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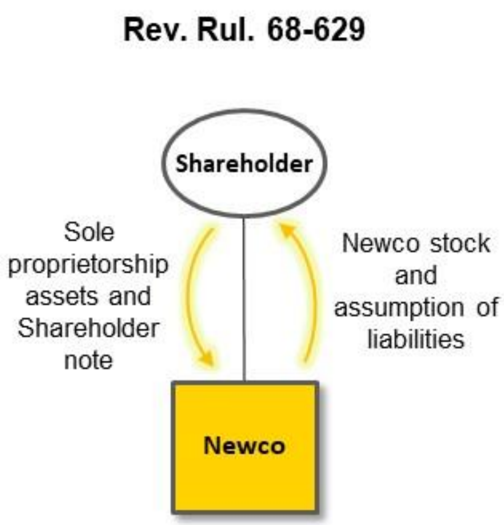
Technical Developments and Musings

The basis for Rev. Rul. 68-629. Notice 2025-22 represents some of the first substantive IRS subregulatory guidance from the Trump administration. The new notice declares a number of Internal Revenue Bulletin items “unnecessary,” thereby withdrawing multiple notices such as Notice 2005-64, which had addressed an older §965 repatriation provision. But one revenue ruling, 91-32, was also targeted and “obsoleted” by the notice because its subject has since been “squarely addressed” by 2017 tax legislation. Taxpayers and advisors may be left to ponder: will there be more revenue ruling culling? To be sure, some corporate tax rulings have generated critical commentary over the years including, for example, Rev. Rul. 68-629. The 1968 ruling involved the incorporation of a sole proprietorship, but the individual transferor also transferred his own promissory note—made in favor of the new transferee corporation—with the intention to avoid having assumed liabilities exceed transferred asset basis under §357(c). The ruling concludes that the note was ineffective to avoid gain recognition, because according to the IRS, there was “no cost” involved to the maker of the note. Apparently, the IRS thought it too easy to create asset basis in the hands of a related counterparty. Critics might counter that even in 1968, other parts of the tax code gave effect to notes between a corporation and its shareholders. See, e.g., §312(a)(2) (earnings and profits reduced for distribution of corporation’s own note). And additional developments since 1968 would seem to underscore this view. For example, in the context of §355 spin-offs, shareholder promissory notes transferred to a corporation in a §351 exchange would seem to create “purchased” basis in the stock of the respective distributing or controlled corporation, under §355(d)(5)(B)(iii). And in the S corporation context, after years of litigation, the IRS in 2014 generally accepted the basis effect of related party loans; i.e., as long as the debt is bona fide, back-to-back loans—such as from one S corporation to a shareholder who in turn makes a loan to another S corporation—will generally be respected under §1366(d)(1)(B) and Reg. §1.1366-2(a)(2)(i).



Partnership basis shifting regs will be withdrawn. In companion guidance—Notice 2025-23—the IRS and Treasury announced their intention to withdraw related party partnership basis-shifting regulations. For further info, see Tax Alert 2025-0957.

SRLY limitation depends on context. In a partially redacted field attorney advice 20251401F, the IRS determined that, following a spin-off, a “Distributing” consolidated group is not permitted to allocate some amount of cumulative income from subsidiaries still within the group to a successor “Controlled” entity. Post-spin off, the Controlled group had a loss, some of which it intended to carry back to the Distributing group’s prior year; the taxpayer asserted this was appropriate because a portion of the assets in Controlled had been transferred from Distributing entities, making Controlled a successor. However, the IRS concluded that, under Reg. §1.1502-21(f), the “context does not require” that the successor entity be treated as an extension of the Distributing group entities in order to compute the cumulative register of the successor.