(d) proposed regulations also would provide a *de minimis* rule pursuant to which a foreign partnership with one or more direct or indirect domestic entity partners would not be considered an applicable specified affiliate if the domestic entities hold, directly or indirectly, in aggregate, less than five percent of the capital and profits interests in the foreign partnership. *See* proposed §58.4501-7(h)(5).

One commenter suggested that the proposed *de minimis* rule produces a cliff effect that may result in a relatively minimal U.S. nexus through a domestic partner causing such a foreign partnership to be treated in the same manner as a domestic corporation. The commenter recommended applying the stock repurchase excise tax proportionately to domestic partners of a foreign partnership (that is, based on the domestic partner's interest in the foreign partnership), rather than with respect to the entire foreign partnership.

These final regulations do not adopt this recommendation, because section 4501(d) equates a foreign partnership having a domestic entity as a direct or indirect partner with a domestic corporation and does not apply the stock repurchase excise tax proportionately to domestic partners of a foreign partnership.

With respect to the *de minimis* rule, the commenter acknowledged its appropriateness but recommended raising the threshold such that the rule (i) would apply only to situations in which the domestic partner has a material interest in, and material influence on, the operations of a foreign partnership, and (ii) is administrable. The commenter recommended applying the section 4501(d) excise tax to a foreign partnership if the foreign partnership's direct or indirect domestic partners, and related parties of such domestic partners, hold, directly or indirectly, in aggregate, 80 percent or more of the capital and profits interests in the foreign partnership. In the alternative, the commenter recommended that the *de minimis* threshold be increased to 25 percent for the domestic partner itself or increased to 50 percent to reflect actual control by the domestic partner and to be consistent with the percentage used to determine specified affiliate status more generally under section 4501.

These final regulations do not adopt the foregoing recommendations. Section 4501(d) does not require the domestic entity partner to have a material interest in, or material influence on, the operations of a foreign partnership. Moreover, the *de minimis* rule addresses compliance burdens regarding the determination of when direct or indirect ownership by domestic entity partners causes a foreign partnership to be an applicable specified affiliate. However, in response to the comment, these final regulations raise the *de minimis* threshold so that a foreign partnership with one or more direct or indirect domestic entity partners is not considered an applicable specified affiliate if the domestic entities hold, directly or indirectly, in aggregate, less than 10 percent of the capital and profits interests in the foreign partnership.

The commenter further requested clarification on how a foreign partnership applicable specified affiliate that makes a covered purchase pays the section 4501(d) excise tax. The commenter stated that the section 4501(d) proposed regulations do not specify which entity is responsible for paying the section 4501(d) excise tax when the tax arises because of a covered purchase by a foreign partnership applicable specified affiliate. Although acknowledging that the foreign partnership itself is the payor of the excise tax because it is the entity whose section 4501(d) excise tax basis is increased as a result of the covered funding, the commenter stated that this requirement imposes significant administrative compliance burdens. These asserted burdens include: (i) tracking direct and indirect domestic entity partners to determine whether domestic ownership falls outside of the *de minimis* threshold; (ii) requiring a foreign partnership to file a section 4501 excise tax return and pay the section 4501(d) excise tax liability even though such foreign partnership would not otherwise be required to file U.S. tax returns or report operations for Federal tax purposes; and (iii) requiring the foreign partnership to set aside funds at the partnership level to pay the section 4501(d) excise tax liability and determine how to allocate that liability among its partners.

The Treasury Department and the IRS have determined that the statute is clear that a foreign partnership applicable specified affiliate is the entity responsible for paying the section 4501(d) excise tax when the tax arises because that foreign partnership acquires the stock of the applicable foreign corporation. In respect of filing the stock repurchase excise tax return and paying the section 4501(d) excise tax liability, *see* §§58.6011-1(a) (requirement to file stock repurchase excise tax return) and 58.6151-1(a) (time and place for paying tax shown on stock repurchase excise tax return). *See also* the discussion of filing issues in respect of foreign partnership applicable specified affiliates in the preamble to the proposed computational regulations.

E. *Other modifications to the section 4501(d) proposed regulations*

As noted in part VIII.A. of this Summary of Comments and Explanation of Revisions, the section 4501(d) proposed regulations generally apply based on related rules in proposed §§58.4501-2 through 58.4501-4, with modifications as appropriate to reflect differences in the operation of section 4501(d). Accordingly, these final regulations modify the section 4501(d) proposed regulations to reflect modifications to the related rules in proposed §§58.4501-2 through 58.4501-4, as appropriate.

IX. *Other Comments*

One commenter recommended that these final regulations distinguish between "illegitimate" repurchases (in the commenter's view, repurchases that benefit executives rather than investors) and "legitimate" repurchases. The Treasury Department and the IRS are of the view that the statute does not draw a distinction between repurchases that benefit executives versus those that benefit investors. Accordingly, these final regulations do not adopt this comment. However, as reflected in this Summary of Comments and Explanation of Revisions, these final regulations streamline the stock repurchase excise tax regulations while preserving clear, bright-line rules for determining which repurchases are subject to the stock repurchase excise tax.

X. *Applicability Dates*

A. *In general*

These final regulations generally provide that §§58.4501-1 through 58.4501-5 apply to (i) repurchases of stock of a covered corporation occurring after December 31, 2022, and (ii) issuances and provisions of stock of a covered corporation occurring during taxable years ending after December 31, 2022. *See* §58.4501-6(a). However, §58.4501-6(b)(1) provides that certain rules in §§58.4501-2 through 58.4501-4 that were not described in Notice 2023-2 apply to (i) repurchases of stock of a covered corporation occurring after April 12, 2024 (the date of publication of the proposed computational regulations in the ***Federal Register***), and (ii) issuances and provisions of stock of a covered corporation occurring after April 12, 2024. Nevertheless, §58.4501-6(b)(2) provides that so long as a covered corporation consistently applies the provisions of §§58.4501-1 through 58.4501-5, the covered corporation may choose to apply these final regulations with respect to the provisions described in §58.4501-6(b)(1) to (i) repurchases of stock of the covered corporation occurring on or before April 12, 2024, and after December 31, 2022, and (ii) issuances and provisions of stock of the covered corporation occurring on or before April 12, 2024, and during taxable years ending after December 31, 2022.

Except with respect to the rules under §58.4501-7(p)(2) and (3), the rules of §58.4501-7 apply to transactions that occur after April 12, 2024. *See* §58.4501-7(p)(1). Section 58.4501-7(p)(2) provides a transition rule for the foreign partnership de minimis rule, allowing a section 4501(d) covered corporation to apply §58.4501-7(g)(5) by replacing the phrase "10 percent" with "five percent" for transactions that occur after April 12, 2024, but before November 24, 2025. Alternatively, a section 4501(d) covered corporation may apply the final rules of §58.4501-7 for transactions that occur after December 31, 2022, provided that the section 4501(d) covered corporation applies all those rules consistently. *See* §58.4501-7(p)(3).

B. *Effect on prior returns*

If a covered corporation previously filed a Form 7208, *Excise Tax on Repurchase of Corporate Stock*, applying Notice 2023-2 or the proposed computational regulations and would like to file a refund claim after the effective date of these final regulations, the covered corporation should file a Form 720-X, *Amended Quarterly Federal Excise Tax Return*, for the quarter (or previously amended quarter, if applicable) in which the covered corporation filed the original Form 720, *Quarterly Federal Excise Tax Return*, and attach a corrected Form 7208 (with the word "Amended" added to the top of the corrected Form 7208). If a taxpayer other than the original filer would like to file a refund claim, the taxpayer should file a claim on Form 8849, *Claim for Refund of Excise Taxes*, and attach Schedule 6, *Other Claims*, and a corrected Form 7208.

If a covered corporation is filing a Form 720-X for the third quarter of 2024, and if the covered corporation previously attached two Forms 7208 (one for a tax year ending in 2023, and one for a tax year ending in 2024) to the Form 720 for that quarter, the covered corporation must attach two corrected Forms 7208 (with the word "Amended" added to the top of each corrected Form 7208) to the Form 720-X for that quarter.

Special Analyses

I. *Regulatory Planning and Review*

The Office of Information and Regulatory Analysis (OIRA) of the Office of Management and Budget (OMB) has determined that these final regulations are not significant and are not subject to review under section 6(b) of Executive Order 12866. Therefore, a regulatory impact analysis is not required.

II. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the OMB before collecting information from the public, whether that collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the OMB.

The collections of information in these regulations contain reporting, third-party disclosure, and recordkeeping requirements in §§58.4501-3(g) and 58.4501-7(l)(6). This information is necessary for the IRS to accurately determine the stock repurchase excise tax due and is required by law to comply with the provisions of section 4501 of the Code as enacted by section 10201 of the Inflation Reduction Act of 2022. The likely respondents are corporations and partnerships. The burdens associated with these information collections are included in Form 7208 and its instructions and approved with OMB control number 1545-2323 in accordance with PRA procedures under 5 CFR 1320.10.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

III. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations only apply to publicly traded corporations, which tend to consist of larger businesses. Specifically, based on the most recent data available to the IRS for tax year 2023, approximately 3,800 corporations reported publicly traded common stock. Of those corporations, approximately 3,210 (over 84 percent) reported total assets over $100 million, and approximately 3,750 (over 98 percent) reported total assets over $10 million. Meanwhile, for tax year 2023, the IRS received 8,269,075 Corporation Income Tax Returns. IRS Publication 6292, Fiscal Year Projections for the United States: 2024-2031, Fall 2024, Table 2. Of these corporation returns, 8,009,010 reported total assets below $10 million. Thus, the

number of corporations affected by these regulations that reported total assets below $10 million is less than one thousandth of one percent of the total number of corporations that reported total assets below $10 million. Therefore, these regulations do not create additional obligations for, or impose an economic impact on, a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

IV. *Section 7805(f)*

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

V. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

VII. *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

Any IRS Revenue Procedure, Revenue Ruling, Notice, or other guidance cited in this document is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov*.

Drafting Information

The principal authors of these regulations are Kailee H. Hock of the Office of Associate Chief Counsel (Corporate), Naomi Lehr and Robert C. Weedman of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), Lucas J. Eberhart of the Office of Associate Chief Counsel (Financial Institutions and Products), and Brittany N. Dobi of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 58

Excise taxes, Stocks, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR parts 1 and 58 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1275-6 is amended by adding paragraph (f)(12)(iii) to read as follows:

§1.1275-6 Integration of qualifying debt instruments.

* * * * *

(f) * * *

(12) * * *

(iii) *Excise tax on repurchase of corporate stock*—(A) *Application*. If a taxpayer enters into an integrated transaction (for example, a convertible debt instrument integrated with one or more §1.1275-6 hedges consisting of an option on the taxpayer's own stock), then, solely for purposes of section 4501 of the Code and the stock repurchase excise tax regulations (as defined in §58.4501-1(b)(37) of this chapter), the taxpayer must apply the rules that would apply on a separate basis to the components of the integrated transaction, rather than the rules that otherwise would apply to the integrated transaction under this section.

(B) *Applicability date*. Notwithstanding paragraph (j) of this section, paragraph (f)(12)(iii)(A) of this section applies to an integrated transaction outstanding after December 31, 2022 (regardless of when such integrated transaction was entered into by the taxpayer).

* * * * *

PART 58—STOCK REPURCHASE EXCISE TAX

Par. 3. The authority citation for part 58 continues to read in part as follows:

Authority: 26 U.S.C. 4501(f) and 7805.

* * * * *

Par. 4. Subpart A is added to read as follows:

Subpart A—Excise Tax on Stock Repurchases

Sec.

Subpart A—Excise Tax on Stock Repurchases

§58.4501-0 Table of contents.

This section lists the major captions that appear in §§58.4501-1 through 58.4501-7.

(e) Fair market value of issued or provided stock.

(1) In general.

(2) Stock traded on an established securities market.

(3) Stock not traded on an established securities market.

(4) Market price of stock denominated in non-U.S. currency.

(5) Stock issued or provided in connection with the performance of services.

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

(1) Distributions by a covered corporation of its own stock.

(2) Issuances to a specified affiliate.

(3) Issuances in an E reorganization or an F reorganization.

(4) Deemed issuances under section 304(a)(1).

(5) Deemed issuance of a fractional share.

(6) Issuance by a covered corporation that is a dealer in securities.

(7) Issuance by the target corporation in a reverse triangular merger.

(8) Issuance as part of a section 1036(a) exchange.

(9) Issuance as part of a distribution under section 355.

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

(11) Net exercises and share withholding.

(12) Settlement other than in stock.

(13) Instrument not in the legal form of stock.

§58.4501-5 Examples.

(a) Scope.

(b) In general.

(1) Example 1: Redemption of preferred stock not subject to an exception.

(2) Example 2: Debt-for-debt exchange.

(3) Example 3: Valuation of repurchase.

(4) Example 4: Acquisition partially funded by the target corporation.

(5) Example 5: Pro rata stock split.

(6) Example 6: Acquisition of a target corporation in an acquisitive reorganization.

(7) Example 7: E reorganization.

(8) Example 8: E reorganization with non-qualifying property.

(9) Example 9: Cash paid in lieu of fractional shares.

(10) Example 10: F reorganization.

(11) Example 11: Section 355 split-off.

(12) Example 12: Section 355 split-off as part of a D reorganization.

(13) Example 13: Section 355 spin-off.

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

(15) Example 15: Repurchase pursuant to an accelerated share repurchase agreement.

(16) Example 16: Distribution in complete liquidation of a covered corporation.

(17) Example 17: Complete liquidation of a covered corporation to which sections 331 and 332(a) both apply.

(18) Example 18: Acquisition by disregarded entity.

(19) Example 19: Multiple repurchases and contributions of same class of stock.

(20) Example 20: Multiple repurchases and contributions of different classes of stock.

(21) Example 21: Treatment of contributions after the taxable year.

(22) Example 22: Becoming a covered corporation.

(23) Example 23: Actual pro rata redemption in partial liquidation.

(24) Example 24: Constructive redemption in partial liquidation.

(25) Example 25: Non-pro rata redemption in partial liquidation.

(26) Example 26: Physical settlement of call option contract.

(27) Example 27: Net cash settlement of call option contract.

(28) Example 28: Physical settlement of put option contract.

(29) Example 29: Net cash settlement of put option contract.

(30) Example 30: Indirect ownership.

(31) Example 31: Restricted stock provided to a service provider.

(32) Example 32: Restricted stock provided to a service provider with section 83(b) election.

(33) Example 33: Forfeiture of restricted stock provided to a service provider with section 83(b) election.

(34) Example 34: Vested stock provided to a service provider with share withholding.

(35) Example 35: Stock option net exercise.

(36) Example 36: Net share settlement not in connection with performance of services.

(37) Example 37: Broker-assisted net exercise.

(38) Example 38: Stock provided by a specified affiliate to an employee.

(39) Example 39: Stock provided by a specified affiliate to a non-employee.

(40) Example 40: Corporation treated as a domestic corporation under section 7874(b).

§58.4501-6 Applicability dates.

(a) In general.

(b) Exceptions.

(1) Applicability date for certain rules.

(2) Early application.

(c) Special rules for acquisitions or repurchases of stock of certain foreign corporations.

§58.4501-7 Special rules for acquisitions or repurchases of stock of certain foreign corporations.

(a) Scope.

(b) Definitions.

(1) Application of definitions in §58.4501-1(b).

(2) Section 4501(d) definitions.

(c) Computation of section 4501(d) excise tax liability for a section 4501(d) covered corporation.

(1) Imposition of tax.

(2) Section 4501(d) de minimis exception.

(3) Section 4501(d) excise tax base.

(4) Section 4501(d)(1) repurchases or section 4501(d)(2) repurchases before January 1, 2023.

(d) Section 4501(d)(2) coordination rules.

(1) Coordination rule for section 4501(d)(1) repurchases and section 4501(d)(2) repurchases.

(2) Coordination rule for multiple section 4501(d) covered corporations.

(e) Status as applicable foreign corporation or covered surrogate foreign corporation.

(1) Initiation date.

(2) Cessation date.

(3) Rules regarding F reorganizations.

(f) Status as an applicable specified affiliate or a specified affiliate of a covered surrogate foreign corporation.

(1) Timing of determination.

(2) Determination of indirect ownership.

(g) Foreign partnerships that are applicable specified affiliates.

(1) In general.

(2) Direct or indirect partner.

(3) Control of a foreign corporation.

(4) Indirect interests held through applicable foreign corporations.

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(h) CSFC repurchase.

(1) Overview.

(2) Scope of CSFC repurchases.

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(4) Section 4501(d) economically similar transactions.

(5) Transactions that are not CSFC repurchases.

(i) [Reserved]

(j) Date of section 4501(d)(1) repurchase or section 4501(d)(2) repurchase.

(1) General rule.

(2) Regular-way sale.

(k) Fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation that is repurchased or acquired.

(1) In general.

(2) Stock traded on an established securities market.

(3) Stock not traded on an established securities market.

(4) Market price of stock denominated in non-U.S. currency.

(l) Section 4501(d) exceptions.

(1) In general.

(2) Section 4501(d) reorganization exception.

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

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

(5) Repurchases by a RIC or REIT.

(6) CSFC repurchase treated as a dividend.

(7) Repurchases by a non-RIC '40 Act fund.

(m) Application of section 4501(d) netting rule.

(1) In general.

(2) Stock issued or provided outside period of applicable foreign corporation or covered surrogate foreign corporation status.

(3) Issuances or provisions before January 1, 2023.

(4) Stock Issued or provided in connection with the performance of services.

(5) Date of issuance or provision for section 4501(d) netting rule.

(6) Fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation that is issued or provided to employees.

(7) Issuances that are disregarded for purposes of applying the section 4501(d) netting rule.

(n) Section 4501(d)(1) examples.

(1) Example 1: Section 4501(d) netting rule with respect to a single applicable specified affiliate.

(2) Example 2: Section 4501(d) netting rule with respect to multiple applicable specified affiliates.

(3) Example 3: Foreign partnership that is an applicable specified affiliate.

(4) Example 4: Foreign partnership that is not an applicable specified affiliate.

(5) Example 5: Foreign partnership that is directly owned by foreign corporations and is an applicable specified affiliate.

(o) Section 4501(d)(2) examples.

(1) Example 1: Section 4501(d) netting rule with respect to an expatriated entity.

(2) Example 2: Section 4501(d)(2) repurchase from the covered surrogate foreign corporation or another specified affiliate of the covered surrogate foreign corporation.

(3) Example 3: Liability with respect to multiple expatriated entities.

(p) Applicability dates.

(1) In general.

(2) Transition rule for foreign partnership de minimis rule.

(3) Early application.

§58.4501-1 Excise tax on stock repurchases.

(a) *Excise tax imposed*. Section 4501(a) of the Code imposes a stock repurchase excise tax on each covered corporation equal to the applicable percentage of the fair market value of any stock of the corporation that is repurchased by the corporation during the taxable year. This section and §58.4501-2 provide generally applicable definitions and operating rules regarding the application of the stock repurchase excise tax and the computation of the stock repurchase excise tax liability of a covered corporation. Section 58.4501-3 provides rules regarding the application of the exceptions in section 4501(e) (other than the de minimis exception described in section 4501(e)(3), which is addressed in §58.4501-2(b)(2)) and related exceptions. Section 58.4501-4 provides rules regarding the application of section 4501(c)(3). Section 58.4501-5 provides examples that illustrate the application of section 4501 and the stock repurchase excise tax regulations. Section 58.4501-6 provides applicability dates for the stock repurchase excise tax regulations (other than §58.4501-7). For special rules and examples regarding the application of section 4501(d) to acquisitions or repurchases of stock of certain foreign corporations, *see* §58.4501-7.

(b) *Definitions.* The following definitions apply for purposes of this section and §§58.4501-2 through 58.4501-6, and, to the extent provided in §58.4501-7(b), for purposes of §58.4501-7:

(1) *Acquisitive reorganization*. The term *acquisitive reorganization* means a transaction that qualifies as a reorganization under—

(i) Section 368(a)(1)(A) of the Code, including by reason of section 368(a)(2)(D) or (a)(2)(E);

(ii) Section 368(a)(1)(C);

(iii) Section 368(a)(1)(D), if the reorganization satisfies the requirements of section 354(b)(1) of the Code; or

(iv) Section 368(a)(1)(G), if the reorganization satisfies the requirements of section 354(b)(1).

(2) *Applicable percentage*. The term *applicable percentage* means the percentage provided in section 4501(a).

(3) *Cessation date*. The term *cessation date* means the date on which all stock of a covered corporation ceases to be traded on an established securities market.

(4) *Clawback*. The term *clawback* means a surrender of stock pursuant to a contractual provision that requires an employee to return vested stock.

(5) *Code*. The term *Code* means the Internal Revenue Code.

(6) *Controlled corporation*. The term *controlled corporation* has the meaning given the term in section 355(a)(1)(A) of the Code.

(7) *Covered corporation*. The term *covered corporation* means any domestic corporation (including within the meaning of paragraph (d) of this section) the stock of which is traded on an established securities market.

(8) *Covered holder*. The term *covered holder* has the meaning given the term in §58.4501-4(f)(13)(ii)(C).

(9) *Covered non-stock instrument*. The term *covered non-stock instrument* has the meaning given the term in §58.4501-4(f)(13)(ii)(B).

(10) *De minimis exception*. The term *de minimis exception* has the meaning given the term in §58.4501-2(b)(2)(i).

(11) *Distributing corporation*. The term *distributing corporation* has the meaning given the term in section 355(a)(1)(A).

(12) *E reorganization*. The term *E reorganization* means a transaction that qualifies as a reorganization under section 368(a)(1)(E).

(13) *Economically similar transaction*. The term *economically similar transaction* means a transaction described in §58.4501-2(e)(4).

(14) *Employee*. The term *employee* means an employee as defined in section 3401(c) of the Code and §31.3401(c)-1 of this chapter, or a former employee, of a covered corporation or a specified affiliate of the covered corporation (as appropriate).

(15) *Employer-sponsored retirement plan*—(i) *In general*. The term *employer-sponsored retirement plan* means a plan that includes a trust that is qualified under section 401(a) of the Code and maintained by a covered corporation or a specified affiliate of the covered corporation.

(ii) *ESOPs included*. For the purposes of these regulations, the term *employer-sponsored retirement plan* includes an employee stock ownership plan defined in section 4975(e)(7) of the Code (ESOP) that is maintained by a covered corporation or a specified affiliate of the covered corporation.

(16) *Established securities market*. The term *established securities market* has the meaning given the term in §1.7704-1(b) of this chapter.

(17) *F reorganization*. The term *F reorganization* means a transaction that qualifies as a reorganization under section 368(a)(1)(F).

(18) *Forfeiture*. The term *forfeiture* means a surrender of stock to the issuing corporation for no consideration.

(19) *Gross repurchase amount*. The term *gross repurchase amount* has the meaning given the term in §58.4501-2(c)(1)(i).

(20) *Initiation date*. The term *initiation date* means the date on which stock of a corporation begins to be traded on an established securities market.

(21) *IRS*. The term *IRS* means the Internal Revenue Service.

(22) *Netting rule*. The term *netting rule* has the meaning given the term in §58.4501-4(a).

(23) *Non-RIC '40 Act fund*. The term *non-RIC '40 Act fund* has the meaning given the term in §58.4501-3(h).

(24) *Non-stock instrument*. The term *non-stock instrument* has the meaning given the term in §58.4501-4(f)(13)(ii)(A).

(25) *Recapitalizing corporation*. The term *recapitalizing corporation* means the corporation recapitalizing its stock in an E reorganization.

(26) *REIT*. The term *REIT* has the meaning given the term *real estate investment trust* in section 856(a) of the Code.

(27) *Reorganization exception*. The term *reorganization exception* means the exception provided in §58.4501-3(c).

(28) *Repurchase*. The term *repurchase* has the meaning given the term in §58.4501-2(e)(2).

(29) *RIC*. The term *RIC* has the meaning given the term *regulated investment company* in section 851 of the Code.

(30) *SEC*. The term *SEC* means the U.S. Securities and Exchange Commission.

(31) *Section 317(b) redemption*. The term *section 317(b) redemption* means a redemption within the meaning of section 317(b) of the Code with regard to the stock of a covered corporation.

(32) *Specified affiliate*. 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.

(33) *Split-off*. The term *split-off* means a distribution qualifying under section 355 (or so much of section 356 of the Code as relates to section 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.

(34) *Stock*—(i) *In general*. Except as provided in paragraph (b)(34)(ii) or (iii) of this section, the term *stock* means any instrument issued by a corporation that is stock (including treasury 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.

(ii) *Additional tier 1 capital*. The term *stock* does not include preferred stock that—

(A) Qualifies as additional tier 1 capital (within the meaning of 12 CFR 3.20(c), 217.20(c), 217.608(a)(2), 324.20(c), or 628.20(c)); and

(B) Does not qualify as common equity tier 1 capital (within the meaning of 12 CFR 3.20(b), 217.20(b), 217.608(a)(3), 324.20(b), or 628.20(b)).

(iii) *Section 1504(a)(4) stock*. The term *stock* does not include preferred stock described in section 1504(a)(4) of the Code.

(35) *Stock repurchase excise tax*. The term *stock repurchase excise tax* means the excise tax imposed by section 4501(a) on each covered corporation equal to the applicable percentage of the fair market value of any stock of the corporation that is repurchased by the corporation during the taxable year.

(36) *Stock repurchase excise tax base*. The term *stock repurchase excise tax base* has the meaning given the term in §58.4501-2(c)(1).

(37) *Stock repurchase excise tax regulations*. The term *stock repurchase excise tax regulations* means—

(i) Subparts A and B of this part; and

(ii) Section 1.1275-6(f)(12)(iii) of this chapter (providing that the integration of a qualifying debt instrument with a hedge pursuant to §1.1275-6 of this chapter is not

taken into account in determining whether and when stock is repurchased or issued).

(38) *Taxable year*. The term *taxable year* has the meaning given the term in section 7701(a)(23) of the Code.

(39) *Treasury stock*. The term *treasury stock* means treasury stock within the meaning of section 317(b).

(c) *No application for any purposes of chapter 1 of the Code.* The rules of this part have no application for purposes of chapter 1 of the Code.

(d) *Status as a domestic or foreign corporation*. If a corporation is, or is treated as, a domestic corporation for purposes of the Code or for purposes that include chapter 37 of the Code, then the corporation is a domestic corporation for purposes of the stock repurchase excise tax regulations. A corporation that is not a domestic corporation for purposes of the stock repurchase excise tax regulations is a foreign corporation for such purposes.

(e) *F reorganizations*. For purposes of the stock repurchase excise tax regulations, the transferor corporation and the resulting corporation (each as defined in §1.368-2(m)(1) of this chapter) in an F reorganization are treated as the same corporation.

§58.4501-2 General rules regarding excise tax on stock repurchases.

(a) *Scope*. This section provides general rules regarding the application of the stock repurchase excise tax and the computation of the stock repurchase excise tax liability of a covered corporation. Paragraphs (b) and (c) of this section provide rules for computing a covered corporation's stock repurchase excise tax liability. Paragraph (d) of this section provides rules for determining whether a corporation is a covered corporation. Paragraph (e) of this section provides rules for determining whether a transaction is a repurchase. Paragraph (f) of this section provides rules for acquisitions of stock of a covered corporation by a specified affiliate of the covered corporation. Paragraph (g) of this section provides rules for determining when stock is repurchased. Paragraph (h) of this section provides rules for determining the fair market value of repurchased stock.

(b) *Computation of excise tax liability*—(1) *Imposition of tax*. Except as provided in paragraph (b)(2) of this section (regarding the de minimis exception), the amount of stock repurchase excise tax imposed by section 4501(a) on a covered corporation for a taxable year equals the product obtained by multiplying—

(i) The applicable percentage; by

(ii) The stock repurchase excise tax base of the covered corporation for the taxable year determined in accordance with paragraph (c)(1) of this section.

(2) *De minimis exception*—(i) *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 stock described in paragraphs (b)(2)(i)(A) and (B) of this section does not exceed $1,000,000 (*de minimis exception*):

(A) The stock of the covered corporation that is repurchased by the covered corporation (as determined under paragraph (e) of this section).

(B) The stock of the covered corporation that is acquired by a specified affiliate of the covered corporation (as determined under paragraph (f) of this section).

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

(A) Any exception under §58.4501-3; and

(B) Any adjustments pursuant to the netting rule under §58.4501-4.

(c) *Stock repurchase excise tax base*—(1) *In general*. With regard to a covered corporation, the term *stock repurchase excise tax base* means the dollar amount (not less than zero) that is obtained by—

(i) Determining (in accordance with paragraphs (e) through (h) of this section) the aggregate fair market value of the stock of the covered corporation that is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation during the covered corporation's taxable year (*gross repurchase amount*);

(ii) Reducing the gross repurchase amount by the fair market value of the stock of the covered corporation repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation during the covered corporation's taxable year to the extent the repurchase or acquisition qualifies for an exception in accordance with §58.4501-3; and then

(iii) Further reducing the gross repurchase amount by the aggregate fair market value of stock of the covered corporation issued by the covered corporation or provided by a specified affiliate of the covered corporation during the covered corporation's taxable year under the netting rule in accordance with §58.4501-4.

(2) *Taxable year determination*—(i) *In general*. The determinations under paragraph (c)(1)(i) of this section are made separately for each covered corporation and for each taxable year of the covered corporation.

(ii) *No carrybacks or carryforwards*. Reductions under paragraphs (c)(1)(ii) and (iii) of this section in excess of the gross repurchase amount may not be carried forward or backward to preceding or succeeding taxable years of the covered corporation.

(3) *Repurchases before January 1, 2023*. Stock of a covered corporation repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation before January 1, 2023 (as determined under paragraphs (e) through (g) of this section) is neither—

(i) Included in the stock repurchase excise tax base of the covered corporation; nor

(ii) Taken into account in determining the applicability of the de minimis exception.

(d) *Duration of covered corporation status*—(1) *Initiation date*. A corporation becomes a covered corporation at the beginning of the corporation's initiation date (that is, the date on which stock of the corporation begins to be traded on an established securities market).

