

Section 6043.—Liquidating, etc., Transactions

26 CFR 1.6043-4T: Information returns relating to certain acquisitions of control and changes in capital structure (temporary)

T. D. 9022

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

Information Reporting Relating to Taxable Stock Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 6043(c) requiring information reporting by a corporation if control of the corporation is acquired or if the corporation has a recapitalization or other substantial change in capital structure. This document also contains temporary regulations under section 6045 concerning information reporting requirements for brokers with respect to transactions described in section 6043(c). The text of these temporary regulations also serves as the text of proposed regulations (REG-143321-02) set forth in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on November 18, 2002.

Applicability Dates: For dates of applicability, see §§ 1.6043-4T(i) and 1.6045-3T(f).

FOR FURTHER INFORMATION CONTACT: Nancy Rose at (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1812. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in this issue of the Bulletin.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Section 6043(c) provides that if any person acquires control of a corporation, or if there is a recapitalization or other substantial change in capital structure of a corporation, the corporation, when required by the Secretary, shall make a return setting forth the identity of the parties to the transaction, the fees involved, the changes in the capital structure involved, and such other information as the Secretary may require with respect to such transaction.

Proposed regulations under section 6043(c) were previously published in the Federal Register on July 5, 1990 (CO-5-90, 1990-2 C.B. 686 [55 FR 27648]) (the 1990 proposed regulations). After considering issues raised in public comments and the reporting burdens placed on corporate taxpayers under the 1990 proposed regulations, the Internal Revenue Service decided to withdraw the 1990 proposed regulations on October 16, 1992 (Notice 92-51, 1992-2 C.B. 381 [57 FR 47428]). At that time, the IRS stated that the value of the information that would be collected under the 1990 proposed regulations did not justify the burden to the public in complying with the rules. The IRS further stated that it might promulgate regulations under section 6043(c) if it became apparent that the information would be needed to administer the tax system properly.

At this time, the IRS believes that information reporting under section 6043(c) for certain large corporate transactions is appropriate. The transactions covered by this reporting requirement are acquisitions of control and substantial changes in the capital structure of a corporation. The temporary regulations require a corporation to attach a form to its income tax return describing these transactions, and to file information returns with respect to certain shareholders in such transactions. Duplicate reporting is not intended; thus, the regulations provide that no reporting is required under this section where reporting is required under another section. The text

of these temporary regulations also serves as the text of the proposed regulations set forth in the cross-referencing notice of proposed rulemaking (REG-143321-02) published in this issue of the Bulletin. The preamble to that notice of proposed rulemaking invites public comments with respect to the potential for duplicate reporting under this section. That preamble also invites comments with respect to the burden of compliance with the reporting requirements.

These temporary regulations require a domestic corporation involved in certain large taxable transactions to file Form 8806 reporting and describing such transactions. The corporation must attach Form 8806 to its timely filed income tax return. If Form 8806 is not available at least 90 days prior to the due date (including extensions) of the corporation's income tax return for the year in which the acquisition of control or the substantial change in capital structure occurs or at least 90 days before such return is timely filed (whichever is sooner), the regulation allows a corporation to make the report by attaching an interim statement to its return containing certain required information.

The temporary regulations define an acquisition of control of a corporation as a transaction or series of related transactions in which stock representing control of that corporation is distributed by a second corporation or in which stock representing control of that corporation is acquired (directly or indirectly) by a second corporation and the shareholders of the first corporation receive cash, stock or other property. For these purposes, control is determined in accordance with the first sentence of section 304(c)(1). With certain limitations, the constructive ownership rules of section 318(a) apply to determine ownership. Acquisitions of control within an affiliated group are excepted from this definition, as are acquisitions in which the fair market value of the stock acquired in the transaction or series of related transactions is less than \$100,000,000.

Under the temporary regulations, a corporation has a substantial change in its capital structure if the corporation in a transaction or series of related transactions (a) undergoes a recapitalization with respect to its stock, (b) redeems its stock, (c) merges, consolidates or otherwise combines with another entity or transfers sub-

stantially all of its assets to one or more entities, (d) transfers all or part of its assets to another corporation in a title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation, or (e) changes its identity, form or place of organization. Transactions in which the amount of any cash plus the fair market value of any property (including stock) provided to shareholders of the corporation is less than \$100,000,000 are excepted from this definition, as are transactions within an affiliated group.

