

Deadline Approaches; IRS Issues Form 8937

The Emergency Economic Stabilization Act (the Act) of 2008 shifted certain burdens associated with maintaining tax basis in securities from the investor to brokers, custodians and the underlying companies.

Among other items, the Act specifically enacted Section 6045B of the Internal Revenue Code (IRC), requiring any issuer of a specified security to file a return describing the organizational action taken, a description of the quantitative effect on the basis of the security, and any other information the IRS may prescribe. An organizational action includes return of capital distributions, stock distributions, stock splits, recapitalizations and reorganizations.

January 17, 2012, is the initial reporting deadline for corporations' organizational actions that occurred in 2011. Regulated Investment Companies (RICs) are required to report organizational actions occurring on or after January 1, 2012.

In preparation for the impending filing deadline, the IRS recently released Form 8937, Report of Organizational Actions Affecting Basis of Securities. The form provides the mechanism for reporting these organizational actions and imposes additional reporting requirements, including:

- Security Identifiers (i.e. CUSIPs).
- Contact information for the issuer.
- Details of how the change in basis is calculated.
- The applicable IRC sections upon which the tax treatment is based.
- Discussion of whether any loss can be recognized and any additional information.

Going forward, an issuer is required to file the Form 8937 no later than the earlier of 45 days after the date of the action or January 15 of the year following the calendar year in which the action occurred. In addition, written statements must be provided to each holder of the specified securities or their nominees on or before January 15 of the year following the calendar year in which the action occurred.

Given the significant administrative burdens of filing Form 8937 and providing the related written statements to holders of the securities, there are exceptions to compliance. Form 8937 is not required to be filed with the IRS and a written statement to shareholders is not required to be sent IF any of the following circumstances apply:

- The issuer posts a completed Form 8937 in a readily accessible format in an area of its primary public website dedicated to this purpose, and the Form is accessible to the public for 10 years. This is the most notable exception that will potentially impact the largest number of issuers.
- All holders of the securities are exempt recipients, including C corporations, charitable organizations, IRSSs, foreign holders, HSAs and governmental organizations.
- The organization is a RIC that holds itself out as a money market fund under Rule 2a-7 under the Investment Company Act of 1940.



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