(2) *Cessation date*. A corporation ceases to be a covered corporation at the end of the corporation's cessation date (that is, the date on which all stock of the corporation ceases to be traded on an established securities market).

(3) *Inbound and outbound F reorganizations*—(i) *Inbound F reorganization*. In the case of a foreign corporation that transfers its assets or that is treated as transferring its assets to a domestic corporation in an F reorganization (as described in §1.367(b)-2(f) of this chapter), the cor-

poration is not treated as a domestic corporation until the day after the reorganization.

(ii) *Outbound F reorganization*. In the case of a domestic corporation that transfers its assets or that is treated as transferring its assets to a foreign corporation in an F reorganization (as described in §1.367(a)-1(e) of this chapter), the corporation is not treated as a foreign corporation until the day after the reorganization.

(e) *Repurchase*—(1) *Overview*. This paragraph (e) provides rules for determining whether a transaction is a repurchase. Paragraph (e)(2) of this section provides a general rule regarding the scope of the term *repurchase* for purposes of the stock repurchase excise tax. Paragraph (e)(3) of this section provides an exclusive list of transactions that are section 317(b) redemptions but are not repurchases. Paragraph (e)(4) of this section provides an exclusive list of transactions that are economically similar transactions. Paragraph (e)(5) of this section provides a non-exclusive list of transactions that are not repurchases.

(2) *Scope of repurchase*. A *repurchase* means solely—

(i) A section 317(b) redemption, except as provided in paragraph (e)(3) of this section; or

(ii) An economically similar transaction described in paragraph (e)(4) of this section.

(3) *Certain section 317(b) redemptions that are not repurchases*. This paragraph (e)(3) provides an exclusive list of section 317(b) redemptions that are not repurchases for purposes of the stock repurchase excise tax regulations.

(i) *Section 304(a)(1) transactions*—(A) *Rule regarding deemed distributions*. The deemed distribution by an acquiring corporation (within the meaning of section 304(a)(1) of the Code) that is a covered corporation in redemption of stock of the acquiring corporation (resulting from the application of section 304(a)(1) to an acquisition of stock by such acquiring corporation), regardless of whether section 302(a) or (d) of the Code applies to the acquiring corporation's deemed distribution in redemption of its stock.

(B) *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 section 304(a)(1), *see* §58.4501-4(f)(4).

(ii) *Leveraged buyouts and take-private transactions*. A redemption by a covered corporation that occurs as part of a transaction in which the covered corporation ceases to be a covered corporation.

(iii) *Stock issued prior to August 16, 2022*. A redemption by a covered corporation of stock of the covered corporation issued prior to August 16, 2022, if, at the time such stock was issued and continuing until the time of the redemption, the stock was subject to—

(A) Mandatory redemption by the covered corporation; or

(B) A unilateral put option by the holder of such stock.

(iv) *Payment by a covered corporation of cash in lieu of fractional shares*. A payment by a covered corporation of cash in lieu of a fractional share of the covered corporation's stock, if—

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

(B) 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);

(C) The payment is carried out solely for administrative convenience (and, therefore, solely for non-tax reasons); and

(D) The amount of cash paid to the shareholder in lieu of a fractional share does not exceed the fair market value of one full share of the class of stock of the covered corporation with respect to which the payment of cash in lieu of a fractional share is made.

(4) *Economically similar transactions*. This paragraph (e)(4) provides an exclusive list of transactions that are economically similar to section 317(b) redemptions solely for purposes of the stock repurchase excise tax (that is, economically similar transactions) and, therefore, are taken into account as repurchases for purposes of the stock repurchase excise tax regulations.

(i) *E reorganizations*—(A) *In general*. Except as provided in paragraph (e)(4)(i)(B) of this section, in the case of an E reorganization in which the recapitalizing corporation is a covered corporation, solely the recapitalizing corporation's acquisition of its stock pursuant to the plan of reorganization in exchange for property that is not permitted to be received by the recapitalizing corporation's shareholders under section 354 of the Code without the recognition of gain.

(B) *Exception*. Paragraph (e)(4)(i)(A) of this section does not apply to the extent that—

(*1*) The distribution of such property is treated as a distribution with respect to the recapitalizing corporation's stock under §1.301-1(j) of this chapter; or

(*2*) The exchange is with respect to preferred stock with dividends in arrears that is treated under §1.305-7(c)(2) or 1.368-2(e)(5) of this chapter as a deemed distribution to which sections 301 and 305(b)(4) of the Code apply.

(ii) *Split-offs*. In the case of a split-off by a distributing corporation that is a covered corporation, the acquisition by the distributing corporation of its stock in exchange for property.

(iii) *Certain forfeitures and clawbacks of stock*—(A) *In general*. In the case of a forfeiture or clawback of stock of a covered corporation pursuant to a legal or contractual obligation, the forfeiture to or clawback by the covered corporation or a specified affiliate of the covered corporation (as appropriate) on the date of forfeiture or clawback (as appropriate) if the stock was treated as issued or provided under §58.4501-4(b) and the forfeiture or clawback of the stock (as appropriate) is described in paragraph (e)(4)(iii)(B), (C), or (D) of this section.

(B) *Stock subject to post-closing price adjustments*. The stock was issued pursuant to an acquisition of a target entity or its business, and the forfeiture of the stock was in accordance with the terms of the documents governing the transaction (for example, to compensate the acquiring corporation for breaches of representations or warranties made by the target entity, or because the business of the target

entity did not achieve certain performance benchmarks agreed upon in the transaction documents).

(C) *Stock for which a section 83(b) election was made*. The stock was subject to a substantial risk of forfeiture within the meaning of section 83(a) of the Code on the date the stock was issued or provided, the service provider made a valid election under section 83(b) with regard to the stock, and the forfeiture resulted from the service provider failing to meet the vesting condition.

(D) *Clawbacks.* On the date the stock was issued or provided, the stock was subject to a clawback agreement, and a clawback of the stock resulted from the occurrence of an event specified in the clawback agreement.

(5) *Transactions that are not repurchases*. This paragraph (e)(5) provides a non-exclusive list of transactions each of which is not a repurchase for purposes of the stock repurchase excise tax regulations.

(i) *Complete liquidations*. A distribution by a covered corporation—

(A) In complete liquidation of the covered corporation to which section 331 or 332(a) (or both) applies;

(B) Pursuant to a resolution or plan of dissolution of the covered corporation that is reported on an original (but not a supplemented or an amended) IRS Form 966, *Corporate Dissolution or Liquidation* (or any successor form); or

(C) Pursuant to a deemed dissolution of the covered corporation (for instance, pursuant to a deemed liquidation under §301.7701-3 of this chapter).

(ii) *Distributions during taxable year of complete liquidation or dissolution*. A distribution by a covered corporation during a taxable year of the covered corporation, if the covered corporation—

(A) Completely liquidates during the taxable year (that is, has a final distribution during the taxable year in a complete liquidation to which section 331 or 332(a) (or both) applies);

(B) Dissolves during the taxable year pursuant to a resolution or plan of dissolution as reported on an original (but not a supplemented or an amended) IRS Form 966, *Corporate Dissolution or Liquidation* (or any successor form); or

(C) Is deemed to dissolve during the taxable year (for instance, pursuant to a deemed liquidation under §301.7701-3 of this chapter).

(iii) *Divisive transactions under section 355 other than split-offs*—(A) *In general*. Subject to paragraph (e)(5)(iii)(B) of this section, a distribution by a distributing corporation that is a covered corporation of stock of a controlled corporation qualifying under section 355 that is not a split-off.

(B) *Exception regarding non-qualifying property in spin-offs*. A distribution by a distributing corporation that is a covered corporation of other property or money in exchange for stock of the distributing corporation is a repurchase by the distributing corporation if it occurs in pursuance of a transaction qualifying under section 355 in which the distribution by the distributing corporation of stock of the controlled corporation is with respect to stock of the distributing corporation.

(iv) *Non-redemptive distributions subject to section 301(c)(2) or (3)*. A distribution to which section 301 applies by a covered corporation to a distributee, if the distribution—

(A) Is subject to section 301(c)(2) or (3); and

(B) The distributee does not exchange stock of the covered corporation (and is not treated as exchanging stock of the covered corporation for Federal income tax purposes).

(v) *Acquisitive reorganizations*. In the case of an acquisitive reorganization in which the target corporation is a covered corporation, the acquisition by the target corporation of its stock pursuant to the plan of reorganization in exchange for property that is permitted to be received by the target corporation's shareholders under section 354 or 356 of the Code.

(vi) *Net cash settlement of an option contract or other derivative financial instrument*—(A) *In general*. Subject to paragraph (e)(5)(vi)(B) of this section, the net cash settlement of an option contract or other derivative financial instrument with respect to stock of a covered corporation.

(B) *Exception regarding net cash settlement of an option contract or other derivative financial instrument treated as stock*. The net cash settlement of an instrument in the legal form of an option contract or other derivative financial instrument that is treated as stock of a covered corporation for Federal tax purposes at the time of issuance is a repurchase.

(vii) *Repurchases from a specified affiliate*. The acquisition by a covered corporation of its stock from a specified affiliate of the covered corporation if the specified affiliate's acquisition of such stock of the covered corporation was treated as a repurchase under paragraph (f)(1) of this section.

(f) *Specified affiliates*—(1) *Acquisitions of stock of a covered corporation by a specified affiliate treated as a repurchase*. 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) *Determination of specified affiliate status*—(i) *Timing of determination*. A covered corporation must determine whether another corporation or partnership is a specified affiliate of the covered corporation at the time the stock of the covered corporation is acquired or provided by the other corporation or partnership for purposes of computing the stock repurchase excise tax with regard to the covered corporation.

(ii) *Indirect ownership*. For purposes of determining whether a corporation or a partnership is a specified affiliate of a covered corporation, the covered corporation is treated as indirectly owning stock in the corporation or holding capital or profits interests in the partnership in the percentage equal to the covered corporation's proportionate percentage of stock owned, or capital or profits interests held, through other entities.

(g) *Date of repurchase*—(1) *General rule*. In general, stock of a covered corporation is treated as repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation on the date on which ownership of the stock transfers to the covered corporation or specified affiliate (as appropriate) for Federal income tax purposes.

(2) *Regular-way sale*. A regular-way sale of stock of a covered corporation (that is, a transaction in which a trade order is placed on the trade date, and settlement

of the transaction, including payment and delivery of the stock, occurs a standardized period of time, as set by a regulator, after the trade date) is treated as a repurchase by the covered corporation or an acquisition by a specified affiliate of the covered corporation on the trade date.

(h) *Fair market value of repurchased stock*—(1) *In general*. The fair market value of stock of a covered corporation that is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation is the market price of the stock on the date the stock is repurchased or acquired (as determined under paragraph (g) of this section). That is, if the price at which the repurchased or acquired stock is purchased differs from the market price of the stock on the date the stock is repurchased or acquired, the fair market value of the stock is the market price on the date the stock is repurchased or acquired.

(2) *Stock traded on an established securities market*—(i) *In general*. If stock of a covered corporation that is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation is traded on an established securities market, the covered corporation must determine the market price of the repurchased or acquired stock by applying one of the methods provided in paragraph (h)(2)(ii) of this section. For purposes of this paragraph (h)(2), repurchased or acquired stock of a covered corporation 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 or acquired are so traded.

(ii) *Acceptable methods*. The following are acceptable methods for determining the market price of repurchased or acquired stock of a covered corporation traded on an established securities market:

(A) The daily volume-weighted average price as determined on the date the stock is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation.

(B) The closing price on the date the stock is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation.

(C) The average of the high and low prices on the date the stock is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation.

(D) The trading price at the time the stock is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation.

(iii) *Date of repurchase not a trading day*. For purposes of each method provided in paragraph (h)(2)(ii) of this section, if the date the stock of a covered corporation is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation is not a trading day, the date on which the market price is determined is the immediately preceding trading day.

(iv) *Consistency requirement*—(A) *Solely one method permitted for determining market price of repurchased or acquired stock*. The market price of repurchased or acquired stock of a covered corporation 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 paragraph (h)(2)(ii) of this section to all stock of the covered corporation repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation throughout the covered corporation's taxable year.

(B) *Application to netting rule*. The method used by the covered corporation under paragraph (h)(2)(iv)(A) of this section must be consistently applied to determine the market price of all stock of the covered corporation issued or provided throughout the covered corporation's taxable year for purposes of the netting rule under §58.4501-4 except with respect to the determination of the fair market value of stock of a covered corporation that the covered corporation issues, or that a specified affiliate of the covered corporation provides, in connection with the performance of services. *See* §58.4501-4(e).

(v) *Stock traded on multiple exchanges*—(A) *In general*. A covered corporation the stock of which is traded on multiple established securities markets must determine the market price of the stock of the covered corporation by reference to trading on the established securities market in the country in which the covered corporation is organized, including a regional established securities market that trades in that country.

(B) *Stock traded on multiple exchanges in country where covered corporation is organized*. If a covered corporation's stock is traded on multiple established securities markets in the country in which the covered corporation is organized, the covered corporation must determine the market price of the stock by reference to trading on the established securities market in that country with the highest trading volume in that stock in the prior taxable year.

(C) *Other cases in which stock is traded on multiple exchanges*. If stock of a covered corporation is traded on multiple established securities markets and neither paragraph (h)(2)(v)(A) nor (B) of this section applies, the covered corporation must determine the market price of the stock in a manner that is reasonable and consistent under the facts and circumstances.

(3) *Stock not traded on an established securities market*—(i) *General rule*. If repurchased or acquired stock of a covered corporation is not traded on an established securities market, the market price of the stock is determined as of the date the stock is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation under the principles of §1.409A-1(b)(5)(iv)(B)(*1*) of this chapter.

(ii) *Consistency requirement*—(A) *Solely one method permitted for determining market price of repurchased or acquired stock*. The valuation method for determining the market price of repurchased or acquired stock of a covered corporation that is not traded on an established securities market must be used for all repurchases of stock of the covered corporation or acquisitions by a specified affiliate of the covered corporation of the same class throughout the covered corporation's taxable year, unless the application of that method to a particular repurchase or acquisition would be unreasonable under the facts and circumstances as of the valuation date within the meaning of §1.409A-1(b)(5)(iv)(B)(*1*) of this chapter.

(B) *Application to netting rule*. The method used by the covered corporation under paragraph (h)(3)(ii)(A) of this section must be consistently applied to determine the market price of all stock

of the covered corporation of the same class issued throughout the covered corporation's taxable year for purposes of the netting rule under §58.4501-4 except with respect to the determination of the market price of stock of the covered corporation that is issued or provided in connection with the performance of services or if the application of that method to a particular issuance in connection with the performance of services would be unreasonable under the facts and circumstances as of the valuation date.

(4) *Market price of stock denominated in non-U.S. currency*. The market price of any stock of a covered corporation that is denominated in a currency other than the U.S. dollar is converted into U.S. dollars at the spot rate (as defined in §1.988-1(d)(1) of this chapter) on the date the stock is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation.

§58.4501-3 Exceptions.

(a) *Scope*. This section provides rules regarding the application of each exception set forth in section 4501(e) of the Code, other than the de minimis exception described in section 4501(e)(3) and subject to §58.4501-2(b)(2), to a repurchase of stock of a covered corporation by the covered corporation or an acquisition of stock of a covered corporation by a specified affiliate of the covered corporation (as appropriate). This section also provides rules regarding an additional exception to the stock repurchase excise tax applicable to non-RIC '40 Act funds. For rules regarding the application of these exceptions in the context of section 4501(d), *see* §58.4501-7(l).

(b) *Reduction of covered corporation's stock repurchase excise tax base*—(1) *In general*. For purposes of determining a covered corporation's stock repurchase excise tax base under §58.4501-2(c)(1), the covered corporation reduces its gross repurchase amount by an amount equal to the aggregate fair market value of its repurchased stock that qualifies for an exception described in paragraphs (c) through (h) of this section. *See* §58.4501-2(c)(1)(ii).

(2) *Coordination of exceptions*. If a repurchase of stock qualifies for more than one exception described in paragraphs (c) through (h) of this section, the covered corporation may reduce its gross repurchase amount under solely a single exception, as determined by the covered corporation.

(c) *Reorganization exception*. A covered corporation reduces its gross repurchase amount under §58.4501-2(c)(1)(ii) by an amount equal to the aggregate fair market value of its stock repurchased from a shareholder in a transaction described in §58.4501-2(e)(4)(ii) to the extent that the repurchase is for property permitted by section 355 to be received without the recognition of gain or loss.

(d) *Stock contributions to an employer-sponsored retirement plan*—(1) *Reductions in computing covered corporation's stock repurchase excise tax base*—(i) *General rule*. A covered corporation reduces its gross repurchase amount under §58.4501-2(c)(1)(ii) if the stock of the covered corporation that is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation, or an amount of stock equal to the fair market value of the stock repurchased or acquired, is contributed to an employer-sponsored retirement plan. The amount of the reduction under this paragraph (d)(1) is determined as provided in paragraph (d)(3) or (4) of this section.

(ii) *Special rule for leveraged ESOPs*. If a covered corporation or a specified affiliate of the covered corporation maintains an ESOP with an exempt loan (as described in section 4975(d)(3) of the Code), allocations of qualifying employer securities from the ESOP suspense account to ESOP participants' accounts that are attributable to employer contributions (and not to dividends) are treated as contributions of stock under this paragraph (d) as of the date stock attributable to repayment of the exempt loan is released from the suspense account and allocated to ESOP participants' accounts.

(2) *Classes of stock contributed to an employer-sponsored retirement plan*. This paragraph (d) applies to contributions of any class of covered corporation stock to an employer-sponsored retirement plan, regardless of the class of stock that was repurchased or acquired.

(3) *Same class of stock repurchased and contributed*. If stock of a covered corporation is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation, and stock of the covered corporation of the same class is contributed to an employer-sponsored retirement plan, the amount of the reduction under paragraph (d)(1) of this section is equal to the lesser of—

(i) The aggregate fair market value of the stock of the same class that was repurchased or acquired (as determined under §58.4501-2(h)) during the covered corporation's taxable year; or

(ii) The amount obtained by—

(A) Determining the aggregate fair market value of all stock of that class repurchased or acquired (as determined under §58.4501-2(h)) during the covered corporation's taxable year, reduced by the fair market value of shares of that class of stock that is a reduction to the stock repurchase excise tax base for the taxable year under an exception in this section other than the exception in this paragraph (d);

(B) Dividing the amount determined under paragraph (d)(3)(ii)(A) of this section by the number of shares of that class repurchased or acquired, reduced by the number of shares of that class of stock the fair market value of which is a reduction to the stock repurchase excise tax base for the taxable year under an exception in this section other than the exception in this paragraph (d); and

(C) Multiplying the amount determined under paragraph (d)(3)(ii)(B) of this section by the number of shares of that class contributed to an employer-sponsored retirement plan for the taxable year.

(4) *Different class of stock repurchased and contributed*. If stock of a covered corporation is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation, and stock of the covered corporation of a different class is contributed to an employer-sponsored retirement plan, then the amount of the reduction under paragraph (d)(1) of this section is equal to the fair market value of the contributed stock at the time the stock is contributed to the employer-sponsored retirement plan.

(5) *Timing of contributions*—(i) *In general*. The reduction under paragraph (d)(1) of this section (that is, the reduction in computing the stock repurchase excise tax base), for a taxable year applies to con-

tributions of covered corporation stock to an employer-sponsored retirement plan during the covered corporation's taxable year.

(ii) *Treatment of contributions after close of taxable year*. For purposes of paragraph (d)(5)(i) of this section, a covered corporation may treat stock contributions to an employer-sponsored retirement plan made after the close of the covered corporation's taxable year as having been contributed during that taxable year if the following two requirements are satisfied:

(A) The stock must be contributed to the employer-sponsored retirement plan by the filing deadline for the form on which the stock repurchase excise tax must be reported (applicable form) for that taxable year of the covered corporation.

(B) The stock must be treated by the employer-sponsored retirement plan in the same manner that the plan would treat a contribution received on the last day of that taxable year of the covered corporation.

(iii) *No duplicate reductions*. Stock contributions that are treated under paragraph (d)(5)(ii) of this section as having been contributed in the taxable year to which the applicable form applies may not be treated as having been contributed for any other taxable year for purposes of the stock repurchase excise tax.

(6) *Contributions before January 1, 2023*. A covered corporation with a taxable year that both begins before January 1, 2023, and ends after December 31, 2022, may include for that taxable year the fair market value of all contributions of its stock to an employer-sponsored retirement plan during the entirety of that taxable year for purposes of applying this paragraph (d).

(e) *Repurchases or acquisitions by a dealer in securities in the ordinary course of business*—(1) *In general*. Subject to paragraph (e)(2) of this section, a covered corporation reduces its gross repurchase amount under §58.4501-2(c)(1)(ii) by an amount equal to the aggregate fair market value of its stock repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation (as appropriate) that is a dealer in securities (within the meaning of section 475(c)(1) of the Code) to the extent the stock is acquired in the ordinary course of the dealer's business of dealing in securities.

(2) *Applicability*. The reduction described in paragraph (e)(1) of this section 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 a specified affiliate of the covered corporation, or the dealer (if it is a specified affiliate of the covered corporation) does not sell or otherwise transfer the stock to the covered corporation or to another specified affiliate of the covered corporation, in each case other than in a sale or transfer to a dealer that also satisfies the requirements of this paragraph (e)(2).

(f) *Repurchases by a RIC or REIT*. A covered corporation that is a RIC or a REIT reduces its gross repurchase amount under §58.4501-2(c)(1)(ii) by an amount equal to the aggregate fair market value of any shares of its stock repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation.

(g) *Repurchase treated as a dividend*—(1) *In general*. A covered corporation reduces its gross repurchase amount under §58.4501-2(c)(1)(ii) by an amount equal to the aggregate fair market value of the covered corporation's stock that the covered corporation repurchases (excluding stock treated as repurchased under §58.4501-2(f)(1)) to the extent the repurchase is treated as a distribution of a dividend under section 301(c)(1) or 356(a)(2) of the Code.

(2) *Rebuttable presumption of no dividend equivalence*—(i) *Presumption*. A repurchase to which section 302 or 356(a) of the Code applies is presumed to be subject to section 302(a) or 356(a)(1), respectively (and, therefore, is presumed ineligible for the exception in paragraph (g)(1) of this section).

(ii) *Rebuttal of presumption.* A covered corporation may rebut the presumption described in paragraph (g)(2)(i) of this section with regard to a specific shareholder solely by establishing with sufficient evidence that the covered corporation and the shareholder treat the repurchase as a dividend for Federal income tax purposes.

(3) *Sufficient evidence requirement*—(i) *In general*. To provide sufficient evidence under paragraph (g)(2)(ii) of this section to establish that the shareholder treats the repurchase as a dividend for Federal income tax purposes, the covered corporation must—

(A) Establish, based on information known to the covered corporation (for example, through legal documentation of share ownership, publicly available information, the pro rata nature of the repurchase, or the shareholder certification safe harbor described in paragraph (g)(3)(ii) of this section), that—

(*1*) The repurchase either constitutes a redemption that is treated as a distribution to which section 301 applies by reason of section 302(d) or has the effect of the distribution of a dividend under section 356(a)(2); and

(*2*) The covered corporation has no knowledge of facts that would indicate that the treatment described in paragraph (g)(3)(i)(A)(*1*) of this section is incorrect;

(B) Treat the repurchase consistent with the treatment described in paragraph (g)(3)(i)(A)(*1*) of this section, including by withholding the applicable amounts, if required; and

(C) Demonstrate sufficient earnings and profits to treat as a dividend either the redemption under section 302 or the receipt of money or other property under section 356.

(ii) *Shareholder certification safe harbor*—(A) *In general*. To provide sufficient evidence under paragraph (g)(3)(i)(A) of this section to establish that the shareholder treats the repurchase as a dividend for Federal income tax purposes, the covered corporation—

(*1*) May obtain certification from the shareholder, in accordance with paragraph (g)(3)(ii)(B) of this section, that the repurchase constitutes a redemption treated as a distribution to which section 301 applies

by reason of section 302(d), or that the repurchase has the effect of the distribution of a dividend under section 356(a)(2); and

(*2*) Must have no knowledge of facts that would indicate that the shareholder certification is incorrect.

(B) *Content of shareholder certification*. The shareholder certification allowed under paragraph (g)(3)(ii)(A) of this section must include the following information:

(*1*) The name of the shareholder.

(*2*) The name of the covered corporation.

(*3*) The total number of shares of the covered corporation outstanding immediately before and immediately after the repurchase.

(*4*) A statement that the shareholder treated the repurchase as a dividend for Federal income tax purposes.

(*5*) The number of shares actually and constructively owned by the shareholder before and after the repurchase.

(*6*) The shareholder's percentage ownership before and after the repurchase.

(*7*) If the shareholder is not a United States person (within the meaning of section 7701(a)(30) of the Code) and the shares are held through a broker (within the meaning of section 6045(c) of the Code), a statement that a copy of the certification has been provided to the shareholder's broker.

(*8*) Any other information described in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (*see* §§601.601(d)(2) and 601.602 of this chapter).

(*9*) A penalties of perjury statement.

(*10*) The signature of the shareholder and date of signature.

(C) *Agreement to shareholder certification*. After receiving the shareholder certification provided under paragraph (g)(3)(ii)(A)(*1*) of this section, the covered corporation must include on the shareholder certification a statement signed by the covered corporation under penalties of perjury that the covered corporation—

(*1*) Agrees to treat the repurchase consistent with the shareholder certification provided under paragraph (g)(3)(ii)(A)(*1*) of this section; and

(*2*) Has no knowledge of facts that would indicate that the shareholder certification provided under paragraph (g)(3)(ii)(A)(*1*) of this section is incorrect.

(4) *Documentation of sufficient evidence*—(i) *Retention and availability of evidence*. A covered corporation must retain the evidence described in paragraph (g)(3) of this section and make that evidence available for inspection to the IRS if any of the evidence becomes material in the administration of any internal revenue law.

(ii) *Retention of supporting records*. The covered corporation must retain records of all information necessary to document and substantiate all content described in paragraph (g)(3) of this section.

(h) *Repurchases by a non-RIC '40 Act fund*. A covered corporation that is described in section 851(a)(1)(A) of the Code, but that has not elected to be a RIC under section 851(b) (non-RIC '40 Act fund), reduces its gross repurchase amount under §58.4501-2(c)(1)(ii) by an amount equal to the aggregate fair market value of any shares of its stock repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation if—

(1) The non-RIC '40 Act fund is an *open-end company* as defined in section 5(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-5); or

(2) The non-RIC '40 Act fund is a *closed-end company* as defined in section 5(a)(2) of the Investment Company Act of 1940, and the repurchase occurs as part of a periodic repurchase offer made pursuant to SEC Rule 23c-3 (17 CFR 270.23c-3).

§58.4501-4 Application of netting rule.

(a) *Scope*. This section provides rules regarding the application of section 4501(c)(3) of the Code. Paragraph (b) of this section provides general rules regarding the adjustment to a covered corporation's stock repurchase excise tax base with respect to stock that is issued by the covered corporation or provided by a specified affiliate of the covered corporation (*netting rule*). Paragraph (c) of this section provides special rules for stock issued or provided in connection with the performance of services. Paragraph (d) of this section provides rules for determining the date on which stock is issued or provided. Paragraph (e) of this section provides rules for determining the fair market value of stock that is issued or provided. Paragraph (f) of this section sets forth the only circumstances under which an issuance or provision of stock is disregarded for purposes of the netting rule. For rules regarding the application of the netting rule in the context of section 4501(d), *see* §58.4501-7(m).

(b) *Issuances and provisions of stock that are a reduction in computing the stock repurchase excise tax base*—(1) *General rule*. The aggregate fair market value of stock of a covered corporation that is issued by the covered corporation or provided by a specified affiliate of the covered corporation during the covered corporation's taxable year is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base for that taxable year in the following circumstances:

(i) The stock is issued by the covered corporation in connection with the performance of services for the covered corporation by an employee or other service provider of the covered corporation.

(ii) The stock is provided by a specified affiliate of the covered corporation in connection with the performance of services for the specified affiliate by an employee or other service provider of the specified affiliate.

(iii) The stock is issued by the covered corporation other than in connection with the performance of services.

(2) *Stock issued or provided outside period of covered corporation status*. Any stock of a covered corporation issued by the covered corporation or provided by a specified affiliate of the covered corporation before the initiation date or after the cessation date is not taken into account under paragraph (b)(1) of this section. *See* §58.4501-2(d).

(3) *Issuances or provisions before January 1, 2023*. Except as provided in paragraph (b)(2) of this section, a covered corporation with a taxable year that both begins before January 1, 2023, and ends after December 31, 2022, may include the fair market value of all issuances or provisions of its stock during the entirety of that taxable year for purposes of applying paragraph (b)(1) of this section to that taxable year.

(c) *Stock issued or provided in connection with the performance of services*—(1) *In general*. For purposes of this section, stock of a covered corporation is issued or provided by the covered corporation or a specified affiliate of the covered corporation in connection with the performance of services only if the issuance or provision of stock is a transfer described in section 83 of the Code, including pursuant to the exercise of a nonqualified stock option described in §1.83-7 of this chapter, pursuant to the exercise of a stock option described in section 421 of the Code, or pursuant to stock settlement of a restricted stock unit (RSU). A specified affiliate of the covered corporation is not a service provider for purposes of this section.

(2) *Sale of shares to cover exercise price and withholding*—(i) *Payment or advance by third party equal to exercise price*. If a third party pays the exercise price of an option to acquire stock of a covered corporation on behalf of a service provider or advances to a service provider an amount equal to the exercise price of a stock option that the service provider uses to exercise the option, then any stock transferred by the covered corporation or specified affiliate to the third party upon exercise of the option in connection with exercising the option (as well as any stock transferred by the covered corporation or specified affiliate to the service provider) is treated as issued or provided in connection with the performance of the services by the service provider.

(ii) *Advance by third party equal to withholding obligation*. If a third party advances an amount equal to the withholding obligation of a service provider, then any stock transferred by the covered corporation or specified affiliate to the third party in connection with this arrangement (as well as any stock transferred by the covered corporation or specified affiliate to the service provider) is treated as issued or provided in connection with the performance of services by the service provider.

