



include brokers. The 2003 temporary regulations also required brokers to file an information return reporting the required information with respect to their customers who are not exempt recipients if they know or have reason to know, based on readily available information, that a transaction described in §1.6043-4T(c) or (d) has occurred. The 2003 temporary regulations required Form 1099-B, “*Proceeds From Broker and Barter Exchange Transactions*,” to be used for such reporting. The Form 1099-B was revised in 2004 to include new boxes for the information required under the temporary regulations.

The 2003 temporary regulations were effective only for acquisitions of control and substantial changes in capital structure that occur after December 31, 2002, 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) and the regulations.

#### *Notice 2005-7*

On December 31, 2004, the IRS issued Notice 2005-7, 2005-3 I.R.B. 340, (see §601.601(d)(2) of this chapter) in response to enactment of section 6043A of the Code, Returns Relating to Taxable Mergers and Acquisitions. Section 6043A was added by Section 805 of the American Jobs Creation Act of 2004, Public Law 108-357, (118 Stat. 1418), and provides for information reporting by an acquiring corporation in any taxable acquisition, according to forms or regulations prescribed by the Secretary. Notice 2005-7 stated that taxpayers required to report under Temp. Treas. Reg. §§1.6043-4T and 1.6045-3T must continue to report pursuant to those regulations. The notice observed that section 6043A supplements the information reporting provisions of sections 6043(c) and 6045, and it requested comments on the coordination of section 6043A with the requirements of the 2003 temporary and proposed regulations.

#### **Summary of Comments**

No comments were received in response to publication of the 2003 temporary and proposed regulations. The Treasury Department and the IRS, however, received comments in response to Notice 2005-7. The subject matter of

several of those comments related to issues addressed in the 2003 temporary and proposed regulations. A commentator recommended changes to the reporting obligations under the 2003 proposed regulations in four areas. First, the commentator recommended that reporting corporations furnish to the IRS or to clearing organizations, and the IRS publish, information in addition to that set forth in §1.6043-4T(a)(1)(v) and (a)(2) of the temporary regulations, including (i) a breakdown of the amount of cash, the fair market value of taxable stock or other property, and the number of shares of nontaxable stock received with respect to each share exchanged, and (ii) CUSIP numbers for both the shares exchanged and those received. Second, the commentator recommended that the regulations clearly state that brokers may separately report cash and other property on separate Forms 1099-B. Third, the commentator recommended that the IRS eliminate the requirement for brokers to report the address of corporations and that the IRS build into the final regulations flexibility concerning the content of Form 1099-B. Finally, the commentator recommended that the Form 1099-B revert back to the 2003 version for 2005 and future years and that the regulations be modified in any way necessary to permit this result.

In comments to Notice 2005-7, another commentator also recommended changes in the Form 1099-B, suggesting that the corporation’s name and address become optional data elements.

#### **Explanation of Final Regulations**

With the revisions explained below, the final regulations adopt the 2003 temporary regulations. The final regulations limit the information reporting to transactions in which the reporting corporation or any shareholder is required to recognize gain (if any) under section 367(a). The final regulations make certain clarifying changes to the rules of the temporary regulations and one modification in response to comments.

In the final regulations, the definition of *acquisition of control of a corporation* in §1.6043-4T(c)(1)(i) has been revised to omit transactions where stock representing control of a corporation is

distributed by a second corporation to shareholders of the second corporation because such transactions would not result in a recognition of gain under section 367(a) and the regulations. The rules regarding constructive ownership in §1.6043-4T(c)(3), two or more corporations acting pursuant to a plan or arrangement in §1.6043-4T(c)(4), and section 338 elections in §1.6043-4T(c)(5) have been deleted since those special rules are unnecessary regarding transactions that may result in recognition of gain under section 367(a) and the regulations. The definition of *change in capital structure* in §1.6043-4T(d)(2) has been modified to remove the inclusion of recapitalizations and redemptions since those transactions would not result in a recognition of gain under section 367(a) and the regulations. Finally, *Examples 2 and 3* in §1.6043-4T(h) have been omitted because those examples addressed circumstances beyond section 367(a) and the regulations.

The Treasury Department and the IRS continue to consider the comments received with respect to broker reporting under §1.6045-3T, particularly with respect to appropriate changes to Form 1099-B and that form’s interaction with other reporting obligations. Accordingly, to maintain flexibility in the design of Form 1099-B, the final regulations do not include the explicit requirement that Form 1099-B include the corporation’s address.

