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New Tax Reporting Requirements for Corporate Actions Affecting Stock Basis

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Overview

Beginning in 2011, pursuant to regulations issued under Internal Revenue Code Section 6045B, any domestic or foreign, public or private corporation that completes a corporate action that affects the tax basis in its outstanding stock must report certain information regarding that action. The corporation may comply with these new reporting requirements by either 1) filing a return with IRS and delivering notice to each holder of the affected stock, or 2) posting the required information on its website.

Required Reporting under Section 6045B

Pursuant to Section 6045B and regulations issued thereunder, a corporation must file a return with the IRS describing any corporate action undertaken by it that affects the tax basis of its outstanding stock (such as a stock split, merger, acquisition, recapitalization, or in some cases, a redemption or distribution). The return must describe the corporate action, its quantitative effect on the basis of the stock, and certain other information. The corporation must file the return with the IRS within 45 days after the date of the

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corporate action or, if earlier, by January 15 of the calendar year after the corporate action.

In addition to filing the return with the IRS, the corporation must deliver a written statement containing the same information to each holder of the affected stock, or the holder's nominee, by January 15 of the year after the corporate action.

In lieu of filing the return with the IRS and delivering the information to the affected stockholders, the corporation may post (and maintain for ten years) the required information on its primary public website in an area dedicated to that purpose. Like the return filing deadline, the deadline for posting the required information on the corporation's website is 45 days after the date of the corporate action or, if earlier, by January 15 of the calendar year after the corporate action.

Because the IRS has not yet adopted the form for this information return, the IRS recently provided transitional relief from the reporting deadlines described above. Pursuant to Notice 2011-18, for corporate actions occurring in 2011, the deadline for filing the return with the IRS or posting the information on the corporation's website has been extended to January 17, 2012. The Notice does not, however, relieve the corporation from its obligation to provide the required information to its stockholders by January 15 of the calendar year after the corporate action. The IRS is in the process of developing the form for the information return under Section 6045B. Until the form is adopted by the IRS, the only method of compliance is by posting the required information on the corporation's public website.

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Exceptions to Reporting Requirements

A corporation is not required to furnish the required information to any stockholder who is an exempt recipient. If all of the stockholders are exempt recipients, the requirements of Section 6045B do not apply at all. Exempt recipients include corporations (or entities treated as corporations for federal income tax purposes), tax-exempt organizations, and foreign holders. S corporations, however, are not considered exempt recipients.

Generally, in order to treat a stockholder as an exempt recipient, the corporation must have actual knowledge that the stockholder satisfies the definition of exempt recipient or obtain an exemption certificate from the stockholder asserting that it is an exempt recipient.

An S corporation is deemed to satisfy all of the required reporting requirements if it reports the corporate action affecting the basis of its stock on a timely filed Schedule K-1 (Form 1120S) for each stockholder and timely furnishes copies to all proper parties.

Penalties for Non-compliance

Section 6721 of the Internal Revenue Code imposes a penalty on any corporation that does not comply with the reporting requirements of Section 6045B. The penalty is \$100 for each failure to file properly, with a maximum of \$1,500,000 in any calendar year.

Conclusion

Although the IRS eased the burden of compliance by postponing the deadline for reporting, corporations should be aware of any actions which might trigger these

reporting requirements and plan ahead to meet the January 2012 deadlines. Penalties for failure to comply with the law can be substantial, so corporations should consult an attorney or tax advisor if unsure whether or how the law affects them.

Circular 230 Disclosure To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this memorandum is not intended or written to be used, and cannot be used, for the purpose of avoiding tax related penalties under the Internal Revenue Code or promoting, marketing or recommending to another party any transaction or matter addressed herein.



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