(d) *Date of issuance*—(1) *In general*. Except as provided in paragraph (d)(2) of this section, stock of a covered corporation is treated as issued by the covered corporation or provided by a specified affiliate of the covered corporation on the date on which ownership of the stock transfers to the recipient for Federal income tax purposes.

(2) *Stock issued or provided in connection with the performance of services*—(i) *In general*. Stock of a covered corporation is issued by the covered corporation or provided by a specified affiliate of the covered corporation in connection with the performance of services as of the date the recipient of the stock is treated as the beneficial owner of the stock for Federal income tax purposes. In general, a recipient is treated as the beneficial owner of the stock when the stock is both transferred by the covered corporation (or a specified affiliate of the covered corporation) and substantially vested within the meaning of §1.83-3(b) of this chapter. Thus, stock transferred pursuant to a vested stock award or an RSU is issued or provided when the covered corporation or a specified affiliate of the covered corporation initiates payment of the stock. Stock transferred that is not substantially vested within the meaning of §1.83-3(b) of this chapter is not issued or provided until it vests, except as provided in paragraph (d)(2)(iii) of this section.

(ii) *Stock options and stock appreciation rights*. Stock of a covered corporation transferred by the covered corporation or a specified affiliate of the covered corporation pursuant to an option described in §1.83-7 of this chapter or section 421 or a stock appreciation right is issued by the covered corporation or provided by the specified affiliate of the covered corporation (as applicable) as of the date the stock is transferred pursuant to the exercise of the option or stock appreciation right.

(iii) *Stock on which a section 83(b) election is made*. Stock of a covered corporation transferred by the covered corporation or a specified affiliate of the covered corporation when it is not substantially vested within the meaning of §1.83-3(b) of this chapter, but as to which a valid election under section 83(b) is made, is treated as issued by the covered corporation or provided by the specified affiliate of the covered corporation (as applicable) as of the transfer date.

(e) *Fair market value of issued or provided stock*—(1) *In general*. Except as provided in paragraph (e)(5) of this section, the fair market value of stock of a covered corporation issued by the covered corporation or provided by a specified affiliate of the covered corporation is the market price of the stock on the date the stock is issued or provided.

(2) *Stock traded on an established securities market*—(i) *In general*. If stock of a covered corporation that is issued by the covered corporation is traded on an established securities market, the covered corporation must determine the market price of the stock by applying one of the methods provided in paragraph (e)(2)(ii) of this section.

(ii) *Acceptable methods*. The following are the acceptable methods for determining the market price of stock of a covered corporation traded on an established securities market:

(A) The daily volume-weighted average price as determined on the date the stock is issued by the covered corporation.

(B) The closing price on the trading day the stock is issued by the covered corporation, or the immediately preceding trading day.

(C) The average of the high and low prices on the date the stock is issued by the covered corporation.

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

(iii) *Date of issuance not a trading day*. For purposes of each method provided in paragraph (e)(2)(ii) of this section, if the date the stock of a covered corporation is issued by the covered corporation is not a trading day, the date on which the market price is determined is the immediately preceding trading day.

(iv) *Consistency requirement*—(A) *Solely one method permitted for determining market price of issued stock*. The market price of stock of a covered corporation that is traded on an established securities market must be determined by consistently applying solely one of the methods provided in paragraph (e)(2)(ii) of this section to all stock of the covered corporation issued by the covered corporation throughout the covered corporation's taxable year.

(B) *Application to repurchased stock*. The method used by the covered corporation under paragraph (e)(2)(ii)(A) of this section must be consistently applied to determine the market price of all stock of the covered corporation repurchased by the covered corporation or acquired by a

specified affiliate of the covered corporation throughout the covered corporation's taxable year. *See* §58.4501-2(h)(2)(iv).

(v) *Stock traded on multiple exchanges*. *See* §58.4501-2(h)(2)(v) for rules regarding the valuation of stock of a covered corporation traded on multiple established securities markets.

(3) *Stock not traded on an established securities market*—(i) *General rule*. If stock of a covered corporation is not traded on an established securities market, the market price of the stock is determined as of the date the stock is issued by a covered corporation under the principles of §1.409A-1(b)(5)(iv)(B)(*1*) of this chapter.

(ii) *Consistency requirement*. In determining the market price of stock of a covered corporation that is not traded on an established securities market, the same valuation method must be used for all issuances of stock of the covered corporation belonging to the same class throughout the covered corporation's taxable year, unless the application of that method to a particular issuance would be unreasonable under the facts and circumstances as of the valuation date. That same method also must be consistently applied to determine the market price of all stock of the covered corporation of the same class repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation throughout the covered corporation's taxable year, unless the application of that method to a particular issuance would be unreasonable under the facts and circumstances as of the valuation date. *See* §58.4501-2(h)(3)(ii).

(4) *Market price of stock denominated in non-U.S. currency*. The market price of any stock of a covered corporation that is denominated in a currency other than the U.S. dollar is converted into U.S. dollars at the spot rate (as defined in §1.988-1(d)(1) of this chapter) on the date the stock is issued by the covered corporation or provided by a specified affiliate of the covered corporation (as applicable).

(5) *Stock issued or provided in connection with the performance of services*. The fair market value of stock of a covered corporation issued by the covered corporation or provided by a specified affiliate of the covered corporation (as applicable) in connection with the performance of services is the fair market value of the stock, as determined under section 83, as of the date the stock is issued by the covered corporation or provided by the specified affiliate of the covered corporation (as applicable). For purposes of this section, the fair market value of the stock is determined under the rules provided in section 83 regardless of whether an amount is includible in the service provider's income under section 83 or otherwise. For example, the fair market value of stock issued by a covered corporation pursuant to a stock option described in section 421 and stock issued by a covered corporation to a nonresident alien for services performed outside of the United States is determined using the rules provided in section 83.

(f) *Issuances that are disregarded for purposes of applying the netting rule*. This paragraph (f) lists the only circumstances in which an issuance of stock of a covered corporation is disregarded for purposes of the netting rule.

(1) *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 the covered corporation's stock is disregarded for purposes of the netting rule.

(2) *Issuances to a specified affiliate*—(i) *In general*. Subject to paragraphs (f)(2)(ii) through (iv) of this section, stock of a covered corporation is disregarded for purposes of the netting rule if that stock is issued by the covered corporation—

(A) To a specified affiliate of the covered corporation; or

(B) In connection with the performance of services by an employee of, or other service provider for, a specified affiliate of the covered corporation (but see paragraph (f)(2)(iv) of this section, allowing certain compensatory transfers of a specified affiliate to be regarded in accordance with paragraph (b)(1)(ii) of this section).

(ii) *Subsequent transfer by specified affiliate*. Stock of a covered corporation issued by the covered corporation to a specified affiliate of the covered corporation that is subsequently transferred by the specified affiliate to a person that is not a specified affiliate of the covered corporation is regarded for purposes of the netting rule, and is treated as issued by the covered corporation on the date of the subsequent transfer, only if—

(A) The subsequent transfer by the specified affiliate occurs within the same taxable year that the specified affiliate receives the stock from the covered corporation (*applicable year*);

(B) The covered corporation does not otherwise reduce its stock repurchase excise tax base for the applicable year with respect to the stock under this section; and

(C) The subsequent transfer by the specified affiliate is not in connection with the performance of services provided to the specified affiliate (but see paragraph (f)(2)(iv) of this section, allowing certain compensatory transfers of a specified affiliate to be regarded in accordance with paragraph (b)(1)(ii) of this section).

(iii) *Specific identification of shares*. For purposes of paragraph (f)(2)(ii)(A) of this section, unless specifically identified, the shares of stock of the covered corporation in a specific class of the covered corporation's stock treated as subsequently transferred by the specified affiliate are the earliest shares of that class issued by the covered corporation to the specified affiliate.

(iv) *Subsequent transfers in connection with the performance of services for a specified affiliate*. Stock issued by a covered corporation in connection with the performance of services for a specified affiliate is not treated as issued by the covered corporation. However, a transfer of stock of a covered corporation described in §1.83-6(d) of this chapter (in addition to an actual provision of stock by a specified affiliate described in paragraph (b)(1)(ii) of this section) by a specified affiliate of the covered corporation to an employee or other service provider (that is not another specified affiliate of the covered corporation) of the specified affiliate is treated as a provision of stock described in paragraph (b)(1)(ii) of this section.

(3) *Issuances in an E reorganization or an F reorganization*. The following issuances are disregarded for purposes of the netting rule:

(i) Any stock issued by a recapitalizing corporation as part of a transaction qualifying as an E reorganization.

(ii) Any stock issued by a resulting corporation (as defined in §1.368-2(m)(1) of this chapter) as part of a transaction qualifying as an F reorganization.

(4) *Deemed issuances under section 304(a)(1)*. Any stock treated as issued by the acquiring corporation by reason of the application of section 304(a)(1) to a transaction (as more fully described in §58.4501-2(e)(3)(i)) is disregarded for purposes of the netting rule.

(5) *Deemed issuance of a fractional share*. Any fractional share of a covered corporation's stock deemed to be issued for Federal income tax purposes (by virtue of a payment described in §58.4501-2(e)(3)(iv)) is disregarded for purposes of the netting rule.

(6) *Issuance by a covered corporation that is a dealer in securities*. Any stock of a covered corporation that is a dealer in securities issued by such covered corporation is disregarded for purposes of the netting rule to the extent the stock is issued, or otherwise is used to satisfy obligations to customers arising, in the ordinary course of the covered corporation's business of dealing in securities.

(7) *Issuance by the target corporation in a reverse triangular merger*. Any target corporation stock that is issued by the target corporation to the merged corporation (within the meaning of section 368(a)(2)(E)) in exchange for consideration that includes the stock of the controlling corporation (within the meaning of section 368(a)(2)(E)) in a transaction qualifying as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(E) is disregarded for purposes of the netting rule.

(8) *Issuance as part of a section 1036(a) exchange*. Any stock of a covered corporation issued by the covered corporation in exchange for stock of the covered corporation in a transaction that qualifies under section 1036(a) of the Code is disregarded for purposes of the netting rule.

(9) *Issuance as part of a distribution under section 355*. Any stock issued by a controlled corporation in a distribution qualifying under section 355 (or so much of section 356 as relates to section 355) is disregarded for purposes of the netting rule.

(10) *Stock contributions to an employer-sponsored retirement plan*. Any stock of a covered corporation contributed to an employer-sponsored retirement plan, any stock of a covered corporation treated as contributed to an employer-sponsored retirement plan under §58.4501-3(d)(1)(ii) and (d)(5)(ii), and any stock of a covered corporation sold to a leveraged or non-leveraged ESOP, is disregarded for purposes of the netting rule.

(11) *Net exercises and share withholding*. Stock of a covered corporation withheld by the covered corporation or a specified affiliate of the covered corporation to satisfy the exercise price of a stock option, or to pay any withholding obligation, is disregarded for purposes of the netting rule. For example, stock of a covered corporation withheld by a covered corporation or a specified affiliate of the covered corporation to pay the exercise price of a stock option, to satisfy an employer's income tax withholding obligation under section 3402 of the Code, to satisfy an employer's withholding obligation under section 3102 of the Code, or to satisfy an employer's withholding obligation for State, local, or foreign taxes, is disregarded for purposes of the netting rule.

(12) *Settlement other than in stock*. Settlement of an option contract with respect to stock of a covered corporation using any consideration other than stock of the covered corporation (including cash) is disregarded for purposes of the netting rule.

(13) *Instrument not in the legal form of stock*—(i) *Issuance or provision of covered non-stock instrument generally disregarded*. Except as provided in paragraph (f)(13)(iii) or (iv) of this section, the issuance by a covered corporation or provision by a specified affiliate of the covered corporation of a covered non-stock instrument (as defined in paragraph (f)(13)(ii)(B) of this section), including an issuance or provision before the initiation date or after the cessation date, is disregarded for purposes of the netting rule.

(ii) *Definitions.* The following definitions apply for purposes of this paragraph (f)(13).

(A) *Non-stock instrument.* A *non-stock instrument* is an instrument of a covered corporation that is not in the legal form of stock but that is treated as stock for Federal tax purposes. For the avoidance of doubt, in the case of a covered corporation that is an eligible entity within the meaning of §301.7701-3(a) of this chapter, a *non-stock instrument* does not include an instrument that is in the legal form of a membership, partnership, or other ownership interest of the eligible entity.

(B) *Covered non-stock instrument.* A *covered non-stock instrument* is a non-stock instrument issued by a covered corporation or provided by a specified affiliate of the covered corporation to a covered holder.

(C) *Covered holder.* A *covered holder* is any person that owns (or under the attribution rules of section 318 of the Code is considered to own) at least 10 percent of the stock of the covered corporation, either by vote or value, but only if the covered corporation has knowledge of facts that would indicate such ownership, including through legal documentation of share ownership, publicly available information, or any other means—

(*1*) In the case of the covered corporation's issuance of a non-stock instrument, at the time of the issuance by the covered corporation; or

(*2*) In the case of a specified affiliate of the covered corporation's provision of a non-stock instrument, at the time of the provision by the specified affiliate.

(iii) *Certain instruments treated as issued when repurchased or acquired*—(A) *In general*. Subject to the identification requirement in paragraph (f)(13)(iii)(B) of this section, if a covered non-stock instrument is repurchased by a covered corporation or acquired by a specified affiliate of the covered corporation, the issuance or provision of the instrument is regarded for purposes of the netting rule at the time of such repurchase or acquisition based on the fair market value of the instrument when the instrument was issued or provided. Such fair market value is determined under paragraph (e) of this section. For purposes of the stock repurchase excise tax regulations, the delivery of stock pursuant to the terms of a covered non-stock instrument is treated as a repurchase of the covered non-stock instrument in exchange for an issuance or provision of the stock that is delivered.

(B) *Identification of an instrument not in the legal form of stock*. The issuance or provision of a covered non-stock instrument is regarded under paragraph (f)(13)(iii)(A) of this section only if the covered corporation identifies the repurchase or acquisition of the covered non-stock instrument as the repurchase

or acquisition of a covered non-stock instrument on the return on which the stock repurchase excise tax must be reported for the covered corporation's taxable year in which the repurchase or acquisition occurs.

(iv) *Issuances pursuant to a public offering*. Paragraph (f)(13)(i) of this section does not apply to any issuance of a covered non-stock instrument the offer and sale of which was registered with the SEC.

(v) *Coordination with specified affiliate rule*. This paragraph (f)(13) does not apply to the extent that paragraph (f)(2) of this section applies.

§58.4501-5 Examples.

(a) *Scope*. The examples in this section illustrate the application of section 4501 of the Code and the stock repurchase excise tax regulations other than the provisions of section 4501(d) and §58.4501-7. *See* §58.4501-7(n) and (o) for examples that illustrate the application of the rules in §58.4501-7 related to section 4501(d).

(b) *In general*. For purposes of the examples in this section, unless otherwise stated: each of Corporation X and unrelated Target is a covered corporation that is a calendar-year taxpayer; the only outstanding stock of each of Corporation X and Target is a single class of common stock that is traded on an established securities market; any shareholder whose stock is redeemed in a section 317(b) redemption qualifies for sale or exchange treatment under section 302(a) of the Code; the de minimis exception does not apply; the covered corporation determines the fair market value of its stock repurchased or issued based on the trading price of the stock at the time it is repurchased or issued; the stock is not a non-stock instrument; and the facts set forth the only repurchases and issuances made during the taxable year.

(1) *Example 1: Redemption of preferred stock not subject to an exception*—(i) *Facts*. Corporation X has outstanding common stock that is traded on an established securities market. Corporation X also has outstanding mandatorily redeemable preferred stock issued on July 1, 2023, that is stock for Federal tax purposes but is not traded on an established securities market, is not additional tier 1 capital, and is not described in section 1504(a)(4) of the Code. On January 1, 2025, Corporation X redeems the preferred stock pursuant to its terms.

(ii) *Analysis*. The redemption by Corporation X of its mandatorily redeemable preferred stock is a repurchase because Corporation X redeems an instrument that is stock for purposes of the stock repurchase excise tax regulations (that is, preferred stock issued by Corporation X that is neither additional tier 1 capital nor described in section 1504(a)(4)), the redemption is a section 317(b) redemption, and the exception for mandatorily redeemable stock does not apply. *See* §§58.4501-1(b)(34) and 58.4501-2(e)(2)(i) and (e)(3)(iii).

(iii) *Mandatorily redeemable preferred stock issued prior to August 16, 2022*. The facts are the same as in paragraph (b)(1)(i) of this section (*Example 1*), except that Corporation X issues the mandatorily redeemable preferred stock on July 1, 2022. The redemption by Corporation X of such stock is not a repurchase. *See* §58.4501-2(e)(3)(iii).

(2) *Example 2: Debt-for-debt exchange*—(i) *Facts*. Corporation X has outstanding securities with a principal amount of $100x. On January 1, 2024, Corporation X issues new securities with a principal amount of $100x to its security holders in exchange for the outstanding securities (debt-for-debt exchange). Neither the outstanding securities nor the new securities are treated as stock for Federal tax purposes.

(ii) *Analysis*. The debt-for-debt exchange is not subject to the stock repurchase excise tax because it is not a repurchase of stock. *See* §§58.4501-1(a) and (b)(34) and 58.4501-2(c)(1) and (e)(4)(i).

(3) *Example 3: Valuation of repurchase*—(i) *Facts*. On April 15, 2025, when the stock of Corporation X is trading at $0.70x per share, Corporation X purchases 50 shares of its stock for $35x from one of its shareholders on an established securities market. The shareholder is required to deliver the stock to Corporation X within the standard settlement cycle for the stock (a regular-way sale), which is one business day after execution of the sale (that is, the trade date of April 15, 2025). On April 17, 2025, the 50 shares are delivered to Corporation X.

(ii) *Analysis*. Corporation X's purchase of 50 shares of Corporation X stock is a repurchase, because the transaction is a section 317(b) redemption and no exception applies. *See* §58.4501-2(e)(2)(i) and (e)(3). For purposes of computing Corporation X's stock repurchase excise tax base, the trade date of April 15, 2025, is the date of repurchase. *See* §58.4501-2(g)(1) and (2). The fair market value of the 50 shares of stock repurchased on April 15, 2025, is the aggregate market price of those shares on the date of repurchase, or $35x ($0.70x per share x 50 shares = $35x). *See* §58.4501-2(h)(1). Accordingly, the repurchase by Corporation X increases its stock repurchase excise tax base for the 2025 taxable year by $35x.

(iii) *Application of netting rule*. The facts are the same as in paragraph (b)(3)(i) of this section (*Example 3*), except that, on August 1, 2025, Corporation X issues 20 shares of its 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 stock of Corporation X is trading at $0.50x per share. For purposes of computing Corporation X's stock repurchase excise tax base, Corporation X is treated as issuing the 20 shares of its stock on August 1, 2025 (that is, the date on which ownership of the stock transfers to the recipient for Federal income tax purposes). *See* §58.4501-4(d)(1). The fair market value of that issued stock is its aggregate market price on the date of issuance by Corporation X, or $10x ($0.50x per share x 20 shares = $10x). *See* §58.4501-4(e)(1). Accordingly, the net increase in Corporation X's stock repurchase excise tax base for its 2025 taxable year is $25x ($35x repurchase - $10x issuance = $25x). *See* §58.4501-2(c)(1).

(4) *Example 4: Acquisition partially funded by the target corporation*—(i) *Facts*. On May 30, 2025, 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. First, Corporation X contributes $40x to a newly formed corporation (Merger Sub). Second, 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 percent 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.) All of Target's stock ceases to trade on an established securities market upon completion of the Target Stock Acquisition.

(ii) *Analysis*. Target ceases to be a covered corporation after the Target Stock Acquisition. *See* §58.4501-1(b)(7). Target's redemption of 60 percent of its outstanding stock is a redemption within the meaning of section 317(b) with regard to the stock of a covered corporation. *See* §58.4501-2(e)(2)(i). However, because Target's redemption occurs as part of a transaction in which Target ceases to be a covered corporation, it is not a repurchase. *See* §58.4501-2(e)(3)(ii).

(5) *Example 5: Pro rata stock split*—(i) *Facts*. On October 1, 2025, Corporation X distributes three shares of Corporation X stock with respect to each existing share of its outstanding stock (Corporation X Stock Split).

(ii) *Analysis*. The stock distributed by Corporation X to its shareholders through the Corporation X Stock Split is disregarded for purposes of the netting rule because Corporation X distributed the stock to its shareholders with respect to its outstanding stock. *See* §58.4501-4(f)(1). Accordingly, the Corporation X Stock Split is not taken into account in computing Corporation X's stock repurchase excise tax base for its 2025 taxable year. *See* §58.4501-2(c)(1) (regarding the computation of the stock repurchase excise tax base).

(6) *Example 6: Acquisition of a target corporation in an acquisitive reorganization*—(i) *Facts*. On October 1, 2025, Target merges into Corporation X in a transaction that qualifies as a reorganiza-

tion under section 368(a)(1)(A) of the Code (Target Merger). 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 their Target stock for Corporation X stock and cash.

(ii) *Analysis*. Target's acquisition of its stock from the Target shareholders in exchange for the consideration received in the Target Merger is not a repurchase by Target. *See* §58.4501-2(e)(5)(v).

(7) *Example 7: E reorganization*—(i) *Facts*. On November 1, 2025, Corporation X issues shares of new stock, with a fair market value of $100x (New Common Stock), to its shareholders in exchange for their outstanding stock in Corporation X (Old Common Stock) pursuant to a plan of reorganization (Recapitalization). The Recapitalization qualifies as an E reorganization. At the time of the Recapitalization, the fair market value of Corporation X's Old Common Stock is $100x.

(ii) *Analysis*. The acquisition by Corporation X of its Old Common Stock solely in exchange for New Common Stock in the Recapitalization is not a repurchase. *See* §58.4501-2(e)(4)(i). The issuance of the New Common Stock by Corporation X is disregarded for purposes of the netting rule. *See* §58.4501-4(f)(3)(i).

(8) *Example 8: E reorganization with non-qualifying property*—(i) *Facts*. The facts are the same as in paragraph (b)(7)(i) of this section (*Example 7*), except that some shareholders receive solely shares of New Common Stock in exchange for their shares of Old Common Stock, and other shareholders receive both shares of New Common Stock and Corporation X securities in exchange for their shares of Old Common Stock. The aggregate fair market value of the New Common Stock is $80x, and the aggregate fair market value of the Corporation X securities is $20x. The distribution of the Corporation X securities is not treated as a distribution with respect to Corporation X's stock under §1.301-1(j) of this chapter and is not treated as having the effect of a distribution of a dividend under section 356(a)(2) of the Code.

(ii) *Analysis regarding repurchase treatment, timing, and amount*. The acquisition by Corporation X of its Old Common Stock in exchange for New Common Stock in the Recapitalization is not a repurchase. *See* §58.4501-2(e)(4)(i). The acquisition by Corporation X of its Old Common Stock for Corporation X securities is a repurchase by Corporation X because the securities would not be permitted to be received by Corporation X shareholders under section 354 of the Code without the recognition of gain. *See id*. The repurchase occurs on November 1, 2025 (that is, the date on which ownership of the Old Common Stock transfers to Corporation X for Federal income tax purposes). *See* §58.4501-2(g)(1). The amount of the repurchase by Corporation X is $20x, which equals the fair market value of the Old Common Stock exchanged for Corporation X securities on the date of the repurchase. *See* §58.4501-2(h)(1).

(iii) *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 disregarded for purposes of the netting rule. *See* §58.4501-4(f)(3) (disregarding such types of issuances). Therefore, Corporation X does not take into account any of the New Common Stock issued to its shareholders in computing its stock repurchase excise tax base for its 2025 taxable year under §58.4501-4(b)(1).

(9) *Example 9: Cash paid in lieu of fractional shares*—(i) *Facts*. The facts are the same as in paragraph (b)(7)(i) of this section (*Example 7*), except that, as part of the Recapitalization, Corporation X shareholders receive cash in lieu of fractional shares of New Common Stock. The payment by Corporation X of cash in lieu of fractional shares of New Common Stock was not separately bargained-for consideration (that is, the cash paid by Corporation X in lieu of the fractional shares represented a mere rounding off of the shares issued in the Recapitalization). In addition, the payment by Corporation X of cash in lieu of fractional shares of New Common Stock was carried out solely for administrative convenience (and, therefore, solely for non-tax reasons) and was for an amount of cash that did not exceed the value of one full share of New Common Stock.

(ii) *Analysis*. The payment by Corporation X of cash in lieu of fractional shares of New Common Stock is treated for Federal income tax purposes as though the fractional shares were distributed by Corporation X as part of the Recapitalization and then redeemed by Corporation X for cash. This deemed redemption is not a repurchase because the payment of cash in lieu of the fractional shares satisfies the requirements of §58.4501-2(e)(3)(iv). In addition, Corporation X's deemed issuance of the fractional shares is disregarded for purposes of the netting rule. *See* §58.4501-4(f)(5).

(10) *Example 10: F reorganization*—(i) *Facts*. Corporation X is a State A corporation. To reorganize under the laws of State B, on November 15, 2025, Corporation X forms New Corporation X (a State B corporation) and merges into New Corporation X in a transaction that qualifies as an F reorganization (Corporation X Redomiciliation). On the date of the Corporation X Redomiciliation, 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 Redomiciliation, Shareholder A transfers all its Corporation X stock in exchange for $25x of cash, which is treated for Federal income tax purposes as an unrelated, separate transaction from the Corporation X Redomiciliation to which section 302(a) applies (Shareholder A Redemption). *See* §1.368-2(m)(3)(iii) of this chapter. The remaining Corporation X shareholders exchange their Corporation X stock for New Corporation X stock as part of the Corporation X Redomiciliation.

(ii) *Analysis regarding repurchase treatment, timing, and amount*. Corporation X and New Corporation X are treated as the same corporation for purposes of the stock repurchase excise tax regulations. *See* §58.4501-1(e). The Shareholder A Redemption is a repurchase by Corporation X because it is a section 317(b) redemption. *See* §58.4501-2(e)(2)(i). This repurchase occurs on November 15, 2025 (that is, the date on which Shareholder A's ownership of its Corporation X stock transfers to Corporation X as part of the transaction). *See* §58.4501-2(g)(1). The acquisition by Corporation X of its Corporation X stock in exchange for New Corporation X stock pursuant to the plan of reorganization is not a repurchase because that exchange is not an economically similar transaction. *See* §58.4501-2(e)(4). The total amount of the repurchase by Corporation X is $25x (the fair market value of the Corporation X stock redeemed in the Shareholder A Redemption on the date of the redemption). *See* §58.4501-2(h)(1). New Corporation X's transfer of $75x of its stock to Corporation X in the Corporation X Redomiciliation is disregarded for purposes of the netting rule. *See* §58.4501-4(f)(3) (disregarding such types of issuances). Therefore, New Corporation X's stock repurchase excise tax base for its 2025 taxable year is $25x ($25x gross repurchase amount unreduced by the $75x of New Corporation X stock issued in the Corporation X Redomiciliation).

(11) *Example 11: Section 355 split-off*—(i) *Facts*. Corporation X owns all the stock of a pre-existing subsidiary (Controlled). On December 1, 2025, Corporation X distributes all the stock of Controlled (with a fair market value of $80x) and $20x of cash to certain of Corporation X's shareholders (Participating Shareholders) in exchange for $100x of Corporation X stock in a split-off (Corporation X Split-Off).

(ii) *Analysis regarding repurchase treatment, timing, and amount*. The acquisition by Corporation X of its stock in exchange for Controlled stock and cash in the Corporation X Split-Off is a repurchase by Corporation X. *See* §58.4501-2(e)(2)(ii) and (e)(4)(ii). This repurchase occurs on December 1, 2025 (that is, the date on which ownership of the Corporation X stock transfers to Corporation X for Federal income tax purposes). *See* §58.4501-2(g)(1). The total amount of the repurchase by Corporation X is $100x, which equals the aggregate fair market value of the Corporation X stock on the date the stock is exchanged by the Participating Shareholders for Controlled stock and cash in the Corporation X Split-Off (that is, December 1, 2025). *See* §58.4501-2(h)(1).

(iii) *Analysis regarding impact of Corporation X Split-Off on Corporation X's stock repurchase excise tax base*. Corporation X's gross repurchase amount for its 2025 taxable year is $100x on account of the Corporation X Split-Off. *See* §58.4501-2(c)(1)(i). Under the reorganization exception, Corporation X may reduce its gross repurchase amount under §58.4501-2(c)(1)(ii) by an amount equal to the aggregate fair market value of any Corporation X stock repurchased from a Participating Shareholder in the Corporation X Split-Off to the extent that the repurchase is for property permitted by section 355 to be received without the recognition of gain or loss. *See* §58.4501-3(c). Accordingly, Corporation X's gross repurchase amount is reduced under §58.4501-2(c)(1)(ii) by $80x as a result of the application of the reorganization exception. Consequently, Corporation X's stock repurchase excise tax base for its 2025 taxable year is $20x ($100x - $80x).

(12) *Example 12: Section 355 split-off as part of a D reorganization*—(i) *Facts*. The facts are the same as in paragraph (b)(11)(i) of this section (*Example 11*), except that Controlled is a newly formed corporation, and the Corporation X Split-Off is carried out as part of a transaction qualifying as a reorganization

under section 368(a)(1)(D) in which Corporation X transfers assets to Controlled.

(ii) *Analysis regarding Corporation X's stock repurchase excise tax base*. The analysis regarding Corporation X's stock repurchase excise tax base is the same as in paragraphs (b)(11)(ii) and (iii) of this section (*Example 11*).

(iii) *Analysis regarding Controlled's stock repurchase excise tax base*. Controlled's transfer of $80x of its stock to Corporation X in the Corporation X Split-Off is disregarded for purposes of the netting rule. *See* §58.4501-4(f)(9) (disregarding such types of issuances). Controlled's transfer of its stock to Corporation X also is disregarded for purposes of the netting rule because Controlled is not a covered corporation at the time of the transfer. *See* §58.4501-2(d)(1). Therefore, Controlled does not take into account any of the $80x of its stock transferred to Corporation X in computing Controlled's stock repurchase excise tax base for its 2025 taxable year under §58.4501-4(b)(1).

