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KPMG report: Reporting and paying the stock repurchase excise tax—not quite yet

Legislation enacted in 2022 as part of the “Inflation Reduction Act” (IRA) imposed¹ a non-deductible one percent excise tax (the “stock repurchase excise tax”) on the net value of certain share repurchases by publicly traded corporations (or by their subsidiaries) within a tax year, effective with respect to repurchases on or after January 1, 2023.²

The stock repurchase excise tax has been on the books for 18 months now, and diligent taxpayers are wondering how and when they should report their share repurchases to the IRS, and when they will need to submit payments for the stock repurchase excise tax. The surprising answer is that as of today (and until regulations are issued), taxpayers should neither report their share repurchases to the IRS, nor should they pay the stock repurchase excise tax.³

When to file and pay

The IRA did not specify a particular due date for reporting or paying the stock repurchase excise tax, and there is no specific due date set forth in the Code. In general, when a statute does not impose a due date for the payment of a tax, payment is due at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return),⁴ and when the time for filing a return is not specified by

¹ IRC section 4501(a), enacted in § 10201(a) of title I of a bill to provide for reconciliation pursuant to title II of S. Con. Res. 14 (better known as the Inflation Reduction Act), Pub. L. No. 117-169, 136 Stat. 1818, 1828–1831 (2022).

Unless otherwise indicated, all references in this article to “section” are to the Internal Revenue Code of 1986, as amended, or the Treasury regulations thereunder.

² For discussions of various aspects of the substantive rules in section 4501 and Notice 2023-2, see Robert Delgado, Gary Cvatch, Maury Passman, Tim Nichols, and Dontrell Lemon, *The Stock Buyback Excise Tax: Practical Considerations for Retirement Plans and Equity-Based Compensation Arrangements*, 51 Tax Management Compensation Planning Journal 1 (Bloomberg Industry Group, May 5, 2023); KPMG Report: *Stock repurchase excise tax and funding rule considerations for inbound taxpayers* (March 27, 2023) (read [TaxNewsFlash](#)); KPMG Report: *“Inflation Reduction Act” stock buyback – Practical considerations for retirement plans and equity-based compensation arrangements* (January 26, 2023) (read [TaxNewsFlash](#)); and Adam Murphy, Maury Passman, and Jeffrey L. Vogel, *Stock Repurchases Under the Build Back Better Act’s Excise Tax*, 175 Tax Notes Federal 865 (May 9, 2022)

³ The discussion in this KPMG report is limited to certain procedural aspects of the excise tax.

⁴ Section 6151(a).

statute the government is authorized to prescribe by regulations the filing requirement and the due date for the filing.⁵ Given there is no due date prescribed by statute and because the government has not prescribed a due date by regulation, there is no current due date for reporting or paying the stock repurchase excise tax; instead, payment of the stock repurchase excise tax is expected to be due at the time provided in forthcoming regulations as the original due date for filing the relevant return.

The government has indicated its intent to issue regulations that would require the stock repurchase excise tax to be reported and paid annually. Notice 2023-2⁶ provided that forthcoming regulations would provide that:

- The stock repurchase excise tax will be reported once per tax year on the Form 720, *Quarterly Federal Excise Tax Return*, that is due for the first full quarter after the close of the taxpayer's tax year.
- The deadline for payment of the stock repurchase excise tax will be the same as the Form 720 filing deadline.
- No extensions will be permitted for reporting or paying the stock repurchase excise tax.

In addition, the government issued Announcement 2023-18,⁷ in which it stated that:

- Taxpayers are not required to report or to pay the stock repurchase excise tax before the time specified in forthcoming regulations.
- Taxpayers will not be subject to penalties for failure to file or pay the stock repurchase excise tax before the time specified in forthcoming regulations.
- Taxpayers will be required to keep complete and detailed records of their stock repurchases (including repurchases made after December 31, 2022, but before the forthcoming regulations are published) and to retain these records as long as their contents may become material.

Announcement 2023-18 further stated that:

- For those taxpayers with a tax year ending after December 31, 2022, but prior to publication of the forthcoming regulations, such regulations are expected to provide that any liability for the stock repurchase excise tax for such tax year will be reported on the Form 720 that is due for the first full quarter after the date of publication of the forthcoming regulations, and that the deadline for payment of the stock repurchase excise tax is the same as the filing deadline.

This latter point confirms that for taxpayers with tax years ending after December 31, 2022, but prior to publication of the forthcoming regulations, the stock repurchase excise tax is neither to be reported nor paid at this time. This applies to taxpayers that report on a fiscal year basis with respect to their straddle year (i.e., a tax year that started in 2022 and ended in 2023), to taxpayers with one or more short tax periods that started and ended in 2023, and to calendar year taxpayers with respect to their 2023 tax year.

The stock repurchase excise tax was estimated to raise more than \$70 billion during the 10-year budget period,⁸ and these revenues will not flow into Treasury's coffers until temporary or final regulations are

⁵ Sections 6011(a), 6071(a).

⁶ Notice 2023-2, 2023-3 I.R.B. 374.

⁷ Announcement 2023-18, 2023-30 I.R.B. 366.

⁸ See Staff of the Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 117th Congress*, at 523 (JCS-1-23) (December 2023).

promulgated. For this reason, we can anticipate that these regulations will be issued in the near term.⁹ If regulations are issued prior to the end of the current quarter (i.e., by March 31, 2024), we generally anticipate the due date for calendar year taxpayers to file and pay the stock repurchase excise tax for the 2023 tax year will be July 31, 2024, which is the due date with respect to the Form 720, *Quarterly Federal Excise Tax Return* for the first full calendar quarter ending after the current quarter.

How to report

The IRS has released a [draft Form 7208, Excise Tax on Repurchase of Stock](#) [PDF 241 KB], for taxpayers to use in reporting the stock repurchase excise tax. To date, this form remains a draft, and has not been released for use in filing. Taxpayers can look at the draft Form 7208 to get a sense of the information that the government is expected to require them to report in connection with the stock repurchase excise tax.

In December 2023, the IRS issued a revised Form 720, *Quarterly Federal Excise Tax Return*. Part II on page 2 of the Form 720 now includes a single line referencing Form 7208. The IRS also issued revised instructions to the Form 720, which state on page 10 that “[n]o regulations have been issued requiring the reporting, nor payment, of this tax. Don’t report a liability on the line for IRS No. 150 until further notice.”

Conclusion

Congress has imposed the stock repurchase excise tax, and it will become due and payable. However, until such time as regulations are issued, taxpayers should refrain from reporting to the IRS or paying the tax. Meanwhile, taxpayers should collect the necessary information and set aside the funds, to be in a position to report and pay the tax once regulations are issued.

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⁹ See also Kristen A. Parillo, *Timing Clarified for Regs on Corporate AMT and Stock Buyback Tax*, 2024 Tax Notes Federal Today 11-5 (January 17, 2024), reporting comments made at the New York State Bar Association’s annual meeting by Brett York, Treasury’s Deputy Tax Legislative Counsel.

