

this section, see section 6652(d) and the regulations thereunder.

(d) *Definitions.* (1)(i) The term “substantial contraction”, as used in this section, shall include any partial liquidation or any other significant disposition of assets, other than transfers for full and adequate consideration or distributions out of current income. For purposes of this subparagraph, the term “significant disposition of assets” shall not include any disposition for a taxable year where the aggregate of—

(A) The dispositions for the taxable year and

(B) Where any disposition for the taxable year is part of a series of related dispositions made during such prior taxable years, the total of the related dispositions made during prior taxable years, is less than 25 percent of the fair market value of the net assets of the organization at the beginning of the taxable year (in the case of (A) of this subdivision) or at the beginning of the first taxable year in which any of the series of related dispositions was made (in the case of (B) of this subdivision). A “significant disposition of assets” may result from the transfer of assets to a single organization or to several organizations, and it may occur in a single taxable year (as in (A) of this subdivision) or over the course of two or more taxable years (as in (B) of this subdivision). The determination whether a significant disposition has occurred through a series of related dispositions (within the meaning of (B) of this subdivision) will be determined from all the facts and circumstances of the particular case. Ordinarily, a distribution described in section 170(b)(1)(D)(ii) shall not be taken into account as a significant disposition of assets within the meaning of this subparagraph.

(ii) The provisions of this subparagraph may be illustrated by the following examples:

*Example 1.* M, an organization described in section 501(c)(4), is on the calendar year basis. It has net assets worth \$100,000 as of January 1, 1971. In 1971, in addition to distributions out of current income, M transfers \$10,000 to N, \$10,000 to O, and \$10,000 to P. Such dispositions to N, O, and P are not distributions described in section 170(b)(1)(E)(ii). N, O, and P are all organizations described in section 501(c)(4). Under

subdivision (i)(a) of this subparagraph, M has made a significant disposition of its assets in 1971 since M has disposed of more than 25 percent of its net assets (with respect to the fair market value of such assets as of January 1, 1971). Thus, M is subject to the provisions of section 6043(b) and this section for the year 1971.

*Example 2.* U, a tax-exempt private foundation on the calendar year basis, has net assets worth \$100,000 as of January 1, 1971. As part of a series of related dispositions in 1971 and 1972, U transfers in 1971, in addition to distributions out of current income, \$10,000 to private foundation X and \$10,000 to private foundation Y, and in 1972, in addition to distributions out of current income, U transfers \$10,000 to private foundation Z. Such dispositions to X, Y, and Z are not distributions described in section 170(b)(1)(E)(ii). Under subdivision (i) of this subparagraph, U is treated as having made a series of related dispositions in 1971 and 1972. The aggregate of the 1972 disposition (under subdivision (i)(a) of this subparagraph) and the series of related dispositions (under subdivision (i)(b) of this subparagraph) is \$30,000, which is more than 25 percent of the fair market value of U's net assets as of the beginning of 1971 (\$100,000), the first year in which any such disposition was made. Thus, U has made a significant disposition of its assets and is subject to the provisions of section 6043(b) and this section for the year 1972.

*Example 3.* Assume in Example (1) that in 1973 M makes a \$5,000 disposition related to the 1971 disposition. Under subdivision (i)(B) of this subparagraph M is treated as having made a series of related dispositions in 1971 and 1973. The aggregate of the 1971 disposition under subdivision (i)(A) of this subparagraph and the 1973 related disposition under subdivision (i)(B) of this subparagraph is \$35,000, which is more than 25 percent of the fair market value of M's net assets as of the beginning of 1971, the first year in which any disposition was made. Thus M has made a significant disposition of its assets and is subject to the provisions of section 6043(b) and this section for the year 1973.

(2) For the definition of the term “normally” as used in paragraph (b)(2) of this section, see § 1.6033-2(g)(3).

(3) For examples of the term “integrated auxiliaries” as used in paragraph (b)(1) of this section, see § 1.6033-2(g)(1)(i)(a).

