February 25, 2011 | Posted By

New IRS Reporting Rules for Stock Splits, Mergers and Acquisitions

Beginning this year, according to forms or regulations the IRS prescribes, any issuer of a “specified security” will have to file an information return setting forth:

1. a description of any organizational action (occurring after December 31, 2010) that affects the basis of the specified security of the issuer;
2. the quantitative effect on the specified security's basis resulting from the organizational action; and
3. any other information IRS may prescribe.

Stock splits, mergers and acquisitions are examples of organizational changes that affect basis.

The term "specified security" means any share of stock in an entity organized as, or treated for tax purposes as, a corporation (foreign or domestic). The term does not include membership interests in an LLC that is taxed as a partnership.

The IRS has not yet prepared a form that can be filed. However, regardless of when or whether the IRS issues such form, the regulations instruct that the information return should include the following: (i) the name and taxpayer identification number of the reporting issuer, (ii) the identifiers of each security involved, (iii) the contact information of the issuer, (iv) information about the organizational action taken, and (v) the quantitative effect of the organizational action on the basis of the security.

The quantitative effect may be disclosed as an adjustment per share or as a percentage of the old basis, including a description of the calculation, the applicable Internal Revenue Code provision upon which the tax treatment is based, the data supporting the calculation (including the market value of securities and valuation dates) and any other information necessary to implement the adjustment. However, precisely what the IRS means by the “quantitative effect” of an action is less than clear.

Special rules apply to RICs, REITs, S corporations, and other special entities and situations. Further, there is an exemption from the reporting requirements where all of the holders of the stock are “exempt recipients,” such as corporations or nonprofit organizations, or where the tax return of the issuer is made publicly available.

Generally, the issuer must file the return with the IRS on or before the 45th day following the organizational action, or, if earlier, January 15 of the year following the calendar year of the organizational action. Penalties may apply for failure to timely file.

The issuer must also furnish a written statement to nominees or certificate holders on or before Jan. 15 of the year following the calendar year during which the organizational action occurred.

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