

Editor-At-Large
Ilya Beylin

Editorial Board
John C. Coffee, Jr.
Edward F. Greene
Robert J. Jackson, Jr.
Kathryn Judge

[Our
Contributors](#)

[Corporate
Governance](#)

[Finance &
Economics](#)

[M & A](#)

[Securities
Regulation](#)

[Dodd-Frank](#)

[International
Developments](#)

[Library &
Archives](#)

Wachtell Lipton explains IRS Elimination of Partnership Structures Intended to Avoid Corporate Tax on Dispositions of Appreciated Assets

By [Deborah L. Paul](#)
[June 19, 2015](#)

[On June 11th], the Internal Revenue Service promulgated regulations eliminating a structure that used a partnership to avoid corporate level tax on the disposition by a corporation of an appreciated asset, the so-called “May Company” structure. The structure had been targeted by regulations that were proposed in 1992, but its status had been uncertain in light of subsequent legislative developments and the IRS’s failure to finalize the 1992 proposed regulations. The new regulations, issued in temporary form, address transactions in which a corporation contributes an appreciated asset to a partnership, and the partnership acquires stock in the corporate partner. Economically, in this structure, the corporation indirectly reacquires its own stock in exchange for a portion of the appreciated asset. If the corporation in form had bought back its own stock using an appreciated asset, the corporation would recognize gain. The new regulations confirm that the same result will apply if the stock buyback using an appreciated asset is effected via a partnership in which the corporation is a partner. The new regulations contain technical improvements relative to the 1992 proposed regulations, narrowing their scope. In particular, in contrast to the 1992 proposed regulations, the new regulations do not apply to transactions involving stock of certain affiliates of a corporate partner where the avoidance concerns are not present.

The full and original memorandum was published by Wachtell, Lipton, Rosen & Katz on June 12, 2015.