

Information Reporting Relating to Corporate Inversions

Notice 2004-9

SECTION 1. Purpose

This notice announces the extension of certain 2004 deadlines under revised §§ 1.6043-4T and 1.6045-3T of the Income Tax Regulations for filing Form 8806 and furnishing Form 1099-CAP to clearing organizations. This notice also provides information to filers of Forms 1099-CAP and 1099-B to assist in complying with the reporting requirements set forth in revised §§ 1.6043-4T and 1.6045-3T. The 2003 Forms 1099-CAP and 1099-B, and their instructions, do not reflect the provisions of the revised temporary regulations.

SECTION 2. Background

On December 30, 2003, the Internal Revenue Service (Service) issued temporary regulations under sections 6043(c) and 6045 of the Internal Revenue Code (T.D. 9101, 2004-5 I.R.B. _____ [68 FR 75119]). These regulations, which revise temporary regulations issued on November 18, 2002 (T.D. 9022, 2002-2 C.B. 909 [67 FR 69468]), require information reporting if a domestic corporation undergoes an acquisition of control or a substantial change in capital structure after December 31, 2002, if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) of the Internal Revenue Code (Code). Pursuant to the revised regulations, a corporation must file Form 8806, “*Information Return for Acquisition of Control or Substantial Change in Capital Structure*,” reporting and describing the acquisition of control or substantial change in capital structure. In addition, the revised regulations require the corporation to file Form 1099-CAP, “*Changes in Corporate Control and Capital Structure*,” with the Service with respect to each of its shareholders that

is not an exempt recipient, and to furnish Form 1099–CAP to each such shareholder. The regulations also require a broker that holds stock on behalf of a customer in the corporation that the broker knows or has reason to know has engaged in a transaction described in these regulations to file Form 1099–B, “*Proceeds From Broker and Barter Exchange Transactions*,” with the Service with respect to its customer, and to furnish a copy of the Form 1099–B to the customer.

SECTION 3. Extension of Deadlines

Section 6081 of the Code provides that the Secretary may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by the Code or by regulations thereunder. Under the authority of section 6081, the Service is extending the deadlines set forth in revised §§ 1.6043–4T and 1.6045–3T for filing Forms 8806 with the Service and furnishing Forms 1099–CAP to clearing organizations for transactions occurring in calendar year 2003. Forms 8806 otherwise required to be filed with the Service by January 5, 2004, must be filed by January 12, 2004. Forms 1099–CAP otherwise required to be furnished to clearing organizations by January 5, 2004, must be furnished by January 12, 2004. This extension does not apply to any other deadline.

SECTION 4. Information for Filers of Form 1099–CAP

Under revised § 1.6043–4T(b), a reporting corporation must file Form 1099–CAP with respect to its shareholders who are not exempt recipients. The list of exempt recipients is set forth in § 1.6043–4T(b)(5), and includes brokers. Clearing organizations are not exempt recipients under the revised regulations. Therefore, corporations must file Form 1099–CAP with respect to shares held by a clearing organization, and furnish a copy of the form to the clearing organization. Pursuant to § 1.6043–4T(b)(4), Form 1099–CAP must be furnished to clearing organizations by January 5th of the year following the calendar year in which the transaction took place. Pursuant to Section 3 of this notice, Forms 1099–CAP otherwise due on January 5, 2004, must be furnished to clearing organizations no

later than January 12, 2004. Taxpayers, however, are encouraged to comply as soon as possible prior to January 12, 2004.

The Depository Trust Company (DTC) is a clearing organization which holds a large percentage of publicly issued securities, and is likely to receive Forms 1099–CAP pursuant to the provisions of § 1.6043–4T(b). In anticipation of receiving such forms, DTC has established a specific mailing address. DTC requests that Forms 1099–CAP be delivered via express mail or other overnight service to:

Tax Information Reporting Services
Depository Trust & Clearing Corporation
55 Water Street — 25th Floor
New York, NY 10041
(212) 855–4703

The envelope should be marked with the words:

TIME CRITICAL TAX INFORMATION FORM 1099–CAP

DTC will also accept Form 1099–CAP electronically. Forms should be emailed to:

1099CAP@dtcc.com in Adobe Acrobat PDF file format

Furnishing Forms 1099 to payees electronically is permitted pursuant to section 401 of the Job Creation and Worker Assistance Act of 2002, if the rules set forth in § 31.6051–1T(j) are followed.

SECTION 5. Information for Filers of Form 1099–B

Pursuant to revised § 1.6045–3T(a), a broker that holds shares on behalf of a customer in a corporation that the broker knows or has reason to know has engaged in a transaction under § 1.6043–4T(c) or (d) must file an information return with respect to the customer, unless the customer is an exempt recipient, and furnish a copy of the information return to the customer. Revised § 1.6045–3T(c) provides that the broker must use Form 1099–B, along with transmittal Form 1096, for this information reporting requirement. With respect to transactions in 2003, the broker may elect to use Form 1099–CAP in lieu of Form 1099–B.

In completing Form 1099–B, brokers should aggregate all proceeds (cash, stock,

and other property) provided to the customer in Box 2 (Stocks, bonds, etc.). Brokers should use Box 5 (Description) to report the name and address of the corporation which engaged in the transaction and the number and class of shares exchanged by the customers (as required by § 1.6045–3T(d)(2) and (3)).

SECTION 6. DRAFTING INFORMATION

For further information regarding this notice, contact Nancy Rose of the Office of the Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division, at (202) 622–4910 (not a toll-free call).
