

June 11, 2024

Internal Revenue Service
P.O. Box 7604 CC:PA:01:PR (REG-115710-22)
Room 5203
Ben Franklin Station
Washington, DC 20044

Re: Excise Tax on Repurchase of Corporate Stock (REG-115710-22)

To Whom It May Concern:

Americans for Financial Reform Education Fund (AFREF) and the undersigned organizations appreciate the opportunity to comment on this important proposal implementing the stock buybacks excise tax under section 4501 of the Internal Revenue Code.

This 1% excise tax on stock buybacks, passed as part of the Inflation Reduction Act, is the first of its kind. Congress, well-aware of corporations' adeptness at avoiding taxes, gave the Treasury Secretary a broad mandate to issue guidance and promulgate regulations to prevent the avoidance of the tax. 26 U.S.C. 4501(f) ("The 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 this section..."). This mandate includes a specific reference to regulations and guidance to implement special rules in the text of the statute relating to the acquisition of stock of certain foreign corporations. *See* 26 U.S.C. 4501(f)(3) reference to 26 U.S.C. 4501(d).

In January 2023, the Treasury Department and the IRS followed Congress's mandate and issued initial guidance on the implementation of the tax (Notice 2023-2, 2023-3 I.R.B. 374). This guidance included a "funding rule," whereby a buyback or acquisition of a publicly traded foreign corporation's stock would be subject to the tax if it was funded by the domestic affiliate "by any means," and "a principal purpose" of the funding was to avoid the tax. If the funding occurred within two years of the buyback, the guidance considered tax avoidance to be a "per se" principal purpose.

Following fierce industry backlash to this approach, this proposal retains but significantly scales back the funding rule. The proscription against a domestic affiliate's funding of a buyback of a publicly traded foreign corporation's stock for the principal purpose of tax avoidance remains, but the per se rule is gone. The per se rule is replaced by a much narrower rebuttable presumption that assumes a principal purpose of tax avoidance when a domestic corporation

funds a “downstream relevant entity”¹ within two years of the purchase of foreign parent stock by the funded entity. In addition to adopting the rebuttable presumption standard, the proposed regulations importantly also clarify that a “principal purpose of funding, directly or indirectly, a covered purchase” will be treated as a principal purpose of avoiding the section 4501(d) excise tax. Unsurprisingly, industry continues to criticize this rule despite these changes.

It is critical that the Treasury Department and the IRS preserve the proposed funding rule despite predictable opposition by corporations and those representing their interests, as their interests are to maximize their ability to avoid the tax. This is contrary to the statutory text and Congress’s intent to prevent avoidance of this novel tax.

We thank the Treasury Department and the IRS for engaging in this important process to follow their statutory mandate to issue regulations to implement the tax and prevent its avoidance. We appreciate your consideration of our request to preserve the proposed funding rule. For further discussion, please contact Natalia Renta at natalia@ourfinancialsecurity.org.

Sincerely,

20/20 Vision

Accountable.US

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

Americans for Financial Reform Education Fund

Americans for Tax Fairness

Campaign for America’s Future

Center for Popular Democracy

Coalition on Human Needs

Communication Workers of America (CWA)

Connecticut Citizen Action Group

Hedge Clippers

Institute for Local Self-Reliance

Institute for Policy Studies, Global Economy Project

Institute on Taxation and Economic Policy

Main Street Alliance

Moms Rising

NETWORK Lobby for Catholic Social Justice

Oxfam America

¹ The proposed rule defines downstream relevant entity as “a relevant entity (i) 25 percent or more of the stock of which is owned (by vote or by value), directly or indirectly, by, individually or in aggregate, one or more applicable specified affiliates of an applicable foreign corporation, or (ii) 25 percent or more of the capital or profits interests in which are held, directly or indirectly, by, individually or in aggregate, one or more applicable specified affiliates of an applicable foreign corporation.”

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Tulipshare
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