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SUBCHAPTER A—INCOME TAX (CONTINUED)

PART 1—INCOME TAXES

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PUBLIC LAW 74, 84TH CONGRESS

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Section 1.1561–2T also issued under 26 U.S.C. 1561.

Section 1.6011–4T also issued under 26 U.S.C. 6001 and 6011(a).

Section 1.6011–4T also issued under 26 U.S.C. 6011.

Section 1.6013–6 also issued under 26 U.S.C. 7701(b)(11).

Section 1.6015–1 also issued under 26 U.S.C. 6015(h).

Section 1.6015–2 also issued under 26 U.S.C. 6015(h).

Section 1.6015–3 also issued under 26 U.S.C. 6015(h).

Section 1.6015–4 also issued under 26 U.S.C. 6015(h).

Section 1.6015–5 also issued under 26 U.S.C. 6015(h).

Section 1.6015–6 also issued under 26 U.S.C. 6015(h).

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Section 1.6015–8 also issued under 26 U.S.C. 6015(h).

Section 1.6015–9 also issued under 26 U.S.C. 6015(h).

Section 1.6031(a)–1 also issued under section 404 of the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97–248; 96 Stat. 324, 669) (TEFRA).

Section 1.6033–6 also issued under 26 U.S.C. 6033(i)(1).

Sections 1.6035–1 through 1.6035–3 also issued under 26 U.S.C. 6035 (a), (d), and (e).

Section 1.6038–2 also issued under 26 U.S.C. 6038.

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Section 1.6038A–1 also issued under 26 U.S.C. 6038A.

Section 1.6038A–2 also issued under 26 U.S.C. 6038A.

Section 1.6038A–3 also issued under 26 U.S.C. 6038A and 7701(l).

Section 1.6038A–4 also issued under 26 U.S.C. 6038A.

Section 1.6038A–5 also issued under 26 U.S.C. 6038A.

Section 1.6038A–6 also issued under 26 U.S.C. 6038A.

Section 1.6038A–7 also issued under 26 U.S.C. 6038A.

Section 1.6038B–1 also issued under 26 U.S.C. 6038B.

Section 1.6038B–1T also issued under 26 U.S.C 6038B.

Section 1.6038B–2 also issued under 26 U.S.C. 6038B.

Section 1.6039I–1 also issued under 26 U.S.C. 6039I.

Section 1.6041–1 also issued under 26 U.S.C. 6041(a).

Section 1.6041–2 also issued under 26 U.S.C. 6041(d).

Section 1.6041–3 also issued under 26 U.S.C. 62 and 6041(a).

Section 1.6042–3 also issued under 26 U.S.C. 6045.

Section 1.6043–4 also issued under 26 U.S.C. 6043(c).

Section 1.6045–1 also issued under 26 U.S.C. 6045.

Section 1.6045–2 also issued under 26 U.S.C. 6045.

Section 1.6045–3 also issued under 26 U.S.C. 6045.

Section 1.6045–4 also issued under 26 U.S.C. 6045.

Section 1.6046A–1 also issued under 26 U.S.C. 6046A.

Section 1.6049–4 also issued under 26 U.S.C. 6049 (a), (b), and (d).

Section 1.6049–5 also issued under 26 U.S.C. 6049 (a), (b), and (d).

Section 1.6049–5T also issued under 26 U.S.C. 6049.

Section 1.6049–6 also issued under 6049(a), (b), and (d).

Section 1.6049–7 also issued under 26 U.S.C. 860G(e), 1275(c) and 26 U.S.C. 6049(d)(7)(D).

Section 1.6050E–1 also issued under 26 U.S.C. 6050E.

Section 1.6050H–1 also issued under 26 U.S.C. 6050H.

Section 1.6050H–1T also issued under 26 U.S.C. 6050H.

Section 1.6050H–2 also issued under 26 U.S.C. 6050H.

Section 1.6050I–1 also issued under 26 U.S.C. 6050I.

Section 1.6050I–2 also issued under 26 U.S.C. 6050I.

Section 1.6050K–1 also issued under 26 U.S.C. 6050K.

Section 1.6050M–1 also issued under 26 U.S.C. 6050M.

Section 1.6050P–1 also issued under 26 U.S.C. 6050P.

Section 1.6050P–2 also issued under 26 U.S.C. 6050P.

Section 1.6050S–1 also issued under 26 U.S.C. 6050S(g).

Section 1.6050S–2 also issued under 26 U.S.C. 6050S(g).

Section 1.6050S–3 also issued under 26 U.S.C. 6050S(g).

Section 1.6050S–4 also issued under 26 U.S.C. 6050S(g).

Section 1.6060–1 also issued under 26 U.S.C. 6060(a).

Section 1.6061–2T also issued under 26 U.S.C. 6061.

Section 1.6065–2T also issued under 26 U.S.C. 6065.

Section 1.6081–1 also issued under 26 U.S.C. 6081.

Section 1.6081–2T also issued under 26 U.S.C. 6081.

Section 1.6081–3 also issued under 26 U.S.C. 6081.

Section 1.6081–4 also issued under 26 U.S.C. 6081.

Section 1.6081–5 also issued under 26 U.S.C. 6081.

Section 1.6081–6T also issued under 26 U.S.C. 6081.

Section 1.6081–7 also issued under 26 U.S.C. 6081.

Section 1.6081–8 also issued under 26 U.S.C. 6081(a).

Section 1.6081–9 also issued under 26 U.S.C. 6081(a).

Section 1.6081–10 also issued under 26 U.S.C. 6081.

Section 1.6081–11 also issued under 26 U.S.C. 6081.

Section 1.6109–2 also issued under 26 U.S.C. 6109(a).

Section 1.6302–1 also issued under 26 U.S.C. 6302(c) and (h).

Section 1.6302–2 also issued under 26 U.S.C. 6302(h).

Section 1.6302–3 also issued under 26 U.S.C. 6302(h).

Section 1.6302–4 also issued under 26 U.S.C. 6302(a), (c), and (h).

Section 1.6411–4 also issued under 26 U.S.C. 6402(i) and 6411(c).

Section 1.6655–5 also issued under 26 U.S.C. 6655(i)(2).

Section 1.6662–6 also issued under 26 U.S.C. 6662.

Section 1.6695–1 also issued under 26 U.S.C. 6060(b) and 6695(b).

Section 1.6695–1 also issued under 26 U.S.C. 6695(b).

Section 1.6695–2 also issued under 26 U.S.C. 6695(g).

Section 1.6695–2 also issued under 26 U.S.C. 6695(g).

Section 1.6851–2 also issued under 26 U.S.C 6851(d).

Section 1.7520–1 also issued under 26 U.S.C. 7520(c)(2).

Section 1.7520–2 also issued under 26 U.S.C. 7520(c)(2).

Section 1.7520–3 also issued under 26 U.S.C. 7520(c)(2).

Section 1.7520–4 also issued under 26 U.S.C. 7520(c)(2).

Section 1.7701(l)–1 also issued under 26 U.S.C. 7701(l).

Section 1.7701(l)–3 also issued under 26 U.S.C. 7701(l).

Section 1.7702–2 also issued under 26 U.S.C. 7702(k).

Section 1.7872–5T also issued under 26 U.S.C. 7872.

Section 1.7872–15 also issued under 26 U.S.C. 1275 and 7872.

Section 1.7874–1 also issued under 26 U.S.C. 7874(c)(6) and (g).

