

implementing reporting by the industry. Those existing processes include the dissemination of information by clearing organizations. Under current practices, important information regarding corporate transactions (including tax information) is disseminated by clearing organizations to their members. The new temporary regulations try to take advantage of this existing information flow by continuing to require corporations to provide a Form 1099-CAP to clearing organizations that are listed as shareholders of record at the time of an acquisition of control or substantial change in capital structure. It is anticipated that clearing organizations will disseminate information obtained from the Form 1099-CAP to their members and that broker-members will use that information (and information obtained from other sources) to satisfy their own reporting obligations under revised § 1.6045-3T. Under the revised temporary regulations, a broker is required to report information if the broker knows or has reason to know, based on readily available information, that there was an acquisition of control or substantial change in capital structure with respect to shares held by the broker on behalf of a customer. If a clearing organization disseminates information identifying an acquisition of control or a substantial change in capital structure to a broker-member, the broker-member has readily available information about the transaction and must satisfy its § 1.6045-3T reporting obligations with respect to the transaction.

The revised temporary regulations provide that a reporting corporation is not required to file Forms 1099-CAP with respect to its shareholders which are clearing organizations, or to furnish Forms 1099-CAP to such clearing organizations, if the corporation makes the election to permit the IRS to publish information regarding the transaction. The IRS' publication of such information pursuant to the corporation's consent will provide readily available information for brokers, who must satisfy their reporting obligations with respect to the transaction.

Commentators also requested that brokers be permitted to use Form 1099-B, "Proceeds from Broker and Barter Exchange Transactions," for reporting under § 1.6045-3T, rather than overhaul their systems to report on Form 1099-CAP. The commentators point out that this would also avoid any confusion stemming from the issuance of both types of forms to the same taxpayer in the same transaction. The revised

temporary regulations provide that Form 1099-B should be used by brokers for reporting under § 1.6045-3T. With respect to transactions occurring in 2003, brokers may use either Form 1099-B or 1099-CAP.

#### Explanation of Provisions

The revised temporary regulations require a domestic corporation involved in certain large taxable transactions to file Form 8806 reporting and describing such transactions. The revised temporary regulations require the filing of Form 8806 within 45 days following an acquisition of control or substantial change in capital structure, as defined in §§ 1.6043-4T(c) and (d), or, if earlier, by January 5th of the year following the calendar year in which such event occurred.

The revised temporary regulations do not change the definition of *acquisition of control* or *substantial change in capital structure* as set forth in the 2002 temporary regulations. An acquisition of control of a corporation is defined as a transaction or series of related transactions in which stock representing control of that corporation is distributed by a second corporation or in which stock representing control of that corporation is acquired (directly or indirectly) by a second corporation and the shareholders of the first corporation receive cash, stock or other property. For these purposes, control is determined in accordance with the first sentence of section 304(c)(1). With certain limitations, the constructive ownership rules of section 318(a) apply to determine ownership. Acquisitions of control within an affiliated group are excepted from this definition, as are acquisitions in which the fair market value of the stock acquired in the transaction or series of related transactions is less than \$100,000,000.

A corporation has a substantial change in its capital structure if the corporation in a transaction or series of related transactions (a) undergoes a recapitalization with respect to its stock, (b) redeems its stock, (c) merges, consolidates or otherwise combines with another entity or transfers substantially all of its assets to one or more entities, (d) 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 (e) changes its identity, form or place of organization. Transactions in which the amount of any cash plus the fair market value of any property (including stock) provided to shareholders of the corporation is less than \$100,000,000

are excepted from this definition, as are transactions within an affiliated group.

The revised temporary regulations require a domestic corporation involved in the specified transactions to issue, with respect to each of its shareholders of record, a Form 1099-CAP reporting the amount of any cash plus the fair market value of any property (including certain stock) exchanged in the transaction. Corporations are not required to report the fair market value of any stock provided to a shareholder if the corporation reasonably determines that the receipt of such stock would not cause the shareholder to recognize gain (if any). Corporations also are not required to report amounts distributed to certain exempt recipients. The list of exempt recipients has been expanded to include brokers.

Penalties under section 6652(l) may be imposed for failing to file required returns under section 6043(c) (including failure to file on magnetic media, as required under section 6011(e) and § 1.6011-2). The penalty under section 6652(l) is \$500 for each day the failure continues, but the total amount imposed with respect to a return cannot exceed \$100,000. The revised temporary regulations provide that the information returns required under these regulations shall be treated as one return for purposes of the section 6652(l) penalty, so that the penalty shall not exceed \$500 per day (\$100,000 in total) with respect to any acquisition of control or change in capital structure. Further, as provided in section 6652(l), such penalty does not apply if the failure is due to reasonable cause. Until regulations are promulgated under section 6652(l) to set forth specific standards for determining reasonable cause, the IRS will use the reasonable cause standards set forth in § 301.6724-1 as a guideline for determining reasonable cause.

The 2002 temporary regulations under section 6045 required a broker who, as the record holder of stock, received a Form 1099-CAP from a corporation pursuant to the reporting requirements of § 1.6043-4T to file a Form 1099-CAP with respect to the actual owner and furnish such Form 1099-CAP to the actual owner. Under the revised temporary regulations, brokers should not receive Forms 1099-CAP from a corporation and are not required to issue Forms 1099-CAP. Instead, revised § 1.6045-3T requires a broker that knows or has reason to know, based on readily available information, that a transaction described in § 1.6043-4T(c) or (d) has occurred to file an information return reporting the required information with respect to its