



Tax News & Views Health Care Edition

Proposed Section 385 Treasury Regulations

On April 4, 2016, the US Treasury and the IRS released [Proposed Regulations under section 385](#) to address whether a purported debt instrument that is issued to a related party is treated as stock, debt, or in part stock and in part debt for US federal income tax purposes. Under the proposed regulations definition of expanded group, tax-exempt organizations are specifically included in the expanded group for purposes of determining related parties. There are 3 objectives of the operative rules proposed in these regulations:

1. Authorize Bifurcation—Implement the grant of regulatory authority under section 385 to bifurcate certain related party debt instruments.

2. Require Documentation—Impose strict contemporaneous documentation requirements on certain related party debt instruments as a prerequisite to treatment of such instruments as debt; otherwise, such instruments are treated as equity.
3. Target Intercompany Leveraging Transactions—Treat as stock certain debt instruments issued to a related party by way of, or in connection with, certain distribution and acquisition transactions that do not introduce new capital into the broader related party group.

If adopted in their current form, the proposed regulations will cause increased administrative burdens including meeting the substantial documentation and maintenance requirements. These

requirement do not allow organizations to issue debt and subsequently execute the required documentation later; further, organizations will need to track the funded status, prohibited transactions, and debt modifications. The proposed regulations provide minimum standards for documenting debt. However, it should be noted that satisfying the minimum standards does not establish that an instrument is debt, but failure to satisfy the requirement means an instrument is stock.

Find it Fast

Proposed Section 385 Treasury Regulations

Department of the Treasury/IRS
release 2016-2017 Priority Guidance Plan

Did you know?

While not effective in their current form, the IRS has indicated it is their intention to finalize these regulations quickly. Exempt taxpayers should pay particular attention to intercompany transactions whether classified as debt or equity especially those with taxable subsidiaries. The proposed regulations give the IRS a framework to reclassify equity transactions as debt or vice versa which could result in tax consequences to taxpayers whether at the exempt or taxable subsidiary level. For further information, please reach out to your Deloitte contact.

Department of the Treasury/IRS release 2016-2017 Priority Guidance Plan

On August 15, 2016, the U.S. Department of the Treasury and the Internal Revenue Service issued its [2016-2017 Priority Guidance Plan](#). The plan includes 15 projects related to exempt organizations that are priorities for the plan year from June 2016 through July 2017. Of the 15 projects listed for the current plan year, 10 projects were on the 2015-2016 Priority Guidance Plan. The plan represents projects that the Treasury and IRS intend to work on actively during the plan year but does not place any deadline on completion of projects. The following are the priority projects related to exempt organizations:

1. Revenue procedures updating grantor and contributor reliance criteria under §§ 170 and 509.
2. Revenue procedure to update Revenue Procedure 2011-33 for EO Select Check.
3. Final regulations under §§ 501(a), 501(c)(3), and 508 relating to a streamlined application process for eligible organizations to apply for recognition of tax-exempt status under § 501(c)(3). Final and temporary regulations were published on July 02, 2014.*
4. Update Revenue Ruling 67-390 regarding the requirement for new applications for exempt from Federal income tax in case of a change in the structure of organizations exempt from Federal income tax under section 501(a) of the Internal Revenue Code.*
5. Proposed regulations under § 501(c) relating to political campaign intervention.
 - Project suspended in accordance with section 127 of the Department of the Treasury Appropriations Act, 2016 (Title I of Division E of the Consolidated Appropriations Act, 2016).
6. Regulations and other guidance on § 506 as added by the Protecting Americans from Tax Hikes Act of 2015.*
 - PUBLISHED 07/12/16 in FR as TD 9775 (FINAL and TEMP).
 - PUBLISHED 07/25/16 in IRB 2016-30 as REV. PROC. 2016-41. (RELEASED 07/08/16).
7. Final regulations on § 509(a)(3) supporting organizations. Proposed regulations were published on February 19, 2016.*
8. Guidance under § 512 regarding methods of allocating expenses relating to dual use facilities.
9. Final regulations under § 529A on Qualified ABLE Programs as added by § 102 of the ABLE Act of 2014. Proposed regulations were published on June 22, 2015.
10. Guidance under § 4941 regarding a private foundation's investment in a partnership in which disqualified persons are also partners.
11. Update to Revenue Procedure 92-94 on §§ 4942 and 4945.*
12. Guidance regarding the excise taxes on donor advised funds and fund management.
13. Guidance under § 6033 relating to the reporting of contributions.
14. Final regulations under § 6104(c). Proposed regulations were published on March 15, 2011.
15. Final regulations under § 7611 relating to church tax inquiries and examinations. Proposed regulations were published on August 5, 2009.