Section 1.7874–1T also issued under 26 U.S.C. 7874(c)(6) and (g).

SOURCE: Sections 1.1401–1 through 1.1403–1 contained in T.D. 6691, 28 FR 12796, Dec. 3, 1963, unless otherwise noted.

RELATED RULES

§ 1.1551–1 Disallowance of surtax exemption and accumulated earnings credit.

(a) *In general.* If:

(1) Any corporation transfers, on or after January 1, 1951, and before June 13, 1963, all or part of its property (other than money) to a transferee corporation,

(2) Any corporation transfers, directly or indirectly, after June 12, 1963, all or part of its property (other than money) to a transferee corporation, or

(3) Five or fewer individuals are in control of a corporation and one or more of them transfer, directly or indirectly, after June 12, 1963, property (other than money) to a transferee corporation, and the transferee was created for the purpose of acquiring such property or was not actively engaged in business at the time of such acquisition, and if after such transfer the transferor or transferors are in control of the transferee during any part of the taxable year of the transferee, then for such taxable year of the transferee the Secretary or his delegate may disallow the surtax exemption defined in section 11(d) or the accumulated earnings credit of $150,000 ($100,000 in the case of taxable years beginning before January 1, 1975) provided in paragraph (2) or (3) of section 535(c), unless the transferee establishes by the clear preponderance of the evidence that the securing of such exemption or credit was not a major purpose of the transfer.

(b) *Purpose of section 1551.* The purpose of section 1551 is to prevent avoidance or evasion of the surtax imposed by section 11(c) or of the accumulated earnings tax imposed by section 531. It is not intended, however, that section 1551 be interpreted as delimiting or abrogating any principle of law established by judicial decision, or any existing provisions of the Code, such as sections 269 and 482, which have the effect of preventing the avoidance or evasion of income taxes. Such principles of law and such provisions of the Code, including section 1551, are not mutually exclusive, and in appropriate cases they may operate together or they may operate separately.

(c) *Application of section 269(b) to cases covered by section 1551.* The provisions of section 269(b) and the authority of the district director thereunder, to the extent not inconsistent with the provisions of section 1551, are applicable to cases covered by section 1551. Pursuant to the authority provided in section 269(b) the district director may allow to the transferee any part of a surtax exemption or accumulated earnings credit for a taxable year for which such exemption or credit would otherwise be disallowed under section 1551(a); or he may apportion such exemption or credit among the corporations involved. For example, corporation A transfers on January 1, 1955, all of its property to corporations B and C in exchange for all of the stock of such corporations. Immediately thereafter, corporation A is dissolved and its stockholders become the sole stockholders of corporations B and C. Assuming that corporations B and C are unable to establish by the clear preponderance of the evidence that the securing of the surtax exemption defined in section 11(d) or the accumulated earnings credit provided in section 535, or both, was not a major purpose of the transfer, the district director is authorized under sections 1551(c) and 269(b) to allow one such exemption and credit and to apportion such exemption and credit between corporations B and C.

(d) *Actively engaged in business.* For purposes of this section, a corporation maintaining an office for the purpose of preserving its corporate existence is not considered to be ''actively engaged in business'' even though such corporation may be deemed to be ''doing business'' for other purposes. Similarly, for purposes of this section, a corporation engaged in winding up its affairs, prior to an acquisition to which section 1551 is applicable, is not considered to be ''actively engaged in business.''

(e) *Meaning and application of the term ''control''*—(1) *In general.* For purposes of this section, the term ''control'' means:

(i) With respect to a transferee corporation described in paragraph (a) (1) or (2) of this section, the ownership by the transferor corporation, its shareholders, or both, of stock possessing either (*a*) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or (*b*) at least 80 percent of the total value of shares of all classes of stock.

(ii) With respect to each corporation described in paragraph (a)(3) of this section, the ownership by five or fewer individuals of stock possessing (*a*) at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes

of the stock of each corporation, and (*b*) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such individual only to the extent such stock ownership is identical with respect to each such corporation.

(2) *Special rules.* In determining for purposes of this section whether stock possessing at least 80 percent (or more than 50 percent in the case of subparagraph (1)(ii)(*b*) of this paragraph) of the total combined voting power of all classes of stock entitled to vote is owned, all classes of such stock shall be considered together; it is not necessary that at least 80 percent (or more than 50 percent) of each class of voting stock be owned. Likewise, in determining for purposes of this section whether stock possessing at least 80 percent (or more than 50 percent) of the total value of shares of all classes of stock is owned, all classes of stock of the corporation shall be considered together; it is not necessary that at least 80 percent (or more than 50 percent) of the value of shares of each class be owned. The fair market value of a share shall be considered as the value to be used for purposes of this computation. With respect to transfers described in paragraph (a) (2) or (3) of this section, the ownership of stock shall be determined in accordance with the provisions of section 1563(e) and the regulations thereunder. With respect to transfers described in paragraph (a)(1) of this section, the ownership of stock shall be determined in accordance with the provisions of section 544 and the regulations thereunder, except that constructive ownership under section 544(a)(2) shall be determined only with respect to the individual's spouse and minor children. In determining control, no stock shall be excluded because such stock was acquired before January 1, 1951 (the effective date of section 1551(a)(1)), or June 13, 1963 (the effective date of section 1551(a) (2) and (3)).

(3) *Example.* This paragraph may be illustrated by the following example:

Example. On January 1, 1964, individual A, who owns 50 percent of the voting stock of corporation X, and individual B, who owns 30 percent of such voting stock, transfer property (other than money) to corporation Y (newly created for the purpose of acquiring such property) in exchange for all of Y's voting stock. After the transfer, A and B own the voting stock of corporations X and Y in the following proportions:

Individual	Corp. X	Corp. Y	Identical ownership
A	50	30	30
B	30	50	30
Total	80	80	60

The transfer of property by A and B to corporation Y is a transfer described in paragraph (a)(3) of this section since (i) A and B own at least 80 percent of the voting stock of corporations X and Y, and (ii) taking into account each such individual's stock ownership only to the extent such ownership is identical with respect to each such corporation, A and B own more than 50 percent of the voting stock of corporations X and Y.

(f) *Taxable year of allowance or disallowance*—(1) *In general.* The district director's authority with respect to cases covered by section 1551 is not limited to the taxable year of the transferee corporation in which the transfer of property occurs. Such authority extends to the taxable year in which the transfer occurs or any subsequent taxable year of the transferee corporation if, during any part of such year, the transferor or transferors are in control of the transferee.

(2) *Examples.* This paragraph may be illustrated by the following examples:

Example 1. On January 1, 1955, corporation D transfers property (other than money) to corporation E, a corporation not actively engaged in business at the time of the acquisition of such property, in exchange for 60 percent of the voting stock of E. During a later taxable year of E, corporation D acquires an additional 20 percent of such voting stock. As a result of such additional acquisition, D owns 80 percent of the voting stock of E. Accordingly, section 1551(a)(1) is applicable for the taxable year in which the later acquisition of stock occurred and for each taxable year thereafter in which the requisite control continues.

Example 2. On June 20, 1963, individual A, who owns all of the stock of corporation X, transfers property (other than money) to corporation Y, a corporation not actively engaged in business at the time of the acquisition of such property, in exchange for 60 percent of the voting stock of Y. During a later taxable year of Y, A acquires an additional

20 percent of such voting stock. After such acquisition A owns at least 80 percent of the voting stock of corporations X and Y. Accordingly, section 1551(a)(3) is applicable for the taxable year in which the later acquisition of stock occurred and for each taxable year thereafter in which the requisite control continues.

