

(c) \* \* \*

(6) *Conversion transaction following a section 355 distribution*—(i) *In general*. Except as provided in paragraph (c)(6)(ii) of this section, a C corporation described in paragraph (f)(1) of this section is treated as having made the election under paragraph (c)(5) of this section with respect to a conversion transaction if the conversion transaction occurs following the related section 355 distribution (as defined in paragraph (f)(1)(i) of this section) and the C corporation has not made such an election.

(ii) *Limitation*. A C corporation treated as having made the election under paragraph (c)(5) of this section as a result of paragraph (c)(6)(i) of this section is not treated as having made the election with respect to property that the taxpayer establishes is not distribution property with respect to the related section 355 distribution. For purposes of this paragraph (c)(6)(ii), any property with an adjusted basis in excess of its fair market value as of the date of the conversion transaction will not be treated as distribution property unless the taxpayer establishes that it owned such asset immediately after the related section 355 distribution. If the limitation applies, then paragraph (b) of this section will apply to the property that is not distribution property with respect to the related section 355 distribution.

\* \* \* \* \*

(f) *Conversion transaction preceding or following a section 355 distribution*—

(1) *In general*. A C corporation or a REIT is described in this paragraph (f)(1) if—

(i) The C corporation or the REIT engages in a conversion transaction involving a REIT during the twenty-year period beginning on the date that is ten years before the date of a section 355 distribution (the related section 355 distribution); and

(ii) The C corporation or the REIT engaging in the related section 355 distribution is either—

(A) The distributing corporation or the controlled corporation, as those terms are defined in section 355(a)(1); or

(B) A member of the separate affiliated group (as defined in section 355(b)(3)(B)) of the distributing corporation or the controlled corporation.

(2) *Predecessors and successors*. For purposes of this paragraph (f), any reference to a controlled corporation, a distributing corporation, or a member of the separate affiliated group of a distributing corporation or a controlled corporation includes a reference to any predecessor or successor of such

corporation. Predecessors and successors include corporations which succeed to and take into account items described in section 381(c) of the distributing corporation or the controlled corporation, and corporations having such items to which the distributing corporation or the controlled corporation succeeded and took into account.

(3) *Exclusion of certain conversion transactions*. A C corporation or a REIT is not described in paragraph (f)(1) of this section if—

(i) The distributing corporation and the controlled corporation are both REITs immediately after the related section 355 distribution (including by reason of elections under section 856(c)(1) made after the related section 355 distribution that are effective before the related section 355 distribution) and at all times during the two years thereafter;

(ii) Section 355(h)(1) does not apply to the related section 355 distribution by reason of section 355(h)(2)(B); or

(iii) The related section 355 distribution is described in a ruling request referred to in section 311(c) of Division Q of the Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2422.

(g) \* \* \*

(2) \* \* \*

(ii) *Conversion transactions occurring on or after the date these regulations are published in the Federal Register as final regulations*. Paragraphs (a)(1), (a)(2)(vi), (a)(2)(vii), (a)(2)(viii), (b)(4), (c)(1), (c)(6), and (f) of this section will apply to conversion transactions occurring 30 days after the date these regulations are published in the **Federal Register** as final regulations, and to conversion transactions and related section 355 distributions for which the conversion transaction occurs before, and the related section 355 distribution occurs on or after, the date that is 30 days after the date these regulations are published in the **Federal Register** as final regulations. For conversion transactions that occurred on or after June 7, 2016 and before the date that is 30 days after these regulations are published in the **Federal Register** as final regulations, see §§ 1.337(d)–7 and 1.337(d)–7T as contained in 26 CFR part 1 in effect on April 1, 2018. However, taxpayers may consistently apply paragraphs (a)(1), (a)(2)(vi), (a)(2)(vii), (a)(2)(viii), (b)(4), (c)(1), (c)(6), and (f) of this section in their entirety for all conversion transactions described in the preceding sentence. For conversion transactions that occurred on or after January 2, 2002 and before June 7, 2016,

see § 1.337(d)–7 as contained in 26 CFR part 1 in effect on April 1, 2016.

