

2004



Department of the Treasury
Internal Revenue Service

Instructions for Form 1099-CAP

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

What's New for 2004

Revised Temporary Regulations section 1.6043-4T, T.D. 9101, was issued December 30, 2003, and includes the following changes to Form 1099-CAP reporting:

- A corporation that is required to file **Form 8806**, Information Return for Acquisition of Control or Substantial Change in Capital Structure, under revised Temporary Regulations section 1.6043-4T, must file **Form 1099-CAP**, Changes in Corporate Control and Capital Structure, with the IRS and furnish a copy to each shareholder who receives cash, stock, or other property as a result of the acquisition of control or substantial change in capital structure (under section 367(a)) and who is not an exempt recipient. However, if the corporation can reasonably determine that the receipt of such stock would not cause the shareholder to recognize gain, then the corporation is not required to report the fair market value of any stock provided to a shareholder.
- The list of exempt recipients has been expanded and includes brokers.
- Brokers will not receive Forms 1099-CAP from a corporation and are not required to issue Form 1099-CAP. Instead, a broker who has reason to know, based on readily available information, that a transaction described in 1.6043-4T(c) or (d) has occurred, is required to file **Form 1099-B**, Proceeds From Broker and Barter Exchange Transactions. See the **2004 Instructions for Form 1099-B** for reporting information.
- Corporations are required to furnish copies of Forms 1099-CAP to clearing organizations by January 5 of the year following the year in which the transaction took place.

An Item To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

Specific Instructions for Form 1099-CAP

File **Form 1099-CAP**, Changes in Corporate Control and Capital Structure, for shareholders of a corporation if control of the corporation was acquired or it underwent a substantial change in capital structure. Revised Temporary Regulations section 1.6043-4T(b) requires you to report this information to the IRS and to shareholders on Form 1099-CAP. Form 1099-CAP is furnished to shareholders who receive cash, stock, or other property from an acquisition of control or a substantial change in capital structure.

When To File

File Form 1099-CAP with the IRS by February 28, 2005 (March 31, 2005, if filed electronically); furnish the statement to shareholders by January 31, 2005.

Special reporting date—clearing organizations.

The revised temporary regulations require a corporation to file Form 1099-CAP and furnish a copy to each of its shareholders who receives any stock or other consideration in the transaction and who is not an exempt recipient. A clearing organization, such as the Depository Trust Company (DTC), is not an exempt recipient. The corporation is therefore required to file and furnish a copy of Form 1099-CAP to a clearing organization with respect to shares held by the clearing organization unless it makes a consent election, as discussed below. Furnish Form 1099-CAP to the clearing organization by January 5 of the year following the calendar year in which the transaction took place. If you are furnishing the DTC with Forms 1099-CAP, see Notice 2004-9, 2004-4 I.R.B. 334, for specific mailing requirements.

Who Must File

A domestic corporation that is required to file Form 8806, Statement of Acquisition of Control or Change in Capital Structure, must file Form 1099-CAP with the IRS and furnish a copy to each shareholder who receives any stock or other consideration in the transaction and who is not an exempt recipient. Corporations do not file Form 1099-CAP under one of the following conditions:

- The transaction involves the acquisition of control within an affiliated group or involves stock valued at less than \$100 million. See revised Temporary Regulations section 1.6043-4T for more information.
- The corporation makes the consent election on Form 8806. Under the election, the corporation is not required to file Form 1099-CAP with respect to shares held by a clearing organization because it allows the IRS to publish information necessary for brokers to meet their reporting obligations under Treasury Regulations section 1.6045-3T.

- The corporation properly reports the transaction under section 6043(a).
- Information returns are filed under section 6042 (Form 1099-DIV) or section 6045 (Form 1099-B), unless the corporation knows or has reason to know that such returns were not filed.