The proposed regulations under sections 6043(c) and 6045 issued on December 30, 2003 (and corrected on February 13, 2004) remain outstanding with respect to the transactions not covered by the final regulations. The Treasury Department and the IRS continue to consider the proper implementation of the additional information reporting provided in section 6043A and the coordination of reporting requirements under sections 6043(c), 6043A, and 6045 to transactions not covered by the final regulations.

The final regulations are effective for acquisitions of control and substantial changes in capital structure that occur after December 5, 2005, 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) and the regulations.

## 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, and because the regulation does not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these regulations were 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 regulations is Michael Hara, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

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## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following entries in numerical order to read in part as follows:

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

Section 1.6043-4 also issued under 26 U.S.C. 6043(c).

\* \* \* \* \*

Section 1.6045-3 also issued under 26 U.S.C. 6045. \* \* \*

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

*§1.6043-4 Information returns relating to certain acquisitions of control and changes in capital structure.*

(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, “*Information Return for Acquisition of Control or Substantial Change in Capital Structure*,” in accordance with the instructions to that form. The Form 8806 will request information with respect to the following and such other information specified in the instructions:

(i) *Reporting corporation.* 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, the name, address, and TIN of the common parent of that affiliated group.

(iii) *Acquiring corporation.* 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) and whether the acquiring corporation was newly formed prior to its involvement in the transaction.

(iv) *Information about acquisition of control or substantial change in capital structure.*

(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; and

(C) A description of and a statement of the fair market value of any stock and other property, if any, provided to the reporting corporation’s shareholders in exchange for their stock.

(2) *Consent election.* Form 8806 will provide the reporting corporation with the ability to elect to permit the Internal Revenue Service (IRS) to publish information

that will inform brokers of the transaction and enable brokers to satisfy their reporting obligations under §1.6045-3. The information to be published, whether on the IRS website or in an IRS publication, would be limited to the name and address of the corporation, the date of the transaction, a description of the shares affected by the transaction, and the amount of cash and the fair market value of stock or other property provided to each class of shareholders in exchange for a share.

(3) *Time for making return.* Form 8806 must be filed on or before the 45th day following the acquisition of control or substantial change in capital structure of the corporation, or, if earlier, on or before January 5th of the year following the calendar year in which the acquisition of control or substantial change in capital structure occurs.

(4) *Exception where transaction is reported under section 6043(a).* No reporting is required under this paragraph (a) 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 this paragraph (a) 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)(5) 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 shall file a return of information on Forms 1096, “*Annual Summary and Transmittal of U.S. Information Returns*,” and 1099-CAP, “*Changes in Corporate Control and Capital Structure*,” 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 and who is not an exempt recipient as defined in paragraph (b)(5) of this section. A corporation is not required to file a Form 1096 or 1099-CAP with respect to a clearing organization if the

corporation makes the election described in paragraph (a)(2) of this section.

(2) *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.

(3) *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)(5) of this section). The Form 1099-CAP will request information with respect to the following and such other information as may be specified in the instructions:

(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; and

(iv) The aggregate amount of cash and the fair market value of any stock or other property provided to the shareholder in exchange for its stock.

(4) *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. The Form 1099-CAP filed with respect to a clearing organization must be furnished to the clearing organization on or before January 5th of the year following the calendar year in which the acquisition of control or substantial change in capital structure occurred. A Form 1099-CAP is not required to be furnished to a clearing organization if the reporting corporation makes the election described in paragraph (a)(2) of this section.

(5) *Exempt recipients.* A corporation is not required to file a Form 1099-CAP pursuant to this paragraph (b) with respect to any of the following shareholders that is not a clearing organization:

(i) Any shareholder who receives stock in an exchange that is not subject to gain recognition under section 367(a) and the regulations.

(ii) Any shareholder if the corporation reasonably determines that the total amount of cash and the fair market value of stock and other property received by the shareholder does not exceed \$1,000.

(iii) Any shareholder described in paragraphs (b)(5)(iii)(A) through (M) of this section if the corporation has actual knowledge that the shareholder is described in one of paragraphs (b)(5)(iii)(A) through (M) of this section or if the corporation has a properly 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)(5)(iii)(A) through (M) of this section based on the applicable indicators described in §1.6049-4(c)(1)(ii).

