

Reporting Organizational Actions Affecting Basis of Issued Securities

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If your company, in 2011, engaged in any transaction that affected the basis of all holders of a particular class of stock, including stock-splits, mergers, reorganizations, spin-offs, split-offs, stock redemptions, and distributions in excess of corporate earnings and profits, then your company has until January 17, 2012 to file a new tax form with the Internal Revenue Service.

The Energy Improvement and Extension Act of 2008, which was enacted on October 3, 2008, added new Internal Revenue Code ("IRC") section 6045B which requires an issuer of a specified security (1) to file an information return with the IRS within 45 days of an organizational action (or, if earlier, January 15 of the year following the year of the organizational action) that affects the basis of the specified securities and (2) to provide holders of record or nominees with written statements regarding such basis impact by January 15 of the year following the year of the organizational action. The reporting rules are generally effective for actions with respect to an issuer's stock on or after January 1, 2011.¹ The rules apply to actions affecting other securities of an issuer, such as notes and bonds, that occur on or after January 1, 2013.

Because the IRS had not finalized a form on which securities issuers could report these transactions, the IRS, in Notice 2011-18, stated that it would not impose penalties on 2011 actions so long as the issuer filed the appropriate form with the IRS and security holders, or disclosed the required information on the issuer's public website, by January 17, 2012. The IRS finally issued such a form on January 5, 2012.

As of the date of this client alert, taxpayers have less than one week to comply with IRC section 6045B with respect to 2011 organizational actions affecting basis of their stock. The basic requirements are briefly summarized below.

Who Must File

Issuers of stock² in a corporation that had an organizational action that affected the basis of the organization's shareholders for that particular class of security.

Exception 1: if all of the security holders are C corporations, charitable organizations, foreign holders, IRAs, Archer MSAs, health savings accounts, or governmental entities.

Exception 2: if the stock was issued in an initial public offering.

Exception 3: an S corporation can satisfy its obligation under IRC section 6045B if it timely provides a Schedule K-1 (Form 1120S) for each shareholder.

What Must Be Filed

Newly published IRS Form 8937, *Report of Organizational Actions Affecting Basis of Securities*, which requires disclosure of identifying information and a description of the organizational action, quantitative effect on basis and applicable tax rules.

How Must the Form be Filed

Issuers of securities have two options:

1. Mail the completed form to the IRS in Ogden, Utah; or
2. Post a copy of the completed form in a readily accessible format in an area of the issuer's website dedicated to this purpose and keep the form accessible to the public for ten years.

The issuer must also provide a copy of the Form 8937 (or a written statement with the same information as the form) to each security holder of record (or nominee) as of the date of the organizational action and all subsequent holders of record, up to the date the copy of the Form 8937 (or written statement) is provided.

However, if the issuer posts a copy of the Form 8937 to its website, then the issuer will not be required to provide a copy (or written statement) directly to each security holder (or nominee).

When to File

Generally, the issuer must file the form with the IRS or publish the form on its public website before the 45th day following the organizational action (or if earlier January 15 of the year following the calendar year of the action).

The issuer must provide copies of the form or written statements in lieu thereof to holders of record by January 15 of the year following the calendar year of the action or publish the information on its public website in accordance with the deadlines set forth above for reporting to the IRS.

However, for organizational actions that occurred in 2011, the issuer will not be penalized so long as the form is filed (or posted to its website) by January 17, 2012.

If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings New York lawyers:

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¹ Issuers of stock with respect to which the average basis method is permitted (e.g., regulated investment companies) are subject to the reporting requirements for organizational actions that occur on or after January 1, 2012.

² This includes any interest treated as stock including American Depository Receipts.