(13) *Example 13: Section 355 spin-off*—(i) *Facts*. The facts are the same as in paragraph (b)(11)(i) of this section (*Example 11*), except that Corporation X distributes the Controlled stock and cash to the Corporation X shareholders pro rata without the shareholders exchanging any Corporation X stock (Corporation X Spin-Off).

(ii) *Analysis*. The Corporation X Spin-Off is not a repurchase by Corporation X. *See* §58.4501-2(e)(5)(iii).

(14) *Example 14: Section 355 spin-off as part of a D reorganization*—(i) *Facts*. The facts are the same as in paragraph (b)(13)(i) of this section (*Example 13*), except that Controlled is a newly formed corporation, the Corporation X Spin-Off is carried out as part of a transaction qualifying as a reorganization under section 368(a)(1)(D) in which Corporation X transfers assets to Controlled, and Corporation X receives the $20x of cash from Controlled and distributes the cash to certain of Corporation X's shareholders in exchange for Corporation X stock.

(ii) *Analysis regarding Corporation X's stock repurchase excise tax base*. The distribution by Corporation X of the $80x of stock of Controlled in the Corporation X Spin-Off is not a repurchase by Corporation X. *See* §58.4501-2(e)(5)(iii)(A). The distribution by Corporation X of the $20x of cash in exchange for Corporation X stock is a repurchase. *See* §58.4501-2(e)(5)(iii)(B).

(iii) *Analysis regarding Controlled's stock repurchase excise tax base*. The analysis regarding Controlled's stock repurchase excise tax base is the same as in paragraph (b)(12)(iii) of this section (*Example 12*).

(15) *Example 15: Repurchase pursuant to an accelerated share repurchase agreement*—(i) *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 80 shares of Corporation X stock from a party not related to Bank or Corporation X. Pursuant to the terms of the ASR agreement, Bank delivered 80 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 80 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 settled in 2023. On February 1, 2023, Bank delivers an additional 20 shares to Corporation X in final settlement of the ASR agreement. For Federal income tax purposes, ownership of those 20 shares is treated as transferring from Bank to Corporation X at the time of delivery (that is, February 1, 2023).

(ii) *Analysis*. Corporation X is treated as repurchasing 80 shares of Corporation X stock on October 12, 2022 (that is, the date on which ownership of the 80 shares delivered by Bank transferred from Bank to Corporation X for Federal income tax purposes). *See* §58.4501-2(g)(1). However, the repurchase by Corporation X of the 80 shares of Corporation X stock does not increase Corporation X's stock repurchase excise tax base for its 2022 taxable year because the repurchase occurred prior to January 1, 2023. *See* §58.4501-2(c)(3); *see also* section 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 20 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* §58.4501-2(g)(1). Therefore, the repurchase by Corporation X of those 20 shares of Corporation X stock increases Corporation X's gross repurchase amount for its 2023 taxable year.

(16) *Example 16: Distribution in complete liquidation of a covered corporation*—(i) *Facts*. Corporation X adopts a plan of complete liquidation that becomes effective on March 1, 2025 (Corporation X Liquidation). Corporation X has 100 shares of stock outstanding. On April 1, 2025, all shareholders of Corporation X receive a liquidating distribution by Corporation X in full payment for their Corporation X stock. On the date on which Corporation X distributes all its corporate assets to its shareholders in complete liquidation (that is, April 1, 2025), Corporation X stock is trading at $1x per share. Each distribution in complete liquidation is subject to section 331 of the Code.

(ii) *Analysis*. A distribution in complete liquidation of a covered corporation (that is, Corporation X) to which section 331 applies is not a repurchase by the covered corporation. *See* §58.4501-2(e)(5)(i). Therefore, none of the distributions by Corporation X in complete liquidation is a repurchase by Corporation X, and Corporation X's gross repurchase amount for its 2025 taxable year is not increased because of the Corporation X Liquidation.

(17) *Example 17: Complete liquidation of a covered corporation to which sections 331 and 332(a) both apply*—(i) *Facts*. The facts are the same as in paragraph (b)(16)(i) of this section (*Example 16*), except that one of Corporation X's shareholders (Corporation Z) is an 80-percent distributee (as defined in section 337(c) of the Code), and the liquidating distribution by Corporation X to Corporation Z as part of the Corporation X Liquidation qualifies as a complete liquidation under section 332(a).

(ii) *Analysis*. The analysis is the same as in paragraph (b)(16)(ii) of this section (*Example 16*).

(18) *Example 18: Acquisition by disregarded entity*—(i) *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 this chapter. On May 31, 2025, LLC purchases shares of Corporation X's stock for cash from an unrelated shareholder.

(ii) *Analysis*. Because LLC is a disregarded entity, the May 31, 2025, acquisition of Corporation X stock is treated as an acquisition by Corporation X. Accordingly, the acquisition is a section 317(b) redemption and therefore a repurchase. *See* §58.4501-2(e)(2)(i). Section 301.7701-2(c)(2)(v) of this chapter (treating disregarded entities as corporations for purposes of certain excise taxes) does not apply to treat LLC as a corporation because neither chapter 37 of the Code nor section 4501 is described in §301.7701-2(c)(2)(v)(A) of this chapter.

(19) *Example 19: Multiple repurchases and contributions of same class of stock*—(i) *Facts*. On January 15, 2025, Corporation X repurchases 100 shares of its Class A stock that have an aggregate fair market value of $1,000x ($10x per share). On September 16, 2025, Corporation X repurchases 50 shares of its Class A stock that have an aggregate fair market value of $200x ($4x per share). Corporation X contributes to its ESOP 75 shares of its Class A stock on March 15, 2025, and 75 shares of its Class A stock on October 15, 2025.

(ii) *Analysis*. Corporation X's gross repurchase amount for its 2025 taxable year is increased by $1,200x ($1,000x + $200x = $1,200x) as a result of the repurchases of its Class A stock. *See* §58.4501-2(c)(1)(i). Under the exception for stock contributions to an employer-sponsored retirement plan, Corporation X's stock contributions reduce Corporation X's gross repurchase amount. *See* §§58.4501-2(c)(1)(ii) and 58.4501-3(d). The amount of the reduction is determined by dividing the aggregate fair market value of shares of Class A stock repurchased by the number of shares repurchased ($1,200x/150 shares = $8 per share) and multiplying the number of shares contributed by the average price of the repurchased shares (150 shares x $8 per share = $1,200x). *See* §58.4501-3(d)(3)(i). Therefore, Corporation X's stock repurchase excise tax base for its 2025 taxable year is $0 ($1,200x repurchase - $1,200x exception = $0).

(20) *Example 20: Multiple repurchases and contributions of different classes of stock*—(i) *Facts*. The facts are the same as in paragraph (b)(19)(i) of this section (*Example 19*), except that Corporation X has Class B stock and contributes its Class B stock rather than its Class A stock to its ESOP. On October 15, 2025, Corporation X contributes to its ESOP 75 shares of its Class B stock that have an aggregate fair market value of $1,000x. On December 16, 2025,

Corporation X contributes to its ESOP 25 shares of its Class B stock that have an aggregate fair market value of $500x.

(ii) *Analysis*. Corporation X reduces its gross repurchase amount by an amount equal to the sum of the fair market values of the different class of stock at the time the stock is contributed to the employer-sponsored retirement plan ($1,000x + $500x = $1,500x). However, the amount of the reduction may 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* §58.4501-3(d)(4)(ii). Therefore, Corporation X's stock repurchase excise tax base for its 2025 taxable year is $0 ($1,200x repurchase - $1,200x exception = $0). The $300x excess of the contributions over the allowable reduction ($1,500x contributions - $1,200x allowable reduction) may not be carried forward or backward to preceding or succeeding taxable years of Corporation X. *See* §58.4501-2(c)(2)(ii).

(21) *Example 21: Treatment of contributions after the taxable year*—(i) *Facts*. Corporation X repurchases 200 shares of its stock on December 31, 2025, for $200x ($1x per share). Corporation X has no other repurchases in 2025. On February 2, 2026, Corporation X contributes 200 shares of stock to its ESOP. Corporation X treats the contribution as if it had been received for the 2025 calendar year for plan allocation purposes. *See* §58.4501-3(d)(5)(ii).

(ii) *Analysis*. Corporation X may use the contribution of the 200x shares of its stock on February 2, 2026, to reduce its $200x gross repurchase amount for 2025. *See* §58.4501-3(d)(5)(ii).

(22) *Example 22: Becoming a covered corporation*—(i) *Facts*. As of January 1, 2025, all of Corporation X's stock is privately held (and, therefore, none of Corporation X's stock is traded on an established securities market). On February 15, 2025, Corporation X purchases 10 shares of its stock for $5x of cash ($.50x per share). On April 1, 2025, Corporation X issues 100 shares of its stock to the public (Public Shareholders), at which time Corporation X's stock begins trading on an established securities market. On November 15, 2025, when Corporation X stock is trading at $2x per share, Corporation X purchases 60 shares of its stock for $120x of cash.

(ii) *Analysis regarding purchase on February 15, 2025.* Corporation X becomes a covered corporation at the beginning of the day on April 1, 2025 (the initiation date). *See* §58.4501-2(d)(1). Accordingly, Corporation X's purchase of 10 shares of its stock for $5x of cash on February 15, 2025, is not a repurchase. Thus, the purchase on February 15, 2025, is not included in Corporation X's gross repurchase amount for its 2025 taxable year.

(iii) *Analysis regarding issuance on April 1, 2025*. Corporation X is a covered corporation at the beginning of the day on April 1, 2025. *See* §58.4501-2(d)(1). Accordingly, the Corporation X stock issued to the Public Shareholders on that date is stock of a covered corporation for purposes of the netting rule. *See* §58.4501-4(b)(1). As a result, Corporation's gross repurchase amount for its 2025 taxable year is reduced by $100x. *See* §58.4501-2(c)(1)(iii).

(iv) *Analysis regarding purchase on November 15, 2025*. Corporation X is a covered corporation on November 15, 2025. Accordingly, Corporation X's purchase of 60 shares of its stock on that date is a repurchase because the transaction is a section 317(b) redemption (that is, a redemption within the meaning of section 317(b) with regard to the stock of a covered corporation). *See* §§58.4501-1(b)(31) and 58.4501-2(e)(2)(i). For purposes of computing Corporation X's gross repurchase amount, the fair market value of the 60 shares of stock repurchased on November 15, 2025, is the aggregate market price of those shares on that repurchase date, or $120x ($2x per share x 60 shares = $120x). *See* §58.4501-2(g)(1). Accordingly, Corporation's gross repurchase amount for its 2025 taxable year is increased by $120x. *See* §58.4501-2(c)(1)(i).

(23) *Example 23: Actual pro rata redemption in partial liquidation*—(i) *Facts*. Corporation X is actively engaged in the conduct of Businesses A and B. Each business constitutes a qualified trade or business within the meaning of section 302(e)(3). On September 1, 2025, pursuant to a plan of partial liquidation adopted in the same taxable year, Corporation X sells Business B for $100x and distributes the proceeds to its shareholders pro rata in redemption of $100x of Corporation X stock. The transaction qualifies as a distribution in partial liquidation under section 302(b)(4) and (e).

(ii) *Analysis*. Corporation X's distribution in partial liquidation is a section 317(b) redemption. In addition, Corporation X's pro rata distribution in partial liquidation is not included in the exclusive list of transactions under §58.4501-2(e)(3) that are a section 317(b) redemption but are not treated as a repurchase. Accordingly, the distribution in partial liquidation is a repurchase. *See* §58.4501-2(e)(2)(i). Therefore, as a result of the distribution, Corporation X's gross repurchase amount for its 2025 taxable year is increased by $100x. *See* §58.4501-2(c)(1)(i).

(24) *Example 24: Constructive redemption in partial liquidation*—(i) *Facts*. The facts are the same as in paragraph (b)(23)(i) of this section (*Example 23*), except that the shareholders of Corporation X surrender no stock in exchange for the proceeds from the sale of Business B. For Federal income tax purposes, a constructive redemption of stock is deemed to occur, and the transaction qualifies as a distribution in partial liquidation under section 302(b)(4) and (e).

(ii) *Analysis*. The analysis regarding Corporation X's gross repurchase amount is the same as in paragraph (b)(23)(ii) of this section (*Example 23*).

(25) *Example 25: Non-pro rata redemption in partial liquidation*—(i) *Facts*. The facts are the same as in paragraph (b)(23)(i) of this section (*Example 23*), except that Corporation X distributes the proceeds to Shareholder A in redemption of $100x of preferred Corporation X stock that is not described in §58.4501-1(b)(34)(ii) or (iii).

(ii) *Analysis*. The analysis regarding Corporation X's gross repurchase amount is the same as in paragraph (b)(23)(ii) of this section (*Example 23*).

(26) *Example 26: Physical settlement of call option contract*—(i) *Facts*. On March 1, 2025, Corporation X issues an option that entitles the holder to buy 100 shares of Corporation X stock from Corporation X for $150x ($1.50x per share). On the date the option is issued, Corporation X stock is trading at $1x per share. On November 1, 2025, when Corporation X stock is trading at $2x per share, the holder pays $150x to Corporation X to exercise the option, and Corporation X issues 100 shares of Corporation X stock to the holder, at which time ownership of the shares transfers to the holder for Federal income tax purposes.

(ii) *Analysis*. For purposes of computing Corporation X's stock repurchase excise tax base, Corporation X is treated as issuing 100 shares of Corporation X stock on November 1, 2025. *See* §58.4501-4(d)(1). The fair market value of that stock is its aggregate market price on the date of issuance by Corporation X, or $200x ($2x per share x 100 shares = $200x). *See* §58.4501-4(e)(1). Accordingly, the issuance is a $200x reduction of $200x to Corporation X's gross repurchase amount in computing Corporation X's stock repurchase excise tax base for its 2025 taxable year. *See* §58.4501-2(c)(1)(iii).

(27) *Example 27: Net cash settlement of call option contract*—(i) *Facts*. The facts are the same as in paragraph (b)(26)(i) of this section (*Example 26*), except that Corporation X net cash settles the option by paying the holder $50x.

(ii) *Analysis*. The net cash settlement is disregarded for purposes of the netting rule. *See* §58.4501-4(f)(12) (disregarding the settlement of an option contract with respect to stock of a covered corporation using any consideration other than stock of the covered corporation). The net cash settlement also is not a repurchase. *See* §58.4501-2(e)(5)(iv) (providing that net cash settlement of an option contract with respect to stock of a covered corporation generally is not a repurchase by the covered corporation).

(28) *Example 28: Physical settlement of put option contract*—(i) *Facts*. On April 1, 2025, Corporation X issues an option entitling the holder to sell 100 shares of Corporation X stock to Corporation X for $100x ($1x per share). On the date the option is issued, Corporation X stock is trading at $1.25x per share. On October 1, 2025, when Corporation X stock is trading at $0.75x per share, the holder exercises the option, and Corporation X purchases 100 shares of Corporation X stock for $100x, at which time ownership of the shares transfers to Corporation X.

(ii) *Analysis*. Corporation X's purchase on October 1, 2025, is a repurchase because it is a section 317(b) redemption that is not otherwise excluded. *See* §58.4501-2(e)(2) and (3). For purposes of computing Corporation X's gross repurchase amount, the fair market value of the repurchased stock is its aggregate market price on the date on which ownership of the stock transfers to Corporation X for Federal income tax purposes (October 1, 2025), or $75x ($0.75x per share x 100 shares = $75x). *See* §58.4501-2(g)(1) and (h)(1). Accordingly, the repurchase is an increase of $75x to Corporation X's gross repurchase amount for its 2025 taxable year. *See* §58.4501-2(c)(1)(i).

(29) *Example 29: Net cash settlement of put option contract*—(i) *Facts*. The facts are the same as in paragraph (b)(28)(i) of this section (*Example 28*), except that Corporation X net cash settles the put option by paying the holder $25x.

(ii) *Analysis*. The net cash settlement is not a repurchase. *See* §58.4501-2(e)(5)(vi) (providing that net cash settlement of an option contract with respect to stock of a covered corporation generally is not a repurchase by the covered corporation).

(30) *Example 30: Indirect ownership*—(i) *Facts*. Corporation X owns 60 percent of the only class of stock of Sub 1, a domestic corporation. Sub 1 owns 60 percent of the only class of stock of Sub 2, which also is a domestic corporation. On October 15, 2025, Sub 2 purchases stock of Corporation X with a market price of $100,000.

(ii) *Analysis*. Corporation X must determine at the time its stock is repurchased by Sub 2 (that is, on October 15, 2025) whether Sub 2 is a specified affiliate of Corporation X. *See* §58.4501-2(f)(2)(i). Under §58.4501-2(f)(2)(ii), Corporation X indirectly owns 36 percent (60% x 60% = 36%) of the stock of Sub 2. Sub 2 is not a specified affiliate of Corporation X, because Corporation X does not own, directly or indirectly, more than 50 percent of the stock of Sub 2. *See* §58.4501-1(b)(32). Accordingly, Sub 2's purchase of Corporation X stock on October 15, 2025, is not a repurchase under §58.4501-2(f)(1).

(31) *Example 31: Restricted stock provided to a service provider*—(i) *Facts*. Individual M provides services to Corporation X. In 2025, as compensation for Individual M's services, Corporation X transfers to Individual M 100 shares of Corporation X restricted stock with an aggregate fair market value of $500x ($5x per share). The shares vest in 2028. Individual M does not make an election under section 83(b) of the Code. In 2028, Corporation X withholds from Individual M's other wages amounts that are required to pay the income tax and employment tax withholding obligations arising from the stock transfer. The shares have a fair market value of $7x per share when they vest.

(ii) *Analysis*. Corporation X is treated as issuing 100 shares of stock to Individual M when they become substantially vested in 2028. *See* §58.4501-4(d)(2)(i). The fair market value of the shares issued is $700x (100 shares x $7x per share = $700x). Accordingly, the issuance is a reduction of $700x in computing Corporation X's stock repurchase excise tax base for its 2028 taxable year.

(32) *Example 32: Restricted stock provided to a service provider with section 83(b) election*—(i) *Facts*. The facts are the same as in paragraph (b)(31)(i) of this section (*Example 31*), except that Individual M makes a valid election under section 83(b) to include the fair market value of the shares of restricted stock in gross income when the shares are transferred.

(ii) *Analysis*. Corporation X is treated as issuing 100 shares of stock to Individual M when the shares are transferred in 2025. *See* §58.4501-4(d)(2)(iii). The fair market value of the shares issued is $500x (100 shares x $5x per share = $500x). Accordingly, the issuance is a reduction of $500x in computing Corporation X's stock repurchase excise tax base for its 2025 taxable year. Corporation X is not treated as issuing stock to Individual M when the shares vest in 2028.

(33) *Example 33: Forfeiture of restricted stock provided to a service provider with section 83(b) election*—(i) *Facts*. The facts are the same as in paragraph (b)(32)(i) of this section (*Example 32*), except that Individual M forfeits the 100 shares of restricted stock in 2027 because of a failure to meet the vesting conditions for the stock. At the time of the forfeiture, the fair market value of the 100 shares of stock is $600x (100 shares x $6x per share = $600x).

(ii) *Analysis*. The analysis regarding the timing and amount of Corporation X's issuance of stock is the same as in paragraph (b)(32)(ii) of this section (*Example 32*). *See* §58.4501-4(d)(2)(iii). However, because Individual M made a valid election under section 83(b) with regard to the stock and the forfeiture resulted from Individual M failing to meet the vesting conditions for the stock, Individual M's forfeiture of the 100 shares of stock to Corporation X is a repurchase by Corporation X. *See* §58.4501-2(e)(4)(iii). The stock is treated as repurchased in 2027. *See* §58.4501-2(g)(1). The amount of the repurchase by Corporation X equals the fair market value of the stock (that is, $600x) on the date of the repurchase. *See* §58.4501-2(h)(1).

(34) *Example 34: Vested stock provided to a service provider with share withholding*—(i) *Facts*. Individual N is an employee of Corporation X. In 2025, as compensation for Individual N's services, Corporation X grants Individual N 100 restricted stock units (RSUs). Pursuant to the RSUs, if Individual N remains employed by Corporation X through December 31, 2027, Corporation X will transfer 100 shares of Corporation X stock to Individual N in January 2028. Individual N remains employed by Corporation X through December 31, 2027. In January 2028, when the shares have a fair market value of $5x per share, Corporation X initiates the transfer of 60 shares of Corporation X stock to Individual N and withholds 40 shares to satisfy Corporation X's income tax and employment tax withholding obligations arising from Individual N vesting in the shares.

(ii) *Analysis*. Corporation X is treated as issuing 60 shares of stock to Individual N when the shares are transferred in 2028. *See* §58.4501-4(d)(2)(i). The 40 shares of Corporation X stock withheld to satisfy Corporation X's withholding obligations are disregarded for purposes of the netting rule. *See* §58.4501-4(f)(11)(i). The fair market value of the shares issued is $300x (60 shares x $5x per share = $300x). Accordingly, the issuance is a reduction of $300x in computing Corporation X's stock repurchase excise tax base for its 2028 taxable year.

(35) *Example 35: Stock option net exercise*—(i) *Facts*. Individual O is an employee of Corporation X. In 2025, in connection with the performance of services, Corporation X transfers to Individual O options to purchase 100 shares of Corporation X stock with an exercise price of $4x per share ($400x exercise price in total). The options are described in §1.83-7 of this chapter and do not have a readily ascertainable fair market value. Individual O exercises the options to purchase 100 shares in 2026, when the fair market value is $5x per share. Corporation X withholds 80 shares to pay the $400x exercise price (80 shares x $5x per share = $400x).

(ii) *Analysis*. Corporation X is treated as issuing 20 shares of stock to Individual O when Individual O exercises the options in 2026. *See* §58.4501-4(d)(2)(ii). The 80 shares of Corporation X stock withheld to pay the exercise price are disregarded for purposes of the netting rule. *See* §58.4501-4(f)(11). The fair market value of the shares issued is $100x (20 shares x $5x per share = $100x). Accordingly, the issuance is a reduction of $100x in computing Corporation X's stock repurchase excise tax base for its 2026 taxable year.

(36) *Example 36: Net share settlement not in connection with performance of services*—(i) *Facts*. Corporation X issues a call option to Individual P that entitles Individual P to buy 100 shares of Corporation X stock for $100x ($1x per share) from Corporation X for a limited time. The terms of the option require or permit net share settlement. On the date the option is issued, Corporation X stock is trading at $1x per share. On the date the option is exercised, Corporation X stock is trading at $1.25x per share. To settle the option, Individual P makes no payment to Corporation X, and Corporation X issues 20 shares of Corporation X stock (worth $25x).

(ii) *Analysis*. Corporation X is treated as issuing 20 shares with a fair market value of $25x. *See* §58.4501-4(f)(11).

(37) *Example 37: Broker-assisted net exercise*—(i) *Facts*. The facts are the same as in paragraph (b)(35)(i) of this section (*Example 35*), 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 (that is, $400x) to Corporation X. Corporation X transfers 100 shares of Corporation X stock to the third-party broker, which deposits the 100 shares into Individual O's account. The third-party broker then immediately sells 80 shares to recover the $400x exercise price paid to Corporation X (80 shares x $5x per share = $400x).

(ii) *Analysis*. Corporation X is treated as issuing 100 shares of stock to Individual O when Individual O exercises the options in 2026. *See* §58.4501-4(c)(2) and (d)(1)(i). The fair market value of the shares issued is $500x (100 shares x $5x per share = $500x). Accordingly, the issuance is a reduction of $500x in computing Corporation X's stock repurchase excise tax base for its 2026 taxable year.

(38) *Example 38: Stock provided by a specified affiliate to an employee*—(i) *Facts*. Individual Q is an employee of Corporation Y, which is a specified affiliate of Corporation X. In 2025, Corporation X transfers 100 shares of its stock to Individual Q, when the stock is valued at $9x per share, in connection with Individual Q's performance of services as an employee of Corporation Y.

(ii) *Analysis*. Under §1.83-6(d) of this chapter, Corporation X is treated as contributing the stock to the capital of Corporation Y, which is treated as transferring the shares to Individual Q as compensation for services. Corporation Y is treated as providing 100 shares to Individual Q. *See* §58.4501-4(b)(1)(ii) and (f)(2)(iv). The fair market value of the shares provided is $900x (100 shares x $9x per share = $900x). Accordingly, the provision is a reduction of $900x in computing Corporation X's stock repurchase excise tax base for its 2025 taxable year.

(39) *Example 39: Stock provided by a specified affiliate to a non-employee*—(i) *Facts*. The facts are the same as in paragraph (b)(38)(i) of this section (*Example 38*), except that Individual Q provides services as a non-employee service provider of Corporation Y.

(ii) *Analysis*. The analysis is the same as in paragraph (b)(38)(ii) of this section (*Example 38*).

(40) *Example 40: Corporation treated as a domestic corporation under section 7874(b)*—(i)

Facts. Corporation FB is a corporation the stock of which is traded on an established securities market (within the meaning of section 7704(b)(1) of the Code) and that is created or organized in a foreign jurisdiction. Corporation FB is treated as a domestic corporation under section 7874(b) of the Code.

(ii) *Analysis*. Corporation FB is treated for purposes of this title as a domestic corporation under section 7874(b). Corporation FB is a covered corporation because it is treated for purposes of this title as a domestic corporation and its stock is traded on an established securities market. *See* §58.4501-1(b)(7).

§58.4501-6 Applicability dates.

(a) *In general*. Except as provided in paragraph (b) of this section, §§58.4501-1 through 58.4501-5 apply to—

(1) Repurchases of stock of a covered corporation occurring after December 31, 2022; and

(2) Issuances and provisions of stock of a covered corporation occurring during taxable years ending after December 31, 2022.

(b) *Exceptions*—(1) *Applicability date for certain rules*. Sections 58.4501-2(d), (e)(4)(iii), (f)(2), (h)(2)(v), and (h)(3)(ii), 58.4501-3(g)(3) through (5), 58.4501-4(e)(2)(v), (e)(3)(ii), (f)(2)(ii), (f)(8), (f)(9), and (f)(13) apply to—

(i) Repurchases of stock of a covered corporation occurring after April 12, 2024; and

(ii) Issuances and provisions of stock of a covered corporation occurring after April 12, 2024.

(2) *Early application*. Provided a covered corporation consistently applies all the rules set forth in paragraph (b)(1) of this section, the covered corporation may choose to apply all the rules set forth in paragraph (b)(1) of this section to—

(i) Repurchases of stock of the covered corporation occurring on or before April 12, 2024, and after December 31, 2022; and

(ii) Issuances and provisions of stock of the covered corporation occurring on or before April 12, 2024, and during taxable years ending after December 31, 2022.

(c) *Special rules for acquisitions or repurchases of stock of certain foreign corporations*. *See* §58.4501-7(p) for applicability dates for the provisions of §58.4501-7 and the provisions of §58.4501-1 as applicable to transactions subject to §58.4501-7.

§58.4501-7 Special rules for acquisitions or repurchases of stock of certain foreign corporations.

(a) *Scope*. This section provides rules regarding the application of section 4501(d) of the Code. Paragraph (b) of this section provides definitions applicable for purposes of this section. Paragraph (c) of this section provides rules for computing a section 4501(d) covered corporation's section 4501(d) excise tax liability. Paragraph (d) of this section provides certain coordination rules related to section 4501(d)(2). Paragraph (e) of this section provides certain rules for determining the status of a corporation as an applicable foreign corporation or a covered surrogate foreign corporation. Paragraph (f) of this section provides certain rules for determining the status of a corporation or partnership as an applicable specified affiliate of an applicable foreign corporation or a specified affiliate of a covered surrogate foreign corporation. Paragraph (g) of this section provides rules for determining whether a foreign partnership is an applicable specified affiliate. Paragraph (h) of this section defines the term *CSFC repurchase*. Paragraph (i) of this section is reserved. Paragraph (j) of this section provides rules for determining the date of a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase. Paragraph (k) of this section provides rules for determining the fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation that is repurchased or acquired. Paragraph (l) of this section provides rules regarding the application of certain section 4501(d) exceptions. Paragraph (m) of this section provides rules regarding the section 4501(d) netting rule. Paragraph (n) of this section illustrates the application of the rules of this section through examples involving section 4501(d)(1). Paragraph (o) of this section illustrates the application of the rules of this section through examples involving section 4501(d)(2). Paragraph (p) of this section provides applicability dates for the rules of this section.

(b) *Definitions*—(1) *Application of definitions in §58.4501-1(b)*. Any term used in this section but not defined in paragraph (b)(2) of this section has the meaning provided in §58.4501-1(b), with the following modifications:

(i) For all definitions provided in §58.4501-1(b) other than those described in paragraph (b)(1)(ii) of this section, any reference in those definitions to a *covered corporation* is treated as a reference to either a *section 4501(d) covered corporation*, an *applicable foreign corporation*, or a *covered surrogate foreign corporation*, as appropriate based on the context.

(ii) For the definitions of *employee* and *employer-sponsored retirement plan* provided in §58.4501-1(b)(14) and (15), any reference to a *covered corporation* or its *specified affiliates* is treated solely as a reference to a *section 4501(d) covered corporation*.

(2) *Section 4501(d) definitions*. The definitions in this paragraph (b)(2) apply solely for purposes of this section.

(i) *Applicable foreign corporation*. The term *applicable foreign corporation* means any foreign corporation the stock of which is traded on an established securities market.

(ii) *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, as determined under paragraph (g) of this section).

(iii) *CSFC repurchase*. The term *CSFC repurchase* has the meaning provided in paragraph (h) of this section.

(iv) *Covered surrogate foreign corporation*. The term *covered surrogate foreign corporation* means any surrogate foreign corporation (as determined under section 7874(a)(2)(B) of the Code by substituting *September 20, 2021* for *March 4, 2003* each place it appears) the stock of which is traded on an established securities market, including any successor to the surrogate foreign corporation (as determined under §1.7874-12(a)(10) of this chapter), but only with respect to taxable years that include any portion of the applicable period with respect to such corporation under section 7874(d)(1).