[T.D. 7563, 43 FR 40221, Sept. 11, 1978]

**§ 1.6043-4 Information returns relating to certain acquisitions of control and changes in capital structure.**

(a) *Information returns for an acquisition of control or a substantial change in*

*capital structure*—(1) *General rule.* If there is an acquisition of control (as defined in paragraph (c) of this section) or a substantial change in the capital structure (as defined in paragraph (d) of this section) of a domestic corporation (reporting corporation), the reporting corporation must file a completed Form 8806, “Information Return for Acquisition of Control or Substantial Change in Capital Structure,” in accordance with the instructions to that form. The Form 8806 will request information with respect to the following and such other information specified in the instructions:

(i) *Reporting corporation.* The name, address, and taxpayer identification number (TIN) of the reporting corporation.

(ii) *Common parent, if any, of the reporting corporation.* If the reporting corporation was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, the name, address, and TIN of the common parent of that affiliated group.

(iii) *Acquiring corporation.* The name, address and TIN of any corporation that acquired control of the reporting corporation within the meaning of paragraph (c) of this section or combined with or received assets from the reporting corporation pursuant to a substantial change in capital structure within the meaning of paragraph (d) of this section (acquiring corporation) and whether the acquiring corporation was newly formed prior to its involvement in the transaction.

(iv) *Information about acquisition of control or substantial change in capital structure.* (A) A description of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure of the corporation;

(B) The date or dates of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure; and

(C) A description of and a statement of the fair market value of any stock and other property, if any, provided to the reporting corporation’s shareholders in exchange for their stock.

(2) *Consent election.* Form 8806 will provide the reporting corporation with the ability to elect to permit the Internal Revenue Service (IRS) to publish information that will inform brokers of the transaction and enable brokers to satisfy their reporting obligations under § 1.6045-3. The information to be published, whether on the IRS Web site or in an IRS publication, would 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 stock or other property provided to each class of shareholders in exchange for a share.

(3) *Time for making return.* Form 8806 must be filed on or before the 45th day following the acquisition of control or substantial change in capital structure of the corporation, or, if earlier, on or before January 5th of the year following the calendar year in which the acquisition of control or substantial change in capital structure occurs.

(4) *Exception where transaction is reported under section 6043(a).* No reporting is required under this paragraph (a) with respect to a transaction for which information is required to be reported pursuant to section 6043(a), provided the transaction is properly reported in accordance with that section.

(5) *Exception where shareholders are exempt recipients.* No reporting is required under this paragraph (a) if the reporting corporation reasonably determines that all of its shareholders who receive cash, stock, or other property pursuant to the acquisition of control or substantial change in capital structure are exempt recipients under paragraph (b)(5) of this section.

(b) *Information returns regarding shareholders*—(1) *General rule.* A corporation that is required to file Form 8806 pursuant to paragraph (a)(1) of this section shall file a return of information on Forms 1096, “Annual Summary and Transmittal of U.S. Information Returns,” and 1099-CAP, “Changes in Corporate Control and Capital Structure,” with respect to each shareholder of record in the corporation (before or after the acquisition of control or the substantial change in capital structure) who receives cash, stock, or other

property pursuant to the acquisition of control or the substantial change in capital structure and who is not an exempt recipient as defined in paragraph (b)(5) of this section. A corporation is not required to file a Form 1096 or 1099-CAP with respect to a clearing organization if the corporation makes the election described in paragraph (a)(2) of this section.

(2) *Time for making information returns.* Forms 1096 and 1099-CAP must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(3) *Contents of return.* A separate Form 1099-CAP must be filed with respect to amounts received by each shareholder (who is not an exempt recipient as defined in paragraph (b)(5) of this section). The Form 1099-CAP will request information with respect to the following and such other information as may be specified in the instructions:

(i) The name, address, telephone number and TIN of the reporting corporation;

(ii) The name, address and TIN of the shareholder;

(iii) The number and class of shares in the reporting corporation exchanged by the shareholder; and

(iv) The aggregate amount of cash and the fair market value of any stock or other property provided to the shareholder in exchange for its stock.

