

# Information Reporting Relating to Acquisitions of Control and Substantial Changes in Capital Structure

## Announcement 2003-7

For transactions occurring in 2002, corporations and brokers shall furnish a letter in lieu of Form 1099-CAP.

### SECTION 1. BACKGROUND

On November 18, 2002, the Internal Revenue Service issued temporary regulations under section 6043(c) and 6045 (T.D. 9022, 2002-48 I.R.B. 909 [67 FR 69468]). These regulations require information reporting if a domestic corporation undergoes an acquisition of control or a substantial change in capital structure after December 31, 2001, and gain (if any) is required to be recognized due to the application of section 367(a) as a result of the transaction. In such case, the regulations require the corporation to file Form 8806 (or

interim statement) describing the transaction to the Service. In addition, the regulations require the corporation to file Form 1099-CAP with the Service with respect to each shareholder of record that is not an exempt recipient and to furnish the Form 1099-CAP to each such shareholder. The regulations also require a broker, that holds stock in the corporation on behalf of actual owners, to file Form 1099-CAP with the Service with respect to each actual owner and to furnish Form 1099-CAP to each such owner. For transactions occurring in 2002, corporations must furnish Form 1099-CAP to shareholders on or before January 31, 2003, and brokers must furnish Form 1099-CAP to actual owners on or before February 28, 2003.

### SECTION 2. PENALTY WAIVER

The Service recognizes that sufficient time is necessary for affected corporations and brokers to establish systems needed to capture and report the information required by the temporary regulations. Therefore, for transactions occurring in 2002, the Service will not impose penalties on corporations and brokers that comply with the requirements in the transition rules below.

### SECTION 3. TRANSITION RULES FOR CORPORATIONS FOR TRANSACTIONS OCCURRING IN 2002

.01 A corporation that undergoes an acquisition of control or a substantial change in capital structure (as defined in section 1.6043-4T(c) and (d), respectively) during 2002 for which gain (if any) is required to be recognized due to the application of section 367(a) will satisfy the requirement to furnish Form 1099-CAP to each shareholder of record that is not an exempt recipient (as defined in section 1.6043-4T(b)(6)) by instead furnishing a letter to such shareholder that contains the following language:

On [date], you exchanged shares in [name of corporation] for new shares [and cash and other property] in a transaction that may be subject to United States federal income tax due to the application of section 367(a) of the Internal Revenue Code. Depending on your

individual circumstances, you may be required to report any gain from the exchange on your federal income tax return. You had gain from the exchange if [the cash and] the fair market value on [the date of the exchange] of the new shares [and any other property] you received exceeded your basis in the shares of [name of corporation] that you gave up in the exchange. You are not permitted to claim a loss on your tax return with respect to the exchange.

The legend "Important Tax Return Document Enclosed" must appear in a bold and conspicuous manner on the outside of the envelope containing the letter. The letter must be furnished to the shareholder on or before February 15, 2003.

.02 The corporation is required to file an interim statement with the Service in accordance with section 1.6043-4T(a).

.03 Upon inquiry by a shareholder of record on the date of the transaction (including any clearing organization or broker), the corporation must identify itself as a corporation described in section 3.01 of this announcement.

.04 For transactions occurring in 2002, provided the requirements of this section are satisfied, the corporation is not required to file Form 1099-CAP with the Service with respect to its shareholders, or Form 1096 transmitting Form 1099-CAP. In addition, the corporation is not required to furnish Form 1099-CAP to any of its shareholders.

#### SECTION 4. TRANSITION RULES FOR BROKERS FOR TRANSACTIONS OCCURRING IN 2002

.01 A broker that holds shares in a corporation that the broker reasonably believes, based on readily available information (including, for example, information from a clearing organization), has engaged in a transaction described in section 3.01 of this announcement must provide a letter to each actual owner of such shares that is not an exempt recipient (as defined in section 1.6043-4T(b)(6)) containing the language set forth in section 3.01 of this announcement. A broker that furnishes this letter to the actual owner satisfies the reporting requirements of section 1.6045-3T. The legend "Important Tax Return Document Enclosed" must appear in a bold and conspicuous manner on the out-

side of the envelope containing the letter. The letter must be furnished to the actual owner on or before March 15, 2003.

.02 The broker must satisfy any other reporting obligations the broker may have with respect to the transaction. For example, the broker may be required under section 1.6045-1 of the regulations to report cash proceeds from the transaction on Form 1099-B.

.03 The broker is not required to send a letter under section 4.01 of this announcement to the actual owner if the broker furnishes Form 1099-B to the actual owner showing the amount of any cash and the fair market value as of the date of the transaction of the new shares and of any other property received by the actual owner in the transaction.

.04 For transactions occurring in 2002, provided the requirements of this section are satisfied, the broker is not required to file Form 1099-CAP with the Service with respect to the actual owners, or Form 1096 transmitting Form 1099-CAP. In addition, the broker is not required to furnish Form 1099-CAP to the actual owners of such shares.

#### SECTION 5. DRAFTING INFORMATION

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