(v) *Direct partner*. The term *direct partner* has the meaning given the term in paragraph (g)(2)(i) of this section.

(vi) *Domestic entity*. The term *domestic entity* means a domestic corporation, a domestic partnership, or a trust within the

meaning of section 7701(a)(30)(E) of the Code.

(vii) *Expatriated entity*. The term *expatriated entity* has the meaning given the term in section 7874(a)(2)(A) and §1.7874-12(a)(8) of this chapter, including any successor (as determined under §1.7874-12(a)(6) of this chapter).

(viii) *Indirect partner*. The term *indirect partner* has the meaning given the term in paragraph (g)(2)(ii) of this section.

(ix) *Section 4501(d) covered corporation*. The term *section 4501(d) covered corporation* means either—

(A) An applicable specified affiliate of an applicable foreign corporation that is treated as a covered corporation under section 4501(d)(1)(A) by reason of a section 4501(d)(1) repurchase; or

(B) Any expatriated entity with respect to a covered surrogate foreign corporation that is treated as a covered corporation under section 4501(d)(2)(A) by reason of a section 4501(d)(2) repurchase.

(x) *Section 4501(d) covered holder*. The term *section 4501(d) covered holder* has the meaning provided in paragraph (m)(7)(v)(B)(*3*) of this section.

(xi) *Section 4501(d) covered non-stock instrument*. The term *section 4501(d) covered non-stock instrument* has the meaning provided in paragraph (m)(7)(v)(B)(*2*) of this section.

(xii) *Section 4501(d) de minimis exception*. The term *section 4501(d) de minimis exception* has the meaning provided in paragraph (c)(2)(i) of this section.

(xiii) *Section 4501(d) economically similar transaction*. The term *section 4501(d) economically similar transaction* has the meaning provided in paragraph (h)(4) of this section.

(xiv) *Section 4501(d) exception*. The term *section 4501(d) exception* has the meaning provided in paragraph (l)(1) of this section.

(xv) *Section 4501(d) excise tax*. The term *section 4501(d) excise tax* has the meaning provided in paragraph (c)(1) of this section.

(xvi) *Section 4501(d) excise tax base*. The term *section 4501(d) excise tax base* has the meaning provided in paragraph (c)(3)(i) of this section.

(xvii) *Section 4501(d) gross repurchase amount*. The term *section 4501(d) gross repurchase amount* has the meaning provided in paragraph (c)(3)(i)(A) of this section.

(xviii) *Section 4501(d) netting rule*. The term *section 4501(d) netting rule* has the meaning provided in paragraph (m)(1) of this section.

(xix) *Section 4501(d) non-stock instrument*. The term *section 4501(d) non-stock instrument* has the meaning provided in paragraph (m)(7)(v)(B)(*1*) of this section.

(xx) *Section 4501(d) reorganization exception*. The term *section 4501(d) reorganization exception* has the meaning provided in paragraph (l)(2) of this section.

(xxi) *Section 4501(d)(1) repurchase*. The term *section 4501(d)(1) repurchase* means an acquisition of stock of an applicable foreign corporation by an applicable specified affiliate of the applicable foreign corporation from a person other than the applicable foreign corporation or a specified affiliate of the applicable foreign corporation. A *section 4501(d)(1) repurchase* includes a clawback or forfeiture of stock of an applicable foreign corporation pursuant to a legal or contractual obligation on the date of forfeiture or clawback (as appropriate), but only if the stock was treated in the current or a prior year as issued or provided by the section 4501(d) covered corporation to its employees in accordance with the section 4501(d) netting rule.

(xxii) *Section 4501(d)(2) repurchase*. The term *section 4501(d)(2) repurchase* means a CSFC repurchase or an acquisition of stock of a covered surrogate foreign corporation by a specified affiliate of the covered surrogate foreign corporation.

(c) *Computation of section 4501(d) excise tax liability for a section 4501(d) covered corporation*—(1) *Imposition of tax*. Except as provided in paragraph (c)(2) of this section (regarding the section 4501(d) de minimis exception), the amount of excise tax imposed pursuant to section 4501(a) on a section 4501(d) covered corporation (*section 4501(d) excise tax*) for a taxable year equals the product obtained by multiplying—

(i) The applicable percentage; by

(ii) The section 4501(d) excise tax base of the section 4501(d) covered corporation for the taxable year determined in accordance with paragraph (c)(3)(i) of this section.

(2) *Section 4501(d) de minimis exception*—(i) *In general*. A section 4501(d) covered corporation is not subject to the section 4501(d) excise tax with regard to a taxable year of the section 4501(d) covered corporation if, during that taxable year, the aggregate fair market value of all section 4501(d)(1) repurchases with respect to all applicable specified affiliates of the applicable foreign corporation or all section 4501(d)(2) repurchases by the covered surrogate foreign corporation and all specified affiliates of the covered surrogate foreign corporation, as applicable, does not exceed $1,000,000 (*section 4501(d) de minimis exception*).

(ii) *Determination*. A determination of whether the section 4501(d) de minimis exception applies with regard to a taxable year of a section 4501(d) covered corporation is made before applying—

(A) Any section 4501(d) exception under paragraph (l) of this section; and

(B) Any adjustments pursuant to the section 4501(d) netting rule under paragraph (m) of this section.

(3) *Section 4501(d) excise tax base*—(i) *In general*. With regard to a section 4501(d) covered corporation, the term *section 4501(d) excise tax base* means the dollar amount (not less than zero) that is obtained by—

(A) Determining the aggregate fair market value of, as applicable, all section 4501(d)(1) repurchases or section 4501(d)(2) repurchases during the section 4501(d) covered corporation's taxable year (*section 4501(d) gross repurchase amount*);

(B) Reducing the section 4501(d) gross repurchase amount by the fair market value of stock repurchased or acquired in all section 4501(d)(1) repurchases or section 4501(d)(2) repurchases, as applicable, during the section 4501(d) covered corporation's taxable year to the extent any section 4501(d) exceptions apply in accordance with paragraph (l) of this section; and then

(C) Further reducing the section 4501(d) gross repurchase amount by the aggregate fair market value of, as applicable, stock of the applicable foreign corporation or stock of the covered surrogate foreign corporation to the extent the section 4501(d) netting rule applies in accordance with paragraph (m) of this section.

(ii) *Taxable year determination*—(A) *In general*. The determinations under paragraph (c)(3)(i) of this section are made separately for each section 4501(d) covered corporation and for each taxable year of such section 4501(d) covered corporation.

(B) *No carrybacks or carryforwards*. Reductions under paragraphs (c)(3)(i)(B) and (C) of this section in excess of the section 4501(d) gross repurchase amount with regard to a section 4501(d) covered corporation may not be carried forward or backward to preceding or succeeding taxable years of the section 4501(d) covered corporation.

(4) *Section 4501(d)(1) repurchases or section 4501(d)(2) repurchases before January 1, 2023*. Section 4501(d)(1) repurchases and section 4501(d)(2) repurchases before January 1, 2023, are neither included in the section 4501(d) excise tax base of a section 4501(d) covered corporation nor taken into account in determining the applicability of the section 4501(d) de minimis exception.

(d) *Section 4501(d)(2) coordination rules*—(1) *Coordination rule for section 4501(d)(1) repurchases and section 4501(d)(2) repurchases*. To the extent any CSFC repurchase or acquisition of stock of a covered surrogate foreign corporation by a specified affiliate of the covered surrogate foreign corporation would be both a section 4501(d)(1) repurchase and a section 4501(d)(2) repurchase absent this paragraph (d)(1), the CSFC repurchase or acquisition will only be a section 4501(d)(2) repurchase.

(2) *Coordination rule for multiple section 4501(d) covered corporations*—(i) *In general*. Except as provided in paragraph (d)(2)(ii) of this section, each section 4501(d) covered corporation with respect to a covered surrogate foreign corporation is liable for any section 4501(d) excise tax with respect to section 4501(d)(2) repurchases that occur during a taxable year of the section 4501(d) covered corporation.

(ii) *Full payment and reporting by a section 4501(d) covered corporation*. If there are multiple section 4501(d) covered corporations with respect to a covered surrogate foreign corporation, then provided that one of those section 4501(d) covered corporations pays the amount of section 4501(d) excise tax determined under paragraph (c)(1) of this section with respect to all section 4501(d)(2) repurchases that occur during the paying section 4501(d) covered corporation's taxable year and fulfills the filing obligations for the taxable year with respect to such section 4501(d)(2) repurchases, no other section 4501(d) covered corporation with respect to the covered surrogate foreign corporation is liable for section 4501(d) excise tax related to such section 4501(d)(2) repurchases.

(e) *Status as applicable foreign corporation or covered surrogate foreign corporation*—(1) *Initiation date*. A corporation becomes an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, at the beginning of the corporation's initiation date (that is, the date on which stock of the corporation begins to be traded on an established securities market).

(2) *Cessation date*. A corporation ceases to be an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, at the end of the corporation's cessation date (that is, the date on which all stock of the corporation ceases to be traded on an established securities market).

(3) *Rules regarding F reorganizations*—(i) *Inbound F reorganization.* In the case of a foreign corporation that transfers its assets or that is treated as transferring its assets to a domestic corporation in an F reorganization (as described in §1.367(b)-2(f) of this chapter), the corporation is not treated as a domestic corporation until the day after the reorganization.

(ii) *Outbound F reorganization.* In the case of a domestic corporation that transfers its assets or that is treated as transferring its assets to a foreign corporation in an F reorganization (as described in §1.367(a)-1(e) of this chapter), the corporation is not treated as a foreign corporation until the day after the reorganization.

(iii) *Treatment of F reorganizations*. For purposes of the stock repurchase excise tax regulations, the transferor corporation and the resulting corporation (each as defined in §1.368 2(m)(1) of this chapter) in an F reorganization are treated as the same corporation.

(f) *Status as an applicable specified affiliate or a specified affiliate of a covered surrogate foreign corporation*—(1) *Timing of determination*. The determination of whether a corporation or partnership is an applicable specified affiliate of an applicable foreign corporation, or a specified affiliate of a covered surrogate foreign corporation, as applicable, is made at the time the stock of the applicable foreign corporation or covered surrogate foreign corporation is acquired or provided by the applicable specified affiliate or a specified affiliate of a covered surrogate foreign corporation, respectively, whenever such determination is relevant for purposes of this section.

(2) *Determination of indirect ownership*. Except as provided in paragraph (g)(2)(ii)(B) of this section, a corporation or partnership is treated as indirectly owning stock in a corporation or holding capital or profits interests in a partnership equal to the corporation's or partnership's proportionate percentage of stock owned or capital or profits interests held through other entities.

(g) *Foreign partnerships that are applicable specified affiliates*—(1) *In general*. A foreign partnership is an applicable specified affiliate of an applicable foreign corporation, if—

(i) More than 50 percent of the capital interests or profits interests of the foreign partnership are held, directly or indirectly, by the applicable foreign corporation; and

(ii) Under the rules described in paragraphs (g)(2) through (5) of this section, at least one domestic entity is a direct or indirect partner with respect to the foreign partnership.

(2) *Direct or indirect partner*. Except as provided in paragraphs (g)(4) and (5) of this section—

(i) A domestic entity is a direct partner with respect to a foreign partnership if it directly owns an interest in the foreign partnership; and

(ii) A domestic entity is an indirect partner with respect to a foreign partnership if the domestic entity owns an interest in the foreign partnership indirectly through—

(A) One or more other foreign partnerships;

(B) One or more foreign corporations controlled by one or more domestic entities within the meaning of paragraph (g)(3) of this section; or

(C) An ownership chain with one or more entities described in paragraphs (g)(2)(ii)(A) and (B) of this section.

(3) *Control of a foreign corporation*. For purposes of paragraph (g)(2)(ii)(B) of this section, a foreign corporation is controlled by one or more domestic entities, if more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote or the total value of the stock of such corporation is owned, directly or indirectly, in aggregate, by one or more domestic entities.

(4) *Indirect interests held through applicable foreign corporations*. Solely for purposes of paragraph (g)(2)(ii) of this section, if an applicable foreign corporation owns, directly or indirectly, stock of a foreign corporation or an interest in a foreign partnership, a domestic entity is not treated as indirectly owning stock of the foreign corporation or an interest in the foreign partnership solely by reason of owning, directly or indirectly, stock of the applicable foreign corporation.

(5) *De minimis domestic entity (direct or indirect) partner*. A foreign partnership that has one or more domestic entities as direct or indirect partners is not considered an applicable specified affiliate if the domestic entities hold, directly or indirectly, in aggregate, less than 10 percent in each of the capital interests and profits interests in the foreign partnership.

(h) *CSFC repurchase*—(1) *Overview*. This paragraph (h) provides rules for determining whether a transaction is a CSFC repurchase for purposes of this section. Paragraph (h)(2) of this section provides a general rule regarding the scope of such term. Paragraph (h)(3) of this section provides an exclusive list of transactions that are section 317(b) redemptions but are not CSFC repurchases. Paragraph (h)(4) of this section provides an exclusive list of transactions that are section 4501(d) economically similar transactions. Paragraph (h)(5) of this section provides a non-exclusive list of transactions that are not CSFC repurchases.

(2) *Scope of CSFC repurchases*. For purposes of this section, a *CSFC repurchase* means solely—

(i) A section 317(b) redemption with respect to stock of a covered surrogate foreign corporation, except as provided in paragraph (h)(3) of this section; or

(ii) A section 4501(d) economically similar transaction described in paragraph (h)(4) of this section.

(3) *Certain section 317(b) redemptions that are not CSFC repurchases*. This paragraph (h)(3) provides an exclusive list of section 317(b) redemptions that are not CSFC repurchases for purposes of the section 4501(d) excise tax.

(i) *Section 304(a)(1) transactions*. The deemed distribution by an acquiring corporation (within the meaning of section 304(a)(1) of the Code) that is a covered surrogate foreign corporation in redemption of stock of the acquiring corporation (resulting from the application of section 304(a)(1) to an acquisition of stock by such acquiring corporation), regardless of whether section 302(a) or (d) of the Code applies to the acquiring corporation's deemed distribution in redemption of its stock.

(ii) *Leveraged buyouts and take-private transactions*. A redemption by a covered surrogate foreign corporation that occurs as part of a transaction in which the covered surrogate foreign corporation ceases to be a covered surrogate foreign corporation.

(iii) *Stock issued prior to August 16, 2022*. A redemption by a covered surrogate foreign corporation of stock of the covered corporation issued prior to August 16, 2022, if, at the time such stock was issued, the stock was subject to—

(A) Mandatory redemption by the covered surrogate foreign corporation; or

(B) A unilateral put option by the holder of such stock.

(iv) *Payment by a covered surrogate foreign corporation of cash in lieu of fractional shares*. A payment by a covered surrogate foreign corporation of cash in lieu of a fractional share of the stock of the covered surrogate foreign corporation, if—

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

(B) 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 surrogate foreign corporation in lieu of the fractional share represents a mere rounding off of the shares issued in the exchange or settlement);

(C) The payment is carried out solely for administrative convenience (and, therefore, solely for non-tax reasons); and

(D) The amount of cash paid to the shareholder in lieu of a fractional share does not exceed the fair market value of one full share of the class of stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, with respect to which the payment of cash in lieu of a fractional share is made.

(4) *Section 4501(d) economically similar transactions*. This paragraph (h)(4) provides an exclusive list of transactions that are economically similar to section 317(b) redemptions solely for purposes of the section 4501(d) excise tax (each, a *section 4501(d) economically similar transaction*) and, therefore, are taken into account as CSFC repurchases for purposes of this section.

(i) *E reorganizations*—(A) *In general*. Except as provided in paragraph (h)(4)(i)(B) of this section, in the case of an E reorganization in which the recapitalizing corporation is a covered surrogate foreign corporation, solely the recapitalizing corporation's acquisition of its stock pursuant to the plan of reorganization in exchange for property that is not permitted to be received by the recapitalizing corporation's shareholders under section 354 of the Code without the recognition of gain.

(B) *Exception*. Paragraph (h)(4)(i)(A) of this section does not apply to the extent that—

(*1*) The distribution of such property is treated as a distribution with respect to the recapitalizing corporation's stock under §1.301-1(j) of this chapter; or

(*2*) The exchange is with respect to preferred stock with dividends in arrears and is treated under §1.305-7(c)(2) or 1.368-2(e)(5) of this chapter as a deemed distribution to which sections 301 and 305(b)(4) of the Code apply.

(ii) *Split-offs*. In the case of a split-off by a distributing corporation that is a covered surrogate foreign corporation, the acquisition by the distributing corporation of its stock in exchange for property.

(iii) *Certain forfeitures and clawbacks of stock*—(A) *In general*. In the case of a

forfeiture or clawback of stock of a covered surrogate foreign corporation pursuant to a legal or contractual obligation, the forfeiture or clawback is a section 4501(d)(2) repurchase on the date of forfeiture or clawback (as appropriate) if the stock was treated as issued or provided under paragraph (m)(1) of this section and the forfeiture or clawback of the stock (as appropriate) is described in paragraph (h)(4)(iii)(B) or (C) of this section.

(B) *Stock for which a section 83(b) election was made.* The stock was subject to a substantial risk of forfeiture within the meaning of section 83(a) of the Code on the date the stock was issued or provided, the service provider made a valid election under section 83(b) with regard to the stock, and the forfeiture resulted from the service provider failing to meet the vesting condition.

(C) *Clawbacks*. On the date the stock was issued or provided, the stock was subject to a clawback agreement, and a clawback of the stock resulted from the occurrence of an event specified in the clawback agreement.

(5) *Transactions that are not CSFC repurchases*. This paragraph (h)(5) provides a non-exclusive list of transactions each of which is not a CSFC repurchase for purposes of this section.

(i) *Complete liquidations*. A distribution by a covered surrogate foreign corporation—

(A) In complete liquidation of the covered surrogate foreign corporation to which section 331 or 332(a) (or both) applies;

(B) Pursuant to a resolution or plan of dissolution of the covered surrogate foreign corporation that is reported on an original (but not a supplemented or an amended) IRS Form 966, *Corporate Dissolution or Liquidation* (or any successor form); or

(C) Pursuant to a deemed dissolution of the covered surrogate foreign corporation (for instance, pursuant to a deemed liquidation under §301.7701-3 of this chapter).

(ii) *Distributions during taxable year of complete liquidation or dissolution*. A distribution by a covered surrogate foreign corporation during a taxable year of the covered surrogate foreign corporation, if the covered surrogate foreign corporation—

(A) Completely liquidates during the taxable year (that is, has a final distribution during the taxable year in a complete liquidation to which section 331 or 332(a) (or both) applies);

(B) Dissolves during the taxable year pursuant to a resolution or plan of dissolution as reported on an original (but not a supplemented or an amended) IRS Form 966, *Corporate Dissolution or Liquidation* (or any successor form); or

(C) Is deemed to dissolve during the taxable year (for instance, pursuant to a deemed liquidation under §301.7701-3 of this chapter).

(iii) *Divisive transactions under section 355 other than split-offs*—(A) *In general*. Subject to paragraph (h)(5)(iii)(B) of this section, a distribution by a distributing corporation that is a covered surrogate foreign corporation of stock of a controlled corporation qualifying under section 355 that is not a split-off.

(B) *Exception regarding non-qualifying property in spin-offs*. A distribution by a distributing corporation that is a covered surrogate foreign corporation of other property or money in exchange for stock of the distributing corporation is a repurchase by the distributing corporation if it occurs in pursuance of a transaction qualifying under section 355 in which the distribution by the distributing corporation of stock of the controlled corporation is with respect to stock of the distributing corporation.

(iv) *Non-redemptive distributions subject to section 301(c)(2) or (3)*. A distribution to which section 301 applies by a covered surrogate foreign corporation to a distributee, if the distribution—

(A) Is subject to section 301(c)(2) or (3); and

(B) The distributee does not exchange stock of the covered surrogate foreign corporation (and is not treated as exchanging stock of the covered surrogate foreign corporation for Federal income tax purposes).

(v) *Acquisitive reorganizations*. In the case of an acquisitive reorganization in which the target corporation is a covered surrogate foreign corporation, the acquisition by the target corporation of its stock pursuant to the plan of reorganization in exchange for property that is received by the target corporation's shareholders under section 354 or 356 of the Code.

(vi) *Net cash settlement of an option contract*—(A) *In general*. Subject to paragraph (h)(5)(vi)(B) of this section, the net cash settlement of an option contract or other derivative financial instrument with respect to stock of a covered surrogate foreign corporation.

(B) *Exception regarding net cash settlement of an option contract or other derivative financial instrument treated as stock*. The net cash settlement of an instrument in the legal form of an option contract or other derivative financial instrument that is treated as stock of a covered surrogate foreign corporation for Federal tax purposes at the time of issuance is a repurchase.

(i) [Reserved]

(j) *Date of section 4501(d)(1) repurchase or section 4501(d)(2) repurchase*—(1) *General rule*. In general, stock of an applicable foreign corporation or a covered surrogate foreign corporation is treated as acquired in a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase, as applicable, on the date on which ownership of the stock transfers to the specified affiliate of the applicable foreign corporation, the specified affiliate of the covered surrogate foreign corporation, or the covered surrogate foreign corporation, as applicable, for Federal income tax purposes.

(2) *Regular-way sale*. A regular-way sale of stock of an applicable foreign corporation or a covered surrogate foreign corporation (that is, a transaction in which a trade order is placed on the trade date, and settlement of the transaction, including payment and delivery of the stock, occurs a standardized period of time, as set by a regulator, after the trade date) is treated as acquired in a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase, as applicable, on the trade date.

(k) *Fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation that is repurchased or acquired*—(1) *In general*. The fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is acquired in a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase is the market price of the stock on the date of the section 4501(d)(1) repurchase or the section 4501(d)(2) repurchase

(as determined under paragraph (j) of this section). That is, if the price at which the repurchased or acquired stock is purchased differs from the market price of the stock on the date the stock is repurchased or acquired, the fair market value of the stock is the market price on the date the stock is repurchased or acquired.

(2) *Stock traded on an established securities market*—(i) *In general*. If stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is acquired in a section 4501(d)(1) repurchase a or section 4501(d)(2) repurchase with respect to a section 4501(d) covered corporation is traded on an established securities market, the section 4501(d) covered corporation must determine the market price of the stock by applying one of the methods provided in paragraph (k)(2)(ii) of this section. For purposes of this paragraph (k)(2), stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, 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 or acquired are so traded.

(ii) *Acceptable methods*. The following are acceptable methods for determining the market price of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, traded on an established securities market:

(A) The daily volume-weighted average price as determined on the date the stock is acquired in a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase.

(B) The closing price on the date the stock is acquired in a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase.

(C) The average of the high and low prices on the date the stock is acquired in a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase.

(D) The trading price at the time the stock is acquired in a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase.

(iii) *Date of section 4501(d)(1) repurchase or section 4501(d)(2) repurchase not a trading day*. For purposes of each method provided in paragraph (k)(2)(ii) of this section, if the date stock is acquired in a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase is not a trading day, the date on which the market price is determined is the immediately preceding trading day.

(iv) *Consistency requirement*. The market price of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, 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 paragraph (k)(2)(ii) of this section to all section 4501(d)(1) repurchases with respect to an applicable foreign corporation or all section 4501(d)(2) repurchases with respect to a covered surrogate foreign corporation, as applicable, in the same taxable year of the applicable foreign corporation or covered surrogate foreign corporation, as applicable (which, if the applicable foreign corporation or covered surrogate foreign corporation, as applicable, does not have a taxable year for Federal tax purposes, is the calendar year).

(v) *Stock traded on multiple exchanges*—(A) *In general*. A section 4501(d) covered corporation must determine the market price of the stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, by reference to trading on the established securities market in the country in which the applicable foreign corporation or covered surrogate foreign corporation, as applicable, is organized, including a regional established securities market that trades in that country.

(B) *Stock traded on multiple exchanges in country where corporation is organized*. If the stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, is traded on multiple established securities markets in the country in which the applicable foreign corporation or covered surrogate foreign corporation, as applicable, is organized, a section 4501(d) covered corporation must determine the market price of the stock by reference to trading on the established securities market in that country with the highest trading volume in the stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, in the section 4501(d) covered corporation's prior taxable year.

(C) *Other cases in which stock is traded on multiple exchanges*. If stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, is traded on multiple established securities markets and neither paragraph (k)(2)(v)(A) nor (B) of this section applies, a section 4501(d) covered corporation must determine the market price of the stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, in a manner that is reasonable and consistent under the facts and circumstances.

(3) *Stock not traded on an established securities market*—(i) *General rule*. If stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, is not traded on an established securities market, the market price of the stock is determined as of the date the stock is acquired in a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase under the principles of §1.409A-1(b)(5)(iv)(B)(*1*) of this chapter.

(ii) *Consistency requirement*. The valuation method for determining the market price of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is not traded on an established securities market must be used for all section 4501(d)(1) repurchases with respect to the same class of stock of an applicable foreign corporation or all section 4501(d)(2) repurchases with respect to the same class of stock of a covered surrogate foreign corporation, as applicable, in the same taxable year of the applicable foreign corporation or covered surrogate foreign corporation, as applicable (which, if the applicable foreign corporation or covered surrogate foreign corporation, as applicable, does not have a taxable year for Federal tax purposes, is the calendar year), unless the application of that method to a particular section 4501(d)(1) repurchase or a particular section 4501(d)(2) repurchase would be unreasonable under the facts and circumstances as of the valuation date within the meaning of §1.409A-1(b)(5)(iv)(B)(*1*) of this chapter.

(4) *Market price of stock denominated in non-U.S. currency*. The market price of any stock of an applicable foreign corporation or a covered surrogate foreign cor-

poration that is denominated in a currency other than the U.S. dollar is converted into U.S. dollars at the spot rate (as defined in §1.988-1(d)(1) of this chapter) on the date the stock is acquired in a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase.

(l) *Section 4501(d) exceptions*—(1) *In general*—(i) *Overview.* This paragraph (l) provides rules regarding the application of each exception set forth in section 4501(e) (other than the section 4501(d) de minimis exception) and an additional exception applicable to certain investment companies (each, a *section 4501(d) exception*) to a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase.

(ii) *Reduction of section 4501(d) excise tax base.* For purposes of determining a section 4501(d) covered corporation's section 4501(d) stock repurchase excise tax base under paragraph (c)(3) of this section, the section 4501(d) covered corporation reduces its section 4501(d) gross repurchase amount by an amount equal to the aggregate fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that qualifies for an exception described in this paragraph (l). *See* paragraph (c)(3)(i)(B) of this section.

(iii) *Coordination of exceptions*. If a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase qualifies for more than one exception described in paragraphs (l)(2) through (7) of this section, the section 4501(d) covered corporation may reduce its gross repurchase amount under solely a single exception, as determined by the section 4501(d) covered corporation.

(2) *Section 4501(d) reorganization exception*. A section 4501(d) covered corporation reduces its section 4501(d) gross repurchase amount under paragraph (c)(3)(i)(B) of this section by an amount equal to the aggregate fair market value of a covered surrogate foreign corporation's stock repurchased from a shareholder in a CSFC repurchase described in paragraph (h)(4)(i) or (ii) of this section to the extent that the repurchase is for property permitted by section 355 to be received without the recognition of gain or loss on that CSFC repurchase (*section 4501(d) reorganization exception*).

(3) *Stock contributions to an employer-sponsored retirement plan*—(i) *Reductions to section 4501(d) excise tax base*—(A) *General rule*. A section 4501(d) covered corporation reduces its section 4501(d) gross repurchase amount under paragraph (c)(3)(i)(B) of this section if the stock of the applicable foreign corporation or the covered surrogate foreign corporation, as applicable, that is repurchased or acquired in a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase, as applicable, or an amount of stock equal to the fair market value of the stock repurchased or acquired, is contributed to an employer-sponsored retirement plan of the section 4501(d) covered corporation.

(B) *Special rule for leveraged ESOPs*. If a section 4501(d) covered corporation maintains an ESOP with an exempt loan (as described in section 4975(d)(3) of the Code), allocations of qualifying employer securities that are stock of the applicable foreign corporation or covered surrogate foreign corporation from the ESOP suspense account to ESOP participants' accounts that are attributable to employer contributions (and not to dividends) are treated as contributions of stock under this paragraph (l)(3) as of the date stock attributable to repayment of the exempt loan is released from the suspense account and allocated to ESOP participants' accounts.

(ii) *Classes of stock contributed to an employer-sponsored retirement plan*. This paragraph (l)(3) applies to contributions of any class of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, to an employer-sponsored retirement plan of the section 4501(d) covered corporation, regardless of the class of stock that was repurchased or acquired in a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase by the section 4501(d) covered corporation.

(iii) *Determining amount of reduction to section 4501(d) excise tax base*. The amount of the reduction under paragraph (l)(3)(i) of this section for a section 4501(d) covered corporation is determined as provided in paragraph (l)(3)(iii)(A) or (B) of this section.

(A) *Same class of stock repurchased and contributed*. If stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, is repurchased or acquired in a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase, as applicable, and stock of the applicable foreign corporation or the covered surrogate foreign corporation, as applicable, that is of the same class is contributed to an employer-sponsored retirement plan of the section 4501(d) covered corporation, the amount of the reduction under paragraph (l)(3)(i) of this section is equal to the lesser of—

(*1*) The aggregate fair market value of the stock of the same class that was repurchased or acquired (as determined under paragraph (k) of this section) during the section 4501(d) covered corporation's taxable year; or

(*2*) The amount obtained by—

(*i*) Determining the aggregate fair market value of all stock of that class repurchased or acquired (as determined under paragraph (k) of this section) in all section 4501(d)(1) repurchases or section 4501(d)(2) repurchases, as applicable, during the section 4501(d) covered corporation's taxable year, reduced by the fair market value of shares of that class of stock that is a reduction to the section 4501(d) excise tax base for the taxable year under a section 4501(d) exception other than this paragraph (l)(3);

(*ii*) Dividing the amount determined under paragraph (l)(3)(iii)(A)(*2*)(*i*) of this section by the number of shares of that class repurchased or acquired in all section 4501(d)(1) repurchases or section 4501(d)(2) repurchases, as applicable, during the section 4501(d) covered corporation's taxable year, reduced by the number of shares of that class of stock the fair market value of which is a reduction to the section 4501(d) excise tax base for the taxable year under a section 4501(d) exception other than this paragraph (l)(3); and

(*iii*) Multiplying the amount determined under paragraph (l)(3)(iii)(A)(*2*)(*ii*) of this section by the number of shares of that class contributed to an employer-sponsored retirement plan of the section 4501(d) covered corporation for the taxable year.