\* \* \* \* \*

**Kirsten Wielobob**,*Deputy Commissioner for Services and Enforcement.*

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## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Part 1**

**[REG–121694–16]****RIN 1545–BN80**

#### **Updating Section 301 Regulations To Reflect Statutory Changes**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations under section 301 of the Internal Revenue Code of 1986 (Code). The proposed regulations would update existing regulations under section 301 to reflect statutory changes made by the Technical and Miscellaneous Revenue Act of 1988, which changes provide that the amount of a distribution of property made by a corporation to its shareholder is the fair market value of the distributed property. The proposed regulations would affect any shareholder who receives a distribution of property from a corporation.

**DATES:** Written or electronic comments and requests for a public hearing must be received by June 24, 2019.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–121694–16), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–121694–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG–121694–16).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Grid R. Glycer, (202) 317–6847; concerning submission of comments, Regina Johnson, (202) 317–6901 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

## Background

Section 301 of the Code originally was enacted as part of the Internal Revenue Code of 1954. Section 301 provides rules for the treatment of a distribution of property, including money, made by a corporation to its shareholder with respect to that shareholder's stock ownership in that corporation (distribution).

Section 301(b)(1) provides general rules for determining the amount of a distribution. As enacted in 1954, section 301(b)(1) provided rules for determining the amount of a distribution that differed depending on whether the shareholder receiving the distribution (distributee) was a corporation. Pre-1986 amendments to section 301(b)(1) added special rules to determine the amount of distributions received from foreign distributing corporations and by foreign corporate distributees. Similarly, section 301(d), as enacted in 1954, provided rules for determining the basis of property received in a distribution that differed depending on whether the distributee was a corporation. As with section 301(b)(1), pre-1986 amendments to section 301(d) added special rules to determine the basis of property received from foreign distributing corporations and by foreign corporate distributees.

Section 1006(e)(10) of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647, 102 Stat. 3342 (1988) (the Act), amended section 301(b)(1) to eliminate the distinction between corporate and noncorporate distributees as well as the special rules relating to foreign corporations. Similarly, section 1006(e)(11) of the Act amended section 301(d) to eliminate the distinction between corporate and noncorporate distributees. (These amendments to section 301(b)(1) and (d) are referred to as the 1988

Amendments.) Section 1019(a) of the Act provided that, in general, the 1988 Amendments were effective as if included in the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085 (1986).

As a result of the 1988 Amendments, effective for taxable years beginning after December 31, 1986, section 301(b)(1) provides that, for purposes of section 301, the amount of any distribution shall be the amount of money received plus the fair market value of the other property received. Section 301(d), as amended by the 1988 Amendments and effective for taxable years beginning after December 31, 1986, provides that the basis of property received in a distribution to which section 301(a) applies shall be the fair market value of such property.

The current regulations issued under section 301 reflect the rules of sections 301(b)(1) and 301(d) as they existed prior to the 1988 Amendments. Accordingly, to the extent preempted by statute, the current regulations have no application.

## Explanation of Provisions

The proposed regulations update § 1.301–1 to reflect the statutory changes made to section 301(b)(1) and (d) by the 1988 Amendments. The scope of the changes to the current regulations issued under section 301 made by these proposed regulations is limited to (1) deleting regulatory provisions made obsolete by statutory changes, (2) making minor additions and revisions to regulatory provisions to reflect current statutory text, and (3) making certain non-substantive changes for purposes of clarity and readability, including reordering and redesignating paragraphs of the current regulations. The proposed regulations also update cross-references in §§ 1.356–1(f), 1.368–2(m)(3)(iii),

1.902–1(a)(12), and 1.902–3(a)(7) to reflect the proposed reordering and redesignating of paragraphs in § 1.301–1.

Specifically, some of the provisions of current § 1.301–1(b) are now found in proposed § 1.301–1(c). Thus, the definition of the amount of a distribution subject to section 301 and the determination of the fair market value of a distribution remain in § 1.301–1(b), while the determination of when to include a distribution in gross income, and its fair market value, is now found in proposed § 1.301–1(c).

