

Part II Organizational Action *(continued)*

17 List the applicable Internal Revenue Code section(s) and subsection(s) upon which the tax treatment is based ▶ [See attachment](#)

Horizontal lines for listing applicable Internal Revenue Code sections.

18 Can any resulting loss be recognized? ▶ [See attachment](#)

Horizontal lines for providing information on resulting loss recognition.

19 Provide any other information necessary to implement the adjustment, such as the reportable tax year ▶ [See attachment](#)

Horizontal lines for providing other necessary information.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here
Signature ▶  Date ▶ 1/31/2024 | 7:47 PM EST
Print your name ▶ Megan Collins Title ▶ Senior Director Corporate Controller

Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name ▶				Firm's EIN ▶
	Firm's address ▶				Phone no.

Biora Therapeutics, Inc.
FEIN: 27-3950390

Attachment to Form 8937
Report of Organizational Actions Affecting Basis of Securities

Biora Therapeutics, Inc. (the “**Company**”) is providing the information contained herein pursuant to the requirements of section 6045B of the Internal Revenue Code of 1986, as amended (the “**Code**”). The discussion contained herein includes a general summary regarding the application of certain U.S. federal income tax laws and regulations to the exchange described below and the potential effects on an exchanging holder’s adjusted U.S. tax basis resulting from such transactions.

The information contained herein does not constitute tax advice and does not purport to be complete or to describe the consequences that may apply to particular categories of holders. Holders are urged to consult their own tax and valuation advisors regarding the particular U.S. tax consequences of the transactions described herein and the impact on tax basis resulting from such transactions.

Unless otherwise specified herein, “section” references are to the Code or Treasury regulations promulgated thereunder.

Part I:

Line 9. Classification and description.

- \$50 million aggregate principal amount of 7.25% Convertible Senior Notes due December 1, 2025 (the “**Convertible Notes**”).
- 9,235,281 shares of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**”).
- 7,399,226 pre-funded warrants to acquire Common Stock, each with a strike price of \$0.001 per share (the “**Pre-funded Warrants**”).
- 16,634,507 cash warrants to acquire Common Stock, each with a strike price of \$3.01 per share (the “**Cash Warrants**,” and together with the Pre-funded Warrants and Common Stock, the “**Equity Consideration**”).

Line 10. CUSIP numbers.

- Convertible Notes - 74319FAA5
- Common Stock – 74319F107

Part II:**Line 14. Describe the organizational action and, if applicable, the date of the action or the date against which shareholders' ownership is measured for the action.**

On September 18, 2023 (the “**Exchange Date**”), the Company consummated an exchange (the “**Exchange**”) pursuant to which the Company provided to certain holders of the Convertible Notes (each, an “**Exchange Holder**” and, collectively, the “**Exchange Holders**”) the following exchange consideration:

- In exchange for \$12,077,000 aggregate principal amount of Convertible Notes, the Company issued (1) 2,230,690 shares of Common Stock, (2) 1,787,209 Pre-funded Warrants, (3) 4,017,899 Cash Warrants, and (4) cash equal to the accrued and unpaid interest on the \$12,077,000 aggregate principal amount of Convertible Notes surrendered.
- In exchange for \$37,923,000 aggregate principal amount of Convertible Notes, the Company issued (1) 7,004,591 shares of Common Stock, (2) 5,612,017 Pre-funded Warrants, (3) 12,616,608 Cash Warrants, and (4) cash equal to the accrued and unpaid interest on the \$37,923,000 aggregate principal amount of Convertible Notes surrendered.

Line 15. Describe the quantitative effect of the organizational action on the basis of the security in the hands of a U.S. taxpayer as an adjustment per share or as a percentage of old basis.

Under U.S. federal income tax law, the Exchange is expected to result in an exchange under section 1001 on which gain or loss may be realized by the Exchange Holders. Consequently, the Exchange Holders are expected to realize - but, subject to the recapitalization rules discussed below, not necessarily recognize - gain or loss (if any) as a result of the Exchange.

