



# Reporting and paying the stock repurchase excise tax: The time is nigh\*

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\* This report supersedes Maury Passman, Tim Nichols, Taylor Cortright, and Greg Armstrong, [KPMG report: Reporting and paying the stock repurchase excise tax – not quite yet](#) (January 18, 2024).



# Introduction

Legislation<sup>1</sup> enacted in 2022 imposed a non-deductible 1% excise tax (the “stock repurchase excise tax”) on the net value of certain share repurchases by publicly traded domestic corporations (or by their subsidiaries) within a tax year, effective with respect to repurchases on or after January 1, 2023.<sup>2</sup> By statute, the stock repurchase excise tax extends to certain U.S. subsidiaries of foreign publicly traded corporation that purchase stock in their foreign parent from unrelated sellers.<sup>3</sup>

The stock repurchase excise tax has been ensconced within the Internal Revenue Code for nearly two years now; diligent taxpayers have been 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 government has now answered this question with the release of final administrative and procedural regulations.<sup>4</sup>

## When to file and pay

Corporations subject to the stock repurchase excise tax and that repurchase any shares of their stock (or are treated as making a repurchase) during a tax year are required to file a return for that year on Form 720, *Quarterly Federal Excise Tax Return*, with an attached Form 7208, *Excise Tax on Repurchase of Corporate Stock*.<sup>5</sup>

In general, the stock repurchase excise tax return is required to be filed by the due date for the Form 720 for the first full calendar quarter after the end of the taxpayer’s tax year.<sup>6</sup> Thus, for calendar year taxpayers, the filing for their 2024 tax year generally will be due on April 30, 2025.<sup>7</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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), [KPMG report: “Inflation Reduction Act” stock buyback – Practical considerations for retirement plans and equity-based compensation arrangements](#) (January 26, 2023), 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).

<sup>3</sup> Section 4501(d)(1).

<sup>4</sup> [T.D. 10002](#), *Excise Tax on Repurchase of Corporate Stock – Procedure and Administration* (filed with the Federal Register at 4:15 pm on June 28, 2024). Final regulations are scheduled to be published in the Federal Register on July 3, 2024. For the proposed regulations, see [REG-119499-23](#), *Excise Tax on Repurchase of Corporate Stock – Procedure and Administration*, 89 Fed. Reg. 25829 (April 12, 2024). For a discussion of the proposed regulations, see [KPMG report: Stock repurchase excise tax proposed regulations – initial analysis](#) (April 17, 2024).

<sup>5</sup> Treas. Reg. §§ 58.6011-1(a), (b). This requirement applies if any stock is repurchased or treated as repurchased, regardless of whether any tax is due, or whether every repurchase is eligible for a statutory exception or is offset by stock issuances. However, the final regulations create a new filing exception for RICs and REITs.

<sup>6</sup> Treas. Reg. §§ 58.6071-1(a).

<sup>7</sup> Treas. Reg. §§ 58.6071-1(b).



For tax years ending on or before June 28, 2024, the stock repurchase excise tax return will be due by the due date for the Form 720 for the first full calendar quarter after June 28, 2024;<sup>8</sup> that due date is October 31, 2024. Thus, for calendar year taxpayers returns for the tax year 2023 will be due on October 31, 2024.<sup>9</sup>

Taxpayers that have had more than one tax year that ended on or after January 1, 2023, and before June 28, 2024, should file a single Form 720 on or before October 31, 2024, with separate Forms 7208 for each such tax year.<sup>10</sup>

In each case, payment of the tax for a particular year is due as of the date the stock repurchase excise tax return for that year is due.<sup>11</sup> Taxpayers that timely file and timely pay are not subject to penalties for failure to report their stock repurchases or to pay the tax prior to the time specified in these regulations.<sup>12</sup>

## How to report

In April 2024, the IRS revised its draft Form 7208, *Excise Tax on Repurchase of Stock*,<sup>13</sup> and draft instructions to the Form 7208.<sup>14</sup> We anticipate that the IRS will release a final Form 7208 and associated instructions for taxpayers to use in reporting the stock repurchase excise tax now that final procedural regulations have been issued.

