

Withdrawal of Previous Proposed Rules; Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations and Notice of Public Hearing

Information Reporting Relating to Taxable Stock Transactions

REG-143321-02; REG-156232-03

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of previous proposed rules; notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: This document withdraws proposed regulations published in the **Federal Register** on November 18, 2002 (REG-143321-02, 2002-2 C.B. 922). In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9101) relating to information reporting relating to taxable stock transactions. This document contains proposed 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 proposed regulations under section 6045 concerning information reporting requirements for brokers with respect to transactions described in section 6043(c). The text of the temporary regulations serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 29, 2004. Outlines of topics to be discussed at the public hearing scheduled for March 31, 2004, at 10 a.m., must be received by March 10, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-156232-03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-156232-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at www.irs.gov/reg. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Nancy L. Rose (202) 622-4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Robin Jones at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The forms referenced in these regulations have been, or will be, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

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.

Books and 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

This document withdraws the Notice of Proposed Rulemaking (REG-143321-02) that was published in the **Federal Register** on November 18, 2002 (67 FR 65496). Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR Part 1) relating to sections

6043 and 6045. The temporary regulations set forth information reporting requirements relating to acquisitions of control and substantial changes in capital structure. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments and these proposed regulations.

On November 18, 2002, the IRS published temporary regulations under section 6043(c) (T.D. 9022, 2002-2 C.B. 909). The transactions covered by the reporting requirement were certain acquisitions of control and substantial changes in the capital structure of a corporation. These regulations required 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. On November 18, 2002, the IRS also published temporary regulations under section 6045, which provided for information reporting with respect to these transactions by brokers (together with the section 6043(c) temporary regulations, the "2002 temporary regulations"). The 2002 temporary regulations were effective for acquisitions of control and substantial changes in capital structure occurring after December 31, 2001, if the reporting corporation or any shareholder was required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction.

The text of the 2002 temporary regulations also served as the text of proposed regulations set forth in a cross-referencing notice of proposed rulemaking published in the Proposed Rules section of the same issue of the **Federal Register** (2002 proposed regulations) (REG-143321-02). The provisions of the proposed regulations were proposed to be effective with respect to any acquisition of control or substantial change in capital structure occurring after the date on which final regulations would be published in the **Federal Register**. The preamble to the notice of proposed rulemaking invited public comments with respect to the potential for duplicate reporting and with respect to the burden of compliance with the reporting requirements.

The IRS received a number of written public comments with respect to the information reporting requirements set forth in the 2002 temporary and proposed regulations. In addition, the IRS met

with representatives of the Information Reporting Program Advisory Committee (IRPAC) and other representatives of the securities industry to discuss their concerns and suggestions for revisions to the regulations.

After considering the issues concerning affected taxpayers, the IRS has decided to revise the 2002 temporary regulations. The revised temporary regulations set forth information reporting rules that will help ensure that brokers and shareholders receive information regarding these corporate transactions, without unduly burdening brokers and other members of the securities industry. The text of the revised temporary regulations also serves as the text of these proposed regulations (reproposed regulations).

Summary of Comments and Explanation of Provisions

The commentators noted certain gaps in the transmission of information under the 2002 temporary and proposed regulations between corporations subject to reporting and brokers. Information reporting by brokers depends upon the effective dissemination of information from the corporation to the reporting community, and broker reporting is difficult to effectuate if there are gaps in the process of transmitting this information.

As provided in the 2002 temporary and proposed regulations, a reporting corporation would file Forms 1099-CAP, "*Changes in Corporate Control and Capital Structure*," with respect to its shareholders of record, including brokers, under §1.6043-4T(b) and proposed §1.6043-4(b). Brokers who received Forms 1099-CAP would then file Forms 1099-CAP with respect to their customers pursuant to §1.6045-3T and proposed §1.6045-3. The commentators pointed out that a large majority of U.S. publicly issued securities are actually held on behalf of brokerage firms through clearing organizations. Pursuant to the 2002 temporary and proposed regulations, clearing organizations would receive Forms 1099-CAP from the reporting corporation; however, because clearing organizations are not treated as brokers, they in turn would not be required under §1.6045-3T and reproposed §1.6045-3 to file Forms 1099-CAP with respect to their

broker-members. Consequently, brokers (who had the requirement to file a Form 1099–CAP upon receiving one) would not receive Form 1099–CAP if they held their shares through a clearing organization. In addition, brokers may not be aware of the requirement to report with respect to a particular corporate transaction, or may have difficulty obtaining the information necessary for reporting. Thus, under the 2002 temporary and proposed regulations, the actual shareholders of the reporting corporation, the broker’s customers, may not receive information returns to assist them in preparing their income tax returns.