Example 3. Individuals A and B each owns 50 percent of the stock of corporation X. On January 15, 1964, A transfers property (other than money) to corporation Y (newly created by A for the purpose of acquiring such property) in exchange for all the stock of Y. In a subsequent taxable year of Y, individual B buys 50 percent of the stock which A owns in Y (or he transfers money to Y in exchange for its stock, as a result of which he owns 50 percent of Y's stock). Immediately thereafter the stock ownership of A and B in corporation Y is identical to their stock ownership in corporation X. Accordingly, section 1551(a)(3) is applicable for the taxable year in which B acquires stock in corporation Y (see paragraph (g)(3) of this section) and for each taxable year thereafter in which the requisite control continues. Moreover, if B's acquisition of stock in Y is pursuant to a preexisting agreement with A, A's transfer to Y and B's acquisition of Y's stock are considered a single transaction and section 1551(a)(3) also would be applicable for the taxable year in which A's transfer to Y took place and for each taxable year thereafter in which the requisite control continues.

(g) *Nature of transfer*—(1) *Corporate transfers before June 13, 1963.* A transfer made before June 13, 1963, by any corporation of all or part of its assets, whether or not such transfer qualifies as a reorganization under section 368, is within the scope of section 1551(a)(1), except that section 1551(a)(1) does not apply to a transfer of money only. For example, the transfer of cash for the purpose of expanding the business of the transferor corporation through the formation of a new corporation is not a transfer within the scope of section 1551(a)(1), irrespective of whether the new corporation uses the cash to purchase from the transferor corporation stock in trade or similar property.

(2) *Corporate transfers after June 12, 1963.* A direct or indirect transfer made after June 12, 1963, by any corporation of all or part of its assets to a transferee corporation, whether or not such transfer qualifies as a reorganization under section 368, is within the scope of section 1551(a)(2) except that section 1551(a)(2) does not apply to a transfer of money only. For example, if a transferor corporation transfers property to its shareholders or to a subsidiary, the transfer of that property by the shareholders or the subsidiary to a transferee corporation as part of the same transaction is a transfer of property by the transferor corporation to which section 1551(a)(2) applies. A transfer of property pursuant to a purchase by a transferee corporation from a transferor corporation controlling the transferee is within the scope of section 1551(a)(2), whether or not the purchase follows a transfer of cash from the controlling corporation.

(3) *Other transfers after June 12, 1963.* A direct or indirect transfer made after June 12, 1963, by five or fewer individuals to a transferee corporation, whether or not such transfer qualifies under one or more other provisions of the Code (for example, section 351), is within the scope of section 1551(a)(3) except that section 1551(a)(3) does not apply to a transfer of money only. Thus, if one of five or fewer individuals who are in control of a corporation transfers property (other than money) to a controlled transferee corporation, the transfer is within the scope of section 1551(a)(3) notwithstanding that the other individuals transfer nothing or transfer only money.

(4) *Examples.* This paragraph may be illustrated by the following examples:

Example 1. Individuals A and B each owns 50 percent of the voting stock of corporation X. On January 15, 1964, A and B each acquires property (other than money) from X and, as part of the same transaction, each transfers such property to his wholly owned corporation (newly created for the purpose of acquiring such property). A and B retain substantial continuing interests in corporation X. The transfers to the two newly created corporations are within the scope of section 1551(a)(2).

Example 2. Corporation W organizes corporation X, a wholly owned subsidiary, for the purpose of acquiring the properties of corporation Y. Pursuant to a reorganization qualifying under section 368(a)(1)(C), substantially all of the properties of corporation Y are transferred on June 15, 1963, to corporation X solely in exchange for voting stock of corporation W. There is a transfer of property from W to X within the meaning of section 1551(a)(2).

Example 3. Individuals A and B, each owning 50 percent of the voting stock of corporation X, organize corporation Y to which each

transfers money only in exchange for 50 percent of the stock of Y. Subsequently, Y uses such money to acquire other property from A and B after June 12, 1963. Such acquisition is within the scope of section 1551(a)(3).

Example 4. Individual A owns 55 percent of the stock of corporation X. Another 25 percent of corporation X's stock is owned in the aggregate by individuals B, C, D, and E. On June 15, 1963, individual A transfers property to corporation Y (newly created for the purpose of acquiring such property) in exchange for 60 percent of the stock of Y, and B, C, and D acquire all of the remaining stock of Y. The transfer is within the scope of section 1551(a)(3).

(h) *Purpose of transfer.* In determining, for purposes of this section, whether the securing of the surtax exemption or accumulated earnings credit constituted ''a major purpose'' of the transfer, all circumstances relevant to the transfer shall be considered. ''A major purpose'' will not be inferred from the mere purchase of inventory by a subsidiary from a centralized warehouse maintained by its parent corporation or by another subsidiary of the parent corporation. For disallowance of the surtax exemption and accumulated earnings credit under section 1551, it is not necessary that the obtaining of either such credit or exemption, or both, have been the sole or principal purpose of the transfer of the property. It is sufficient if it appears, in the light of all the facts and circumstances, that the obtaining of such exemption or credit, or both, was one of the major considerations that prompted the transfer. Thus, the securing of the surtax exemption or the accumulated earnings credit may constitute ''a major purpose'' of the transfer, notwithstanding that such transfer was effected for a valid business purpose and qualified as a reorganization within the meaning of section 368. The taxpayer's burden of establishing by the clear preponderance of the evidence that the securing of either such exemption or credit or both was not ''a major purpose'' of the transfer may be met, for example, by showing that the obtaining of such exemption, or credit, or both, was not a major factor in relationship to the other consideration or considerations which prompted the transfer.

[T.D. 6911, 32 FR 3214, Feb. 24, 1967, as amended by T.D. 7376, 40 FR 42745, Sept. 16, 1975]

§ 1.1552–1 Earnings and profits.

(a) *General rule.* For the purpose of determining the earnings and profits of each member of an affiliated group which is required to be included in a consolidated return for such group filed for a taxable year beginning after December 31, 1953, and ending after August 16, 1954, the tax liability of the group shall be allocated among the members of the group in accordance with one of the following methods, pursuant to an election under paragraph (c) of this section:

(1)(i) The tax liability of the group shall be apportioned among the members of the group in accordance with the ratio which that portion of the consolidated taxable income attributable to each member of the group having taxable income bears to the consolidated taxable income.

(ii) For consolidated return years beginning after December 31, 1965, a member's portion of the tax liability of the group under the method of allocation provided by subdivision (i) of this subparagraph is an amount equal to the tax liability of the group multiplied by a fraction, the numerator of which is the taxable income of such member, and the denominator of which is the sum of the taxable incomes of all the members. For purposes of this subdivision the taxable income of a member shall be the separate taxable income determined under § 1.1502–12, adjusted for the following items taken into account in the computation of consolidated taxable income:

(*a*) The portion of the consolidated net operating loss deduction, the consolidated charitable contributions deduction, the consolidated dividends received deduction, the consolidated section 247 deduction, the consolidated section 582(c) net loss, and the consolidated section 922 deduction, attributable to such member;

(*b*) Such member's capital gain net income (net capital gain for taxable years beginning before January 1, 1977) (determined without regard to any net

capital loss carryover attributable to such member);

(*c*) Such member's net capital loss and section 1231 net loss, reduced by the portion of the consolidated net capital loss attributable to such member; and

(*d*) The portion of any consolidated net capital loss carryover attributable to such member which is absorbed in the taxable year.

