

## Deadline January 17 for Report of Organizational Actions Affecting Basis of Securities

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*White and Williams Tax and Estate Alert*

January 17, 2012 marks an important reporting deadline for corporations that engaged in a transaction in 2011 that affects the basis of its stock. Corporations that experienced a stock split, spinoff, merger, acquisition, non-taxable cash or stock distribution, distribution not treated as a dividend, or similar recapitalization **must file Form 8937 and provide a copy to each of its shareholders by Tuesday, January 17, 2012**. The IRS has provided little time to comply with this reporting and notice requirement (the final Form and Instructions thereto were released just days ago), yet formal administrative relief is unlikely to be forthcoming.

Transitional relief is available with respect to transactions occurring in 2011 only. Obligations incident to such transactions can be met by posting a copy of Form 8937 online, as more fully explained below. Going forward, however, this option will not be available.

### Who Must Report

Under Internal Revenue Code section 6045B, an issuer of a “specified security” that takes an “organizational action” that affects the basis of that security must file Form 8937. A specified security is any share of stock in a corporation (or entity treated as a corporation for federal tax purposes) and any interest treated as stock. For the reporting requirement to attach, the organizational action must affect the basis of all holders of the security or all holders of a class of the security.

### What and When to File

Form 8937 must be filed with the IRS on or before the 45th day following the organizational action giving rise to the obligation or, if earlier, January 15th of the following year. A copy of Form 8937 must be sent to each security holder on or before January 15 of the year following the organizational action.

Given the IRS’s delay in publishing the final Form 8937, the above requirements are relaxed for transactions occurring in 2011 only. For 2011 transactions, both the filing and notice requirements can be fulfilled by simply posting a copy of the completed Form 8937 in a readily accessible format in an area of the issuer’s primary public website dedicated to this purpose. This must still occur by Tuesday, January 17, 2012. Note that the deadline is January 17 because January 15 was a Sunday and January 16 is a federal holiday.

The IRS will not impose penalties for reporting incorrect information provided the issuer makes a good faith effort to timely post the required information. Penalties will be imposed, however, for failure to file the Form and furnish copies to shareholders (or to post the form online, as the case may be).

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For taxpayers taking advantage of the transitional relief, the notice must remain accessible online to the public for 10 years (it must remain on a successor company's website where necessary).

### **Exemptions and Special Rules**

An issuer is exempt from the above requirements if all holders of the security are exempt recipients. Exempt recipients include C corporations, S corporations (for 2011 only), charitable organizations, foreign stockholders, IRAs, Archer MSAs, health savings accounts and certain government entities. The Treasury Regulations provide more examples of exempt recipients.

An acquiring or successor entity of an issuer must satisfy the Form 8937 requirements if the issuer does not. Joint and several liability applies.

S corporations may satisfy the reporting requirement by reporting the effect of an organizational action on timely filed Schedules K-1 (Shareholder's Share of Income, Deductions, Credits, etc.) for each shareholder, and timely providing copies of the same to all proper parties.

By design, this alert does not cover all possible circumstances under which a Form 8937 obligation is triggered. If you think the requirements addressed herein may apply to your business, please contact White and Williams LLP or your tax advisor.

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