To address this issue, commentators suggested an alternative procedure to ensure that brokers receive the required information for reporting and to bridge any potential gaps in the chain of reporting. Commentators recommended that the IRS act as a central repository of information necessary for brokers and issue a publication containing information needed for brokers to satisfy their reporting obligations. Brokers and commercial tax services that publish current developments could access this information, and brokers could use this information in preparing Forms 1099–CAP with respect to their customers. An alternative suggested by commentators was to require the reporting corporation to post essential information for reporting, from its Form 8806, “*Information Return for Acquisition of Control or Substantial Change in Capital Structure*,” to an IRS website.

Based on the comments, revised §1.6043–4T(a)(1)(vi) and repropoed §1.6043–4(a)(1)(vi) provide that reporting corporations may elect on Form 8806 to consent to the publication by the IRS of information necessary for brokers to file information returns with respect to their customers. To provide every corporation with the ability to make this election, the revised temporary regulations require reporting corporations to file Form 8806 even though the corporation may also report the transaction under sections 351, 355, or 368. In order to enable the IRS to publish the information timely, the revised temporary regulations require reporting corporations to file Form 8806 within 45 days after the transaction, and in no event later than January 5 of the year following the calendar year in which the transaction occurs.

The role of clearing organizations was also the subject of comments. Commentators suggested that the regulations utilize existing processes for distributing information to minimize the cost of and the time required for implementing reporting by the industry. Those existing processes include the dissemination of information by clearing organizations. Under current practices, important information regarding corporate transactions (including tax information) is disseminated by clearing organizations to their members. The revised temporary and repropoed regulations try to take advantage of this existing information flow by continuing to require corporations to provide a Form 1099–CAP to clearing organizations that are listed as shareholders of record at the time of an acquisition of control or substantial change in capital structure. It is anticipated that clearing organizations will disseminate information obtained from the Form 1099–CAP to their members and that broker-members will use that information (and information obtained from other sources) to satisfy their own reporting obligations under §1.6045–3T and repropoed §1.6045–3. Under the revised regulations, a broker is required to report information if the broker knows or has reason to know, based on readily available information, that there was an acquisition of control or substantial change in capital structure with respect to shares held by the broker on behalf of a customer. If a clearing organization disseminates information identifying an acquisition of control or a substantial change in capital structure to a broker-member, the broker-member has readily available information about the transaction and must satisfy its reporting obligations under §1.6045–3T and repropoed §1.6045–3 with respect to the transaction.

The revised temporary and repropoed regulations provide that a reporting corporation is not required to file Forms 1099–CAP with respect to its shareholders which are clearing organizations, or to furnish Forms 1099–CAP to such clearing organizations, if the corporation makes the election to permit the IRS to publish information regarding the transaction. The IRS’ publication of such information pursuant to the corporation’s consent will provide readily available information for

brokers, who must satisfy their reporting obligations with respect to the transaction.

Commentators also requested that brokers be permitted to utilize Form 1099–B for reporting under §1.6045–3T and repropoed §1.6045–3, rather than overhaul their systems to report on Form 1099–CAP. The commentators point out that this would also avoid any confusion stemming from the issuance of both types of forms to the same taxpayer in the same transaction. The revised temporary regulations and repropoed regulations provide that Form 1099–B should be used by brokers for reporting under §1.6045–3T and repropoed §1.6045–3. With respect to transactions occurring in 2003, brokers may use either Form 1099–B or 1099–CAP.

Proposed Effective Date

The provisions of these regulations are proposed to be applicable for any acquisition of control and change in capital structure occurring after the date on which these regulations are published in the **Federal Register** as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking 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 regulations do not impose a collection of information 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of

the proposed rules and how they can be made easier to understand. Comments are particularly requested with respect to the ability of brokers to obtain the information necessary for reporting under the proposed rules. All comments will be available for public inspection and copying. A public hearing has been scheduled for March 31, 2004, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the FOR FURTHER INFORMATION CONTACT portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by March 10, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the

deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this notice of proposed rulemaking is Nancy L. Rose, Office of Associate Chief Counsel (Procedure and Administration).

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Withdrawal of a Previous Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking published in the **Federal Register** on November 18, 2002 (REG-143321-02) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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 1.6043-4 is added to read as follows:

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

[The text of proposed §1.6043-4 is the same as the text of §1.6043-4T published elsewhere in this issue of the Bulletin]

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

§1.6045-3 Information reporting for acquisitions of control or substantial changes in capital structure.

[The text of proposed §1.6045-3 is the same as the text of §1.6045-3T published elsewhere in this issue of the Bulletin]

Mark E. Matthews,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on December 29, 2003, 8:45 a.m., and published in the issue of the Federal Register for December 30, 2003, 68 F.R. 75182)