If the computation of the taxable income of a member under this subdivision results in an excess of deductions over gross income, then for purposes of this subdivision such member's taxable income shall be zero.

(2)(i) The tax liability of the group shall be allocated to the several members of the group on the basis of the percentage of the total tax which the tax of such member if computed on a separate return would bear to the total amount of the taxes for all members of the group so computed.

(ii) For consolidated return years beginning after December 31, 1965, a member's portion of the tax liability of the group under the method of allocation provided by subdivision (i) of this subparagraph is an amount equal to the tax liability of the group multiplied by a fraction, the numerator of which is the separate return tax liability of such member, and the denominator of which is the sum of the separate return tax liabilities of all the members. For purposes of this subdivision the separate return tax liability of a member is its tax liability computed as if it has filed a separate return for the year except that:

(*a*) Gains and losses on intercompany transactions shall be taken into account as provided in § 1.1502–13 as if a consolidated return had been filed for the year;

(*b*) Gains and losses relating to inventory adjustments shall be taken into account as provided in § 1.1502–18 as if a consolidated return had been filed for the year;

(*c*) Transactions with respect to stock, bonds, or other obligations of members shall be reflected as provided in § 1.1502–13 (f) and (g) as if a consolidated return had been filed for the year;

(*d*) Excess losses shall be included in income as provided in § 1.1502–19 as if a consolidated return had been filed for the year;

(*e*) In the computation of the deduction under section 167, property shall not lose its character as new property as a result of a transfer from one member to another member during the year;

(*f*) A dividend distributed by one member to another member during the year shall not be taken into account in computing the deductions under section 243(a)(1), 244(a), 245, or 247 (relating to deductions with respect to dividends received and dividends paid);

(*g*) Basis shall be determined under §§ 1.1502–31 and 1.1502–32, and earnings and profits shall be determined under § 1.1502–33, as if a consolidated return had been filed for the year;

(*h*) Subparagraph (2) of § 1.1502–3(f) shall apply as if a consolidated return had been filed for the year; and

(*i*) For purposes of Subtitle A of the Code, the surtax exemption of the member shall be an amount equal to $25,000 ($50,000 in the case of a taxable year ending in 1975), divided by the number of members (or such portion of $25,000 or $50,000 which is apportioned to the member pursuant to a schedule attached to the consolidated return for the taxable year). (However, if for the taxable year some or all of the members are component members of a controlled group of corporations (within the meaning of section 1563) and if there are other such component members which do not join in filing the consolidated return for such year, the amount to be divided among the members filing the consolidated return shall be (in lieu of $25,000 or $50,000) the sum of the amounts apportioned to the component members which join in filing the consolidated return (as determined for taxable years beginning after December 31, 1974 under § 1.1561–2(a)(2) or § 1.1561–3, whichever is applicable, and for taxable years beginning before January 1, 1975, under § 1.561–2A(a)(2) or § 1.1561–3A whichever is applicable).)

If the computation of the separate return tax liability of a member under this subdivision does not result in a positive tax liability, then for purposes

of this subdivision such member's separate return tax liability shall be zero.

(3)(i) The tax liability of the group (excluding the tax increases arising from the consolidation) shall be allocated on the basis of the contribution of each member of the group to the consolidated taxable income of the group. Any tax increases arising from the consolidation shall be distributed to the several members in direct proportion to the reduction in tax liability resulting to such members from the filing of the consolidated return as measured by the difference between their tax liabilities determined on a separate return basis and their tax liabilities (determined without regard to the 2-percent increase provided by section 1503(a) and paragraph (a) of § 1.1502–30A (as contained in the 26 CFR edition revised as of April 1, 1996) for taxable years beginning before January 1, 1964) based on their contributions to the consolidated taxable income.

(ii) For consolidated return years beginning after December 31, 1965, a member's portion of the tax liability of the group under the method of allocation provided by subdivision (i) of this subparagraph shall be determined by:

(*a*) Allocating the tax liability of the group in accordance with subparagraph (1)(ii) of this paragraph, but

(*b*) The amount of tax liability allocated to any member shall not exceed the separate return tax liability of such member, determined in accordance with subparagraph (2)(ii) of this paragraph, and

(*c*) The sum of the amounts which would be allocated to the members but for (*b*) of this subdivision (ii) shall be apportioned among the other members in direct proportion to, but limited to, the reduction in tax liability resulting to such other members. Such reduction for any member shall be the excess, if any, of (*1*) its separate this paragraph.

(4) The tax liability of the group shall be allocated in accordance with any other method selected by the group with the approval of the Commissioner. No method of allocation may be approved under this subparagraph which may result in the allocation of a positive tax liability for a taxable year, among the members who are allocated a positive tax liability for such year, in a total amount which is more or less than the tax liability of the group for such year. (However, see paragraph (d) of § 1.1502–33.)

(b) *Application of rules*—(1) *Tax liability of the group*. For purposes of section 1552 and this section, the tax liability of the group for a taxable year shall consist of the Federal income tax liability of the group for such year determined in accordance with § 1.1502–2 or § 1.1502–30A (as contained in the 26 CFR edition revised as of April 1, 1996), which-ever is applicable. Thus, in the case of a carryback of a loss or credit to such year, although the earnings and profits of the members of the group may not be adjusted until the subsequent taxable year from which the loss or credit was carried back, the effect of the carryback, for purposes of this section, shall be determined by allocating the amount of the adjustment as a part of the tax liability of the group for the taxable year to which the loss or credit is carried. For example, if a consolidated net operating loss is carried back from 1969 to 1967, the allocation of the tax liability of the group for 1967 shall be recomputed in accordance with the method of allocation used for 1967, and the changes resulting from such recomputation shall, for accrual method taxpayers, be reflected in the earnings and profits of the appropriate members in 1969.

(2) *Effect of allocation*. The amount of tax liability allocated to a corporation as its share of the tax liability of the group, pursuant to this section, shall (i) result in a decrease in the earnings and profits of such corporation in such amount, and (ii) be treated as a liability of such corporation for such amount. If the full amount of such liability is not paid by such corporation, pursuant to an agreement among the members of the group or otherwise, the amount which is not paid will generally be treated as a distribution with respect to stock, a contribution to capital, or a combination thereof, as the case may be.

(c) *Method of election*. (1) The election under paragraph (a) (1), (2), or (3) of this section shall be made not later than the time prescribed by law for filing the first consolidated return of the group for a taxable year beginning

after December 31, 1953, and ending after August 16, 1954 (including extensions thereof). If the group elects to allocate its tax liability in accordance with the method prescribed in paragraph (a) (1), (2), or (3) of this section, a statement shall be attached to the return stating which method is elected. Such statement shall be made by the common parent corporation and shall be binding upon all members of the group. In the event that the group desires to allocate its tax liability in accordance with any other method pursuant to paragraph (a)(4) of this section, approval of such method by the Commissioner must be obtained within the time prescribed above. If such approval is not obtained in such time, the group shall allocate in accordance with the method prescribed in paragraph (a)(1) of this section. The request shall state fully the method which the group wishes to apply in apportioning the tax liability. Except as provided in subparagraph (2) of this paragraph, an election once made shall be irrevocable and shall be binding upon the group with respect to the year for which made and for all future years for which a consolidated return is filed or required to be filed unless the Commissioner authorizes a change to another method prior to the time prescribed by law for filing the return for the year in which such change is to be effective.

