

2003



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 2003

Temporary Regulations section 1.6043-4T(b) requires a corporation to file Form 1099-CAP if control of the corporation was acquired or it underwent a substantial change in capital structure. In addition, Regulations section 1.6045-3T requires brokers, who as record holder of stock receive Form 1099-CAP from a corporation reporting under Regulations section 1.6043-4T, to file Form 1099-CAP with the IRS and actual owners.

An Item To Note

In addition to these specific instructions, you should also use the **2003 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 Web Site at www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

Specific Instructions for Form 1099-CAP

File **New 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. New 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 March 1, 2004 (March 31, 2004, if filed electronically); file the statement to shareholders by February 2, 2004 (March 1, 2004, if filed by a broker).

Who Must File

A domestic corporation that undergoes a transaction covered by the temporary regulations is required to report to shareholders the fair market value (FMV) of any stock and other consideration received by the shareholders in the transaction. Transactions involving the acquisition of

control within an affiliated group or involving stock valued at less than \$100 million are not required to be reported. The corporation is also required to file **Form 8806**, Statement of Acquisition of Control or Change in Capital Structure, with its income tax return describing these transactions. See Temporary Regulations section 1.6043-4T(a) for more information. Corporations undergoing transactions covered under Temporary Regulations section 1.6043-4T that have properly reported the transactions in accordance with sections 351, 355, 368, or 6043(a) are not required to file Form 8806. However, corporations are still subject to the Form 1099-CAP filing requirements. Corporations that must report such transactions under section 6043(a) are not required to file Form 8806 or Forms 1099-CAP, provided the corporation properly reports the transaction under section 6043(a). Corporations do not need to file Form 1099-CAP, if information returns are required to report these amounts under sections 6042 (Form 1099-DIV) or 6045 (Form 1099-B), unless the corporation knows that such returns were not filed.

Brokers. Under Regulations section 1.6045-3T, brokers, who as the record holder of the stock receive Form 1099-CAP from a corporation, must furnish Form 1099-CAP to the actual shareholder.

Combined reporting. If you are required to file Form 1099-B to report cash proceeds and Form 1099-CAP to report noncash (stock or property) proceeds for a shareholder from an acquisition of control or substantial change in capital structure that are from the same transaction, then it is not necessary to file both Forms 1099-B and 1099-CAP. You will meet your Form 1099-B filing requirement for the shareholder by reporting all cash and noncash proceeds from this transaction on Form 1099-CAP. However, if you file both Forms 1099-B and 1099-CAP, make no Form 1099-B related entries on Form 1099-CAP.

Exempt Recipients

The corporation is not required to file Form 1099-CAP for the following shareholders:

- Any shareholder who receives only stock for its stock in the corporation if the corporation reasonably determines that the shareholder is not required to recognize gain (if any) from the receipt of such stock for U.S. Federal tax purposes.
- Any shareholder whose amount of cash plus the FMV of any stock and other property does not exceed \$1,000.
- Any one of the following:
 1. A tax-exempt organization;
 2. An individual retirement account (IRA);
 3. The U.S. government or state;
 4. A foreign government, an international organization, or a foreign central bank;
 5. A real estate investment trust (REIT);
 6. A regulated investment trust (RIC);

- 7. A common trust fund; or
- 8. A corporation defined in section 7701(a)(3), except for a corporation that is a broker or the record holder of stock for the actual owner.
 - Any foreign person who 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 except for a corporation that is a broker or the record holder of stock for the actual owner.

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 a least 50 percent of the total value of shares of all classes of stock.

See 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 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 section 6011 and its regulations, see the **2003 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

Brokers. Brokers who fail to meet the reporting requirements are subject to penalties under sections 6721 and 6722. See the General Instructions for Forms 1099, 1098, 5498, and W-2G for more information.

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). However, brokers who are furnishing the actual owner with the required statement must enter their own name and TIN, not that of the corporation. Brokers must enter the reporting corporation's information in Box 10.

Check if Filed by Broker

You will not be subject to penalties under section 6652(l) if you are a broker and check the box (see **Who Must File** on CAP-1).

2nd TIN Not.

If you are a broker, you may enter an "X" in this box if you were notified by the IRS twice within 3 calendar years that the payee provided an incorrect taxpayer identification number (TIN). If you check this box, the IRS will not send you any further notices about this account.

Check if Shareholder Cannot Take a Loss on Their Tax Return

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.

Box 1. Date of Sale or Exchange

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

Box 2. CUSIP No.

If you are a broker, enter the CUSIP (Committee on Uniform Security Identification Procedures) number of the obligation.

Box 3. Cash Received

Enter the amount of cash received in exchange for the number of shares exchanged in the reporting corporation. To determine the cash received amount, you may take into account commissions and option premiums if this treatment is consistent with your books. You may not take into account state and local transfer taxes. Check the applicable box to indicate which amount has been reported to the IRS.

Box 4. Federal Income Tax Withheld

If you are a broker, enter backup withholding. For example, persons who have not furnished their TIN to you in the manner required are subject to withholding at a 30% rate on certain amounts required to be reported on this form. See **Form W-9**, Request for Taxpayer Identification Number and Certification, for information on backup withholding.

Box 5. No. of Shares Exchanged

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

Box 6. (Reserved)**Box 7. Class of Stock Exchanged**

Enter the class 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 8. FMV of Stock Received

Enter the FMV of any stock provided to the shareholder in exchange for the reporting corporation's stock if the reporting corporation reasonably determines that the shareholder would be required to recognize gain (if any) on the receipt of the stock.

Box 9. FMV of Other Property Received

Enter the FMV of any property (other than stock) provided to the shareholder in exchange for the reporting corporation's stock.

Box 10. Description

If you are a broker, enter the name and EIN of the reporting corporation. If necessary, abbreviate the name so that it fits within Box 10.