The tax treatment of the Exchange depends on whether it constitutes a recapitalization under section 368(a)(1)(E) (a “**section 368 recapitalization**”). The determination of whether the Exchange constitutes a section 368 recapitalization depends *inter alia* on whether the Convertible Notes constitute “securities” for purposes of section 354.

If the Convertible Notes are determined to constitute securities for purposes of section 354, and the exchange of Convertible Notes for the Equity Consideration otherwise qualifies as a section 368 recapitalization in accordance with section 368(a)(1)(E), the Exchange Holders generally are expected not to recognize gain or loss with respect to the Exchange. An Exchange Holder's adjusted tax basis in the Equity Consideration is expected to equal to its adjusted tax basis in the Convertible Notes exchanged. An Exchange Holder's aggregate basis in the Equity Consideration is expected to be allocated to the Common Stock, Pre-funded Warrants, and Cash Warrants based on their relative fair market values.

Biora Therapeutics, Inc.
Note Exchange
Attachment to Form 8937

The Company determined that on the Exchange Date (1) each share of Common Stock had a fair market value of \$2.09, (2) each Pre-funded Warrant had a fair market value of \$2.09,¹ and (3) each Cash Warrant had a fair market value of \$1.18. Based on these fair market values, an Exchange Holder's aggregate initial basis in the Equity Consideration would be allocated as follows: (1) approximately 35.5% to the Common Stock, (2) approximately 28.4% to the Pre-funded Warrants, and (3) approximately 36.1% to the Cash Warrants.

If the Exchange is treated as an exchange that does not qualify as a section 368 recapitalization, an Exchange Holder's aggregate initial tax basis in the Equity Consideration is expected to equal the fair market value of the Equity Consideration received (*i.e.*, \$2.09 per share of Common Stock, \$2.09 per Pre-funded Warrant, and \$1.18 per Cash Warrant).

Exchange Holders participating in the Exchange should consult their own tax and valuation advisors to determine the U.S. federal income tax consequences to them of the Exchange.

Line 16. Describe the calculation of the change in basis and the data that supports the calculation, such as the market values of securities and the valuation dates.

See response to Line 15 above.

If the Exchange is a section 368 recapitalization, an Exchange Holder's aggregate initial tax basis in the Equity Consideration is expected to equal its aggregate adjusted tax basis in the Convertible Notes, and then allocated to the Common Stock, Pre-funded Warrants, and Cash Warrants based on their relative fair market values as described above.

If the Exchange is an exchange that does not qualify as a section 368 recapitalization, an Exchange Holder's initial tax basis in the Common Stock, Pre-funded Warrants, and Cash Warrants is expected to be \$2.09 per share of Common Stock, \$2.09 per Pre-funded Warrant, and \$1.18 per Cash Warrant.

Line 17. List the applicable Internal Revenue Code section(s) and subsection(s) upon which the tax treatment is based.

Sections 354, 356, 358, 368, 1001, 1012.

¹ The Pre-funded Warrants have a strike price of \$0.001 and thus have a value approximately equal to the value of the Common Stock. Further, given that the Pre-funded Warrants are deep-in-the money warrants that are exercisable at any time on or after the date of issuance, the Company expects the Pre-funded Warrants to be treated as stock for U.S. federal income tax purposes.

Biora Therapeutics, Inc.
Note Exchange
Attachment to Form 8937

Line 18. Can any resulting loss be recognized?

The Exchange generally should not result in loss being recognized by the Exchange Holders if the Exchange is a section 368 recapitalization.

The Exchange may result in an Exchange Holder recognizing a loss if the Exchange is treated as an exchange that is not a section 368 recapitalization and such Exchange Holder's tax basis in the Convertible Notes exchanged exceeds the fair market value of the Equity Consideration received, subject to generally applicable Code rules that may impact the ability of particular Exchange Holders to recognize losses.

Line 19. Provide any other information necessary to implement the adjustment, such as the reportable tax year.

The organizational actions occurred on September 18, 2023. The reportable tax year is 2023 for calendar-year taxpayers.