(2) Each group may make a new election to use any one of the methods prescribed in paragraph (a) (1), (2), or (3) of this section for its first consolidated return year beginning after December 31, 1965, or in conjunction with an election under paragraph (d) of §1.1502–33, or may request the Commissioner's approval of a method under paragraph (a)(4) of this section for its first consolidated return year beginning after December 31, 1965, irrespective of its previous method of allocation under this section. If such new election is not made in conjunction with an election under paragraph (d) of §1.1502–33, it shall be effective for the first consolidated return year beginning after December 31, 1965, and all succeeding years. (See §1.1502–33 for the method of making such new election in conjunction with an election under paragraph (d) of §1.1502–33.) Any other such new election (or request for the Commissioner's approval of a method under paragraph (a)(4) of this section) shall be made within the time prescribed by law for filing the consolidated return for the first taxable year beginning after December 31, 1965 (including extensions thereof), or within 60 days after July 3, 1968, whichever is later. Such new election shall be made by attaching a statement to the consolidated return for the first taxable year beginning after December 31, 1965, or if such election is made within the time prescribed above but after such return is filed, by filing a statement with the internal revenue officer with whom such return was filed.

(d) *Failure to elect*. If a group fails to make an election in its first consolidated return, or any other election, in accordance with paragraph (c) of this section, the method prescribed under paragraph (a)(1) of this section shall be applicable and shall be binding upon the group in the same manner as if an election had been made to so allocate.

(e) *Definitions*. Except as otherwise provided in this section, the terms used in this section shall have the same meaning as provided in the regulations under section 1502.

(f) *Example*. The provisions of this section may be illustrated by the following example:

Example. Corporation P is the common parent owning all of the stock of corporations S1 and S2, members of an affiliated group. A consolidated return is filed for the taxable year ending December 31, 1966, by P, S1, and S2. For 1966 such corporations had the following taxable incomes or losses computed in accordance with paragraph (a)(1)(ii) of this section:

P	0
S1	$2,000
S2	(1,000)

The group has not made an election under paragraph (c) of this section or paragraph (d) of §1.1502–33. Accordingly, the method of allocation provided by paragraph (a)(1) of this section is in effect for the group. Assuming that the consolidated taxable income is equal to the sum of the members taxable income and losses, or $1,000, the tax liability of the group for the year (assuming a 22-percent rate) is $220, all of which is allocated to S1. S1 accordingly reduces its earnings and profits in the amount of $220, irrespective of who actually pays the tax liability. If S1 pays the

$220 tax liability there will be no further effect upon the income, earnings and profits, or the basis of stock of any member. If, however, P pays the $220 tax liability (and such payment is not in fact a loan from P to S1), then P shall be treated as having made a contribution to the capital of S1 in the amount of $220. On the other hand, if S2 pays the $220 tax liability (and such payment is not in fact a loan from S2), then S2 shall be treated as having made a distribution with respect to its stock to P in the amount of $220, and P shall be treated as having made a contribution to the capital of S1 in the amount of $220.

[T.D. 6962, 33 FR 9655, July 3, 1968, as amended by T.D. 7825, 42 FR 64694, Dec. 28, 1977; T.D. 7728, 45 FR 72650, Nov. 3, 1980; T.D. 8560, 59 FR 41675, Aug. 15, 1994; T.D. 8597, 60 FR 36680, July 18, 1995; T.D. 8677, 61 FR 33325, June 27, 1996]

CERTAIN CONTROLLED CORPORATIONS

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[T.D. 9369, 72 FR 72932, Dec. 26, 2007]

§ 1.1561–1T General rules regarding certain tax benefits available to the component members of a controlled group of corporations (temporary).

(a) *In general.* (1) Part II (section 1561 and following) of subchapter B of chapter 6 of the Internal Revenue Code (part II) provides rules to limit the amounts of certain specified tax benefit items of component members of a controlled group of corporations on a December 31, for their taxable years which include such December 31. The component members of such a group shall be limited for purposes of subtitle A of the Code to the amounts of certain items, set forth in section 1561(a), as if they were one corporation. Certain other tax items also set forth in section 1561(a) (e.g., the additional tax imposed by section 11(b)(1) and the section 55(d)(3) phase out of the alternative minimum tax exemption amount) will be determined by combining the taxable income of all such members and then allocating the amount of such items among such members.

(2) For certain definitions (including the definition of a *controlled group of corporations* and a *component member*) and special rules for purposes of this part II see section 1563.

(b) *Special rules.* (1) For purposes of this part II, the term *corporation* includes a small business corporation (as defined in section 1361). However, for the treatment of such a corporation as an *excluded member* of a controlled group of corporations see § 1.1563–1(b)(2)(ii)(C).

(2) In the case of corporations electing a 52–53-week taxable year under section 441(f)(1), the provisions of this part II shall be applied in accordance with the special rule of section 441(f)(2)(A). See § 1.441–2.

(c) *Tax avoidance.* The provisions of this part II do not delimit or abrogate any principle of law established by judicial decision, or any existing provisions of the Code, such as sections 269, 482, and 1551, which have the effect of preventing the avoidance or evasion of income taxes.

(d) *Effective date*—(1) *Applicability date.* This section applies to any taxable year beginning on or after December 22, 2006. However, taxpayers may apply this section to any Federal income tax return filed on or after December 22, 2006.

(2) *Expiration date.* The applicability of this section will expire on December 21, 2009.

[T.D. 9304, 71 FR 76907, Dec. 22, 2006]

§ 1.1561–2T Special rules for allocating reductions to certain section 1561(a) tax-benefit items (temporary).

(a) *Additional tax*— (1) *Calculation.* For the purpose of determining the amount, if any, of the additional tax imposed by section 11(b)(1), the taxable incomes of all of the component members of a controlled group of corporations for the taxable years that include the same December 31st date shall be combined for determining whether either of the income thresholds for imposing an additional tax have been attained.

(2) *Apportionment*— (i) *General rule.* Any additional tax determined under paragraph (a)(1) of this section shall be apportioned among such members in the same manner as the corresponding tax bracket of section 11(b)(1) is apportioned. For rules to apportion the section 11(b)(1) tax brackets among the component members of a controlled group, see § 1.1561–3T(b) or (c).

(ii) *Apportionment methods.* Unless the component members of a controlled group elect to use the first-in-first-out (FIFO) method described in paragraph (a)(2)(ii)(B) of this section, such members are required to apportion the amount of the additional tax using the proportionate method described in paragraph (a)(2)(ii)(A) of this section. These component members can elect the FIFO method by specifically adopting such method in their apportionment plan.