(4) *Furnishing of forms to shareholders.* The Form 1099-CAP filed with respect to each shareholder must be furnished to such shareholder on or before January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property as part of the acquisition of control or the substantial change in capital structure. The Form 1099-CAP filed with respect to a clearing organization must be furnished to the clearing organization on or before January 5th of the year following the calendar year in which the acquisition of control or substantial change in capital structure occurred. A Form 1099-CAP is not required to be furnished to a clearing organization if the reporting corporation makes the election described in paragraph (a)(2) of this section.

(5) *Exempt recipients.* A corporation is not required to file a Form 1099-CAP pursuant to this paragraph (b) with respect to any of the following shareholders that is not a clearing organization:

(i) Any shareholder who receives stock in an exchange that is not subject to gain recognition under section 367(a) and the regulations.

(ii) Any shareholder if the corporation reasonably determines that the total amount of cash and the fair market value of stock and other property received by the shareholder does not exceed \$1,000.

(iii) Any shareholder described in paragraphs (b)(5)(iii)(A) through (M) of this section if the corporation has actual knowledge that the shareholder is described in one of paragraphs (b)(5)(iii)(A) through (M) of this section or if the corporation has a properly completed exemption certificate from the shareholder (as provided in §31.3406(h)-3 of this chapter). The corporation also may treat a shareholder as described in paragraphs (b)(5)(iii)(A) through (M) of this section based on the applicable indicators described in §1.6049-4(c)(1)(ii).

(A) A corporation, as described in §1.6049-4(c)(1)(ii)(A) (except for corporations for which an election under section 1362(a) is in effect).

(B) A tax-exempt organization, as described in §1.6049-4(c)(1)(ii)(B)(I).

(C) An individual retirement plan, as described in §1.6049-4(c)(1)(ii)(C).

(D) The United States, as described in §1.6049-4(c)(1)(ii)(D).

(E) A state, as described in §1.6049-4(c)(1)(ii)(E).

(F) A foreign government, as described in §1.6049-4(c)(1)(ii)(F).

(G) An international organization, as described in §1.6049-4(c)(1)(ii)(G).

(H) A foreign central bank of issue, as described in §1.6049-4(c)(1)(ii)(H).

(I) A securities or commodities dealer, as described in §1.6049-4(c)(1)(ii)(I).

(J) A real estate investment trust, as described in §1.6049-4(c)(1)(ii)(J).

(K) An entity registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1), as described in §1.6049-4(c)(1)(ii)(K).

(L) A common trust fund, as described in §1.6049-4(c)(1)(ii)(L).

(M) A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization.

(iv) Any shareholder that the corporation, prior to the transaction, associates with documentation upon which the corporation may rely in order to treat payments to the shareholder as made to a foreign beneficial owner in accordance with §1.1441-1(e)(1)(ii) or as made to a foreign payee in accordance with §1.6049-5(d)(1) or presumed to be made to a foreign payee under §1.6049-5(d)(2) or (3). For purposes of this paragraph (b)(5)(iv), the provisions in §1.6049-5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of §1.1441-1 shall apply by using the terms “corporation” and “shareholder” in place of the terms “withholding agent” and “payee” and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code. The provisions of §1.6049-5(d) shall apply by using the terms “corporation” and “shareholder” in place of the terms “payor” and “payee”. Nothing in this paragraph (b)(5)(iv) shall be construed to relieve a corporation of its withholding obligations under section 1441.

(v) Any shareholder if, on January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property, the corporation did not know and did not have reason to know that the shareholder received such cash, stock, or other property in a transaction or series of related transactions that would result in an acquisition of control or a substantial change in capital structure within the meaning of this section.

(6) *Coordination with other sections.* In general, no reporting is required under this paragraph (b) with respect to amounts that are required to be reported under sections 6042 or 6045, unless the corporation knows or has reason to know that such amounts are not properly reported in accordance with those sections. A corporation must sat-

isfy the requirements under this paragraph (b) with respect to any shareholder of record that is a clearing organization.

