

Future Developments

For the latest information about developments related to Form 8806 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/form8806.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A reporting corporation must file Form 8806 to report an acquisition of control or a substantial change in the capital structure of a domestic corporation. The reporting corporation or any shareholder is required to recognize gain (if any) under section 367(a) and the related regulations as a result of the transaction.

Definitions

Acquisition of Control of a Corporation

Generally, an acquisition of control of a corporation (first corporation) occurs if, in a transaction or series of related transactions:

- Before an acquisition of stock of the first corporation (directly or indirectly) by the second corporation, the second corporation does not have control of the first corporation;
- After the acquisition, the second corporation has control of the first corporation;
- The fair market value of the stock acquired in the transaction and in any related transactions as of the date or dates on which such stock was acquired is \$100 million or more;
- The shareholders of the first corporation receive stock or other property pursuant to the acquisition; and
- The first corporation or any shareholder of the first corporation is required to recognize gain (if any) under section 367(a) and the related regulations, as a result of the transaction.

Control. Control means the ownership of stock possessing at least 50% of the total combined voting power of all classes of stock entitled to vote or at least 50% of the total value of shares of all classes of stock.

Substantial Change in Capital Structure of a Corporation

A corporation has a substantial change in capital structure if it has a change in capital structure and the amount of any cash and the fair market value of any other property (including the value of any stock) provided to the shareholders of

the corporation pursuant to the change in capital structure, as of the date or dates on which the cash or other property is provided, is \$100 million or more. Generally, a corporation has a change in capital structure if:

1. The corporation in a transaction or series of transactions:
 - Merges, consolidates, or otherwise combines with another corporation or transfers all or substantially all of its assets to one or more corporations;
 - Transfers all or part of its assets to another corporation in a Title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation; or
 - Changes its identity, form, or place of organization; and
2. The corporation or any shareholder is required to recognize gain (if any) under section 367(a) and the related regulations, as a result of the transaction.

Receipt of property. A shareholder is treated as receiving property (or as having property provided to it) related to an acquisition of control or a substantial change in capital structure if a liability of the shareholder is assumed in the transaction and, as a result of the transaction, an amount is realized by the shareholder from the sale or exchange of stock.

Reporting Corporation

A reporting corporation is a corporation whose stock was acquired in an acquisition of control or that had a substantial change in its capital structure.

Acquiring Corporation

The acquiring corporation is any corporation that acquired control of the reporting corporation or received assets from the reporting corporation pursuant to a substantial change in capital structure of the reporting corporation.

Who Must File

A reporting corporation is required to file Form 8806 if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) to the transaction.

If the reporting corporation transfers all or substantially all of its assets to an acquiring corporation in a transaction that constitutes a substantial change in the capital structure of the reporting corporation and the reporting corporation does not file Form 8806, then the acquiring corporation must file Form 8806. If neither corporation files Form 8806, both corporations are jointly and severally liable for any applicable penalties. See *Penalties for Failure To File* below.

Corporations Not Required To File

Do not file Form 8806:

- For transactions that were properly reported under section 6043(a); or
- If the reporting corporation reasonably determines that all of its shareholders who receive cash, stock, or other property related to the acquisition of control or substantial change in capital structure are exempt recipients under Regulations section 1.6043-4(b)(5).

When To File

File Form 8806, within 45 days after the transaction, or if earlier by January 5th of the year following the calendar year in which the acquisition of control or substantial change in capital structure occurred.

Where To File

Mail Form 8806 to:

Internal Revenue Service
Large Business and International Division
Attention: PFTS
1111 Constitution Ave., NW
Washington, DC 20224

Penalties for Failure To File



Form 8806 and all Forms 1099-CAP, Changes in Corporate Control and Capital Structure, required to be filed under Regulations sections 1.6043-4(a) and (b) will be considered as one return for purposes of the failure to file penalty under section 6652(l).

If a correct Form 8806 is not filed by the due date of the corporation's income tax return, including extensions, it may be penalized \$500 for each day the return is late, up to a maximum of \$100,000. The penalty will not be imposed if the corporation can show that the failure to file on time was due to reasonable cause. See the corporation's income tax return for information on reasonable cause.

Additional penalties may apply under sections 7203, 7206, and 7207.

Note: Failure to file also includes the requirement to file on magnetic media (such as electronic filing) as required by section 6011(e) and Regulations section 301.6011-2.

Information Returns Regarding Shareholders

A corporation required to file Form 8806 also must file Form 1099-CAP for certain shareholders of record who receive cash or other property (including stock) in exchange for their stock in the reporting corporation due to the acquisition of control or the substantial change in capital structure. See Form 1099-CAP for more information.

Specific Instructions

Employer identification number (EIN).

An EIN must be included for each corporation identified. An EIN is not required if the corporation does not have, and is not otherwise required to have, an EIN.

Common parent of the reporting

corporation. If the reporting corporation was a subsidiary member of a consolidated group immediately prior to the reportable transaction, complete lines 2a and 2b.

Common parent of the acquiring

corporation. If the acquiring corporation was a subsidiary member of a consolidated group at the time of the change in control or substantial change in capital structure, complete lines 4a and 4b.

Part IV—Consent Election

A reporting corporation may elect to consent to the IRS publication (on the IRS website and/or an IRS publication) of information included on this form, to be limited to the name and address of the corporation, the date of the transaction, a description of the shares affected by the transaction, and the amount of cash and the fair market value of any property provided to shareholders in exchange for a share. See Regulations section 1.6043-4(a)(2).

Corporations that elect to consent to the publication aren't required to file Form 1099-CAP with respect to shareholders that are clearing organizations, or to furnish Form 1099-CAP to such organizations. See Regulations section 1.6043-4(b)(1) and (4).

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for business taxpayers filing this form is approved under OMB control number 1545-0123 and is included in the estimates shown in the instructions for their business income tax return.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can send us comments from www.irs.gov/formspubs/. Click on "More Information" and then on "Give us feedback." Or you can write to the Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the tax form to this address. Instead, see *Where To File*, earlier.