(A) *Proportionate method.* Under the proportionate method, the additional tax is allocated to each component member in the same proportion as the portion of the tax-benefit amount that inured to a member from utilizing lower tax brackets bears to the amount of the group's total tax-benefit amount inuring to the group from utilizing those lower tax brackets. The tax-benefit amount that inures to a corporation from using a particular tax bracket is the tax savings that such corporation realizes from having a portion of its taxable income taxed at the lower rate attributed to that tax bracket instead of the high tax rates to which it would otherwise be subject. The steps for applying the proportionate method of allocation are as follows:

(*1*) *Step 1.* The regular tax (not including the additional tax) owed by a component member under a particular tax bracket is divided by the total tax owed by all component members under that tax bracket;

(*2*) *Step 2.* The percentage calculated under *Step 1* is multiplied by the total tax-benefit amount inuring to all the members of the group from their use of this tax bracket. This computed amount equals the portion of the group's tax-benefit amount that inured to such member from using its portion of this tax bracket;

(*3*) *Step 3.* The amount determined under *Step 2* is divided by the total tax-benefit amount, inuring to all the component members of the group from using all the tax brackets to which any component member's income was subject;

(*4*) *Step 4.* The percentage calculated under *Step 3* is multiplied by the amount of the group's additional tax. The amount determined under this *Step 4* equals the amount of the additional tax apportioned to such member for that tax bracket; and

(*5*) *Step 5.* If a component member is liable for regular tax (not including the additional tax) under more than one

tax bracket, that member must calculate the amount of the additional tax apportioned to it with respect to each tax bracket. Accordingly, steps 1 through 4 must be applied for each tax bracket applicable to that member. The sum of all the apportioned amounts of additional tax from each tax bracket for which the member is subject is the total amount of the additional tax apportioned to that member.

(B) *FIFO method*. Under the FIFO method, the first dollars of the additional tax are to be allocated proportionately to the members starting with the lowest tax bracket (that is, the first tax bracket), up to the amount of the tax benefit inuring to those members from using that tax bracket. Any remaining amount of additional tax is then allocated proportionately among the component members who use the next higher tax bracket, and so on, until the entire amount of the additional tax has been fully apportioned among the members. For example, the first $9,500 of the additional tax liability of a controlled group is apportioned entirely to the member(s) that availed themselves of the benefit of the 15 percent tax bracket.

(3) *Examples*. The provisions of this paragraph (a) may be illustrated by the following examples:

Example 1. (i) *Facts*. A controlled group of corporations consists of three members: X, Y and Z. X owns all the stock of Y and Z. Each corporation files its separate return on a calendar year basis. For calendar year 2007, the component members of the controlled group have an apportionment plan in effect. The members apportioned 80% of the 15 percent tax-bracket amount ($40,000) to X and the remaining 10% ($10,000) to Y. The members apportioned 100% of the 25 percent tax-bracket amount ($25,000) to Y. However, these members have not adopted the FIFO method for apportioning the additional taxes. Therefore, they must follow the proportionate method. For 2007, X had taxable income (TI) of $40,000, Y had TI of $60,000 and Z had TI of $100,000. Thus the total TI of the group is $200,000.

(ii) *Calculating the tax from the tax brackets and the tax benefit derived from such tax*. (A) *Regular tax of group subjected to a 15 percent tax rate*. (*1*) *Calculating the group's tax which resulted from applying a 15 percent tax rate*. The amount of tax under the 15 percent tax bracket is $7,500 (15% × $50,000).

(*2*) *The tax-benefit amount inuring to the group from using the 15 percent tax bracket*. A tax benefit inures to those members of the group who avail themselves of the 15 percent tax bracket. That tax benefit results from having the first $50,000 of its income taxed at the 15 percent tax rate, instead of at the 34 percent tax rate. Thus, the tax-benefit amount inuring to this group from using the 15 percent tax bracket is $9,500 ($17,000 (34% × $50,000) minus $7,500 (15% × $50,000)).

(B) *Regular tax of group subjected to a 25 percent tax rate*. (*1*) *Calculating the group's tax which resulted from applying a 25 percent tax rate*. The amount of tax under the 25 percent tax bracket is $6,250 (25% × $25,000 ($75,000 − $50,000)).

(*2*) *The tax-benefit amount inuring to the group from using the 25 percent tax bracket*. A tax benefit inures to those members of the group who avail themselves of the 25 percent tax bracket. That tax benefit results from having $25,000 of its income taxed at the 25 percent tax rate, instead of at the 34 percent tax rate. Thus, the tax-benefit amount inuring to this group from using the 25 percent tax bracket is $2,250 ($8,500 (34% × $25,000) minus $6,250 (25% × $25,000)).

(C) *Regular tax of group subjected to a 34 percent tax rate*. (*1*) *Calculating the group's tax which resulted from applying a 34 percent tax rate*. The amount of tax under the 34 percent tax bracket is $42,500 (34% × $125,000 ($200,000 (total TI) − $75,000) (amount taxed at lower rates)).

(*2*) *The tax-benefit amount inuring to the group from using the 34 percent tax bracket*. The group's total TI of $200,000 is less than the $15,000,000 income threshold for imposing any 3 percent additional tax on the group. Therefore, there is no tax benefit inuring to the members of this group for using the 34 percent tax bracket.

(D) *The computation of the additional tax*. Since the combined TI of the group exceeds $100,000, a 5 percent additional tax is imposed on the group. That 5 percent additional tax is the lesser amount of 5 percent of the group's taxable income exceeding $100,000 or $11,750. Five percent of that excess amount of taxable income is $5,000 (5% × $100,000 ($200,000 −$100,000)). Since $5,000 is less than $11,750, the group's 5 percent additional tax is $5,000.

(iii) *Apportioning the amount of additional tax to each applicable tax bracket*. (A) *The apportioned tax under each bracket*. The amount of tax owed by each member under each tax bracket pursuant to the apportionment plan is as follows:

Name of component member	Amount of tax owed under the 15% tax bracket	Amount of tax owed under the 25% tax bracket	Amount of tax owed under the 34% tax bracket
X	$6,000	0	0
Y	$1,500	$6,250	$8,500
Z	0	0	$34,000

(B) *Apportioning the 5 percent additional tax among the component members of the controlled group.* Since the group did not elect to adopt the FIFO method of apportionment, it is required to apportion the $5,000 of its 5 percent additional tax pursuant to the proportionate method in the following manner:

(*1*) *Amount of the additional tax apportioned to X.* Pursuant to the plan, X was liable for $6,000 of the group's $7,500 regular tax (80%) owed under the 15 percent tax bracket (and X is not liable for any regular tax under any higher tax bracket). See *Step 1* of paragraph (a)(2)(ii)(A) of this section. X's portion of the group's tax benefit which it derived from using the 15 percent tax rate is $7,600 (0.8 × $9,500). See *Step 2*. The tax benefit inuring to the entire group from using the 15 percent and 25 percent tax brackets is $11,750 ($9,500 (from the 15 percent tax bracket) + $2,250 (from the 25 percent tax bracket)). So, X's percentage portion of the group's total tax benefit is $7,600/$11,750 (64.68%). See *Step 3*. Thus, X's allocated portion of the 5 percent additional tax from using the 15 percent tax bracket is $3,234 (0.6468 × $5,000). See *Step 4*.

(*2*) *Amount of the additional tax apportioned to Y.* (*i*) *Regular tax apportioned to Y from using the 15 percent tax bracket.* Pursuant to the plan, Y was liable for the remaining $1,500 of the group's $7,500 regular tax (20%) owed under the 15 percent tax bracket. See *Step 1*. Y's portion of the group's tax benefit which it derived from using the 15 percent tax rate is $1,900 ($9,500 − $7,600, or 0.2 × $9,500). See *Step 2*. So, Y's percentage portion of the group's total tax benefit is $1,900/$11,750 (16.17%). See *Step 3*. Thus, Y's allocated portion of the 5 percent additional tax from using the 15 percent tax bracket is $809 (0.1617 × $5,000). See *Step 4*.