(c) *Acquisition of control of a corporation—(1) In general.* For purposes of this section, an acquisition of control of a corporation (first corporation) occurs if, in a transaction or series of related transactions—

(i) 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;

(ii) After the acquisition, the second corporation has control of the first corporation;

(iii) 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;

(iv) The shareholders of the first corporation receive stock or other property pursuant to the acquisition; and

(v) The first corporation or any shareholder of the first corporation is required to recognize gain (if any) under section 367(a) and the regulations, as a result of the transaction.

(2) *Control.* For purposes of this section, control is determined in accordance with the first sentence of section 304(c)(1). For these purposes the rules of section 318 as modified by the rules of section 958(b) shall apply in determining the ownership of stock.

(d) *Substantial change in capital structure of a corporation—(1) In general.* A corporation has a substantial change in capital structure if it has a change in capital structure (as defined in paragraph (d)(2) of this section) and the amount of any cash and the fair market value of any property (including stock) provided to the shareholders of such 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.

(2) *Change in capital structure.* For purposes of this section, a corporation has a change in capital structure if—

(i) The corporation in a transaction or series of transactions—

(A) Merges, consolidates or otherwise combines with another corporation or

transfers all or substantially all of its assets to one or more corporations;

(B) 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

(C) Changes its identity, form or place of organization; and

(ii) The corporation or any shareholder is required to recognize gain (if any) under section 367(a) and the regulations, as a result of the transaction.

(e) *Reporting by successor entity.* If a corporation (transferor) transfers all or substantially all of its assets to another entity (transferee) in a transaction that constitutes a substantial change in the capital structure of transferor, transferor must satisfy the reporting obligations in paragraph (a) and (b) of this section. If transferor does not satisfy one or both of those reporting obligations, then transferee must do so. If neither transferor nor transferee satisfies the reporting obligations in paragraphs (a) and (b) of this section, then transferor and transferee shall be jointly and severally liable for any applicable penalties (see paragraph (g) of this section).

(f) *Receipt of property.* For purposes of this section, a shareholder is treated as receiving property (or as having property provided to it) pursuant 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.

(g) *Penalties for failure to file.* For penalties for failure to file as required under this section, see section 6652(l). The information returns required to be filed under paragraphs (a) and (b) of this section shall be treated as one return for purposes of section 6652(l) and, accordingly, the penalty shall not exceed \$500 for each day the failure continues (up to a maximum of \$100,000) with respect to any acquisition of control or any substantial change in capital structure. Failure to file as required under this section also includes the failure to satisfy the requirement to file on magnetic media as required by section 6011(e) and § 1.6011-2. In addi-

tion, criminal penalties under sections 7203, 7206 and 7207 may apply in appropriate cases.

(h) *Examples.* The following examples illustrate the application of the rules of this section. For purposes of these examples, assume the transaction is not reported under sections 6042, 6043(a), or 6045, unless otherwise specified, and assume that the fair market value of the consideration provided to the shareholders exceeds \$100 million. The examples are as follows:

*Example 1.* The shareholders of X, a domestic corporation and parent of an affiliated group, exchange their X stock for stock in Y, a foreign corporation, pursuant to sections 351 and 354. After the transaction, Y owns all the outstanding X stock. Assume that, under section 367(a) and the regulations, the X shareholders must recognize gain (if any) on the exchange of their stock. Because the transaction results in an acquisition of control of X, X must comply with the rules in paragraphs (a) and (b) of this section. X must file Form 8806 reporting the transaction. X must also file a Form 1099-CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the Y stock received by that shareholder, and X must furnish a copy of the Form 1099-CAP to that shareholder. If X elects on the Form 8806 to permit the IRS to publish information regarding the transaction, X is not required to file or furnish Forms 1099-CAP with respect to shareholders that are clearing organizations.