(B) *Different class of stock repurchased and contributed*—(*1*) *In general.* Subject to paragraph (l)(3)(iii)(B)(*2*) of this section, if stock of an applicable foreign corporation or a covered surrogate

foreign corporation, as applicable, of a different class of stock than is repurchased or acquired in a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase, as applicable, with respect to a section 4501(d) covered corporation is contributed to an employer-sponsored retirement plan of the section 4501(d) covered corporation, then the amount of the reduction under paragraph (l)(3)(i) of this section is equal to the fair market value of the contributed stock at the time the stock is contributed to the employer-sponsored retirement plan.

(*2*) *Maximum reduction permitted*. The amount of the reduction under paragraph (l)(3)(iii)(B)(*1*) of this section may not exceed the section 4501(d) excise tax base for the taxable year (determined without regard to any reduction under paragraph (l)(3)(i) of this section).

(iv) *Timing of contributions*—(A) *In general*. The reduction under paragraph (l)(3)(i) of this section (that is, the reduction in the section 4501(d) excise tax base), for a taxable year applies to contributions of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, to an employer-sponsored retirement plan during the section 4501(d) covered corporation's taxable year.

(B) *Treatment of contributions after close of taxable year*. For purposes of paragraph (l)(3)(iv)(A) of this section, a section 4501(d) covered corporation may treat stock contributions to an employer-sponsored retirement plan made after the close of the section 4501(d) covered corporation's taxable year as having been contributed during that taxable year if the following two requirements are satisfied:

(*1*) The stock must be contributed to the employer-sponsored retirement plan by the filing deadline for the form on which the section 4501(d) excise tax must be reported (applicable form) for that taxable year of the section 4501(d) covered corporation.

(*2*) The stock must be treated by the employer-sponsored retirement plan in the same manner that the plan would treat a contribution received on the last day of that taxable year of the section 4501(d) covered corporation.

(C) *No duplicate reductions*. Stock contributions that are treated under paragraph (l)(3)(iv)(B) of this section as having been contributed in the taxable year to which the applicable form applies may not be treated as having been contributed for any other taxable year for purposes of the section 4501(d) excise tax.

(v) *Contributions before January 1, 2023*. A section 4501(d) covered corporation with a taxable year that both begins before January 1, 2023, and ends after December 31, 2022, may include for that taxable year the fair market value of all contributions of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, to an employer-sponsored retirement plan during the entirety of that taxable year for purposes of applying this paragraph (l)(3).

(4) *Repurchases or acquisitions by a dealer in securities in the ordinary course of business*—(i) *In general*. Subject to paragraph (l)(4)(ii) of this section, a section 4501(d) covered corporation reduces its section 4501(d) gross repurchase amount under paragraph (c)(3)(i)(B) of this section by an amount equal to the aggregate fair market value of stock acquired in a section 4501(d)(1) repurchase or in a section 4501(d)(2) repurchase if the repurchasing or acquiring entity is a dealer in securities (within the meaning of section 475(c)(1) of the Code) to the extent the stock is repurchased or acquired in the ordinary course of the dealer's business of dealing in securities.

(ii) *Applicability*. The reduction described in paragraph (l)(4)(i) of this section applies solely to the extent that—

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

(B) 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

(C) The dealer (if it is a covered surrogate foreign corporation) does not sell or otherwise transfer the stock to a specified affiliate of the covered surrogate foreign corporation or the dealer (if it is a specified affiliate of an applicable foreign corporation or of a covered surrogate foreign corporation, as applicable) does not sell or otherwise transfer the stock to the applicable foreign corporation, covered surrogate foreign corporation, or to another specified affiliate of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, in each case other than in a sale or transfer to a dealer that also satisfies the requirements of this paragraph (l)(4)(ii).

(5) *Repurchases by a RIC or REIT*. Section 4501(e)(5) does not apply for purposes of section 4501(d).

(6) *CSFC repurchase treated as a dividend*—(i) *In general*. A section 4501(d) covered corporation reduces its section 4501(d) gross repurchase amount under paragraph (c)(3)(i)(B) of this section by an amount equal to the aggregate fair market value of stock of a covered surrogate foreign corporation repurchased by the covered surrogate foreign corporation in a CSFC repurchase to the extent the CSFC repurchase is treated as a distribution of a dividend under section 301(c)(1) or 356(a)(2).

(ii) *Rebuttable presumption of no dividend equivalence*—(A) *Presumption*. A CSFC repurchase to which section 302 or 356(a) applies is presumed to be subject to section 302(a) or 356(a)(1), respectively (and, therefore, is presumed ineligible for the exception in paragraph (l)(6)(i) of this section).

(B) *Rebuttal of presumption*. A section 4501(d) covered corporation may rebut the presumption described in paragraph (l)(6)(ii)(A) of this section with regard to a specific shareholder of the covered surrogate foreign corporation solely by establishing with sufficient evidence that the covered surrogate foreign corporation and the shareholder treat the CSFC repurchase as a dividend for Federal income tax purposes.

(iii) *Sufficient evidence requirement*—(A) *In general*. To provide sufficient evidence under paragraph (l)(6)(ii)(B) of this section to establish that the covered surrogate foreign corporation and the shareholder treat the CSFC repurchase as a dividend for Federal income tax purposes, the section 4501(d) covered corporation must—

(*1*) Establish, based on information known to the section 4501(d) covered

corporation (for example, through legal documentation of share ownership, publicly available information, the pro rata nature of the repurchase, or the shareholder certification safe harbor described in paragraph (l)(6)(iii)(B) of this section), that—

(*i*) The CSFC repurchase either constitutes a redemption that is treated as a distribution to which section 301 applies by reason of section 302(d) or has the effect of the distribution of a dividend under section 356(a)(2); and

(*ii*) The section 4501(d) covered corporation has no knowledge of facts that would indicate that the treatment described in paragraph (l)(6)(iii)(A)(*1*)(*i*) of this section is incorrect;

(*2*) Treat the CSFC repurchase consistent with the treatment described in paragraph (l)(6)(iii)(A)(*1*)(*i*) of this section, including by withholding the applicable amounts, if required; and

(*3*) Demonstrate sufficient earnings and profits to treat as a dividend either the redemption under section 302 or the receipt of money or other property under section 356.

(B) *Shareholder certification safe harbor*. To provide sufficient evidence under paragraph (l)(6)(iii)(A) of this section to establish that the shareholder treats the repurchase as a dividend for Federal income tax purposes, the section 4501(d) covered corporation—

(*1*) May obtain certification from the shareholder, in accordance with §58.4501-3(g)(3)(ii), that the repurchase constitutes a redemption treated as a distribution to which section 301 applies by reason of section 302(d), or that the repurchase has the effect of the distribution of a dividend under section 356(a)(2), including evidence that applicable withholding occurred if required; and

(*2*) Must have no knowledge of facts that would indicate that the shareholder certification is incorrect.

(iv) *Documentation of sufficient evidence*—(A) *Retention and availability of evidence*. A section 4501(d) covered corporation must retain the evidence described in paragraph (l)(6)(iii) of this section and make that evidence available for inspection to the IRS if any of the evidence becomes material in the administration of any internal revenue law.

(B) *Retention of supporting records*. The section 4501(d) covered corporation must retain records of all information necessary to document and substantiate all content described in paragraph (l)(6)(iii) of this section.

(7) *Repurchases by a non-RIC '40 Act fund*. The exception for repurchases by a non-RIC '40 Act fund under §58.4501-3(h) does not apply for purposes of section 4501(d).

(m) *Application of section 4501(d) netting rule*—(1) *In general*. This paragraph (m) provides the *section 4501(d) netting rule*, under which the section 4501(d) excise tax base with respect to a section 4501(d) covered corporation for a taxable year is reduced only by stock of the applicable foreign corporation or the covered surrogate foreign corporation, as applicable, issued or provided by the section 4501(d) covered corporation to its employees during its taxable year. Any reference in this paragraph (m) to issuing or providing stock to an employee refers solely to stock of the applicable foreign corporation or the covered surrogate foreign corporation, as applicable, that is issued or provided by a section 4501(d) covered corporation to an employee in connection with the employee's performance of services in the employee's capacity as an employee of the section 4501(d) covered corporation. The fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is described in this paragraph (m) is a reduction for purposes of computing the section 4501(d) covered corporation's section 4501(d) excise tax base. *See* paragraph (c)(3)(i)(C) of this section.

(2) *Stock issued or provided outside period of applicable foreign corporation or covered surrogate foreign corporation status*. Any stock issued or provided prior to the initiation date or after the cessation date of the applicable foreign corporation or the covered surrogate foreign corporation, as applicable, is not taken into account under paragraph (m)(1) of this section. *See* paragraph (e)(1) of this section (determination of initiation date and cessation date).

(3) *Issuances or provisions before January 1, 2023*. Except as provided in paragraph (m)(2) of this section, a section 4501(d) covered corporation with a taxable year that both begins before January 1, 2023, and ends after December 31, 2022, must include the fair market value of all issuances or provisions of stock during the entirety of that taxable year for purposes of applying paragraph (m)(1) of this section for that taxable year.

(4) *Stock issued or provided in connection with the performance of services*—(i) *In general*. For purposes of this paragraph (m), stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, is transferred by the section 4501(d) covered corporation in connection with the performance of services only if the transfer is described in section 83, including pursuant to the exercise of a nonqualified stock option described in §1.83-7 of this chapter, or is pursuant to the exercise of a stock option described in section 421 of the Code.

(ii) *Sale of shares to cover exercise price or withholding*—(A) *Payment or advance by third party equal to exercise price*. If a third party pays the exercise price of an option to acquire stock of a covered corporation on behalf of an employee or advances to an employee an amount equal to the exercise price of a stock option that the employee uses to exercise the option, then any stock transferred by the section 4501(d) covered corporation to the third party in connection with exercising the option (as well as any stock transferred by the covered corporation or specified affiliate to the employee) is treated as issued or provided in connection with the performance of the services by the employee.

(B) *Advance by third party equal to withholding obligation*. If a third party advances an amount equal to the withholding obligation of an employee, then any stock transferred by the section 4501(d) covered corporation to the third party (as well as any stock transferred by the covered corporation or specified affiliate to the employee) in connection with this arrangement is treated as issued or provided in connection with the performance of services by the employee.

(5) *Date of issuance or provision for section 4501(d) netting rule*—(i) *In general*. Stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, is issued or provided to an employee of a section

4501(d) covered corporation as of the date 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 both transferred by the section 4501(d) covered corporation and substantially vested within the meaning of §1.83-3(b) of this chapter. Thus, stock transferred pursuant to a vested stock award or a restricted stock unit is issued or provided when the section 4501(d) covered corporation initiates payment of the stock. Stock transferred that is not substantially vested within the meaning of §1.83-3(b) of this chapter is not issued or provided until it vests, except as provided in paragraph (m)(5)(iii) of this section.

(ii) *Stock options and stock appreciation rights*. Stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, transferred by a section 4501(d) covered corporation pursuant to an option described in §1.83-7 of this chapter or section 421 or a stock appreciation right is issued or provided by the section 4501(d) covered corporation as of the date the option or stock appreciation right is exercised.

(iii) *Stock on which a section 83(b) election is made*. Stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, transferred by the section 4501(d) covered corporation when it is not substantially vested within the meaning of §1.83-3(b) of this chapter, but as to which a valid election under section 83(b) is made, is treated as issued or provided by the section 4501(d) covered corporation as of the transfer date.

(6) *Fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation that is issued or provided to employees*—(i) *In general*. For purposes of paragraph (m)(1) of this section, the fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is issued or provided is determined under section 83 as of the date the stock is issued or provided to an employee by the section 4501(d) covered corporation. The fair market value of the stock is determined under the rules provided in section 83 regardless of whether an amount is includible in the employee's income under section 83 or otherwise. For example, the fair market value of stock issued or provided by a section 4501(d) covered corporation to its employee pursuant to a stock option described in section 421 and stock issued or provided by a section 4501(d) covered corporation to an employee who is a nonresident alien for services performed outside of the United States is determined using the rules provided in section 83.

(ii) *Market price of stock denominated in non-U.S. currency*. The market price of any stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is denominated in a currency other than the U.S. dollar is converted into U.S. dollars at the spot rate (as defined in §1.988-1(d)(1) of this chapter) on the date the stock is issued or provided by the section 4501(d) covered corporation to its employee.

(7) *Issuances that are disregarded for purposes of applying the section 4501(d) netting rule*—(i) *In general*. This paragraph (m)(7) lists the sole circumstances in which an issuance or provision of stock by the section 4501(d) covered corporation to its employee is disregarded for purposes of this paragraph (m). The transfers of stock described in §58.4501-4(f)(1) through (9) are not issuances or provisions of stock by a section 4501(d) covered corporation to its employees and therefore are not relevant to the section 4501(d) netting rule.

(ii) *Stock contributions to an employer-sponsored retirement plan*. Any stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, contributed to an employer-sponsored retirement plan of the section 4501(d) covered corporation, any stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, treated as contributed to an employer-sponsored retirement plan of the section 4501(d) covered corporation under paragraph (l)(3) of this section, and any stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, sold to a leveraged or non-leveraged ESOP, is disregarded for purposes of this paragraph (m).

(iii) *Net exercises and share withholding*. Stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, withheld by a section 4501(d) covered corporation to satisfy the exercise price of a stock option issued to an employee, or to pay any withholding obligation, is disregarded for purposes of this paragraph (m). For example, stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, withheld by a section 4501(d) covered corporation to pay the exercise price of a stock option, to satisfy an employer's income tax withholding obligation under section 3402 of the Code, to satisfy an employer's withholding obligation under section 3102 of the Code, or to satisfy an employer's withholding obligation for State, local, or foreign taxes, is disregarded for purposes of this paragraph (m).

(iv) *Settlement other than in stock*. Settlement of an option contract with respect to stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, using any consideration other than stock of the applicable foreign corporation or the covered surrogate foreign corporation, as applicable, (including cash) is disregarded for purposes of this paragraph (m).

(v) *Instrument not in the legal form of stock*—(A) *Issuance or provision of section 4501(d) covered non-stock instrument generally disregarded*. Except as provided in paragraph (m)(7)(v)(C) or (D) of this section, the issuance or provision by a section 4501(d) covered corporation of a section 4501(d) covered non-stock instrument (as defined in paragraph (m)(7)(v)(B)(*2*) of this section, including an issuance or provision before the initiation date or after the cessation date, is disregarded for purposes of the section 4501(d) netting rule.

(B) *Definitions*. The following definitions apply for purposes of this paragraph (m)(7)(v).

(*1*) *Section 4501(d) non-stock instrument*. A *section 4501(d) non-stock instrument* is an instrument of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is not in the legal form of stock but that is treated as stock for Federal tax purposes. For the avoidance of doubt, in the case of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is an eligible entity

with the meaning of §301.7701-3(a) of this chapter, a *section 4501(d) non-stock instrument* does not include an instrument that is in the legal form of membership, partnership, or other ownership interests of the eligible entity.

(*2*) *Section 4501(d) covered non-stock instrument*. A *section 4501(d) covered non-stock instrument* is a section 4501(d) non-stock instrument issued or provided by a section 4501(d) covered corporation to a section 4501(d) covered holder.

(*3*) *Section 4501(d) covered holder*. A *section 4501(d) covered holder* is any person that owns (or under the attribution rules of section 318 of the Code is considered to own) at least 10 percent of the stock of the applicable foreign corporation or the covered surrogate foreign corporation, as applicable, either by vote or value, but only if the section 4501(d) covered corporation has knowledge of facts that would indicate such ownership, including through legal documentation of share ownership, publicly available information, or any other means at the time of the issuance or provision of the section 4501(d) non-stock instrument by the section 4501(d) covered corporation.

(C) *Certain instruments treated as issued when repurchased*—(*1*) *In general*. Subject to the identification requirement in paragraph (m)(7)(v)(C)(*2*) of this section, if a section 4501(d) covered non-stock instrument is repurchased by a section 4501(d) covered corporation, the issuance or provision of the instrument is regarded for purposes of the section 4501(d) netting rule at the time of such repurchase based on the fair market value of the instrument when the instrument was issued or provided. Such fair market value is determined under paragraph (m)(6) of this section. For purposes of the section 4501(d) excise tax, the delivery of stock pursuant to the terms of a section 4501(d) covered non-stock instrument is treated as a repurchase of the section 4501(d) covered non-stock instrument in exchange for an issuance or provision of the stock that is delivered.

(*2*) *Identification of an instrument not in the legal form of stock*. The issuance or provision of a section 4501(d) covered non-stock instrument is regarded under paragraph (m)(7)(v)(C)(*1*) of this section only if the section 4501(d) covered corporation identifies the section 4501(d)(1) repurchase or the section 4501(d)(2) repurchase, as applicable, of the section 4501(d) covered non-stock instrument on the return on which the section 4501(d) excise tax must be reported for the section 4501(d) covered corporation's taxable year in which the section 4501(d)(1) repurchase or the section 4501(d)(2) repurchase, as applicable, occurs.

(D) *Issuances pursuant to a public offering*. Paragraph (m)(7)(v)(A) of this section does not apply to any issuance or provision of a section 4501(d) covered non-stock instrument the offer and sale of which was registered with the SEC.

(n) *Section 4501(d)(1) examples*. The following examples illustrate the application of the rules in this section relating to section 4501(d)(1). For purposes of the following examples, unless otherwise stated: Corporation FZ is an applicable foreign corporation; each entity has a calendar taxable year, has no direct or indirect owner that is a domestic entity, and is not related to any other entity; each corporation's only outstanding stock for Federal tax purposes is a single class of common stock; the functional currency (within the meaning of section 985 of the Code) of any entity is the U.S. dollar; any acquisition of the stock of an applicable foreign corporation is from a person who is not the applicable foreign corporation or a specified affiliate of the applicable foreign corporation; no stock is transferred to any employee; for examples that expressly provide that stock is transferred to any employee, such transfer is made in connection with the employee's performance of services in its capacity as an employee of the transferor, and the employee is treated as the beneficial owner of the stock for Federal income tax purposes on the date of the transfer; and the section 4501(d) exceptions are inapplicable.

(1) *Example 1: Section 4501(d) netting rule with respect to a single applicable specified affiliate*—(i) *Facts*. Corporation FZ owns all the outstanding stock of Corporation US1, a domestic corporation. Each of Employee M and Employee P is an employee of Corporation US1. On February 1, 2025, Corporation US1 purchases 100 shares of stock of Corporation FZ when the market price of each share is $8x. On May 15, 2025, Corporation US1 transfers to Employee M 50 shares of stock of Corporation FZ when the fair market value of each share is $5x. On November 1, 2025, Corporation US1 transfers to Employee P 30 shares of stock of Corporation US1 when the fair market value of each share is $9x.

(ii) *Analysis*. Corporation US1 is an applicable specified affiliate. *See* paragraph (b)(2)(ii) of this section. Corporation US1's purchase of 100 shares of stock of Corporation FZ on February 1, 2025, is a section 4501(d)(1) repurchase. *See* paragraph (b)(2)(xxi) of this section. Corporation US1 is a section 4501(d) covered corporation with respect to the section 4501(d)(1) repurchase. *See* paragraph (b)(2)(ix)(A) of this section. For purposes of computing Corporation US1's section 4501(d) excise tax base for its 2025 taxable year, the fair market value of the 100 shares of stock of Corporation FZ subject to the section 4501(d)(1) repurchase is $800x. *See* paragraph (k)(1) of this section. Accordingly, the section 4501(d)(1) repurchase increases Corporation US1's section 4501(d) excise tax base for the 2025 taxable year by $800x. 50 shares of Corporation FZ stock are treated as issued or provided to Employee M on May 15, 2025. *See* paragraph (m)(5) of this section. Therefore, Corporation US1's section 4501(d) excise tax base for its 2025 taxable year is reduced by $250x (50 shares x $5x per share = $250x). *See* paragraph (c)(3)(i)(C) of this section. Corporation US1's section 4501(d) excise tax base for its 2025 taxable year is not reduced by the transfer of stock of Corporation US1 to Employee P because the section 4501(d) excise tax base with respect to Corporation US1 can only be reduced by the fair market value of stock of Corporation FZ issued or provided by Corporation US1 to employees of Corporation US1. *See* paragraph (m) of this section. Accordingly, Corporation US1's section 4501(d) excise tax base with respect to these transactions for its 2025 taxable year is $550x ($800x repurchase - $250x issuance = $550x).

(2) *Example 2: Section 4501(d) netting rule with respect to multiple applicable specified affiliates*—(i) *Facts*. Corporation FZ owns all the outstanding stock of both Corporation US1, a domestic corporation, and Corporation US2, a domestic corporation. Employee T is an employee of Corporation US2. On February 1, 2025, Corporation US1 purchases 100 shares of stock of Corporation FZ when the market price of each share is $8x. On May 15, 2025, Corporation US2 transfers to Employee T 50 shares of stock of Corporation FZ when the fair market value of each share is $5x.

(ii) *Analysis*. Corporation US1 is an applicable specified affiliate. *See* paragraph (b)(2)(ii) of this section. Corporation US1's purchase of 100 shares of stock of Corporation FZ on February 1, 2025, is a section 4501(d)(1) repurchase. *See* paragraph (b)(2)(xxi) of this section. Corporation US1 is a section 4501(d) covered corporation with respect to the section 4501(d)(1) repurchase. *See* paragraph (b)(2)(ix)(A) of this section. For purposes of computing Corporation US1's section 4501(d) excise tax base for its 2025 taxable year, the fair market value of the 100 shares of stock of Corporation FZ subject to the section 4501(d)(1) repurchase is $800x. *See* paragraph (k)(1) of this section. Accordingly, the section 4501(d)(1) repurchase increases Corporation US1's section 4501(d) excise tax base for the 2025 taxable year by $800x. Corporation US1's section 4501(d) excise tax base for its 2025 taxable year is not reduced by the transfer of stock of Corporation FZ to Employee T, an employee of Corporation US2,

because the section 4501(d) excise tax base with respect to Corporation US1 can only be reduced by the fair market value of stock of Corporation FZ issued or provided by Corporation US1 to employees of Corporation US1. *See* paragraph (m) of this section. Because there is no section 4501(d) repurchase by Corporation US2, the section 4501(d) netting rule does not apply to Corporation US2's transfer of 50 shares of stock of Corporation FZ to Employee T.

(3) *Example 3: Foreign partnership that is an applicable specified affiliate*—(i) *Facts*. Partnership FP is a foreign partnership in which Corporation FZ, Corporation FB, a foreign corporation, and Corporation US1, a domestic corporation, are partners. Corporation FZ owns 70 percent of the capital interests and profits interests of Partnership FP; Corporation FB owns 20 percent of the capital interests and profits interests of Partnership FP; and Corporation US1 owns 10 percent of the capital interests and profits interests of Partnership FP. On March 1, 2024, Partnership FP purchases 100 shares of stock of Corporation FZ when the market price of each share is $8x.

(ii) *Analysis*. Corporation US1 is a domestic entity. *See* paragraph (b)(2)(vi) of this section. Corporation US1 is a direct partner with respect to Partnership FP for purposes of section 4501(d)(1) because Corporation US1 directly owns an interest in Partnership FP and is not a de minimis domestic entity partner with respect to Partnership FP. *See* paragraphs (g)(2)(i) and (g)(5) of this section. Accordingly, Partnership FP is an applicable specified affiliate of Corporation FZ because Corporation FZ owns more than 50 percent of the capital interests or profits interests of Partnership FP, and Corporation US1, a domestic entity, is a direct partner of Partnership FP. *See* paragraph (g)(1) of this section. Consequently, Partnership FP's purchase of 100 shares of stock of Corporation FZ is a section 4501(d)(1) repurchase. *See* paragraph (b)(2)(xxi) of this section. Partnership FP is a section 4501(d) covered corporation with respect to the section 4501(d)(1) repurchase. *See* paragraph (b)(2)(ix)(A) of this section. For purposes of computing Partnership FP's section 4501(d) excise tax base, the fair market value of the 100 shares of stock of Corporation FZ subject to the section 4501(d)(1) repurchase is $800x. *See* paragraph (k)(1) of this section. Accordingly, the section 4501(d)(1) repurchase increases Partnership FP's section 4501(d) excise tax base for the 2024 taxable year by $800x. *See* paragraph (c)(3)(i) of this section.

(4) *Example 4: Foreign partnership that is not an applicable specified affiliate*—(i) *Facts*. The facts are the same as in paragraph (n)(3)(i) of this section (*Example 3*), except that Corporation FZ owns 76 percent of the capital interests and profits interests of Partnership FP; Corporation FB owns 20 percent of the capital interests and profits interests of Partnership FP; and Corporation US1 owns 4 percent of the capital interests and profits interests of Partnership FP.

(ii) *Analysis*. Corporation US1 is not a direct or indirect partner with respect to Partnership FP for purposes of section 4501(d)(1) because Corporation US1 qualifies as a de minimis domestic entity partner. *See* paragraph (g)(5) of this section. Consequently, Partnership FP is not an applicable specified affiliate of Corporation FZ because Partnership FP has no direct or indirect domestic entity partner. *See* paragraph (g)(1) of this section. Accordingly, Partnership FP's purchase of 100 shares of stock of Corporation FZ is not a section 4501(d)(1) repurchase. *See* paragraph (b)(2)(xxi) of this section.

(5) *Example 5: Foreign partnership that is directly owned by foreign corporations and is an applicable specified affiliate*—(i) *Facts*. Corporation FZ owns all the outstanding stock of Corporation US1, a domestic corporation. Corporation US1 owns all the outstanding stock of Corporation FB, a foreign corporation. Partnership FP is a foreign partnership in which Corporation FB and Corporation FE, a foreign corporation, are partners. Corporation FB owns 80 percent of the capital interests and profits interests of Partnership FP, and Corporation FE owns 20 percent of the capital interests and profits interests of Partnership FP.

(ii) *Analysis*. Corporation US1 is a domestic entity. *See* paragraph (b)(2)(vi) of this section. Corporation US1 owns an interest in Partnership FP indirectly through Corporation FB, a foreign corporation that Corporation US1 controls within the meaning of paragraph (g)(3) of this section. Corporation US1 does not qualify as a de minimis domestic entity partner with respect to Partnership FP. *See* paragraph (g)(5) of this section. Thus, Corporation US1 is an indirect partner with respect to Partnership FP for purposes of section 4501(d)(1). *See* paragraph (g)(2)(ii)(B) of this section. Accordingly, Partnership FP is an applicable specified affiliate of Corporation FZ because Corporation FZ indirectly owns more than 50 percent of the capital interests or profits interests of Partnership FP and Corporation US1, a domestic entity, is an indirect partner of Partnership FP. *See* paragraph (g)(1) of this section.

(o) *Section 4501(d)(2) examples*. The following examples illustrate the application of the rules in this section relating to section 4501(d)(2). For purposes of the following examples, unless otherwise stated: Corporation FZ is a covered surrogate foreign corporation; each domestic entity is an expatriated entity within the meaning of section 7874(a)(2)(A) with respect to Corporation FZ and is not a member of a consolidated group; there are no expatriated entities with respect to Corporation FZ other than as described in the facts; a reference to ownership refers to direct ownership; any repurchase or acquisition of stock is during a taxable year that includes at least a portion of the applicable period with respect to Corporation FZ under section 7874(d)(1); each entity has a calendar taxable year; each corporation's only outstanding stock is a single class of common stock; the functional currency (within the meaning of section 985) of any entity is the U.S. dollar; no stock is transferred to any employee; for examples that expressly provide that stock is transferred to any employee, such transfer is made in connection with the employee's performance of services in its capacity as an employee of the transferor, and the employee is treated as the beneficial owner of the stock for Federal income tax purposes on the date of the transfer; and the section 4501(d) exceptions are inapplicable.

(1) *Example 1: Section 4501(d) netting rule with respect to an expatriated entity*—(i) *Facts*. Corporation FZ owns all the outstanding stock of Corporation US1, a domestic corporation. Employee M is an employee of Corporation FZ, and Employee P is an employee of Corporation US1. On February 1, 2024, Corporation US1 purchases 100 shares of stock of Corporation FZ when the market price of each share is $8x. On May 15, 2024, Corporation FZ transfers to Employee M 50 shares of stock of Corporation FZ when the fair market value of each share is $5x. On November 1, 2024, Corporation US1 transfers to Employee P 30 shares of stock of Corporation US1 when the fair market value of each share is $9x. On December 15, 2024, Corporation FZ purchases 90 shares of its stock when the market price of each share is $12x.

(ii) *Analysis*. Each of Corporation US1's purchase of 100 shares of stock of Corporation FZ and Corporation FZ's purchase of 90 shares of its stock is a section 4501(d)(2) repurchase. *See* paragraph (b)(2)(xxii) of this section. Corporation US1 is a section 4501(d) covered corporation with respect to the section 4501(d)(2) repurchases. *See* paragraph (b)(2)(ix)(B) of this section. For purposes of computing Corporation US1's section 4501(d) excise tax base, the fair market value of the 100 shares of stock of Corporation FZ subject to the section 4501(d)(2) repurchase on February 1, 2024, is $800x, and the fair market value of the 90 shares of stock of Corporation FZ subject to the section 4501(d)(2) repurchase on December 15, 2024, is $1,080x. *See* paragraph (k)(1) of this section. Thus, the section 4501(d)(2) repurchases increase Corporation US1's section 4501(d) excise tax base for the 2024 taxable year by $1,880x ($800x + $1,080x). *See* paragraph (c)(3)(i)(A) of this section. Corporation US1's section 4501(d) excise tax base for its 2024 taxable year is not reduced by the fair market value of the stock of Corporation FZ transferred to Employee M or the fair market value of the stock of Corporation US1 transferred to Employee P because the section 4501(d) excise tax base with respect to Corporation US1 can only be reduced by the fair market value of stock of Corporation FZ issued or provided by Corporation US1 to employees of Corporation US1. *See* paragraph (m)(1) of this section. Accordingly, Corporation US1's section 4501(d) excise tax base with respect to these transactions for its 2024 taxable year is $1,880x.