In addition, current § 1.301–1(g) is redesignated as proposed § 1.301–1(f) and is revised to clarify the application of the principles of section 357(d) to the limitation on the amount of a distribution provided by section 301(b)(2). Section 357(d) was added to the Code by section 3001(b)(1) of the Miscellaneous Trade and Technical Corrections Act of 1999, Public Law No. 106–36, 113 Stat. 127. On January 4, 2001, the Treasury Department and the IRS published a temporary regulation (T.D. 8924) in the **Federal Register** (66 FR 723) to address this interaction. Current § 1.301–1(g), published in the **Federal Register** (66 FR 49278) on September 27, 2001 as T.D. 8964, provides that no reduction shall be made for the amount of any liability, unless the liability is assumed by the shareholder within the meaning of section 357(d). Proposed § 1.301–1(f) would clarify the language of current § 1.301–1(g) by providing that no reduction in the amount of a distribution is made for the amount of any liability except to the extent the liability is assumed by the shareholder within the meaning of section 357(d).

The specific changes to § 1.301–1 are shown in the following table:

Paragraph designation in § 1.301–1	Change
(a) .....	Updated to reflect current law.
(b) .....	Updated to reflect current law, with the definition of the amount of a distribution subject to section 301 and the determination of the fair market value of a distribution remaining in paragraph (b) and the determination of when to include a distribution in gross income, and its fair market value, redesignated as paragraph (c).
(c) .....	Redesignated as paragraph (d).
(d) .....	Deleted as obsolete.
(e) .....	Deleted as obsolete.
(f) .....	Updated to reflect current law and redesignated as paragraph (e).
(g) .....	Redesignated as paragraph (f) and revised to clarify that no reduction in the amount of a distribution is made for the amount of any liability except to the extent the liability is assumed by the shareholder within the meaning of section 357(d).
(h) .....	Updated to reflect current law and redesignated as paragraph (g).
(i) .....	No change.
(j) .....	Updated to reflect current law and redesignated as paragraph (h).
(k) .....	Deleted as obsolete.
(l) .....	Redesignated as paragraph (j).
(m) .....	Redesignated as paragraph (k).
(n) .....	Deleted as obsolete.
(o) .....	Deleted as obsolete.

Paragraph designation in § 1.301–1	Change
(p) .....	Redesignated as paragraph (l).
(q) .....	Redesignated as paragraph (m).
(n) .....	New effective date paragraph.

## Proposed Effective/Applicability Date

The proposed regulations would apply to distributions made after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. However, these proposed regulations would update current regulations under section 301 to reflect statutory changes made by the 1988 Amendments, which statutory changes apply to distributions made in taxable years beginning after December 31, 1986.

## Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

## Drafting Information

The principal author of these regulations is Grid R. Glycer of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS participated in developing these regulations.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

### PART 1—INCOME TAX REGULATIONS

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

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

■ **Par. 2.** Section 1.301–1 is revised to read as follows:

#### § 1.301–1 Rules applicable with respect to distributions of money and other property.

(a) *General.* Section 301 provides the general rule for treatment of distributions made in taxable years beginning after December 31, 1986, of property by a corporation to a shareholder with respect to its stock. The term *property* is defined in section 317(a). Such distributions, except as otherwise provided in this chapter, shall be treated as provided in section 301(c). Under section 301(c), distributions may be included in gross income to the extent the amount distributed is considered a dividend under section 316, applied against and reduce the adjusted basis of the stock, treated as gain from the sale or exchange of property, or (in the case of certain distributions out of increase in value accrued before March 1, 1913) may be exempt from tax. The amount of the distributions to which section 301 applies is determined in accordance with the provisions of section 301(b). The basis of property received in a distribution to which section 301 applies is determined in accordance with the provisions of section 301(d).

(b) *Amount of distribution and determination of fair market value.* The amount of a distribution to which section 301 applies shall be the amount of money received in the distribution, plus the fair market value of other property received in the distribution. The fair market value of any property distributed shall be determined as of the date of the distribution.