*Example 2.* The facts are the same as in *Example 1*, except X hires a transfer agent to effectuate the exchange. The transfer agent is treated as a broker under section 6045 and is required to report the fair market value of the Y stock received by X's shareholders under § 1.6045-3. Under paragraph (b)(6) of this section, X is not required to file information returns under paragraph (b) of this section with respect to a shareholder of record, unless X knows or has reason to know that the transfer agent does not satisfy its information reporting obligation under § 1.6045-3 with respect to that shareholder. Thus, if the transfer agent satisfies its information reporting requirements under § 1.6045-3 with respect to shareholder I, an individual who receives X stock, X is not required to file a Form 1099-CAP with respect to I. Conversely, if the transfer agent does not have an information reporting obligation under § 1.6045-3 with respect to one of X's shareholders of record (for example, a clearing organization that is an exempt recipient under § 1.6045-3(b)(2)), or if X knows or has reason to know that the transfer agent has

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not satisfied its information reporting requirement with respect to a shareholder, then X must provide a Form 1099-CAP to that shareholder.

(i) *Effective date.* This section applies to transactions occurring after December 5, 2005.

[T.D. 9230, 70 FR 72378, Dec. 5, 2005]

### § 1.6044-1 Returns of information as to patronage dividends with respect to patronage occurring in taxable years beginning before 1963.

(a) *Requirement—(1) In general.* Except as provided in subparagraph (2) of this paragraph, any corporation allocating to any patron in respect of patronage occurring in any taxable year of the corporation beginning before January 1, 1963, amounts aggregating \$100 or more during a calendar year as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, letters of advice, or in some other manner that discloses to each patron the amount of such dividend, rebate, or refund) shall for each such calendar year file a return of information with respect to such allocation on Forms 1096 and 1099. A separate Form 1099 shall be prepared for each patron showing the name and address of the patron to whom such allocation is made, and the amount of the allocation. The allocation shall be reported for the calendar year during which the allocation is made, regardless of whether the allocation is deemed for the purpose of section 522 to be made at the close of a preceding taxable year of the corporation.

(2) *Exception.* A return is not required under this section in the case of any corporation (including any cooperative or nonprofit corporation engaged in rural electrification) described in section 501(c) (12) or (15) which is exempt from tax under section 501(a), or in the case of any corporation subject to a tax imposed by subchapter L, chapter 1, of the Code.

(b) *Time and place for filing.* Returns made under this section on Forms 1096 and 1099 for any calendar year shall be filed on or before February 28 of the following year with any of the Internal Revenue Service Centers, the addresses

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of which are listed in the instructions for such forms.

(c) *Definitions.* The terms “cooperative association”, “patron”, “patronage dividends, rebates, and refunds”, and “allocation” are defined, for the purpose of this section, in paragraph (b) of § 1.522-1.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6628, 27 FR 12798, Dec. 28, 1962]

### § 1.6044-2 Returns of information as to payments of patronage dividends.

(a) *Requirement of reporting—(1) In general.* Except as provided in § 1.6044-4, every organization described in paragraph (b) of this section which makes payments with respect to patronage occurring on or after the first day of the first taxable year of the organization beginning after December 31, 1962, of amounts described in § 1.6044-3 aggregating \$10 or more to any person during any calendar year shall make an information return on Forms 1096 and 1099 for the calendar year showing the aggregate amount of such payments, the name and address of the person to whom paid, the total of such payments for all persons, and such other information as is required by the forms. The organization is required to make an information return regardless of the amount of the payment if the tax imposed by section 3406 is required to be withheld. Thus, in the case of any amount subject to backup withholding under section 3406 and not refunded by the payor before the due date of the information return in accordance with the regulations under section 3406, an information return shall be made even if the payment is not generally reportable because it is made to an exempt recipient described in § 1.6049-4(c)(1)(ii) or the amount paid during the calendar year to the recipient aggregates less than \$10.

(2) *Definitions.* The term “person” when used in this section does not include the United States, a State, the District of Columbia, a foreign government, a political subdivision of a State or of a foreign government, or an international organization. Therefore, payment of amounts described in § 1.6044-3 to one of these entities need not be reported.