(2) *Example 2: Section 4501(d)(2) repurchase from the covered surrogate foreign corporation or another specified affiliate of the covered surrogate foreign corporation*—(i) *Facts*. Corporation FZ owns all the outstanding stock of each of Corporation US1, a domestic corporation, Corporation FB, a foreign corporation, and Corporation FE, a foreign corporation. On February 1, 2024, Corporation US1 purchases 100 shares of stock of Corporation FZ

from Corporation FB when the market price of each share is $8x. On December 15, 2024, Corporation FZ contributes 90 shares of its stock to Corporation FE when the fair market value of each share is $12x.

(ii) *Analysis*. Each of Corporation US1's purchase of 100 shares of stock of Corporation FZ and Corporation FZ's transfer of 90 shares of its stock is a section 4501(d)(2) repurchase. *See* paragraph (b)(2)(xxii) of this section. Corporation US1 is a section 4501(d) covered corporation with respect to the section 4501(d)(2) repurchases. *See* paragraph (b)(2)(ix)(B) of this section. For purposes of computing Corporation US1's section 4501(d) excise tax base, the fair market value of the 100 shares of stock of Corporation FZ subject to the section 4501(d)(2) repurchase on February 1, 2024, is $800x, and the fair market value of the 90 shares of stock of Corporation FZ subject to the section 4501(d)(2) repurchase on December 15, 2024, is $1,080x. *See* paragraph (k)(1) of this section. Accordingly, Corporation US1's section 4501(d) excise tax base with respect to these transactions for its 2024 taxable year is $1,880x. *See* paragraph (c)(3)(i) of this section.

(3) *Example 3: Liability with respect to multiple expatriated entities*—(i) *Facts*. Corporation FZ owns all the outstanding stock of each of Corporation US1, a domestic corporation, and Corporation US2, a domestic corporation. Employee M is an employee of Corporation US1, and Employee P is an employee of Corporation US2. On February 1, 2024, Corporation US1 purchases 100 shares of stock of Corporation FZ when the market price of each share is $8x. On May 15, 2024, Corporation US2 purchases 40 shares of stock of Corporation FZ when the market price of each share is $9x. On October 15, 2024, Corporation FZ repurchases 50 shares of its stock when the market price of each share is $7x. On November 1, 2024, Corporation US1 transfers to Employee M 30 shares of stock of Corporation FZ when the fair market value of each share is $9x. On November 20, 2024, Corporation US2 transfers to Employee P 30 shares of stock of Corporation FZ when the fair market value of each share is $8x. Corporation US1 pays the entire amount of section 4501(d) excise tax that it owes with respect to all section 4501(d)(2) repurchases relating to Corporation FZ and its specified affiliates that occur during Corporation US1's 2024 taxable year and fulfills its filing obligations for its 2024 taxable year with respect to such section 4501(d)(2) repurchases.

(ii) *Analysis*. Each of Corporation US1's purchase of 100 shares of stock of Corporation FZ, Corporation US2's purchase of 40 shares of stock of Corporation FZ, and Corporation FZ's repurchase of 50 shares of its stock is a section 4501(d)(2) repurchase. *See* paragraphs (b)(2)(xxii) and (d)(2)(i) of this section. Each of Corporation US1 and Corporation US2 is a section 4501(d) covered corporation with respect to the section 4501(d)(2) repurchases. *See* paragraph (b)(2)(ix)(B) of this section. For purposes of computing the section 4501(d) excise tax base for each of Corporation US1 and Corporation US2, the fair market value of the 100 shares subject to the section 4501(d)(2) repurchase on February 1, 2024, is $800x; the fair market value of the 40 shares of stock of Corporation FZ subject to the section 4501(d)(2) repurchase on May 15, 2024, is $360x; and the fair market value of the 50 shares of stock of Corporation FZ subject to the section 4501(d)(2) repurchase on October 15, 2024, is $350x. *See* paragraph (k)(1) of this section. Thus, the section 4501(d)(2) repurchases increase each of Corporation US1's and Corporation US2's section 4501(d) excise tax base for the 2024 taxable year by $1,510x ($800x + $360x + $350x). *See* paragraph (c)(3)(i)(A) of this section. 30 shares of Corporation FZ stock are treated as issued or provided to Employee M on November 1, 2024. *See* paragraph (m)(5) of this section. Therefore, Corporation US1's section 4501(d) excise tax base is reduced for its 2024 taxable year by the fair market value of the 30 shares of stock of Corporation FZ transferred on November 1, 2024, or $270x ($9x per share x 30 shares = $270x). *See* paragraph (m)(7) of this section. Corporation US1's section 4501(d) excise tax base for its 2024 taxable year is not reduced by the fair market value of the stock of Corporation FZ that Corporation US2 transferred to Employee P because the section 4501(d) excise tax base with respect to Corporation US1 can only be reduced by the fair market value of stock of Corporation FZ issued or provided by Corporation US1 to employees of Corporation US1. *See* paragraph (m)(1) of this section. Accordingly, Corporation US1's section 4501(d) excise tax base with respect to these transactions for its 2024 taxable year is $1,240x ($1,510x - $270x). *See* paragraph (c)(3)(i) of this section. Because Corporation US1 pays the entire amount of section 4501(d) excise tax that it owes with respect to all section 4501(d)(2) repurchases that occur during Corporation US1's 2024 taxable year relating to Corporation FZ and its specified affiliates and fulfills its filing obligations for its 2024 taxable year with respect to such section 4501(d)(2) repurchases, Corporation US2 is not liable for section 4501(d) excise tax with respect to such section 4501(d)(2) repurchases. *See* paragraph (d)(2)(ii) of this section.

(p) *Applicability dates*—(1) *In general*. Except as provided in paragraphs (p)(2) and (3) of this section, the provisions of this section apply to transactions that occur after April 12, 2024.

(2) *Transition rule for foreign partnership de minimis rule*. A section 4501(d) covered corporation may choose to apply paragraph (g)(5) of this section by replacing the phrase "10 percent" with "five percent" for transactions that occur after April 12, 2024, but before November 24, 2025.

(3) *Early application*. A section 4501(d) covered corporation may choose to apply all the rules of this section to transactions occurring after December 31, 2022, provided that the section 4501(d) covered corporation and all other section 4501(d) covered corporations with respect to the same applicable foreign corporation or covered surrogate foreign corporation, as applicable, consistently apply all the rules of this section with respect to such transactions.

Par. 5. Section 58.6011-1 is amended by revising paragraph (a) to read as follows:

§58.6011-1 General requirement of return, statement, or list.

(a) *In general*. Any covered corporation (as defined in section 4501(b) of the Internal Revenue Code (Code)), or any person treated as a covered corporation (as described in section 4501(d)(1)(A) or (d)(2)(A)), other than a regulated investment company (as defined in section 851 of the Code), a real estate investment trust (as defined in section 856(a) of the Code), or a non-RIC '40 Act fund (as described in §58.4501-3(h)), that makes a repurchase (as defined in section 4501(c)(1)), or that is treated as making a repurchase under section 4501(c)(2)(A), (d)(1)(B), or (d)(2)(B), after December 31, 2022, must file a stock repurchase excise tax return with respect to any taxable year in which the covered corporation or person treated as a covered corporation makes a repurchase or is treated as making a repurchase under section 4501(c)(2)(A), (d)(1)(B), or (d)(2)(B).

* * * * *

Frank J. Bisignano,
Chief Executive Officer.

Approved: October 22, 2025.

Kenneth J. Kies,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register November 21, 2025, 8:45 a.m., and published in the issue of the Federal Register for November 24, 2025, 90 FR 53144)

CFR Part 300

T.D. 10038

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 300

Estate Tax Closing Letter User Fee Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations relating to the imposition of a user fee on authorized persons requesting the issuance of IRS Letter 627, also referred to as an estate tax closing letter. The final regulations adopt without change the text of the interim final rule and proposed regulations that reduced the amount of the user fee imposed on a request for the issuance of an estate tax closing letter from $67 to $56. The Independent Offices Appropriations Act of 1952 authorizes the charging of user fees. The final regulations affect persons who request an estate tax closing letter.

DATES: *Effective date:* These regulations are effective on December 31, 2025.

Applicability date: For date of applicability, see §300.12(d).

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations, Juli Ro Kim at (202) 317-6859; concerning cost methodology, CFO Cost and User Fees at (202) 317-6400 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Authority

This document contains amendments to 26 CFR part 300 regarding user fees for authorized persons who request the issuance of an estate tax closing letter (IRS Letter 627).

The Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 9701) authorizes each agency to prescribe regulations that establish user fees for services provided by the agency. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are set forth in the Office of Management and Budget Circular A-25, 58 FR 38142 (July 15, 1993) (OMB Circular A-25).

The IOAA states that the services provided by an agency should be self-sustaining to the extent possible. Under OMB Circular A-25, agencies that provide services that confer special benefits on identifiable recipients beyond those accruing to the general public must identify those services, determine whether user fees should be assessed for those services, and, if so, establish user fees that recover the full cost of providing those services, unless an exception to the full cost requirement is granted. As required by the IOAA and OMB Circular A-25, agencies are to review user fees biennially and update them as necessary to reflect changes in the cost of providing the underlying services.

Background

On May 20, 2025, the Department of the Treasury (Treasury Department) and the IRS published in the ***Federal Register*** (90 FR 21439) a notice of proposed rulemaking (proposed regulations) (REG-107459-24) proposing amendments to regulations under 26 CFR part 300. On the same date, the Treasury Department and the IRS published in the ***Federal Register*** (90 FR 21410) an interim final rule (TD 10031) that reduced the amount of the user fee imposed on a request for the issuance of an estate tax closing letter from $67 to $56, applicable to requests received by the IRS after May 20, 2025. The text of the interim final rule also served as the text of the proposed regulations.

The preamble to the interim final rule contains a detailed explanation of the legal background and user fee calculations supporting the amendment to these regulations. The IRS received five written public comments in response to the interim final rule and proposed regulations. These comments are available at https://www.regulations.gov or upon request. No public hearing on the proposed regulations was requested and accordingly no public hearing was held. After careful consideration of the comments received, the Treasury Department and the IRS adopt the text of the interim final rule and proposed regulations without change.

Summary of Comments

One comment requested more transparency regarding how the fee is calculated and the specific administrative costs covered in determining the fee. The IRS followed the OMB Circular A-25 guidance to compute the full cost of issuing estate tax closing letters to authorized persons. The preamble to the interim final rule provides a detailed explanation of how the user fee was calculated and shows that computation. The IRS determined the total processing labor and benefits cost and quality assurance labor and benefits cost. The IRS then applied the overhead rate to the total labor and benefits cost to calculate the full cost of the estate tax closing letter program. Finally, the IRS divided that full cost by the average annual volume of requests.

Comments recommended a further reduction of the user fee for small estates or low-income families. Alternatively, comments suggested eliminating the fee in all cases and encouraged the IRS to automatically issue, without charge, an estate tax closing letter for every estate tax return filed. The elimination of the user fee would require the Federal government to bear the full cost of the additional service of issuing an estate tax closing letter. OMB Circular A-25 states that when a service offered by an agency confers special benefits to identifiable recipients beyond those accruing to the general public, the agency is to charge a user fee to recover the full cost of providing the service. The issuance of the estate tax closing letter constitutes the provision of a service that confers special benefits to persons requesting such letters beyond those accruing to the general public. In accordance with OMB Circular A-25, the IRS conducted a biennial review of the estate tax closing letter user fee and determined that the full cost of issuing estate tax closing letters to authorized persons is $56.

Finally, one comment recommended changes to the marginal tax brackets for estates at specified amounts. Marginal tax brackets are beyond the scope of this rulemaking.

After consideration of the comments, these final regulations therefore adopt the text of the interim final rule and proposed regulations without change.

Special Analyses

I. *Regulatory Planning and Review*

These final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and OMB regarding review of tax regulations.

II. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. These regulations, which reduce the amount of a fee to obtain a particular service, affect decedents' estates, which generally are not small entities as defined under 5 U.S.C. 601(6). Thus, these regulations have no economic impact on small entities. In addition, the final regulations will establish a $56 fee, which is a reduction from the previously established fee and is not substantial enough to have a significant economic impact on any entities that could be affected by establishing such a fee. Accordingly, the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities.

III. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. *Submission to Small Business Administration*

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking and the interim final rule that preceded these final regulations were submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received on the proposed regulations or the interim final rule.

VI. *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Drafting Information

The principal author of these regulations is the Office of the Associate Chief Counsel (Passthroughs, Trusts, and Estates). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 300

Estate taxes, Reporting and recordkeeping requirements.

PART 300—USER FEES

Accordingly, the interim rule amending 26 CFR part 300, which was published at 90 FR 21410 on May 20, 2025, is adopted as final without change.

Frank J. Bisignano,
Chief Executive Officer.

Approved: November 4, 2025.

Kenneth J. Kies,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register November 28, 2025, 8:45 a.m., and published in the issue of the Federal Register for December 1, 2025, 90 FR 55041)

Part III

Allocation of Foreign Income Taxes Resulting from the Repeal of Section 898(c)(2); Recognition of Pretransition Gain or Loss under Section 987

Notice 2025-72

SECTION 1. PURPOSE

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue proposed regulations under section 70352 of Public Law 119-21, 139. Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBBA), which repeals section 898(c)(2) of the Internal Revenue Code (Code) and directs the Treasury Department and the IRS to issue guidance on the allocation of foreign taxes of foreign corporations affected by that repeal (forthcoming proposed section 898 regulations). This notice also announces that the Treasury Department and the IRS intend to issue proposed regulations under section 987 (forthcoming proposed section 987 regulations) that would modify the election to recognize pretransition section 987 gain or loss ratably over the transition period pursuant to §1.987-10(e)(5)(ii)(A).

SECTION 2. BACKGROUND

.01 *Section 898 and the One-Month Deferral Election.*

Section 898 provides rules for determining the required taxable year of any "specified foreign corporation." A foreign corporation is a specified foreign corporation if it is treated as a controlled foreign corporation (CFC) for any purpose under subpart F of subchapter N of Chapter 1 of Subtitle A of the Code, and if any United States shareholder (as defined in section 951(b)) (U.S. shareholder) owns (determined by applying the ownership rules of section 958) more than 50 percent of the stock of the CFC by vote or value on each testing day (majority U.S. shareholder).[1] *See* section 898(b).

Section 898(c)(1) generally requires a specified foreign corporation to have the same taxable year as the taxable year of its majority U.S. shareholder (the majority U.S. shareholder year). However, prior to the enactment of the OBBBA, section 898(c)(2) permitted a specified foreign corporation to elect a taxable year beginning one month earlier than the majority U.S. shareholder year (one-month deferral election).

.02 *Repeal of One-Month Deferral Election and Statutory Transition Rule.*

Section 70352 of the OBBBA repeals the one-month deferral election for taxable years of specified foreign corporations beginning after November 30, 2025. Section 70352(c) of the OBBBA provides that if a corporation is a specified foreign corporation as of November 30, 2025, its first taxable year beginning after November 30, 2025, will end at the same time as the first required year (within the meaning of section 898(c)(1)) ending after such date (first required year). Thus, a specified foreign corporation with a one-month deferral election in place will have a one-month short taxable year as its first required year.

Section 70352(c) of the OBBBA provides a transition rule for specified foreign corporations required to change their taxable years due to the repeal of the one-month deferral election. Under the transition rule, the change to the specified foreign corporation's taxable year will be treated as initiated by the corporation and as having been made with the consent of the Secretary. The transition rule also directs the Secretary to issue guidance allocating foreign taxes paid or accrued in the specified foreign corporation's first required year and its succeeding taxable year among those taxable years in the manner the Secretary determines appropriate to carry out the purposes of section 70352 of the OBBBA.

.03 *Foreign Income Taxes Paid or Accrued by a CFC.*

In general, under section 951(a)(1),[2] a U.S. shareholder of a CFC must include in gross income its pro rata share of the CFC's subpart F income for the year. Similarly, section 951A(a) generally requires a U.S. shareholder of a CFC to include in gross income the U.S. shareholder's global intangible low-taxed income (GILTI inclusion amount).[3] A U.S. shareholder's GILTI inclusion amount is determined by taking into account the U.S. shareholder's pro rata share of tested items (as defined in §1.951A-1(f)(5)) of all CFCs in which the U.S. shareholder owns (within the meaning of section 958(a)) stock, including tested income and tested loss. *See* §1.951A-1(c). In computing a CFC's items of subpart F income and its tested income or tested loss, deductions (including taxes) properly allocable to such income are taken into account. *See, e.g.*, sections 954(b)(5) and 951A(c)(2)(A)(ii). A CFC's items of subpart F income and its tested income or tested loss are computed in the functional currency of the CFC and translated into U.S. dollars as net amounts using the average exchange rate for the CFC's taxable year. *See* sections 986(b), 989(b)(3) and §1.951A-1(d)(1).

Section 960(a) provides that when a domestic corporation includes in gross income any item of income under section 951(a)(1) with respect to a CFC, the domestic corporation is deemed to have

[1] Section 898(c)(3)(B) (redesignated by section 70352(a) of the OBBBA as section 898(c)(2)(B)) defines the testing days as the first day of the corporation's taxable year, or the days during a representative period that the Secretary may prescribe. No final regulations have been issued that prescribe such a representative period.

[2] Unless otherwise indicated, all references to sections 951, 951A, and 960(d) in this notice are to the versions of those provisions as in effect before the amendments made by sections 70312 and 70354 of the OBBBA. Because the amendments to section 898(c) apply to taxable years of foreign corporations beginning after November 30, 2025, and the amendments to sections 951, 951A, and 960(d) apply to taxable years of foreign corporations beginning after December 31, 2025, the versions of sections 951, 951A, and 960(d) that apply to a foreign corporation's first required year will depend on when that first required year begins.

[3] Under the amendments made by the OBBBA, for taxable years beginning after December 31, 2025, the U.S. shareholder will include in gross income its net CFC tested income under section 951A. This inclusion is determined based on the U.S. shareholder's pro rata share of a CFC's tested income or tested loss.

paid so much of the CFC's foreign income taxes as are properly attributable to the item of income. Section 960(d) provides that when a domestic corporation includes in gross income an amount under section 951A, the domestic corporation is deemed to have paid 80 percent of the product of such domestic corporation's inclusion percentage[4] multiplied by the aggregate tested foreign income taxes paid or accrued by its CFCs.[5] Section 960(d)(3) defines tested foreign income taxes as the foreign income taxes paid or accrued by a CFC which are properly attributable to the tested income of the CFC taken into account by the domestic corporation under section 951A. Therefore, for foreign income taxes paid or accrued by a CFC in a taxable year to be deemed paid by a U.S. shareholder, the related subpart F income of the CFC must be included in gross income by the U.S. shareholder under section 951(a)(1), or the related tested income of the CFC must be taken into account in determining a GILTI inclusion amount included by the U.S. shareholder under section 951A.

Section 1.901-2(f) provides rules for determining the person considered to have paid or accrued a foreign income tax for foreign tax credit purposes (the section 901 taxpayer). A partnership is considered the section 901 taxpayer of a foreign income tax imposed at the entity level on the income of the partnership. *See* §1.901-2(f)(4)(i). The person who is treated as owning the assets of a disregarded entity[6] for Federal income tax purposes is considered the section 901 taxpayer of any foreign income tax imposed at the entity level on the income of the disregarded entity. *See* §1.901-2(f)(4)(ii). However, if a partnership, disregarded entity, or corporation undergoes one or more covered events[7] during its foreign taxable year that do not close the foreign taxable year, a foreign income tax, other than a withholding tax described in section 901(k)(1)(B), imposed with respect to that continuing foreign taxable year is allocated among the current owner or entity and predecessor entities or prior owners under §1.901-2(f)(5).

Section 1.861-20 provides rules for allocating and apportioning foreign income taxes to statutory and residual groupings. *See also* §1.861-8(f). These rules are needed for determining a CFC's net items of subpart F income and tested income as well as for determining which taxes are attributable to the CFC's income groups and PTEP groups (as defined in §1.960-1(b)) for purposes of section 960. *See* §§1.960-1(d), 1.960-2(b)(2), 1.960-2(c)(4) and 1.960-3(d)(1)(i)(A).[8] Among other purposes, these rules are used for determining whether an item of CFC income is high-taxed for purposes of the high-tax exception to foreign base company income or the high-tax exclusion from tested income. *See* §§1.954-1(d) and 1.951A-2(c)(7).

For purposes of determining the amount of the foreign tax credit, foreign income taxes are translated at the rate provided under section 986(a). If the section 901 taxpayer of the foreign income tax takes foreign income taxes into account when accrued, taxes are generally translated using the average exchange rate for the taxable year to which the taxes relate. *See* section 986(a)(1)(A). Section 986(a) provides certain exceptions to the general rule, including for foreign income taxes that are not paid within two years of the close of the U.S. taxable year to which they relate. *See* section 986(a)(1)(B). Section 905(c) provides that, among other things, a change in the amount of foreign income tax accrued and claimed as a credit requires a redetermination of the U.S. tax liability for the year to which the tax relates.

Foreign income taxes accrue in the taxable year in which all the events have occurred that establish the fact of the liability and the amount of the liability can be determined with reasonable accuracy. *See* §§1.446-1(c)(1)(ii)(A) and 1.461-4(g)(6)(iii)(B). A foreign income tax determined on the basis of items of income, gain, deduction, and loss that arise in a foreign taxable year (a foreign net income tax) becomes fixed and determinable at the close of the section 901 taxpayer's foreign taxable year. *See* §1.905-1(d)(1)(i). For section 901 taxpayers who use the cash method of accounting, foreign income taxes are taken into account when paid. *See* §§1.905-1(c)(1) and 1.446-1(c)(1)(i). Foreign income taxes are generally considered paid in the taxable year in which the taxes are remitted to the foreign country.

A specified foreign corporation's foreign taxable year may close with or within the specified foreign corporation's first required year. In that case, the foreign net income tax, likely imposed with respect to a full taxable year of foreign law income, accrues in the first required year while only one month of income accrues in that year for Federal income tax purposes. Depending on the amount of the foreign net income tax imposed, this could result in the specified foreign corporation having a loss with respect to a particular income group for the first required year. In such case, a U.S. shareholder would have no inclusion with respect to that income group under section 951(a)(1) or would take into account no tested income with respect to that income group under section 951A, and therefore, taxes attributable to that income group would not be deemed paid under section 960(a) or (d).

.04 *Section 987 and the Recognition of Pretransition Gain or Loss*.

Section 987 applies to taxpayers (including CFCs) that own a qualified business unit (QBU) with a functional currency other than the dollar. Under section 987(3), the owner of a QBU recognizes foreign currency gain or loss when the QBU makes a remittance. Section 989(c) provides that the Secretary shall prescribe regulations as may be necessary or appropriate to carry out the purposes of subpart

[4] The domestic corporation's inclusion percentage equals its GILTI inclusion amount divided by the domestic corporation's aggregate pro rata shares of its CFCs' tested income.

[5] Under the amendments made by the OBBBA, for taxable years beginning after December 31, 2025, the domestic corporation is deemed to have paid 90 percent of the product of such domestic corporation's inclusion percentage multiplied by the aggregate tested foreign income taxes paid or accrued by its CFCs. Under the amendments made by the OBBBA, the domestic corporation's inclusion percentage equals its net CFC tested income under section 951A(b) divided by the aggregate amount of its CFCs' tested income.

[6] A disregarded entity is an entity described in §301.7701-2(c)(2)(i).

[7] "Covered events" is defined in §1.901-2(f)(5)(ii). Covered events include the transfer of a disregarded entity or a change in entity classification under §301.7701-3.

[8] Proposed amendments to regulations under sections 959 and 960 were published in the Federal Register on December 2, 2024 (89 FR 95362).

J of subchapter N of Chapter 1 of Subtitle A of the Code (which includes section 987), including regulations limiting the recognition of foreign currency loss on certain remittances from QBUs.

On December 10, 2024, the Treasury Department and the IRS published Treasury Decision 10016, which contained final regulations under sections 861, 985, 987 through 989, and 1502 (the section 987 regulations), in the Federal Register (89 FR 100138). The section 987 regulations generally apply to taxable years beginning after December 31, 2024, but taxpayers can elect to apply the section 987 regulations to earlier taxable years ending after November 9, 2023. *See* §1.987-15.

The section 987 regulations provide, among other things, rules for calculating the amount of foreign currency gain or loss recognized by the owner of a QBU under section 987(3) (section 987 gain or loss) and transition rules that apply in the first taxable year in which the section 987 regulations are applicable. The transition rules, provided in §1.987-10, include rules for determining and recognizing section 987 gain or loss that arose before the section 987 regulations became applicable (pretransition gain or loss). In particular, §1.987-10(e)(5)(ii)(A) permits taxpayers to elect to recognize pretransition gain or loss ratably over the transition period (the amortization election). The transition period is a period of ten taxable years beginning with the first taxable year in which the section 987 regulations apply. Subject to special rules for transfers described in section 381(a), a taxpayer that makes the amortization election recognizes one tenth of its pretransition gain or loss in each taxable year of the transition period.

SECTION 3. REGULATIONS TO BE ISSUED UNDER SECTION 70352 OF THE OBBBA ON THE ALLOCATION OF FOREIGN TAXES

.01 *In General*. The forthcoming proposed section 898 regulations would provide the rules described in this section 3.

.02 *Definitions*. For purposes of this section 3 and section 5 of this notice:

(1) *Affected corporation*. Affected corporation means a specified foreign corporation (as defined in section 898(b)) that takes into account foreign income taxes under an accrual method of accounting and that, pursuant to section 70352(c) of the OBBBA, is required to change its first taxable year beginning after November 30, 2025.

(2) *First required year*. First required year means a specified foreign corporation's first taxable year beginning after November 30, 2025.

(3) *Foreign net income tax*. Foreign net income tax means a foreign income tax (as defined in §1.901-2(a)) that is computed based on items of income, gain, deduction, and loss that arise in a foreign taxable year.

(4) *Specified foreign income tax*. Specified foreign income tax means a foreign net income tax accrued by an affected corporation in its first required year for which the affected corporation is the taxpayer of the tax under §1.901-2(f) (section 901 taxpayer).

(5) *Succeeding taxable year*. Succeeding taxable year means a specified foreign corporation's taxable year immediately following its first required year.

.03 *Taxes Not Subject to Sections 3.04 Through 3.06 of This Notice*. (1) *Other foreign taxes taken into account by an affected corporation*. The rules of sections 3.04 through 3.06 of this notice apply only to specified foreign income taxes. A foreign tax, other than a specified foreign income tax, that is taken into account by an affected corporation in its first required year or its succeeding taxable year continues to be taken into account in that taxable year. For example, an affected corporation's distributive share of foreign income taxes paid or accrued by a partnership, withholding taxes described in section 901(k)(1)(B), and foreign income taxes accrued in the succeeding taxable year continue to be taken into account in the year in which they ordinarily would be taken into account for Federal income tax purposes. The rules do not apply to a distributive share of foreign income taxes paid or accrued by a partnership in its first required year because the affected corporation will take into account a distributive share of partnership income at the same time. *See* section 706(a) and §1.706-1(a). Similarly, withholding taxes are not taken into account because they generally accrue close in time to the accrual of the income on which these taxes are imposed. Finally, while a foreign net income tax accrued in the succeeding taxable year may relate to income accrued in the first required year, the Treasury Department and the IRS expect that the administrative and compliance burdens of allocating a portion of that tax to the first required year would exceed the benefits. In particular, such an allocation would be difficult to perform before the end of the succeeding taxable year, which, unless the succeeding taxable year is a short taxable year, will be after the due date of the majority U.S. shareholder's income tax return for the taxable year with which the affected corporation's first required year ends.

(2) *Specified foreign corporations on the cash method*. If a specified foreign corporation takes into account foreign taxes under the cash method of accounting and, pursuant to section 70352(c) of the OBBBA, changes its first taxable year beginning after November 30, 2025, any foreign tax taken into account by the specified foreign corporation in its first required year or its succeeding taxable year will continue to be taken into account in that year.

.04 *Ordering Rule for the Allocation of Specified Foreign Income Taxes*. A specified foreign income tax is allocated between the affected corporation's first required year and its succeeding taxable year and then taken into account in each respective taxable year under the following rules:

(1) First, specified foreign income taxes are determined.

(2) Second, §1.861-20, as modified by §1.960-1(d)(3)(ii)(B), is applied in the first required year to allocate and apportion any specified foreign income tax to the income groups described in §1.960-1(d)(2) and any PTEP group treated as an income group under §1.960-1(d)(3)(ii)(B) in that year, except that the tentative gross tested income items described in §1.951A-2(c)(7)(ii) are treated as income groups instead of the tested income groups described in §1.960-1(d)(2)(ii)(C). Whether any item meets the high-tax exception to foreign base company income in §1.954-1(d) (high-tax exception) or the high-tax exclusion from tested income in §1.951A-2(c)(7) (high-tax exclusion) in

either the first required year or the succeeding taxable year is determined under section 3.04(4)(a) of this notice. *See* section 3.07(3) (Example 3) of this notice.

(3) Third, the allocation rule in section 3.05 of this notice is applied to determine the amount of specified foreign income tax in each income group that is allocated to the first required year and the succeeding taxable year.

(4)(a) Fourth, except as provided in section 3.04(4)(b) of this notice, the amounts of a specified foreign income tax allocated under section 3.04(3) of this notice to the first required year and the succeeding taxable year are treated as accruing in each respective year (assigned to the income groups determined under section 3.04(2) of this notice) for all purposes of the Code, including for purposes of computing the affected corporation's items of subpart F income and tested income (including whether any item meets the high-tax exception or the high-tax exclusion), earnings and profits, and taxes deemed paid under section 960(a), (b), or (d).