The temporary regulations also require a domestic corporation involved in the specified transactions to issue, with respect to each of its shareholders, a Form 1099-CAP reporting the amount of any cash plus the fair market value of any property (including stock) provided to the shareholder in the transaction. Corporations are not required to report amounts distributed to certain exempt recipients or the fair market value of any stock provided to a shareholder if the corporation reasonably determines that the receipt of such stock would not cause the shareholder to recognize gain (if any). Further, transactions and distributions already reported under other sections are not subject to reporting under these regulations.

Penalties under section 6652(l) may be imposed for failing to file required returns under section 6043(c) (including failure to file on magnetic media, as required under section 6011(e) and § 1.6011-2). The penalty under section 6652(l) is \$500 for each day the failure continues, but the total amount imposed with respect to a return cannot exceed \$100,000. The temporary regulations provide that the information returns required under these regulations shall be treated as one return for purposes of the section 6652(l) penalty, so that the penalty shall not exceed \$500 per day (\$100,000 in total) with respect to any acquisition of control or change in capital structure. Further, as provided in section 6652(l), such penalty does not apply if the failure is due to reasonable cause. Until regulations are promulgated under section 6652(l) to set forth specific standards for determining reasonable cause, the IRS will use the reasonable cause standards set forth in § 301.6724-1 of this chapter as a guideline for determining reasonable cause.

Section 1.6045-3T requires a broker who, as the record holder of stock, re-

ceives a Form 1099–CAP from a corporation pursuant to the reporting requirements of § 1.6043–4T, to file a Form 1099–CAP with respect to the actual owner and furnish such Form 1099–CAP to the actual owner.

The temporary regulations are effective only for acquisitions of control and substantial changes of capital structure that occur after December 31, 2001, and for which the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a). The cross-referencing proposed regulations published in this issue of the Bulletin will apply to all acquisitions of control and substantial changes in capital structure occurring after the date that such regulations are published as final regulations (regardless of whether section 367(a) applies).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referencing notice of proposed rule-making published in this issue of the Bulletin. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these temporary regulations is Nancy L. Rose, Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and Treasury Department participated in their development.

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Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:
Authority: 26 U.S.C. 7805* * *

Par. 2. Section 1.6043–4T is added to read as follows:

§ 1.6043–4T Information returns relating to certain acquisitions of control and changes in capital structure (temporary).

(a) *Information returns for an acquisition of control or a substantial change in capital structure—(1) General rule.* If there is an acquisition of control (as defined in paragraph (c) of this section) or a substantial change in the capital structure (as defined in paragraph (d) of this section) of a domestic corporation (“reporting corporation”), the reporting corporation must file a completed Form 8806 (or any successor form) in accordance with the instructions to that form. Form 8806 will request the information required in paragraphs (a)(1)(i) through (v) of this section.

(i) *Reporting corporation.* Provide the name, address, and taxpayer identification number (TIN) of the reporting corporation;

(ii) *Common parent, if any, of the reporting corporation.* If the reporting corporation was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, provide the name, address, and TIN of the common parent of that affiliated group;

(iii) *Acquiring corporation.* Provide the name, address and TIN of any corporation that acquired control of the reporting corporation within the meaning of paragraph (c) of this section or combined with or received assets from the reporting corporation pursuant to a substantial change in capital structure within the meaning of paragraph (d) of this section (“acquiring corporation”). State whether the acquiring corporation is foreign (as defined in section 7701(a)(5)) or is a dual resident corporation (as defined in § 1.1503–2(c)(2)). In either case, state whether the acquiring corporation was newly formed prior to its involvement in the transaction.

(iv) *Common parent, if any, of acquiring corporation.* If the acquiring corporation named in paragraph (a)(1)(iii) of this

section was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, provide the name, address, and TIN of the common parent of that affiliated group.

(v) *Information about acquisition of control or substantial change in capital structure.* Provide—

(A) A description of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure of the corporation;

(B) The date or dates of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure;

(C) A description of and a statement of the fair market value of any stock provided to the reporting corporation’s shareholders in exchange for their stock if the reporting corporation reasonably determines that the shareholders are not required to recognize gain (if any) from the receipt of such stock for U.S. federal income tax purposes; and

(D) A statement of the aggregate amount of cash plus the fair market value of any property (including stock if the reporting corporation reasonably determines that its shareholders would be required to recognize gain (if any) on the receipt of such stock, but excluding stock described in paragraph (a)(1)(v)(C) of this section) provided to the reporting corporation’s shareholders in exchange for their stock.