(c) *Time of inclusion in gross income and time of determination of fair market value.* A distribution made by a

corporation to its shareholders shall be included in the gross income of the distributees when the cash or other property is unqualifiedly made subject to their demands without regard to whether such date is the same as that on which the corporation made the distribution. For example, if a corporation distributes a taxable dividend in property on December 30, 2018, which is received by, or unqualifiedly made subject to the demand of, its shareholders on January 3, 2019, the amount to be included in the gross income of the shareholders will be the fair market value of such property on December 30, 2018, although such amount will not be includable in the gross income of the shareholders until January 3, 2019.

(d) *Application of section to shareholders.* Section 301 is not applicable to an amount paid by a corporation to a shareholder unless the amount is paid to the shareholder in the shareholder's capacity as such.

(e) *Example.* Corporation M, formed in 1998, has never been an acquiring corporation in a transaction to which section 381(a) applies. On January 1, 2019, A, an individual owned all of the stock of Corporation M, consisting of a single share, with an adjusted basis of \$2,000. During 2019, A received distributions from Corporation M totaling \$30,000, consisting of \$10,000 in cash and listed securities having a basis in the hands of Corporation M and a fair market value on the date distributed of \$20,000. Corporation M's taxable year is the calendar year. As of December 31, 2018, Corporation M had accumulated earnings and profits in the amount of \$26,000, and it had no earnings and profits and no deficit for 2019. Of the \$30,000 received by A, \$26,000 will be treated as an ordinary dividend; the remaining \$4,000 will be applied against the adjusted basis of his stock; the \$2,000 in excess of the adjusted basis of his stock will be treated as gain from the sale or exchange of property under section 301(c)(3)(A). If A subsequently sells his stock in Corporation M, the basis for determining gain or loss on the sale will be zero.

(f) *Reduction for liabilities—(1)*  
*General rule.* For purposes of section 301(b)(2), no reduction in the amount of a distribution shall be made for the amount of any liability, except to the

extent the liability is assumed by the shareholder within the meaning of section 357(d).

(2) *No reduction below zero.* Any reduction pursuant to paragraph (f)(1) of this section shall not cause the amount of the distribution to be reduced below zero.

(3) *Effective dates—(i) In general.* This paragraph (f) applies to distributions occurring after January 4, 2001.

(ii) *Retroactive application.* This paragraph (f) also applies to distributions made on or before January 4, 2001, if the distribution is made as part of a transaction described in, or substantially similar to, the transaction in Notice 99–59 (1999–2 C.B. 761), including transactions designed to reduce gain (see § 601.601(d)(2) of this chapter). For rules for distributions on or before January 4, 2001 (other than distributions on or before that date to which this paragraph (f) applies), see rules in effect on January 4, 2001 (see § 1.301–1(g) as contained in 26 CFR part 1 revised April 1, 2001).

(g) *Basis.* The basis of property received in a distribution to which section 301 applies shall be the fair market value of such property. See paragraph (b) of this section.

(h) *Transfers for less than fair market value.* If property is transferred by a corporation to a shareholder for an amount less than its fair market value in a sale or exchange, such shareholder shall be treated as having received a distribution to which section 301 applies. In such case, the amount of the distribution shall be the excess of the fair market value of the property over the amount paid for such property at the time of the transfer. For example, on January 3, 2019, A, a shareholder of Corporation X, purchased property from X for \$20. The fair market value of such property on January 3, 2019 was \$100. The amount of the distribution to A determined under section 301(b) is \$80.

(i) [Reserved]

(j) *Transactions treated as distributions.* A distribution to shareholders with respect to their stock is within the terms of section 301 although it takes place at the same time as another transaction if the distribution is in substance a separate transaction whether or not connected in a formal sense. This is most likely to occur in the case of a recapitalization, a reincorporation, or a merger of a corporation with a newly organized corporation having substantially no property. For example, if a corporation having only common stock outstanding, exchanges one share of newly issued common stock and one bond in the principal amount of \$10 for each share

of outstanding common stock, the distribution of the bonds will be a distribution of property (to the extent of their fair market value) to which section 301 applies, even though the exchange of common stock for common stock may be pursuant to a plan of reorganization under the terms of section 368(a)(1)(E) (recapitalization) and even though the exchange of common stock for common stock may be tax free by virtue of section 354.