(b) The amount of specified foreign income tax allocated to the succeeding taxable year under section 3.04(3) of this notice is not treated as accruing in the succeeding taxable year for purposes of sections 905(c) and 986(a). Section 3.06 of this notice describes the treatment of a specified foreign income tax under those provisions.

.05 *Allocation of Specified Foreign Income Tax Between the First Required Year and the Succeeding Taxable Year.*

(1) *Amounts allocated to the first required year*.

(a) *In general*. Except as provided in section 3.05(1)(b) of this notice, the amount of a specified foreign income tax assigned to each income group determined under section 3.04(2) of this notice that is allocated to the first required year is determined by multiplying the specified foreign income tax assigned to that income group by the affected corporation's allocation percentage for the specified foreign income tax. Except as provided in sections 3.05(1)(b) and 3.05(3) of this notice, the allocation percentage for each specified foreign income tax is equal to the portion of taxable income, as determined under foreign law, that is attributable under the principles of §1.1502-76(b) to the first required year (numerator) divided by the total taxable income, as determined under foreign law, for the foreign taxable year with respect to which the specified foreign income tax is imposed (denominator). The principles of §1.1502-76(b) allow taxpayers to use either a closing of the books method or a ratable allocation method in attributing the foreign tax base to these periods. This approach reduces the likelihood that foreign income taxes of a specified foreign corporation in the first required year could not be deemed paid as a consequence of the repeal of section 898(c)(2) by matching an amount of specified foreign income tax accrued in the first required year to associated income in that first required year while also considering administrability concerns similar to those discussed in section 3.03 of this notice.

(b) *Tax assigned to a PTEP group and accompanying adjustments to the allocation percentage*. The amount of a specified foreign income tax assigned to any PTEP group under section 3.04(2) of this notice is allocated to the first required year. The foreign law taxable income corresponding to the amount of specified foreign income tax described in the preceding sentence is excluded in determining the allocation percentage under section 3.05(1)(a).

(2) *Amount allocated to the succeeding taxable year*. The amounts of the specified foreign income tax assigned to each income group remaining after the application of section 3.05(1) of this notice are allocated to the succeeding taxable year.

(3) *Interaction with §1.901-2(f)(5)*. If an affected corporation is the section 901 taxpayer of a portion of a specified foreign income tax due to the application of §1.901-2(f)(5) and the affected corporation's period of ownership began on or before the beginning of the first required year, the denominator of the fraction used to compute the allocation percentage is the total taxable income attributable to the affected corporation's period of ownership (as determined under §1.901-2(f)(5)). If the affected corporation is the section 901 taxpayer of a portion of a specified foreign income tax due to the application of §1.901-2(f)(5) and the affected corporation's period of ownership began after the beginning of the first required year, the allocation percentage is deemed to be 100 percent.

.06 *Application of Sections 905(c) and 986(a) to Specified Foreign Income Taxes*. For purposes of sections 905(c) and 986(a), a specified foreign income tax accrues in the first required year, regardless of whether a portion of the specified foreign income tax is allocated to the succeeding taxable year under section 3.05 of this notice. Therefore, the first required year is the year to which the specified foreign income tax relates for purposes of sections 905(c)(1)(B) and 986(a). Any change in the liability for a specified foreign income tax results in the following: First, the amount of the specified foreign income tax accrued in the first required year is adjusted to reflect the change in liability. Second, the rules under sections 3.04(1), 3.04(2), and 3.04(3) of this notice are applied based upon the adjusted amount of the specified foreign income tax. Third, the amounts of specified foreign income tax that are treated as accruing in the first required year and the succeeding taxable year under section 3.04(4) of this notice are adjusted to reflect the reapplication of sections 3.04(1) through 3.04(3) of this notice.

.07 *Examples*. The following examples illustrate the application of this section 3.

(1) *Example 1. Taxes subject to allocation*. (a) *Facts*. (i) CFCX is a specified foreign corporation.

(ii) CFCX's first required year is from December 1, 2025, to December 31, 2025.

(iii) CFCX's succeeding taxable year is from January 1, 2026, to December 31, 2026.

(iv) CFCX takes foreign income taxes into account under an accrual method of accounting.

(v) The functional currency of all qualified business units is the u, and all foreign income taxes are denominated in the u.

(vi) CFCX is subject to tax in Country X on the basis of its items of income, gain, deduction, and loss for its Country X taxable year, and the Country X tax is a foreign income tax within the meaning of §1.901-2(a). CFCX's Country X taxable year is the calendar year. CFCX accrues Country X tax of 7,200u in its first required year.

(vii) CFCX owns a 40 percent interest in the profits and capital of Partnership Y, an entity treated as a partnership for Federal income tax purposes that is organized and operated in Country Y. Partnership Y's U.S. taxable year is the calendar year. Partnership Y is subject to tax in Country Y on the basis of its items of income, gain, deduction, and loss for its Country Y taxable year, and the Country Y tax is a foreign income tax within the meaning of §1.901-2(a). Partnership Y's Country Y taxable year is the calendar year. For its U.S. taxable year ending December 31, 2025, Partnership Y accrues Country Y tax of 10,000u. CFCX's distributive share of the Country Y tax is 4,000u.

(viii) CFCX wholly owns DEZ, a disregarded entity that is organized and operated in Country Z. DEZ is subject to tax in Country Z on the basis of its items of income, gain, deduction, and loss for its Country Z taxable year, and the Country Z tax is a foreign income tax within the meaning of §1.901-2(a). DEZ's Country Z taxable year ends on March 31. CFCX accrues 5,000u of Country Z tax in its succeeding taxable year.

(b) *Analysis*. The 7,200u of Country X tax is a specified foreign income tax under section 3.02(4) of this notice because it is a foreign net income tax that accrued in CFCX's first required year and CFCX is the section 901 taxpayer of the tax. As such, the 7,200u of Country X tax is subject to the rules in sections 3.04 through 3.06 of this notice. CFCX's 4,000u distributive share of Country Y tax is not a specified foreign income tax because CFCX is not the section 901 taxpayer of the tax. CFCX is the section 901 taxpayer of the 5,000u of Country Z tax; however, because the tax accrues in the succeeding taxable year, it is not a specified foreign income tax. Because CFCX's 4,000u distributive share of Country Y tax and the 5,000u of Country Z tax are not specified foreign income taxes, both taxes continue to be taken into account in the taxable year in which they are ordinarily taken into account for Federal income tax purposes under section 3.03(1) of this notice.

(2) *Example 2. Application of §1.861-20 and allocation of specified foreign income tax*. (a) *Facts*. The facts are the same as in Example 1. In addition, CFCX's total taxable income under Country X law for the 2025 calendar year is 45,000u. Applying the principles of §1.1502-76(b), 3,750u of this income is attributable to CFCX's first required year. Under §1.861-20, the 7,200u of Country X tax is allocated and apportioned to the income groups described in section 3.04(2) of this notice as follows: 5,400u to general category tentative gross tested income attributable to the CFC tested unit (CFC income group) and 1,800u to the general category foreign base company services income group (FBCServ income group).

(b) *Analysis*. Pursuant to the ordering rules in section 3.04 of this notice, the 7,200u of Country X tax is allocated and apportioned to the income groups described in section 3.04(2) of this notice prior to the application of the allocation rule in section 3.05 of this notice. Under the rules of section 3.05 of this notice, the allocation percentage is then computed and applied to the amount of Country X tax in each income group. The amount of CFCX's taxable income under County X law that is attributable to the first required year (3,750u) is divided by the total taxable income for the Country X taxable year (45,000u), which results in an allocation percentage of 8.33%. The amount of Country X tax in each income group that is allocated to the first required year is determined by applying the allocation percentage to the amount of the specified foreign income tax in each income group. Therefore, the following amounts of the Country X tax are allocated to the first required year: 450u, which is assigned to the CFC income group (8.33% of 5,400u); and 150u, which is assigned to the FBCServ income group (8.33% of 1,800u). The remaining amount of Country X tax in each income group is allocated to CFCX's succeeding taxable year: 4,950u, assigned to the CFC income group (5,400u-450u) and 1,650u, assigned to the FBCServ income group (1,800u-150u).

(3) *Example 3. Treatment of allocated amounts of specified foreign income tax in the first required year for purposes of the high-tax exclusion*. (a) *Facts*. The facts are the same as in Examples 1 and 2. In addition, an election under §1.951A-2(c)(7)(viii) is in effect with respect to CFCX for the first required year. Under §1.951A-2(c)(7)(ii), CFCX has two tentative gross tested income items: 3,000u in the CFC income group and 2,000u of general category tentative gross tested income attributable to the DEZ tested unit. CFCX accrues no expenses in its first required year other than the specified foreign income tax.

(b) *Analysis*. Pursuant to section 3.04(4) of this notice, the portion of the Country X tax allocated to the first required year is treated as the amount of Country X tax accrued in that taxable year for all purposes of the Code except sections 905(c) and 986(a). Therefore, in determining whether CFCX's tentative gross tested income items are excluded from gross tested income under sections 954(b)(4) and 951A(c)(2)(A)(i)(III), 450u of Country X tax is treated as accrued in the first required year and allocated and apportioned to the CFC income group, the statutory grouping to which 3,000u of gross income is assigned. If an election under §1.951A-2(c)(7)(viii) is in effect with respect to CFCX for the succeeding taxable year, the 4,950u assigned to the CFC income group would be taken into account in the same manner in that year.

SECTION 4. REGULATIONS TO BE ISSUED UNDER SECTION 987

.01 *In General*. The forthcoming proposed section 987 regulations would provide the rules described in this section 4. The forthcoming proposed section 987 regulations would modify the effect of the amortization election to appropriately take into account pretransition gain or loss for short taxable years, including short taxable years resulting from the repeal of section 898(c)(2).

.02 *Transition Period*. If an election is made under §1.987-10(e)(5)(ii)(A) to recognize pretransition gain or loss ratably over the transition period, then each owner to which the election applies recognizes pretransition gain or loss with respect to each section 987 QBU, original deferral QBU, and outbound loss QBU ratably over 120 months beginning with the first day of the first taxable year in which the section 987 regulations apply, subject to the special rules provided in §1.987-10(e)(5)(ii)(B) (related to transfers described in section 381(a)) and section 4.03 of this notice.

.03 *Taxable Years Ending Before November 25, 2025*. For purposes of section 4.02 of this notice, if an owner recognized a ratable portion of its pretransition gain or loss under §1.987-10(e)(5)(ii)(A) in any taxable year to which the rules provided in section 4.02 of this notice did not apply, each such taxable year is deemed to contain twelve months. Thus, for example, if the first taxable year of an owner in which the section 987 regulations apply is a short taxable year ending before November 25, 2025, and the owner recognized one tenth of its pretransition gain or loss in that taxable year under §1.987-10(e)(5)(ii)(A), the owner recognizes its remaining pretransition gain or loss ratably over 108 months beginning with the first day of the next taxable year.

SECTION 5. APPLICABILITY DATES AND RELIANCE

The forthcoming proposed section 898 regulations would apply to taxable years of specified foreign corporations beginning after November 30, 2025. A taxpayer may rely on the rules described in section 3 of this notice for foreign taxes paid or accrued in taxable years of specified foreign corporations beginning after November 30, 2025, and ending before the forthcoming proposed section 898 regulations are published in the Federal Register, provided the taxpayer applies the rules in section 3 of this notice in their entirety and in a consistent manner for the first required year and succeeding taxable year of a specified foreign corporation.

The forthcoming proposed section 987 regulations would apply to taxable years beginning after December 31, 2024, and ending on or after November 25, 2025. A taxpayer may rely on the rules described in section 4 of this notice before the forthcoming proposed section 987 regulations are published in the Federal Register for a taxable year to which the section 987 regulations apply, provided the taxpayer applies the rules described in section 4 of this notice in their entirety and in a consistent manner with respect to each section 987 QBU, original deferral QBU, and outbound loss QBU for that taxable year and each subsequent taxable year.

SECTION 6. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on the rules described in sections 3 and 4 of this notice. The Treasury Department and the IRS specifically request comments on whether the allocation rule provided in section 3.05 of this notice should apply to any foreign taxes other than specified foreign income taxes, such as an affected corporation's distributive share of foreign income taxes paid or accrued by a partnership that is required to change its taxable year because of the change in taxable year of the affected corporation. The Treasury Department and the IRS also request comments on whether there are other rules that, similar to the amortization of pretransition gain or loss described in section 2.04 of this notice, apply over multiple years and may warrant guidance to address their application in light of short taxable years resulting from the repeal of section 898(c)(2).

Written comments should be submitted by January 24, 2026. The subject line for comments should include a reference to Notice 2025-72. Comments may be submitted electronically via the Federal eRulemaking Portal at https://www.regulations.gov (type IRS-2025-0433 in the search field on the regulations.gov homepage to find this notice and submit comments). Written comments may be mailed to Internal Revenue Service, CC:PA:01:PR (Notice 2025-72), Room 5503, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044. All commenters are strongly encouraged to submit comments electronically.

The Treasury Department and the IRS will publish for public availability any comment submitted electronically and on paper to its public docket on regulations.gov.

SECTION 7. DRAFTING AND CONTACT INFORMATION

The principal authors of this notice are Hayley Rassuchine and Raphael J. Cohen of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding the allocation of foreign taxes, contact Hayley Rassuchine at (202) 317-6936 (not a toll-free number). For further information regarding the modification of the section 987 regulations, contact Raphael J. Cohen at (202) 317-6938 (not a toll-free number).

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2025-73

This notice provides guidance on the corporate bond monthly yield curve, the corresponding spot segment rates used under § 417(e)(3), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008 and the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I).

YIELD CURVE AND SEGMENT RATES

Section 430 specifies the minimum funding requirements that apply to single-employer plans (except for CSEC plans under § 414(y)) pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins.[1] However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Section 1.430(h)(2)-1(d) provides rules for determining the monthly corporate bond yield curve,[2] and § 1.430(h)(2)-1(c) provides rules for determining the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in § 1.430(h)(2)-1(d), the monthly corporate bond yield curve derived from September 2025 data is in Table 2025-9 at the end of this notice. The spot first, second, and third segment rates for the month of September 2025 are, respectively, 4.06, 5.12, and 5.93.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. Those percentages are 95% and 105% for plan years beginning in 2024, 2025 and 2026. For this purpose, any 25-year average segment rate that is less than 5% is deemed to be 5%. The 25-year average segment rates for plan years beginning in 2024, 2025 and 2026 were published in Notice 2023-66, 2023-40 I.R.B. 992, Notice 2024-67, 2024-41 I.R.B. 726 and Notice 2025-47, 2025-40 I.R.B. 441, respectively.

24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for October 2025 without adjustment for the 25-year average segment rate limits are as follows:

[1] Pursuant to § 433(h)(3)(A), the third segment rate determined under § 430(h)(2)(C) is used to determine the current liability of a CSEC plan (which is used to calculate the minimum amount of the full funding limitation under § 433(c)(7)(C)).

[2] For months before February 2024, the monthly corporate bond yield curve was determined in accordance with Notice 2007-81, 2007-44 I.R.B. 899. Section 1.430(h)(2)-1(d) generally adopts the methodology for determining the monthly corporate bond yield curve under Notice 2007-81 but includes two enhancements to take into account subsequent changes in the bond market. Those enhancements are described in the preamble to TD 9986 (89 FR 2127).

24-Month Average Segment Rates Without 25-Year Average Adjustment			
Applicable Month	**First Segment**	**Second Segment**	**Third Segment**
October 2025	4.75	5.33	5.71

The adjusted 24-month average segment rates set forth in the chart below reflect § 430(h)(2)(C)(iv) of the Code. The 24-month averages applicable for October 2025, adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates in accordance with § 430(h)(2)(C)(iv), are as follows:

Adjusted 24-Month Average Segment Rates				
For Plan Years Beginning In	**Applicable Month**	**First Segment**	**Second Segment**	**Third Segment**
2024	October 2025	4.75	5.33	5.71
2025	October 2025	4.75	5.31	5.71
2026	October 2025	4.75	5.25	5.71

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for September 2025 is 4.74 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in August 2055. For plan years beginning in October 2025, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rates used to calculate current liability are as follows:

Treasury Weighted Average Rates		
For Plan Years Beginning In	**30-Year Treasury Weighted Average**	**Permissible Range 90% to 105%**
October 2025	4.26	3.84 to 4.48

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Section 1.417(e)-1(d)(3) provides guidelines for determining the minimum present value segment rates. Pursuant to that section, the minimum present value segment rates determined for September 2025 are as follows:

Minimum Present Value Segment Rates			
Month	**First Segment**	**Second Segment**	**Third Segment**
September 2025	4.06	5.12	5.93

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or Tony Montanaro at 626-927-1475 (not toll-free calls).

Table 2025-9
Monthly Yield Curve for September 2025
Derived from September 2025 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	4.11	20.5	5.66	40.5	5.96	60.5	6.08	80.5	6.14
1.0	4.05	21.0	5.67	41.0	5.96	61.0	6.08	81.0	6.14
1.5	4.00	21.5	5.69	41.5	5.97	61.5	6.08	81.5	6.14
2.0	3.98	22.0	5.70	42.0	5.97	62.0	6.09	82.0	6.14
2.5	3.98	22.5	5.71	42.5	5.98	62.5	6.09	82.5	6.14
3.0	4.00	23.0	5.72	43.0	5.98	63.0	6.09	83.0	6.15
3.5	4.03	23.5	5.73	43.5	5.99	63.5	6.09	83.5	6.15
4.0	4.08	24.0	5.74	44.0	5.99	64.0	6.09	84.0	6.15
4.5	4.14	24.5	5.75	44.5	5.99	64.5	6.09	84.5	6.15
5.0	4.21	25.0	5.76	45.0	6.00	65.0	6.10	85.0	6.15
5.5	4.28	25.5	5.77	45.5	6.00	65.5	6.10	85.5	6.15
6.0	4.35	26.0	5.78	46.0	6.00	66.0	6.10	86.0	6.15
6.5	4.42	26.5	5.78	46.5	6.01	66.5	6.10	86.5	6.15
7.0	4.50	27.0	5.79	47.0	6.01	67.0	6.10	87.0	6.15
7.5	4.57	27.5	5.80	47.5	6.01	67.5	6.10	87.5	6.15
8.0	4.65	28.0	5.80	48.0	6.02	68.0	6.11	88.0	6.16
8.5	4.72	28.5	5.81	48.5	6.02	68.5	6.11	88.5	6.16
9.0	4.79	29.0	5.82	49.0	6.02	69.0	6.11	89.0	6.16
9.5	4.86	29.5	5.83	49.5	6.03	69.5	6.11	89.5	6.16
10.0	4.92	30.0	5.83	50.0	6.03	70.0	6.11	90.0	6.16
10.5	4.98	30.5	5.84	50.5	6.03	70.5	6.11	90.5	6.16
11.0	5.04	31.0	5.85	51.0	6.03	71.0	6.12	91.0	6.16
11.5	5.09	31.5	5.86	51.5	6.04	71.5	6.12	91.5	6.16
12.0	5.14	32.0	5.86	52.0	6.04	72.0	6.12	92.0	6.16
12.5	5.19	32.5	5.87	52.5	6.04	72.5	6.12	92.5	6.16
13.0	5.24	33.0	5.88	53.0	6.05	73.0	6.12	93.0	6.16
13.5	5.28	33.5	5.88	53.5	6.05	73.5	6.12	93.5	6.16
14.0	5.32	34.0	5.89	54.0	6.05	74.0	6.12	94.0	6.17
14.5	5.36	34.5	5.90	54.5	6.05	74.5	6.13	94.5	6.17
15.0	5.39	35.0	5.90	55.0	6.06	75.0	6.13	95.0	6.17
15.5	5.42	35.5	5.91	55.5	6.06	75.5	6.13	95.5	6.17
16.0	5.46	36.0	5.92	56.0	6.06	76.0	6.13	96.0	6.17
16.5	5.48	36.5	5.92	56.5	6.06	76.5	6.13	96.5	6.17
17.0	5.51	37.0	5.93	57.0	6.06	77.0	6.13	97.0	6.17
17.5	5.54	37.5	5.93	57.5	6.07	77.5	6.13	97.5	6.17
18.0	5.56	38.0	5.94	58.0	6.07	78.0	6.13	98.0	6.17
18.5	5.58	38.5	5.94	58.5	6.07	78.5	6.14	98.5	6.17
19.0	5.60	39.0	5.95	59.0	6.07	79.0	6.14	99.0	6.17
19.5	5.62	39.5	5.95	59.5	6.08	79.5	6.14	99.5	6.17
20.0	5.64	40.0	5.96	60.0	6.08	80.0	6.14	100.0	6.18

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2025-74

This notice provides guidance on the corporate bond monthly yield curve, the corresponding spot segment rates used under § 417(e)(3), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008 and the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I).

YIELD CURVE AND SEGMENT RATES

Section 430 specifies the minimum funding requirements that apply to single-employer plans (except for CSEC plans under § 414(y)) pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins.[1] However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Section 1.430(h)(2)-1(d) provides rules for determining the monthly corporate bond yield curve,[2] and § 1.430(h)(2)-1(c) provides rules for determining the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in § 1.430(h)(2)-1(d), the monthly corporate bond yield curve derived from October 2025 data is in Table 2025-10 at the end of this notice. The spot first, second, and third segment rates for the month of October 2025 are, respectively, 4.01, 5.04, and 5.83.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. Those percentages are 95% and 105% for plan years beginning in 2024, 2025 and 2026. For this purpose, any 25-year average segment rate that is less than 5% is deemed to be 5%. The 25-year average segment rates for plan years beginning in 2024, 2025 and 2026 were published in Notice 2023-66, 2023-40 I.R.B. 992, Notice 2024-67, 2024-41 I.R.B. 726 and Notice 2025-47, 2025-40 I.R.B. 441, respectively.

24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for November 2025 without adjustment for the 25-year average segment rate limits are as follows:

24-Month Average Segment Rates Without 25-Year Average Adjustment			
Applicable Month	**First Segment**	**Second Segment**	**Third Segment**
November 2025	4.67	5.28	5.69

The adjusted 24-month average segment rates set forth in the chart below reflect § 430(h)(2)(C)(iv) of the Code. The 24-month averages applicable for November 2025, adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates in accordance with § 430(h)(2)(C)(iv), are as follows:

Adjusted 24-Month Average Segment Rates				
For Plan Years Beginning In	**Applicable Month**	**First Segment**	**Second Segment**	**Third Segment**
2024	November 2025	4.75	5.28	5.69
2025	November 2025	4.75	5.28	5.69
2026	November 2025	4.75	5.25	5.69

[1] Pursuant to § 433(h)(3)(A), the third segment rate determined under § 430(h)(2)(C) is used to determine the current liability of a CSEC plan (which is used to calculate the minimum amount of the full funding limitation under § 433(c)(7)(C)).

[2] For months before February 2024, the monthly corporate bond yield curve was determined in accordance with Notice 2007-81, 2007-44 I.R.B. 899. Section 1.430(h)(2)-1(d) generally adopts the methodology for determining the monthly corporate bond yield curve under Notice 2007-81 but includes two enhancements to take into account subsequent changes in the bond market. Those enhancements are described in the preamble to TD 9986 (89 FR 2127).

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for October 2025 is 4.64 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in August 2055. For plan years beginning in November 2025, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rates used to calculate current liability are as follows:

Treasury Weighted Average Rates

For Plan Years Beginning In	30-Year Treasury Weighted Average	Permissible Range 90% to 105%
November 2025	4.29	3.86 to 4.50

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Section 1.417(e)-1(d)(3) provides guidelines for determining the minimum present value segment rates. Pursuant to that section, the minimum present value segment rates determined for October 2025 are as follows:

Minimum Present Value Segment Rates

Month	First Segment	Second Segment	Third Segment
October 2025	4.01	5.04	5.83

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or Tony Montanaro at 626-927-1475 (not toll-free calls).

Table 2025-10
Monthly Yield Curve for October 2025
Derived from October 2025 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	3.98	20.5	5.55	40.5	5.86	60.5	5.97	80.5	6.03
1.0	3.95	21.0	5.57	41.0	5.86	61.0	5.98	81.0	6.03
1.5	3.93	21.5	5.58	41.5	5.87	61.5	5.98	81.5	6.03
2.0	3.93	22.0	5.59	42.0	5.87	62.0	5.98	82.0	6.04
2.5	3.94	22.5	5.60	42.5	5.87	62.5	5.98	82.5	6.04
3.0	3.97	23.0	5.62	43.0	5.88	63.0	5.98	83.0	6.04
3.5	4.02	23.5	5.63	43.5	5.88	63.5	5.98	83.5	6.04
4.0	4.07	24.0	5.64	44.0	5.89	64.0	5.99	84.0	6.04
4.5	4.12	24.5	5.65	44.5	5.89	64.5	5.99	84.5	6.04
5.0	4.19	25.0	5.66	45.0	5.89	65.0	5.99	85.0	6.04
5.5	4.25	25.5	5.66	45.5	5.90	65.5	5.99	85.5	6.04
6.0	4.32	26.0	5.67	46.0	5.90	66.0	5.99	86.0	6.04
6.5	4.39	26.5	5.68	46.5	5.90	66.5	5.99	86.5	6.04
7.0	4.46	27.0	5.69	47.0	5.91	67.0	6.00	87.0	6.05
7.5	4.53	27.5	5.70	47.5	5.91	67.5	6.00	87.5	6.05
8.0	4.60	28.0	5.70	48.0	5.91	68.0	6.00	88.0	6.05
8.5	4.67	28.5	5.71	48.5	5.92	68.5	6.00	88.5	6.05
9.0	4.73	29.0	5.72	49.0	5.92	69.0	6.00	89.0	6.05
9.5	4.79	29.5	5.73	49.5	5.92	69.5	6.00	89.5	6.05
10.0	4.85	30.0	5.73	50.0	5.92	70.0	6.01	90.0	6.05
10.5	4.91	30.5	5.74	50.5	5.93	70.5	6.01	90.5	6.05
11.0	4.96	31.0	5.75	51.0	5.93	71.0	6.01	91.0	6.05
11.5	5.01	31.5	5.76	51.5	5.93	71.5	6.01	91.5	6.05
12.0	5.06	32.0	5.76	52.0	5.94	72.0	6.01	92.0	6.05
12.5	5.10	32.5	5.77	52.5	5.94	72.5	6.01	92.5	6.05
13.0	5.15	33.0	5.78	53.0	5.94	73.0	6.01	93.0	6.06
13.5	5.19	33.5	5.78	53.5	5.94	73.5	6.02	93.5	6.06
14.0	5.22	34.0	5.79	54.0	5.95	74.0	6.02	94.0	6.06
14.5	5.26	34.5	5.80	54.5	5.95	74.5	6.02	94.5	6.06
15.0	5.29	35.0	5.80	55.0	5.95	75.0	6.02	95.0	6.06
15.5	5.32	35.5	5.81	55.5	5.95	75.5	6.02	95.5	6.06
16.0	5.35	36.0	5.81	56.0	5.95	76.0	6.02	96.0	6.06
16.5	5.38	36.5	5.82	56.5	5.96	76.5	6.02	96.5	6.06
17.0	5.41	37.0	5.82	57.0	5.96	77.0	6.02	97.0	6.06
17.5	5.43	37.5	5.83	57.5	5.96	77.5	6.03	97.5	6.06
18.0	5.45	38.0	5.83	58.0	5.96	78.0	6.03	98.0	6.06
18.5	5.48	38.5	5.84	58.5	5.97	78.5	6.03	98.5	6.06
19.0	5.50	39.0	5.84	59.0	5.97	79.0	6.03	99.0	6.07
19.5	5.52	39.5	5.85	59.5	5.97	79.5	6.03	99.5	6.07
20.0	5.53	40.0	5.85	60.0	5.97	80.0	6.03	100.0	6.07

Part IV

Deletions From Cumulative List of Organizations, Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2025-27

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the IRS will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the IRS is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on November 24, 2025, and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Name Of Organization	Effective Date of Revocation	Location
Dreams of Gratitude Foundation	01/01/2021	Fayetteville, NC
Overton Park Conservancy	01/01/2022	Memphis, TN
Odyssey Foundation	01/01/2021	Frisco, TX
Destiny Bound	05/01/2022	Lancaster, TX

Notice of Proposed Rulemaking

Furnishing Identifying Number of Tax Return Preparer

REG-124791-11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking regarding the eligibility of tax return preparers to obtain a preparer tax identification number (PTIN). The proposed regulations would have affected tax return preparers.

DATES: As of November 28, 2025, the notice of proposed rulemaking that was published in the ***Federal Register*** on February 15, 2012 (77 FR 8753), is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mark Shurtliff at (202) 317-6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 15, 2012, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-124791-11) in the ***Federal Register*** (77 FR 8753) under section 6109 of the Internal Revenue Code (Code) relating to the identifying number of tax return preparers (proposed regulations). The proposed regulations would have provided for two additional categories of tax return preparers eligible for a PTIN under a regulatory scheme in which the IRS sought to impose minimum qualification requirements on who could be a tax return preparer.

Following publication of the proposed regulations, on February 11, 2014, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Loving v. Internal Revenue Service*, 742 F.3d 1013 (D.C. Cir. 2014), which upheld an injunction against the IRS from regulating tax return preparers. In light of *Loving*, the IRS is prohibited from regulating tax return preparers and, therefore, the Treasury Department and the IRS are withdrawing the proposed regulations.

Drafting Information

The principal author of this notice is Mark Shurtliff of the Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Amendments to the Regulations

Under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-124791-11) that was published in the ***Federal Register*** on February 15, 2012 (77 FR 8753), is withdrawn.

Frank J. Bisignano,
Chief Executive Officer.

(Filed by the Office of the Federal Register November 26, 2025, 8:45 a.m., and published in the issue of the Federal Register for November 28, 2025, 90 FR 54604)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List[1]

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2025–27 through 2025–52 is in Internal Revenue Bulletin 2025–52, dated December 22, 2025.

Finding List of Current Actions on Previously Published Items[1]

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2025–27 through 2025–52 is in Internal Revenue Bulletin 2025–52, dated December 22, 2025.

Internal Revenue Service
Washington, DC 20224

INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/.*

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page *www.irs.gov*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.