(2) *Time for making return.* Form 8806 (or an interim statement, as set forth in paragraph (a)(3) of this section) must be attached to the reporting corporation’s timely filed income tax return (taking extensions into account) for the year in which the acquisition of control or substantial change in capital structure occurs.

(3) *Interim statement.* If Form 8806 has not been made available at least 90 days before the due date (including extensions) of the reporting corporation’s income tax return for the year in which the acquisition of control or substantial change in capital structure occurs or at least 90 days before such return is timely filed (whichever is sooner), the reporting corporation shall attach a statement to its return containing the information described in paragraphs (a)(1)(i) through (v) of this section.

(4) *Coordination with other sections.* (i) No reporting is required under paragraph (a) of this section with respect to a transaction for which information is required to be filed pursuant to §§ 1.351–3(b), 1.355–5(a), or 1.368–3(a), provided the transaction is properly reported in accordance with those sections.

(ii) No reporting is required under paragraph (a) of this section with respect to a transaction for which information is required to be reported pursuant to section 6043(a), provided the transaction is properly reported in accordance with that section.

(5) *Exception where shareholders are exempt recipients.* No reporting is required under paragraph (a) of this section if the reporting corporation reasonably determines that all of its shareholders who receive cash, stock or other property pursuant to the acquisition of control or substantial change in capital structure are exempt recipients under paragraph (b)(6) of this section.

(b) *Information returns regarding shareholders—(1) General rule.* A corporation that is required to file Form 8806 pursuant to paragraph (a)(1) of this section (or an interim statement under paragraph (a)(3) of this section) shall file a return of information on Forms 1096 and 1099–CAP with respect to each shareholder of record in the corporation (before or after the acquisition of control or the substantial change in capital structure) who receives cash, stock, or other property pursuant to the acquisition of control or the substantial change in capital structure.

(2) *Additional requirement for information returns.* A corporation that would have been required to file Form 8806 pursuant to paragraph (a) of this section (or an interim statement under paragraph (a)(3) of this section) but for the application of paragraph (a)(4)(i) of this section (relating to information provided under §§ 1.351–3(b), 1.355–5(a), or 1.368–3(a)) shall file a return of information on Forms 1096 and 1099–CAP with respect to each shareholder of record in the corporation (before or after the acquisition of control or the substantial change in capital structure) who receives cash, stock, or other property pursuant to the acquisition of control or the substantial change in capital structure.

(3) *Time for making information returns.* Forms 1096 and 1099–CAP must be

filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(4) *Contents of return.* A separate Form 1099–CAP must be filed with respect to amounts received by each shareholder (who is not an exempt recipient as defined in paragraph (b)(6) of this section) showing—

(i) The name, address, telephone number and TIN of the reporting corporation;

(ii) The name, address and TIN of the shareholder;

(iii) The number and class of shares in the reporting corporation exchanged by the shareholder;

(iv) The amount of cash and the fair market value of any stock (other than stock described in paragraph (a)(1)(v)(C)) of this section or other property provided to the shareholder in exchange for its stock; and

(v) Such other information as may be required by the instructions to Form 1099–CAP.

(5) *Furnishing of forms to shareholders.* The Form 1099–CAP filed with respect to each shareholder must be furnished to such shareholder on or before January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property as part of the acquisition of control or the substantial change in capital structure.

(6) *Exempt recipients.* A corporation is not required to file a Form 1099–CAP pursuant to this paragraph (b) of this section with respect to the following shareholders:

(i) Any shareholder who receives solely stock described in paragraph (a)(1)(v)(C) of this section in exchange for its stock in the corporation.

(ii) Any shareholder who is required to recognize gain (if any) as a result of the receipt of cash, stock, or other property if the corporation reasonably determines that the amount of such cash plus the fair market value of such stock and other property does not exceed \$1,000. Stock described in paragraph (a)(1)(v)(C) of this section is not taken into account for purposes of this paragraph (b)(6)(ii).

(iii) Any shareholder described in paragraphs (b)(6)(iii)(A) through (K) of this section if the corporation has actual knowledge that the shareholder is described in one of paragraphs (b)(6)(iii)(A) through (K) of this section or if the corporation has a prop-

erly completed exemption certificate from the shareholder (as provided in § 31.3406(h)–3 of this chapter). The corporation also may treat a shareholder as described in paragraphs (b)(6)(iii) (A) through (J) of this section based on the applicable indicators described in § 1.6049–4(c)(1)(ii).

(A) A tax-exempt organization, as described in § 1.6049–4(c)(1)(ii)(B)(1).