(k) *Cancellation of indebtedness.* The cancellation of indebtedness of a shareholder by a corporation shall be treated as a distribution of property.

(l) *Cross references.* For certain rules relating to adjustments to earnings and profits and for determining the extent to which a distribution is a dividend, see sections 312 and 316 and regulations thereunder.

(m) *Split-dollar and other life insurance arrangements—(1) Split-dollar life insurance arrangements—(i) Distribution of economic benefits.* The provision by a corporation to its shareholder pursuant to a split-dollar life insurance arrangement, as defined in § 1.61–22(b)(1) or (2), of economic benefits described in § 1.61–22(d) or of amounts described in § 1.61–22(e) is treated as a distribution of property, the amount of which is determined under § 1.61–22(d) and (e), respectively.

(ii) *Distribution of entire contract or undivided interest therein.* A transfer (within the meaning of § 1.61–22(c)(3)) of the ownership of a life insurance contract (or an undivided interest therein) that is part of a split-dollar life insurance arrangement is a distribution of property, the amount of which is determined pursuant to § 1.61–22(g)(1) and (2).

(2) *Other life insurance arrangements.* A payment by a corporation on behalf of a shareholder of premiums on a life insurance contract or an undivided interest therein that is owned by the shareholder constitutes a distribution of property, even if such payment is not part of a split-dollar life insurance arrangement under § 1.61–22(b).

(3) *When distribution is made—(i) In general.* Except as provided in paragraph (m)(3)(ii) of this section, paragraph (c) of this section shall apply to determine when a distribution described in paragraph (m)(1) or (2) of this section is taken into account by a shareholder.

(ii) *Exception.* Notwithstanding paragraph (c) of this section, a distribution described in paragraph (m)(1)(ii) of this section shall be treated as made by a corporation to its shareholder at the time that the life insurance contract, or an undivided

interest therein, is transferred (within the meaning of § 1.61–22(c)(3)) to the shareholder.

(4) *Effective date—(i) General rule.* This paragraph (m) applies to split-dollar and other life insurance arrangements entered into after September 17, 2003. For purposes of this paragraph (m)(4), a split-dollar life insurance arrangement is entered into as determined under § 1.61–22(j)(1)(ii).

(ii) *Modified arrangements treated as new arrangements.* If a split-dollar life insurance arrangement entered into on or before September 17, 2003 is materially modified (within the meaning of § 1.61–22(j)(2)) after September 17, 2003, the arrangement is treated as a new arrangement entered into on the date of the modification.

(n) *Applicability date.* Paragraphs (a) through (c), (e), (g), and (h) of this section apply to distributions under section 301 made after the date of publication of the Treasury decision adopting these rules as final regulations in the *Federal Register*.

■ **Par. 3.** Section 1.356–1 is amended by revising paragraph (f) to read as follows:

**§ 1.356–1 Receipt of additional consideration in connection with an exchange.**

\* \* \* \* \*

(f) See § 1.301–1(j) for certain transactions which are not within the scope of section 356.

\* \* \* \* \*

■ **Par. 4.** Section 1.368–2 is amended by revising the last sentence of paragraph (m)(3)(iii) to read as follows:

**§ 1.368–2 Definition of terms.**

\* \* \* \* \*

(m) \* \* \*

(3) \* \* \*

(iii) \* \* \* See § 1.301–1(j).

\* \* \* \* \*

**§ 1.902–1(a)(12) [Amended]**

■ **Par. 5.** In § 1.902–1(a)(12), remove the reference “§ 1.301–1(b)” and add in its place “§ 1.301–1(c)”.

**§ 1.902–3(a)(7) [Amended]**

■ **Par. 6.** In § 1.902–3(a)(7), remove the reference “§ 1.301–1(b)” and add in its place “§ 1.301–1(c)”.

**Kirsten Wielobob,**

*Deputy Commissioner for Services and Enforcement.*

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