(*ii*) *Regular tax apportioned to Y from using the 25 percent tax bracket.* Pursuant to the plan, Y was liable for 100% of the group's regular tax owed under the 25 percent tax bracket, an amount of $6,250. See *Step 1*. Y is, therefore, entitled to 100% of the group's tax benefit which it derived from using this tax bracket, an amount of $2,250. See *Step 2*. So, Y's percentage portion of the group's total tax benefit is $2,250/$11,750 (19.15%). See *Step 3*. Thus, Y's allocated portion of the 5 percent additional tax from using the 25 percent tax bracket is $957 (0.1915 × $5,000). See *Step 4*. Y's total allocated portion of the additional tax is $1,766 ($809 + $957). See *Step 5*.

Example 2. (i) *Facts.* The facts are the same as in *Example 1*, except that on August 31, 2007, X of the X–Y–Z controlled group sold all of the stock of Z to M of the M–N controlled group, a pair of corporations unrelated to the X–Y group. Pursuant to the terms of the sales agreement, the members of the M–N group properly notified the members of the X–Y group on a timely basis that Z's taxable income for its 2007 taxable year, as based on the group's December 31st testing date, was $100,000.

(ii) *Controlled group analysis.* On December 31, 2007, X and Y are members of the selling controlled group and M, N, and Z are members of the buying controlled group. However, pursuant to section 1563(b)(3), Z is treated as an additional member of the X–Y group on December 31, 2007, since it was a member for at least one-half the number of days (243 out of 364) during the period beginning on January 1 and ending on December 30, 2007. Conversely, pursuant to section 1563(b)(2)(A), Z is treated as an excluded member of the M–N controlled group. Therefore, on December 31, 2007, X, Y, and Z qualify as component members of the selling group, and only M and N qualify as component members of the buying group.

(iii) *Additional tax analysis.* With regard to X and Y's 2007 taxable years, X and Y together owed $5,000 of additional tax, as calculated in *Example 1*. X's allocated portion of the additional tax is $3,234, as calculated in the manner set forth in *Example 1*. Y's allocated portion of the additional tax is $1,766, also as calculated in the manner set forth in *Example 1*.

Example 3. (i) *Facts.* The facts are the same as in *Example 2*, except that in 2012, pursuant to an IRS audit, Z's 2007 taxable income was redetermined. It was adjusted by an income increase of $10,000. Pursuant to the terms of the sales agreement, the members of the M–N group timely notified the members of the X–Y group of Z's income adjustment.

(ii) *Additional tax analysis.* For 2007 the X–Y–Z group owed a revised additional tax in the amount of $5,500, allocated as follows: $3,557.40 to X and $1,942.60 to Y. X and Y each filed an amended 2007 tax return to report their portions of the $500 increase to the group's additional tax. Pursuant to their apportionment plan for allocating their regular tax, and as a result of defaulting to the proportionate method for allocating the group's additional tax, X reported $323.40 as its share of the group's increase to its additional tax and Y reported $176.60 as its share of the group's increase to its additional tax.

Example 4. The facts are the same as in *Example 1*, except that the members elected in their apportionment plan to adopt the FIFO method for apportioning the additional tax. Under the FIFO method, the 5 percent additional tax amount of $5,000 will be apportioned entirely to those members who would benefit from using the 15 percent tax bracket, by reason that $5,000 of the group's additional tax is less than $9,500, which is the full tax-benefit amount inuring to a controlled group from having a 15 percent tax rate applied to the full income bracket subject to that rate. Since X derived 80 percent of the group's tax benefit by its use of the 15 percent tax bracket, its share of the group's 5 percent additional tax is $4,000 (80% × $5,000),

and Y's share of the group's 5 percent additional tax is, therefore, $1,000, which is the remaining amount of the group's 5 percent additional tax, attributable to the 15 percent tax bracket.

(b) *Reduction to the amount exempted from the alternative minimum tax*— (1) *Calculation*. The alternative minimum taxable incomes for all the taxable years of the component members of a controlled group of corporations subjected to the same December 31st testing date shall be taken into account in calculating the reduction set forth in section 55(d)(3) to the amount exempted from the alternative minimum tax (the exemption amount).

(2) *Apportionment*. Any reduction to the exemption amount shall be apportioned to the component members of a controlled group in the same manner that the amount of the exemption (provided in section 55(d)(2)) to the alternative minimum tax was allocated under section 1561(a). For rules to apportion the section 55(d)(2) exemption amount among the component members of a controlled group, see § 1.1561–3T(b) or (c).

(3) *Example*. (i) *Facts*. A controlled group of corporations consists of three members: X, Y, and Z. X owns all of the stock of Y and Z. Each corporation files its separate return on a calendar year basis. For calendar year 2007, the component members of this controlled group have an apportionment plan in effect. The group has chosen to apportion the entire section 55(d)(2) exemption amount of $40,000 to Z. For 2007, X had alternative minimum taxable income (AMTI) of $40,000, Y had AMTI of $60,000 and Z had AMTI of $100,000. Thus the total AMTI of the group is $200,000.

(ii) *Calculating the reduction to the exemption amount*. Section 55(d)(3)(A) provides that the section 55(d)(2) exemption amount shall be reduced by an amount equal to 25 percent of the amount by which the AMTI of a corporation exceeds $150,000. For the purpose of computing the group's AMTI, the AMTI of each of the component members, for their taxable years that have the same December 31st testing date, shall be taken into account. In accordance with these provisions, the $40,000 exemption amount is reduced by $12,500 (25% × $50,000 ($200,000 − $150,000)). Pursuant to the group's allocation plan, the entire $12,500 reduction to the exemption amount is allocated to Z. Thus, after such allocation, Z's $40,000 exemption amount is reduced to $27,500 ($40,000 − $12,500).

(c) *Accumulated earnings credit*. The component members of a controlled group of corporations may allocate the amount of the accumulated earnings credit unequally if they have an apportionment plan in effect.

(d) [Reserved]

(e) *Short taxable years not including a December 31st date*— (1) *General rule*. If a corporation has a short taxable year not including a December 31st testing date and, after applying the rules of section 1561(b) and paragraph (e)(2)(i) of this section, it qualifies as a component member of the group with respect to its short taxable year (short-year member), then, for purposes of subtitle A of the Internal Revenue Code, the amount of any tax-benefit item described in section 1561(b) allocated to that component member's short taxable year shall be the amount specified in section 1561(a) for that item, divided by the number of corporations which are component members of that group on the last day of that component member's short taxable year. The component members of such group may not apportion, by their apportionment plan, an amount of such tax-benefit item to any short-year member that differs from an amount based on equal apportionment.

(2) *Additional rules*. For purposes of paragraph (e)(1) of this section—

(i) Section 1563(b) shall be applied as if the last day of the taxable year of a short-year member were substituted for December 31, and

(ii) The term *short taxable year* does not include any portion of a taxable year of a corporation for which its income is required to be included in a consolidated return under § 1.1502–76.