(B) An individual retirement plan, as described in § 1.6049–4(c)(1)(ii)(C).

(C) The United States, as described in § 1.6049–4(c)(1)(ii)(D).

(D) A state, as described in § 1.6049–4(c)(1)(ii)(E).

(E) A foreign government, as described in § 1.6049–4(c)(1)(ii)(F).

(F) An international organization, as described in § 1.6049–4(c)(1)(ii)(G).

(G) A foreign central bank of issue, as described in § 1.6049–4(c)(1)(ii)(H).

(H) A real estate investment trust, as described in § 1.6049–4(c)(1)(ii)(J).

(I) An entity registered under the Investment Company Act of 1940, as described in § 1.6049–4(c)(1)(ii)(K).

(J) A common trust fund, as described in § 1.6049–4(c)(1)(ii)(L).

(K) A corporation, as defined in section 7701(a)(3) (except for corporations for which an election under section 1362(a) is in effect), if the reporting corporation reasonably determines that such corporation is not a broker (as defined in § 1.6045–1(a)(1)) or a record holder for the actual owner of the stock.

(iv) Any shareholder that the corporation, prior to the transaction, associates with documentation upon which the corporation may rely in order to treat payments to the shareholder as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d)(2) or (3). For purposes of this paragraph (b)(6)(iv), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of § 1.1441–1 shall apply by substituting the terms “corporation” and “shareholder” for the terms “withholding agent” and “payee” and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code. The provisions of

§ 1.6049–5(d) shall apply by substituting the terms “corporation” and “shareholder” for the terms “payor” and “payee”. Nothing in this paragraph (b)(6)(iv) shall be construed to relieve a corporation of its withholding obligations under section 1441.

(v) Any shareholder if, on January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property, the corporation did not know and did not have reason to know that the shareholder received such cash, stock, or other property in a transaction or series of related transactions that would result in an acquisition of control or a substantial change in capital structure.

(7) *Coordination with other sections.* No reporting is required under paragraph (b) of this section with respect to amounts that are required to be reported under section 6042 or section 6045, unless the corporation knows or has reason to know that such amounts are not properly reported in accordance with those sections.

(c) *Acquisition of control of a corporation—*(1) *In general.* For purposes of this section, an acquisition of control of a corporation (“first corporation”) occurs if, in a transaction or series of related transactions, either—

(i) Stock representing control of the first corporation is distributed by a second corporation to shareholders of the second corporation and the fair market value of such stock on the date of distribution is \$100,000,000 or more; or

(ii) (A) Before an acquisition of stock of the first corporation (directly or indirectly) by a second corporation, the second corporation does not have control of the first corporation;

(B) After the acquisition, the second corporation has control of the first corporation;

(C) The fair market value of the stock acquired in the transaction and in any related transactions as of the date or dates on which such stock was acquired is \$100,000,000 or more; and

(D) The shareholders of the first corporation (determined without applying the constructive ownership rule of section 318(a)) receive cash, stock, or other property pursuant to the acquisition.

(2) *Control.* For purposes of this section, control is determined in accordance with the first sentence of section 304(c)(1).

(3) *Constructive ownership.* (i) Except as otherwise provided in this section, the constructive ownership rules of section 318(a) (except for section 318(a)(4), providing for constructive ownership through an option to acquire stock), modified as provided in section 304(c)(3)(B), shall apply for determining whether there has been an acquisition of control.

(ii) The determination of whether there has been an acquisition of control shall be made without regard to whether the person or persons from whom control was acquired retain indirect control of the first corporation under section 318(a).

(iii) For purposes of paragraph (c)(1)(ii) of this section, section 318(a) shall not apply to cause a second corporation to be treated as owning, before an acquisition of stock in a first corporation (directly or indirectly) by the second corporation, any stock that is acquired in the first corporation. For example, if the shareholders of a domestic corporation form a new holding company and then transfer their shares in the domestic corporation to the new holding company, the new holding company shall not be treated as having control of the domestic corporation before the acquisition. The new holding company acquires control of the domestic corporation as a result of the transfer. Similarly, if the shareholders of a domestic parent corporation transfer their shares in the parent corporation to a subsidiary of the parent in exchange for shares in the subsidiary, the subsidiary shall not be treated as having control of the parent before the transaction. The subsidiary acquires control of the parent as a result of the transfer.

(4) *Corporation includes group.* For purposes of this paragraph (c), if two or more corporations act pursuant to a plan or arrangement with respect to acquisitions of stock, such corporations will be treated as one corporation for purposes of this section. Whether two or more corporations act pursuant to a plan or arrangement depends on the facts and circumstances.

