



TaxNewsFlash

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Proposed regulations withdrawn: Transfers of no net value

The U.S. Treasury Department and IRS today released for publication in the Federal Register a notice that certain provisions under proposed regulations from 2005 are being withdrawn.

The regulatory measures being withdrawn would have required an exchange or distribution of net value for certain corporate formations and reorganizations to qualify for nonrecognition treatment. In other words, the measures would have affected transactions involving the transfer of no net value.

Today's notice ([RIN-1545-B118](#)) [PDF 211 KB] further explains that the portion of the proposed regulations being withdrawn also would have addressed the treatment of certain distributions not qualifying for tax-free treatment under section 332.

Summary

In March 2005, proposed regulations were issued to address situations concerning corporate insolvency—specifically involving the application of the nonrecognition rules to transactions involving insolvent corporations. Included in those proposed regulations were provisions concerning the continuity of interest requirement. Final regulations in December 2008 adopted a portion of the proposed regulations that concerned the continuity of interest rules.

The preamble to today's release also explains that in March 2016, final regulations adopted "minor portions" of the proposed regulations that reflected statutory changes to sections 332 and 351 (as part of final regulations under sections 334 and 362). Today's explanation continues:

The Treasury Department and the IRS have decided to withdraw the remainder of the 2005 Proposed Regulations.... [C]urrent law is sufficient to ensure that

the reorganization provisions and section 351 are used to accomplish readjustments of continuing interest in property held in modified corporate form.

KPMG observation

Tax professionals have noted that today's explanation offers an incomplete statement regarding current law, and whether and how a transfer of net value is necessary to accomplish such a readjustment of continuing interest. Today's release contains a short list of court opinions and revenue rulings that "continue to reflect the position of the Treasury Department and the IRS." It has been observed that today's explanation seems neither to approve nor disapprove other precedents that do not insist on a transfer of net value.

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