(A) A corporation, as described in §1.6049-4(c)(1)(ii)(A) (except for corporations for which an election under section 1362(a) is in effect).

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

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

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

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

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

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

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

(I) A securities or commodities dealer, as described in §1.6049-4(c)(1)(ii)(I).

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

(K) An entity registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1), as described in §1.6049-4(c)(1)(ii)(K).

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

(M) A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization.

(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 for-

eign 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)(5)(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 using the terms “corporation” and “shareholder” in place of 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 using the terms “corporation” and “shareholder” in place of the terms “payor” and “payee”. Nothing in this paragraph (b)(5)(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 within the meaning of this section.

(6) *Coordination with other sections.* In general, no reporting is required under this paragraph (b) with respect to amounts that are required to be reported under sections 6042 or 6045, unless the corporation knows or has reason to know that such amounts are not properly reported in accordance with those sections. A corporation must satisfy the requirements under this paragraph (b) with respect to any shareholder of record that is a clearing organization.

(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—

(i) 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;

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

(iii) 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 million or more;

(iv) The shareholders of the first corporation receive stock or other property pursuant to the acquisition; and

(v) The first corporation or any shareholder of the first corporation is required to recognize gain (if any) under section 367(a) and the regulations, as a result of the transaction.

(2) *Control.* For purposes of this section, control is determined in accordance with the first sentence of section 304(c)(1). For these purposes the rules of section 318 as modified by the rules of section 958(b) shall apply in determining the ownership of stock.

(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 million or more.

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

(i) The corporation in a transaction or series of transactions—

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

(B) 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

(C) Changes its identity, form or place of organization; and

(ii) The corporation or any shareholder is required to recognize gain (if any) under section 367(a) and the regulations, as a result of the transaction.

(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) and (b) of this section. If transferor does not satisfy one or both of those reporting obligations, then transferee must do so. 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 failure to satisfy 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 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 million. The examples are as follows:

*Example 1.* The shareholders of X, a domestic corporation and parent of an affiliated group, exchange their X stock for stock in Y, a foreign corporation, pursuant to sections 351 and 354. After the transaction, Y owns all the outstanding X stock. Assume that, under section 367(a) and the regulations, the X shareholders must recognize gain (if any) on the exchange of their stock. 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. X must file Form 8806 reporting the transaction. X must also 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. If X elects on the Form 8806 to permit the IRS to publish information regarding the transaction, X is not required to file or furnish Forms 1099-CAP with respect to shareholders that are clearing organizations.

*Example 2.* The facts are the same as in *Example 1*, except X hires a transfer agent to effectuate the exchange. The transfer agent is treated as a broker under section 6045 and is required to report the fair market value of the Y stock received by X's shareholders under §1.6045-3. Under paragraph (b)(6) of this section, X is not required to file information returns under paragraph (b) of this section with respect to a shareholder of record, unless X knows or has reason to know that the transfer agent does not satisfy its information reporting obligation under §1.6045-3 with respect to that shareholder. Thus, if the transfer agent satisfies its information reporting requirements under §1.6045-3 with respect to shareholder I, an individual who receives X stock, X is not required to file a Form 1099-CAP with respect to I. Conversely, if the transfer agent does not have an information reporting obligation under §1.6045-3 with respect to one of X's shareholders of record (for example, a clearing organization that is an exempt recipient under §1.6045-3(b)(2)), or if X knows or has reason to know that the transfer agent has not satisfied its information reporting requirement with respect to a shareholder, then X must provide a Form 1099-CAP to that shareholder.

(i) *Effective date.* This section applies to transactions occurring after December 5, 2005.

#### §1.6043-4T [Removed]

Par. 3. Section 1.6043-4T is removed.

Par. 4. Section 1.6045-3 is added to read as follows:

*§ 1.6045-3 Information reporting for an acquisition of control or a substantial change in capital structure.*

(a) *In general.* Any broker (as defined in §1.6045-1(a)(1)) that holds shares on behalf of a customer in a corporation that the broker knows or has reason to know based on readily available information (including, for example, information from a clearing organization or from information published by the Internal Revenue Service (IRS)) has engaged in a transaction described in §1.6043-4(c) (acquisition of control) or §1.6043-4(d) (substantial change in capital structure) shall file a return of information with respect to the

