

Administrative, Procedural, and Miscellaneous

Transitional Relief for Section 6045B Issuer Returns and Statements for 2011 Organizational Actions

Part III

Notice 2012-11

PURPOSE

This notice provides transitional relief from information reporting requirements in section 6045B of the Internal Revenue Code that apply to issuers of stock with respect to organizational actions that affect the basis of the stock. This notice provides that posting either Form 8937, Report of Organizational Actions Affecting Basis of Securities, or the required information in a readily accessible format to an issuer's primary public Web site will satisfy an issuer's requirement to file and furnish Form 8937 for organizational actions occurring in 2011. This notice also provides that the Internal Revenue Service will not impose penalties for reporting incorrect information against issuers under sections 6721 or 6722 related to filing and furnishing Form 8937 for 2011 organizational actions provided that they make good-faith efforts in timely posting the Form 8937 or the required information on the issuers' primary public Web sites or filing accurate Forms 8937 and furnishing the corresponding issuer statements.

BACKGROUND

Section 403 of the Energy Improvement and Extension Act of 2008, Div. B of Pub. L. No. 110-343, 122 Stat. 3765, enacted on October 3, 2008, added section 6045B to the Code. Section 6045B provides that, for organizational actions beginning in 2011, an issuer of stock must file a return with the Service to describe any organizational action (such as a stock split, merger, or acquisition) that affects the basis of a specified security. Under section 6045B(d) and section 6045(g)(3)(B), in 2011, a specified security is limited to stock in a corporation. The issuer generally must file the return within 45 days after the organizational action. The issuer must also furnish a corresponding statement to each nominee of the stockholder (or to each stockholder if there is no nominee) by January 15th of the year following the calendar year of the organizational action.

Because January 15, 2012, is a Sunday and January 16, 2012, is a Federal holiday, issuers must furnish the required statements to stockholders or nominees by January 17, 2012. Further, the Service announced that issuers may report 2011 organizational actions without penalty if Form 8937 is filed by January 17, 2012. Notice 2011-18, 2011-11 I.R.B. 549 (March 14, 2011).

An issuer is not required to file an issuer return with the Service or furnish issuer statements to stockholders or nominees if it posts the return on its primary public Web site in a readily accessible format by the filing date. Treas. Reg. § 1.6045B-1(a)(3), (b)(4).

The requirements under section 6045B do not apply to issuers of stock in a regulated investment company until 2012.

TRANSITIONAL INFORMATION REPORTING REQUIREMENTS FOR ISSUERS OF STOCK REPORTING ORGANIZATIONAL ACTIONS TAKEN IN 2011

Section 6721 imposes a penalty on any issuer of stock that does not timely file a correct issuer return with the Service as required by section 6045B(a). Section 6722 imposes a penalty on any issuer of stock that does not timely furnish correct issuer statements to stockholders or nominees as required by section 6045B(c). The Service has learned that a number of questions have arisen following the release of the final Form 8937 and instructions and recognizes that the release date provides a very limited timeframe remaining before the due date of the form.

Accordingly, the Service will permit an issuer to publicly report an organizational action by posting either Form 8937 or the required information in a readily accessible format to an area of its primary public Web site. The Service will treat the issuer as having filed Form 8937 and furnished issuer statements to stockholders or nominees on the date of posting of the Form 8937 or the required information.

Further, the Service will not impose penalties for reporting incorrect information under sections 6721 and 6722 on issuers that must file information returns and furnish statements under section 6045B provided that they make good-faith efforts to timely post the Form 8937 or the required information on their primary public Web sites or file accurate Forms 8937 and furnish the corresponding issuer statements. The potential

impact of the issues addressed in this Notice will be considered in assessing reasonable cause with respect to broker reporting required under section 6045(g).

This transitional relief is limited to reporting organizational actions occurring in 2011. This transitional relief does not apply to issuers of stock in a regulated investment company, which are not subject to the issuer reporting requirements for 2011 organizational actions.

DRAFTING INFORMATION

The principal author of this notice is Carlton King of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, please contact Carlton King at (202) 622-4910 (not a toll-free call).