

§ 1.305-6

26 CFR Ch. I (4-1-10 Edition)

shares to the class B shareholders is a distribution to which sections 305(b)(4) and 301 apply.

Example 10. Corporation P is organized with 10,000 shares of class A stock and 1,000 shares of class B stock. The terms of the class B stock require that the class B have a preference of \$5 per share with respect to dividends and \$100 per share with respect to liquidation. In addition, upon a distribution of \$5 per share to the class A stock, class B participates equally in any additional dividends. The terms also provide that upon liquidation the class B stock participates equally after the class A receives \$100 per share. Corporation P has accumulated earnings and profits of \$100,000. In 1971 it earned \$75,000. The corporation is in an industry in which it is reasonable to anticipate a growth in earnings of 10 percent per year. In 1971 the book value of corporation P's assets totalled \$5 million. In that year the corporation paid a dividend of \$5 per share to the class B stock, \$5 per share to the class A stock, and it distributed an additional \$1 per share to both class A and class B stock. In 1972 the corporation had earnings of \$82,500. In that year it paid a dividend of \$5 per share to the class B stock and \$5 per share to the class A stock. In addition, the corporation declared stock dividends of one share of class B stock for every 10 outstanding shares of class B and one share of class A stock for every 10 outstanding shares of class A. Since, in 1972, it was reasonable to anticipate that both the class B stock and the class A stock would participate in the current and anticipated earnings and growth of the corporation beyond their preferred interests, neither class is preferred stock and the stock dividends are not distributions to which section 305(b)(4) applies.

(e) *Effective date.* The rules of paragraph (b) of this section and *Examples 4, 5, 7, and 8* of paragraph (d) of this section apply to stock issued on or after December 20, 1995. For rules applicable to previously issued stock, see § 1.305-5 (b) and (d) *Examples (4), (5), and (7)* (as contained in the 26 CFR part 1 edition revised April 1, 1995). Although the rules of paragraph (b) of this section and the revised examples do not apply to stock issued before December 20, 1995, the rules of sections 305(c)(1), (2), and (3) apply to stock described therein issued on or after October 10, 1990, except as provided in section 11322(b)(2) of the Revenue Reconciliation Act of 1990 (Public Law 101-508 Stat.). Moreover, except as provided in section 11322(b)(2) of the Revenue Reconciliation Act of 1990 (Public Law 101-508 Stat.), with re-

spect to stock issued on or after October 10, 1990, and issued before December 20, 1995, the economic accrual rule of section 305(c)(3) will apply to the entire call premium on stock that is not described in paragraph (b)(2) of this section if the premium is considered to be unreasonable under the principles of § 1.305-5(b) (as contained in the 26 CFR part 1 edition revised April 1, 1995). A call premium described in the preceding sentence will be accrued over the period of time during which the preferred stock cannot be called for redemption.

[T.D. 7281, 38 FR 18536, July 12, 1973, as amended by T.D. 7329, 39 FR 36860, Oct. 15, 1974; T.D. 8643, 60 FR 66136, Dec. 21, 1995]

§ 1.305-6 Distributions of convertible preferred.

(a) *In general.* (1) Under section 305(b)(5), a distribution by a corporation of its convertible preferred stock or rights to acquire such stock made or considered as made with respect to its stock is treated as a distribution of property to which section 301 applies unless the corporation establishes that such distribution will not result in a disproportionate distribution as described in § 1.305-3.

(2) The distribution of convertible preferred stock is likely to result in a disproportionate distribution when both of the following conditions exist: (i) The conversion right must be exercised within a relatively short period of time after the date of distribution of the stock; and (ii) taking into account such factors as the dividend rate, the redemption provisions, the marketability of the convertible stock, and the conversion price, it may be anticipated that some shareholders will exercise their conversion rights and some will not. On the other hand, where the conversion right may be exercised over a period of many years and the dividend rate is consistent with market conditions at the time of distribution of the stock, there is no basis for predicting at what time and the extent to which the stock will be converted and it is unlikely that a disproportionate distribution will result.

(b) *Examples.* The application of section 305(b)(5) may be illustrated by the following examples:

Example 1. Corporation Z is organized with one class of stock, class A common. During the year the corporation declares a dividend on the class A stock payable in newly authorized class B preferred stock which is convertible into class A stock for a period of 20 years from the date of issuance. Assuming dividend rates are normal in light of existing conditions so that there is no basis for predicting the extent to which the stock will be converted, the circumstances will ordinarily be sufficient to establish that a disproportionate distribution will not result since it is impossible to predict the extent to which the class B stock will be converted into class A stock. Accordingly, the distribution of class B stock is not one to which section 301 applies.

Example 2. Corporation X is organized with one class of stock, class A common. During the year the corporation declares a dividend on the class A stock payable in newly authorized redeemable class C preferred stock which is convertible into class A common stock no later than 4 months from the date of distribution at a price slightly higher than the market price of class A stock on the date of distribution. By prearrangement with corporation X, corporation Y, an insurance company, agrees to purchase class C stock from any shareholder who does not wish to convert. By reason of this prearrangement, it is anticipated that the shareholders will either sell the class C stock to the insurance company (which expects to retain the shares for investment purposes) or will convert. As a result, some of the shareholders exercise their conversion privilege and receive additional shares of class A stock, while other shareholders sell their class C stock to corporation Y and receive cash. The distribution is a distribution to which section 301 applies since it results in the receipt of property by some shareholders and an increase in the proportionate interests of other shareholders.

[T.D. 7281, 38 FR 18538, July 12, 1973]

§ 1.305-7 Certain transactions treated as distributions.

(a) *In general.* Under section 305(c), a change in conversion ratio, a change in redemption price, a difference between redemption price and issue price, a redemption which is treated as a distribution to which section 301 applies, or any transaction (including a recapitalization) having a similar effect on the interest of any shareholder may be treated as a distribution with respect to any shareholder whose proportionate interest in the earnings and profits or assets of the corporation is increased by such change, difference,

redemption, or similar transaction. In general, such change, difference, redemption, or similar transaction will be treated as a distribution to which sections 305(b) and 301 apply where—

(1) The proportionate interest of any shareholder in the earnings and profits or assets of the corporation deemed to have made such distribution is increased by such change, difference, redemption, or similar transaction; and

(2) Such distribution has the result described in paragraph (2), (3), (4), or (5) of section 305(b).

Where such change, difference, redemption, or similar transaction is treated as a distribution under the provisions of this section, such distribution will be deemed made with respect to any shareholder whose interest in the earnings and profits or assets of the distributing corporation is increased thereby. Such distribution will be deemed to be a distribution of the stock of such corporation made by the corporation to such shareholder with respect to his stock. Depending upon the facts presented, the distribution may be deemed to be made in common or preferred stock. For example, where a redemption premium exists with respect to a class of preferred stock under the circumstances described in § 1.305-5(b) and the other requirements of this section are also met, the distribution will be deemed made with respect to such preferred stock, in stock of the same class. Accordingly, the preferred shareholders are considered under sections 305(b)(4) and 305(c) to have received a distribution of preferred stock to which section 301 applies. See the examples in §§ 1.305-3(e) and 1.305-5(d) for further illustrations of the application of section 305(c).

(b) *Antidilution provisions.* (1) For purposes of applying section 305(c) in conjunction with section 305(b), a change in the conversion ratio or conversion price of convertible preferred stock (or securities), or in the exercise price of rights or warrants, made pursuant to a bona fide, reasonable, adjustment formula (including, but not limited to, either the so-called “market price” or “conversion price” type of formulas) which has the effect of preventing dilution of the interest of the holders of such stock (or securities) will not be