(5) *Section 338 election.* For purposes of this paragraph (c), an acquisition of stock of a corporation with respect to which an election under section 338 is made is treated as an acquisition of stock (and not as an acquisition of the assets of such corporation).

(d) *Substantial change in capital structure of a corporation—*(1) *In general.* A

corporation has a substantial change in capital structure if it has a change in capital structure (as defined in paragraph (d)(2) of this section) and the amount of any cash and the fair market value of any property (including stock) provided to the shareholders of such corporation pursuant to the change in capital structure, as of the date or dates on which the cash or other property is provided, is \$100,000,000 or more.

(2) *Change in capital structure.* For purposes of this section, a corporation has a change in capital structure if the corporation in a transaction or series of transactions—

(i) Undergoes a recapitalization with respect to its stock;

(ii) Redeems its stock (including deemed redemptions);

(iii) Merges, consolidates or otherwise combines with another corporation or transfers all or substantially all of its assets to one or more corporations;

(iv) Transfers all or part of its assets to another corporation in a title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation; or

(v) Changes its identity, form or place of organization.

(e) *Reporting by successor entity.* If a corporation (“transferor”) transfers all or substantially all of its assets to another entity (“transferee”) in a transaction that constitutes a substantial change in the capital structure of transferor, transferor must satisfy the reporting obligations in paragraph (a) or (b) of this section. If transferor does not satisfy the reporting obligations in paragraph (a) or (b) of this section, then transferee must satisfy those reporting obligations. If neither transferor nor transferee satisfies the reporting obligations in paragraphs (a) and (b) of this section, then transferor and transferee shall be jointly and severally liable for any applicable penalties (see paragraph (g) of this section).

(f) *Receipt of property.* For purposes of this section, a shareholder is treated as receiving property (or as having property provided to it) pursuant to an acquisition of control or a substantial change in capital structure if a liability of the shareholder is assumed in the transaction and, as a result of the transaction, an amount is realized by the shareholder from the sale or exchange of stock.

(g) *Penalties for failure to file.* For penalties for failure to file as required under this section, see section 6652(l). The information returns required to be filed under paragraphs (a) and (b) of this section shall be treated as one return for purposes of section 6652(l) and, accordingly, the penalty shall not exceed \$500 for each day the failure continues (up to a maximum of \$100,000) with respect to any acquisition of control or any substantial change in capital structure. Failure to file as required under this section also includes the requirement to file on magnetic media as required by section 6011(e) and § 1.6011-2. In addition, criminal penalties under sections 7203, 7206, and 7207 may apply in appropriate cases.

(h) *Examples.* The following examples illustrate the application of the rules of this section. For purposes of these examples, assume the transaction is not reported under §§ 1.351-3(b), 1.355-5(a), 1.368-3(a), and sections 6042, 6043(a), or 6045, unless otherwise specified, and assume that the fair market value of the consideration provided to the shareholders exceeds \$100,000,000.

Example 1. The shareholders of X, a domestic corporation and parent of an affiliated group, exchange their X stock for stock in Y, a newly-formed foreign holding corporation. After the transaction, Y owns all the outstanding X stock. The X shareholders must recognize gain (if any) on the exchange of their stock as a result of the application of section 367(a). Because the transaction results in an acquisition of control of X, X must comply with the rules in paragraphs (a) and (b) of this section. If a statement is filed in accordance with § 1.351-3(b) with respect to the transaction, X is not required to attach Form 8806 (or an interim statement) to its return. Regardless of whether a statement is filed in accordance with § 1.351-3(b), X must file a Form 1099-CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the Y stock received by that shareholder, and X must furnish a copy of the Form 1099-CAP to that shareholder.

Example 2. C, a domestic corporation, and parent of an affiliated group merges into D, an unrelated domestic corporation. Pursuant to the transaction, the C shareholders exchange their C stock for D stock or for a combination of short term notes and D stock. The transaction does not satisfy the requirements of section 368, and the C shareholders must recognize gain (if any) on the exchange. Because the transaction results in a substantial change in the capital structure of C, C (or D as the successor to C) must comply with the rules in paragraphs (a) and (b) of this section. C must attach Form 8806 (or an interim statement) to its final income tax return. C (or D as the successor to C) also must file a Form 1099-CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the short term notes (if any) and the fair market value of the D stock

provided to that shareholder, and C (or D) must furnish a copy of the Form 1099-CAP to that shareholder.