Exempt Recipients

The corporation is not required to file Form 1099-CAP for the following shareholders including brokers who are also exempt:

- Any shareholder who receives only stock for its stock in the corporation.
- Any shareholder whose amount of cash plus the fair market value (FMV) of any stock and other property does not exceed \$1,000.
- Any shareholder from whom the corporation has received a properly completed exemption certificate.
- Any one of the following:
 1. A corporation, except a subchapter S corporation;
 2. A tax-exempt organization;
 3. An individual retirement account (IRA);
 4. The U.S. government or a state;
 5. A foreign government, an international organization, or a foreign central bank of issue;
 6. A real estate investment trust (REIT);
 7. A regulated investment company (RIC);
 8. A securities or commodities dealer;
 9. An entity registered under the Investment Company Act of 1940;
 10. A common trust fund; or
 11. A financial institution such as a bank, savings and loan, credit union, or similar organization.
- Any foreign person the corporation associates with a valid **Form W-8BEN**, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, or other documentation upon which the corporation relies in order to treat the shareholder as a foreign beneficial owner or foreign payee. See Regulations section 1.6049-5(c) for more information.



Corporations are not relieved of their withholding obligations on nonresident aliens under section 1441.

Acquisition of Control

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

- The stock representing control of the first corporation is distributed by a second corporation to shareholders of the second corporation and the FMV of such stock on the date of distribution is \$100 million or more; **or**
- Before an acquisition of stock of the first corporation (directly or indirectly) by a 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 FMV 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; and the shareholders of the first corporation (determined without applying the constructive ownership rule of section 318(a)) receive cash, stock, or other property pursuant to the acquisition.

For these purposes, **control is** defined as the ownership of stock possessing at least 50 percent of the

total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of shares of all classes of stock.

See Form 8806 and Temporary Regulations section 1.6043-4T(c) for details and special rules with respect to constructive ownership of stock.

Section 338 election. An acquisition of stock of a corporation under which a section 338 election is made is treated as an acquisition of stock and not as an acquisition of the assets of the corporation.

Substantial Change in Capital Structure

A change in capital structure occurs if a corporation takes part in one or more of the following transactions:

- Recapitalizes its stock;
- Redeems its stock (including deemed redemptions);
- 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 under bankruptcy proceedings including distributing its stock or securities; or
- Changes its identity, form, or place of organization.

Penalties for Failure To File

The penalties under section 6652(l) for failure to file information returns under section 6043(c) apply. For purposes of the 6652(l) penalty, Form 8806 and all Forms 1099-CAP required to be filed are treated as one return. Thus, the penalty will not exceed \$500 for each day the failure continues, up to a maximum of \$100,000, for any acquisition of control or any substantial change in capital structure. If a corporation (transferor) transfers all or substantially all of its assets to another entity (transferee) and is required to file Form 1099-CAP, the transferor must satisfy the reporting requirements. If the transferor fails to file Form 1099-CAP, then the transferee must meet the filing requirements. If the filing requirements are not met by either the transferor or transferee, then both are jointly and severally liable for the applicable penalties.

Failure to file Forms 1099-CAP also includes the requirement to file on magnetic media or electronically. For more information on penalties under sections 6011 and its regulations, see the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.

Statement to Shareholder

If required to file form 1099-CAP, you must provide a statement to the shareholder. For more information about the requirement to furnish a statement to the shareholder, see part **H** in the General Instructions for Forms 1099, 1098, 5498, and W-2G.

Name, Address, Telephone Number, and TIN

Generally this will be the reporting corporation's information and employer identification number (EIN).

Box 1. Date of Sale or Exchange

Enter the trade date of the sale or exchange, actually or constructively received.

Box 2. Aggregate Amount Received

Enter the aggregate amount of cash, stock, and other property received in exchange for the number of shares exchanged in the reporting corporation.

Box 3. No. of Shares Exchanged

Enter the number of shares the shareholder exchanged in the reporting corporation for cash or other property received.

Box 4. Classes of Stock Exchanged

Enter the class or classes of stock (e.g., preferred, common, etc.) exchanged in the reporting corporation for cash or other property received. Abbreviate the class to fit the entry. For example, you may enter "C" for common stock, "P" for preferred, or "O" for other. Also, abbreviate any subclasses.

Box 6. Check the Box if Shareholder Cannot Take a Loss on Their Tax Return Based on the Amount in Box 2

This box must be checked if the reporting corporation reasonably determines that the exchange is part of a transaction described in section 367(a) for which shareholders are required to recognize gain (if any) but are not allowed to claim a loss.