BRYAN CAVE
A Broader Perspective
Bulletin

Tax Advice and Controversy Client Service Group

To: Our Clients and Friends December 30, 2011

Reminder Regarding Information Reporting For Corporate Actions That Affect Stock Basis:

Information Return Due January 17, 2012 For Actions Taken In 2011

Issuers of securities who undertook an "organizational action" in 2011 that affected the basis of such securities are required to file an information return reporting such action by January 17, 2012. Organizational actions occurring in 2012 and subsequent years are to be reported on the earlier of: (i) 45 days after the date of such action or (ii) January 15 of the year following such action. Such information can be reported on IRS Form 8937, which the IRS anticipates finalizing within the next few weeks.

Examples of organizational actions that affect basis include stock redemptions, stock distributions, cash distributions, and stock splits. Securities generally include stock in a corporation, any note, bond, or other evidence of indebtedness, and other financial instruments. The information return is required to include (i) a description of any organizational action which affects the basis of the security; (ii) the quantitative effect on the basis of such security resulting from the action; and (iii) certain identifying information about the issuer and the securities.

The above information is not required to be filed with the IRS if, on or before the due date of filing, the information is posted in a readily accessible format in an area on the issuer's website dedicated to such purpose. Such information must be accessible for ten years to the public on its website or the primary website of any successor entity. In addition, unless the information is posted on the issuer's website, the information above is required to be furnished to each holder of record of the security by January 15 of the year following the calendar year of the organizational action.

An acquiring or successor entity of an issuer that fails to satisfy the reporting obligations above must satisfy these reporting obligations. If neither the issuer nor the acquiring or successor entity satisfies these reporting obligations, both parties are jointly and severally liable for any applicable penalties. An acquiring entity should protect itself from filing failures of the issuer by including a representation in the acquisition agreement. An example of such representation is "Except as set forth on the Schedules, the Company has timely complied with all reporting requirements under Section 6045B of the Code and the Regulations thereunder by filing IRS Form 8937, Report of Organizational Actions Affecting Basis of Securities, with the IRS." If the acquisition itself is an

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organizational action, a covenant requiring the seller to satisfy the reporting obligations should also be included.

Penalties apply if an organization fails to file the information return with the IRS and with the holders of securities by the prescribed due dates. For transactions occurring in 2011, no penalty will be assessed if the information return is filed by January 17, 2012. In addition, special rules and exceptions may apply to certain holders of securities and certain issuers.

For more information on these filing requirements, please speak to your Bryan Cave contact or to:

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