Example 3. (i) The facts are the same as in Example (2), except that C reasonably determines that—

(A) The transaction satisfies the requirements of section 368;

(B) The C shareholders who exchange their C stock solely for D stock will not be required to recognize gain (if any) on the exchange; and

(C) The C shareholders who exchange their C stock for a combination of short term notes and D stock will be required to recognize gain (if any) on the exchange solely with respect to the receipt of the short term notes.

(ii) If a statement is filed in accordance with § 1.368-3(a) with respect to the transaction, C is not required to attach Form 8806 (or an interim statement) to its return under paragraph (a) of this section. Regardless of whether a statement is filed in accordance with § 1.368-3(a), C (or D as the successor to C) must comply with the rules in paragraph (b) of this section. With respect to each shareholder who receives a combination of short term notes and D stock, and who is not an exempt recipient, C or D must file a Form 1099-CAP showing the fair market value of the short term notes provided to the shareholder, and C (or D) must furnish a copy of the Form 1099-CAP to that shareholder. The Form 1099-CAP should not show the fair market value of the D stock provided to the shareholder. C and D are not required to file and furnish Forms 1099-CAP with respect to shareholders who receive only D stock in exchange for their C stock.

Example 4. The facts are the same as in Example 3, except the C shareholders receive cash instead of short term notes. The C shareholders exchange their shares through a transfer agent. Under section 6045, the transfer agent is required to report the amount of cash paid to the C shareholders in the transaction. C and D are not required to file information returns under paragraph (b) of this section, unless C or D knows or has reason to know that the transfer agent did not file the required information returns under section 6045.

(i) *Effective date.* This section applies to any acquisition of control and any substantial change in capital structure occurring after December 31, 2001, if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction. If a reporting corporation described in the preceding sentence files its income tax return for the year in which the acquisition of control or the substantial change in capital structure occurs on or before January 13, 2003, such reporting corporation (or successor entity) shall file an interim statement (as described in paragraph (a)(3) of this section) on or before January 31, 2003. The applicability of this section expires on November 14, 2005.

Par 3. Section 1.6045-3T is added to read as follows:

§ 1.6045-3T Information reporting for an acquisition of control or a substantial change in capital structure (temporary).

(a) *In general.* Any broker (as defined in § 1.6045-1(a)(1)) who receives a Form 1099-CAP from a corporation pursuant to § 1.6043-4T as the record holder of stock in such corporation but who is not the actual owner thereof shall file a return of information with respect to the actual owner unless the actual owner is an exempt recipient as defined in § 1.6045-1(c)(3)(i).

(b) *Form, manner and time for making information returns.* The return required by paragraph (a) of this section must be on Forms 1096 and 1099-CAP, or on an acceptable substitute statement. Such forms must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(c) *Contents of return.* A separate Form 1099-CAP must be prepared for each owner showing—

1. The name, address and taxpayer identification number of the actual owner;

2. The number and class of shares in the corporation exchanged by the actual owner;

3. The amount of cash and the fair market value of stock or other property provided to the actual owner in exchange for its stock, that would have been reported by the corporation under § 1.6043-4T if the corporation had provided the Form 1099-CAP directly to the actual owner (rather than to the broker as nominee); and

4. Such other information as may be required by Form 1099-CAP.

(d) *Furnishing of forms to actual owners.* The Form 1099-CAP prepared for each actual owner must be furnished to the actual owner on or before February 28 of the year following the calendar year in which the actual owner receives stock, cash or other property.

(e) *Single Form 1099.* If a broker is required to file a Form 1099 with respect to an owner under both this § 1.6045-3T and § 1.6045-1(b), the broker may satisfy the requirements of both sections by filing and furnishing one Form 1099 that contains all the relevant information, as provided in the instructions to Form 1099-CAP.

(f) *Effective date.* This section applies with respect to any Form 1099-CAP received by a broker after November 13,

2002. The applicability of this section expires on November 14, 2005.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par 4. The authority citation for part 602 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par 5. In section 602.101, paragraph (b) is amended by adding the following en-

tries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers

* * * * *

(b) * * *

CFR part or section where identified and described

Current OMB control No.

* * * * *

1.6043-4T 1545-1812

* * * * *

1.6045-3T 1545-1812

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Robert E. Wenzel,
*Deputy Commissioner of
Internal Revenue.*

Approved November 8, 2002.

Pamela F. Olson,
*Assistant Secretary of the
Treasury (Tax Policy).*