

New M&A Reporting Requirement

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One of the provisions of the American Jobs Creation Act of 2004 (P.L. 108-357, “the Jobs Act”) (passed October 22, 2004) is a new reporting requirement on taxable mergers and acquisitions. Code Sec. 6045 imposes obligations on brokers (including stock transfer agents) to prepare information returns and provide payee statements on sales made on behalf of their customers. These Code Sec. 6045 information return requirements are subject to penalty provisions set forth in Code Secs. 6721–6724.

The regulations state that these rules have not applied to taxable transactions other than exchanges for cash. However, the Jobs Act adds new Section 6043A to the Code to require reporting. Under the new provision, if gain or loss is recognized (in whole or in part) by shareholders of a corporation by reason of a second corporation’s acquisition of the stock or assets of the first corporation, the acquiring corporation is required to file an information return. The information return must include the following:

- A description of the transaction
- The name and address of each shareholder of the acquired corporation that recognizes gain as a result of the transaction
- The amount of money and the value of stock or other consideration paid to each shareholder
- Other information as the Treasury Secretary prescribes

The new section expressly provides that the information can be made by a stock transfer agent instead of by the second corporation.

In addition to these rules, the party making the information return must furnish each shareholder with a written statement showing the name, address and phone number of the contact person required to make the information return; the information required to be shown on the return itself; and any other information the Treasury Secretary prescribes.

As with most 1099s, the deadline is January 31 of the year following the calendar year during which the transaction occurred. The provision applies to acquisitions after October 22, 2004.