*Newly added to the Priority Guidance Plan for 2016-2017.

Did you know?

IRS issues 2016 draft Form 990 and instructions

The IRS has posted drafts of both the 2016 Form 990, Form 990-EZ and their instructions to its Draft Tax Forms webpage. In addition to the forms, almost all of the 2016 schedules (A, C, D, E, F, G, H, I, J, K, L, M, N, O, and R) and a few of the schedule instructions (C, D, L, and R) are also available. For a link to the draft forms, click [here](#).

Office of Chief Counsel released CCA addressing retirement plans and SMLLCs

The Office of Chief Counsel released [Chief Counsel Advice Number 201634021](#) on August 19, 2016. In the memorandum. The CCA reached three conclusions: (1) employees of SMLLCs are permitted to participate in section 403(b) plans; (2) employees of SMLLCs must be allowed to participate in section 403(b) plans to the extent necessary to comply with the universal availability requirement; (3) employees of SMLLCs are not required to but are permitted to participate in section 457 plans.

Safe harbor guidance released for private business use resulting from management contracts

[Revenue Procedure 2016-44](#) was released by the IRS on August 22, 2016 which builds upon Rev. Proc. 97-13 as modified by Rev. Proc. 2001-39 and amplified by Rev. Proc. 2014-67. In section 5 of the Rev. Proc., the IRS provides safe harbor conditions under which a management contract does not result in private business use under sections 141(b) or 145(a)(2)(B). The safe harbor conditions are no net profits arrangements and no bearing of net losses of the management property, term of the contract and revisions, control over use of the managed property, risk of loss of the managed property, no inconsistent tax position, and no circumstances substantially limiting exercise of rights.

Deloitte Thoughtware

[Deloitte Center for Health Solutions](#). The source for health care insights: The Deloitte Center for Health Solutions (DCHS) is the research division of Deloitte's Life Sciences and Health Care practice. The goal of DCHS is to inform stakeholders across the health care system about emerging trends, challenges, and opportunities.

[Health Care Current](#). Weekly insights to keep you informed and ahead. This weekly series explores breaking news and developments in the US health care industry; examines key issues facing life sciences and health care companies; and provides updates and insights on policy, regulatory, and legislative changes.

Deloitte Dbriefs

Deloitte Dbriefs are live webcasts that give you valuable insights on important developments affecting your business. Register for the following webcasts or view archived recordings by clicking on the respective hyperlinked button below.



Technology Executives

Technology + talent: Implications of technology on 2016 human capital trends

September 8 | 2 p.m. ET

Workplaces, workforces, and work itself are being reshaped in 2016 by sweeping technology forces. What are the latest human capital trends and how can technology executives proactively acknowledge and address them?

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HR Executives

Leadership development: The move to more rigorous, structured, and scientific approaches

September 14 | 2 p.m. ET

Despite increased spending in 2015, leadership development programs continue to disappoint in many organizations. How can organizations use scientifically validated methods to assess existing and prospective leaders and identify gaps in their talent pipeline?

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Financial Reporting

Quarterly accounting roundup: An update on important developments

September 19 | 2 p.m. ET

Do you know what issues the standard-setters and regulators have been addressing lately?

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Health Sciences

Building better hospitals: The value of the patient experience

September 20 | 1 p.m. ET

With the market shift towards value-based and patient-centered care, meeting patients' needs and earning better margins in the face of payment pressure have become growing priorities for hospitals and health systems. How are leading organizations navigating the rapidly changing health care landscape?

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Driving Enterprise Value

What CFOs need to know about blockchain: A new source of enterprise value?

September 21 | 3 p.m. ET

Blockchain, the technology underlying bitcoin and other cryptocurrencies, is quickly gaining credibility in other diverse areas. What are distributed ledgers, and how can CFOs make innovative use of them?

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Transactions & Business Events

Cyberattackers and your intellectual property: Valuing and guarding prized business assets

September 28 | 2 p.m. ET

Because of widespread attention to breaches of personal, health, and payment data, organizations tend to be familiar with some of the associated costs and regulatory impacts. But what if attackers are out to undermine your company's competitive advantage?

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 **Governance, Risk & Compliance**

Advancing board effectiveness with a new strategic framework

September 29 | 2 p.m. ET

Board members who understand the intersection between strategy, risk, and innovation tend to anticipate better, seize opportunities, and help shape the company's future value creation. How prepared is your board today?

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 **Financial Reporting**

EITF roundup: Highlights from the September meeting

September 30 | 11 a.m. ET

The FASB's Emerging Issues Task Force (EITF) will meet in September to review emerging issues.

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