The IRS also recently revised Form 720, *Quarterly Federal Excise Tax Return*. Part II on page 2 of the June 2024 revision of Form 720 includes a single line (IRS No. 150) referencing Form 7208. The IRS also revised the instructions to 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.” We expect the IRS to revise the Form 720 and accompanying instructions to reflect the issuance of the final procedural regulations.

Form 720 is not a consolidated return; it is filed by the entity subject to the stock repurchase excise tax. Form 720 is, however, a composite return; therefore, the quarterly return on which the stock repurchase excise tax is reported also includes all other federal excise taxes for which the same entity is liable during the quarter. Taxpayers may file Form 720 by paper or electronically by using an approved IRS Modernized e-File (MeF) provider.<sup>15</sup>

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<sup>8</sup> Treas. Reg. §§ 58.6071-1(c). The proposed version of the administrative and procedural regulations provided that the initial due date was the due date for the Form 720 for the first full calendar quarter after final regulations were published in the Federal Register. Prop. Reg. § 58.6071-1(c). The final regulations are scheduled to be published in the July 3 edition of the Federal Register; adhering to the proposed regulations would have meant an initial due date of January 31, 2025. However, the final regulations accelerated the initial due date by referring to June 28 (the date the final regulations were publicly released) rather than to July 3 (the date final regulations will be published in the Federal Register). In so doing, the final regulations accelerate the initial due date by about 90 days. The preamble does not directly address this point, though it obliquely states that the example illustrating this rule was modified to align with the effective date of the final regulations, and that the applicability dates of the final regulations were slightly adjusted to facilitate the IRS’s administration and enforcement of the stock repurchase excise tax and to provide guidance to taxpayers as quickly as possible.

<sup>9</sup> Treas. Reg. §§ 58.6071-1(d). This date, of course, is Halloween.

<sup>10</sup> Treas. Reg. §§ 58.6071-1(c). As an example, fiscal year taxpayers with year-ends in January through May generally would have more than one tax year ending after January 1, 2023, and before June 28, 2024, as may taxpayers with one or more short tax years during the January 1, 2023 to June 28, 2024 period.

<sup>11</sup> Treas. Reg. §§ 58.6151-1(a).

<sup>12</sup> Announcement 2023-18, 2023-30 I.R.B. 366.

<sup>13</sup> <https://www.irs.gov/pub/irs-dft/f7208--dft.pdf>

<sup>14</sup> <https://www.irs.gov/pub/irs-dft/i7208--dft.pdf>

<sup>15</sup> [List of MeF providers](#)



# Substantive issues remain open

The final administrative and procedural regulations released on June 28 do not address the issues that are the subject of a far-lengthier set of proposed regulations<sup>16</sup> on substantive aspects of the stock repurchase excise tax. Comments to the proposed substantive regulations were due on June 11, and many comments were submitted. For now, those substantive regulations remain in proposed form.

However, while the proposed substantive regulations have not been finalized (and thus are not in effect as of today), the proposed substantive regulations are proposed to have retroactive applicability. If these regulations are not finalized prior to the initial filing and payment due date of October 31, 2024, taxpayers will be placed in an unfortunate situation – they can file their initial stock repurchase excise tax return either applying or not applying the rules of the proposed substantive regulations but with little clarity on how the final substantive regulations may affect their ultimate liability, and thus with the potential requirement for additional amended filings and payments/requests for refund once the final regulations are released. This issue may be particularly acute for U.S. subsidiaries of publicly traded foreign parents, where potential liability in many cases would be based on provisions of the proposed substantive regulations that have received significant criticism and may be revised in the final substantive regulations. Indeed, even if the final substantive regulations are released prior to October 31, 2024, limited time may be available to analyze whether any changes from the proposed regulations affect a taxpayer's liability before filing and payment must be made.

## Conclusion

Congress has imposed the stock repurchase excise tax, and now it will become due and payable. Taxpayers should evaluate their filing responsibilities and take steps now to be in a position to timely meet their stock repurchase excise tax filing and payment obligations.

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<sup>16</sup> [REG-115-710-22](#), *Excise Tax on Repurchase of Corporate Stock*, 89 Fed. Reg. 25980 (April 12, 2024). For a discussion of the proposed regulations, see [KPMG report: Stock repurchase excise tax proposed regulations – initial analysis](#) (April 17, 2024).

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