(3) *Examples*. The provisions of this paragraph (e) may be illustrated by the following examples:

Example 1. Formation of a new member of a controlled group. (i) *Facts*. On January 2, 2007, corporation X transfers cash to newly formed corporation Y (which begins business on that date) and receives all of the stock of

Y in return. X also owns all of the stock of corporation Z on each day of 2006 and 2007. X, Y, and Z have an apportionment plan in effect, apportioning the 15 percent tax-bracket amount as follows: 40% ($20,000) to each of X and Y and 20% ($10,000) to Z. X, Y, and Z each file a separate return with respect to the group's December 31st 2007 testing date. X is on a calendar taxable year and Z is on a fiscal taxable year ending on March 31. Y adopts a fiscal year ending on June 30 and timely files a tax return for its short taxable year beginning on January 2, 2007, and ending on June 30, 2007.

(ii) *Y's short taxable year*. On June 30, 2007, Y is a component member of a parent-subsidiary controlled group of corporations composed of X, Y and Z. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to Y's short taxable year ending on June 30, 2007. Rather, Y is entitled to exactly ⅓ of such bracket amount, or $16,667.

(iii) *The members' subsequent taxable years*. On December 31, 2007, X, Y and Z are component members of a parent-subsidiary controlled group of corporations. For their taxable years that include December 31, 2007 (X's calendar year ending December 31, 2007, Z's fiscal year ending March 31, 2008 and Y's fiscal year ending June 30, 2008), X, Y and Z apportion among themselves the full amount of all of the applicable tax brackets pursuant to their apportionment plan. For example, 40% of the 15 percent tax-bracket amount, or $20,000, was apportioned to each of X and Y, and the remaining 10%, or $10,000, was apportioned to Z.

Example 2. Allocation of tax bracket to a liquidated member of a controlled group having a short taxable year. (i) *Facts*. On January 1, 2007, corporation P owns all of the stock of corporations S_1, S_2 and S_3 (the P group). Each of these four component members of the P group, with respect to the group's December 31, 2007 testing date, files its separate return on a calendar year basis. These members have an apportionment plan in effect (the P group plan) under which S_1 and S_2 are each entitled to 40% of the 15 percent tax-bracket amount ($20,000), and P and S_3 are each entitled to 10% of the 15 percent tax-bracket amount ($5,000). On May 31, 2007, S_1 liquidates and therefore files a return for the short taxable year beginning on January 1, 2007, and ending on May 31, 2007. On July 31, 2007, S_2 liquidates and therefore files a return for the short taxable year beginning on January 1, 2007 and ending on July 31, 2007. P and S_3 each file a return for their 2007 calendar taxable years.

(ii) *Apportionment of the 15 percent tax bracket to S_1 for its short taxable year*. On May 31, 2007, S_1 is a component member of the P group composed of P, S_1, S_2 and S_3. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to S_1's short taxable year ending on June 30, 2007. Rather, S_1 is entitled to exactly ¼ of such bracket amount, or $12,500.

(iii) *Apportionment of the 15 percent tax bracket to S_2 for its short taxable year*. On July 31, 2007, S_2 is a component member of the P group composed of P, S_2 and S_3. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to S_2's short taxable year ending on June 30, 2007. Rather, S_2 is entitled to exactly ⅓ of such bracket amount, or $16,667.

(iv) *Apportionment of the 15 percent tax bracket to P and S_3 for each of their calendar taxable years*. On December 31, 2007, P and S_3 are component members of the P group. Accordingly, for P and S_3's 2007 calendar taxable year, they are each apportioned $25,000 of the 15 percent tax bracket, pursuant to the applicable P group plan.

Example 3. Liquidation of member after its transfer to another controlled group. (i) *Facts*. The facts are the same as in *Example 2*, except that P, on April 30, 2007, sold all of the stock of S_2 to the M-N controlled group. At the time of the sale, M and N are both unrelated to any members of the P group. As in *Example 2*, S_2 liquidates on July 31, 2007, and therefore files a tax return for its short taxable year beginning on January 1, 2007, and ending on July 31, 2007. Pursuant to the sales agreement, the N-M group timely notified P that S_2 had liquidated.

(ii) *Controlled group analysis*. On April 30, 2007, the date of the sale of S_2, the P group reasonably expected that S_2 would be treated as an excluded member with respect to its December 31, 2007 testing date. On that April 30th date, S_2 had been a member of the P group for less than one-half the number of days of what it expected would be a full 2007 calendar taxable year preceding December 31, 2007 (120 days (January 1–April 30) out of 364 days (January 1–December 30)). Yet, as a result of S_2's subsequent liquidation by the M-N group prior to December 31, 2007, S_2 became a component member of the P group with respect to the P group's December 31, 2007 testing date. With respect to that December 31st testing date, S_2 thus was a member of the P group for more than one-half of the number of days of its taxable year ending on July 31, 2007, which days proceeded December 31st 2007 (120 days (January 1–April 30 of 2007) out of 211 days (January 1–July 30 of 2007)). The allocation of the 15 percent tax-bracket amount to the P group members is determined in the same manner as in *Example 2* and, therefore, the bracket amounts allocated to P, S_1, S_2 and S_3 are the same as determined in *Example 2*. The allocation of the bracket amounts would be the same if, at the time P sold all of the S_2 stock, the parties had made a section 338(h)(10) election.

Example 4. Short taxable year including a December 31st date. Corporation X owns all of the stock of corporations Y and Z. X, Y and Z each file separate returns. X and Y are on a calendar taxable year and Z is on a fiscal taxable year beginning October 1 and ending September 30. On January 2, 2007, Z liquidates. Because Z's final taxable year (beginning on October 1, 2006 and ending on January 2, 2007) includes a December 31st date, that is, December 31, 2006, it is not subject to the short taxable year rule of section 1561(b) and paragraph (e) of this section. Accordingly, Z is a component member of the X-Y-Z group, for the group's December 31, 2006 testing date. Thus, the rules of this paragraph (e) do not limit the amount of any of the tax-benefit items of section 1561(a) available to Z or to this controlled group.

(f) *Effective date*—(1) *Applicability dates*—(i) *Paragraphs (a) and (b) of this section.* Paragraphs (a) and (b) of this section apply to any taxable year beginning after December 31, 2007. However, taxpayers may apply paragraphs (a) and (b) of this section to any Federal income tax return filed on or after December 26, 2007, provided that all of the component members of a controlled group of corporations apply such paragraphs (a) and (b).

(ii) *Paragraph (c) of this section.* Paragraph (c) of this section applies to any taxable year beginning on or after December 22, 2006. However, taxpayers may apply paragraph (c) of this section to any Federal income tax return filed on or after December 22, 2006, provided that all of the component members of a controlled group of corporations apply such paragraph (c).

(iii) *Paragraph (e) of this section.* Paragraph (e) of this section applies to any taxable year beginning on or after *December 26, 2007*. However, taxpayers may apply paragraph (e) of this section to any Federal income tax return filed on or after December 26, 2007.

(2) *Expiration dates.* The applicability of paragraph (c) of this section will expire on December 21, 2009. The applicability of paragraphs (a), (b) and (e) of this section will expire on *December 21, 2010*.

[T.D. 9304, 71 FR 76908, Dec. 22, 2006, as amended by T.D. 9369, 72 FR 72932, Dec. 26, 2007; 73 FR 4695, Jan. 28, 2008]

§ 1.1561–3T Allocation of the section 1561(a) tax items (temporary).

(a) *Filing of form*—(1) *In general.* For each taxable year that a corporation is a component member of the same controlled group of corporations on a December 31, for its taxable year that includes such December 31, such corporation and all other component members of such group must each file the required form (*i.e.*, Schedule O or any successor to that form) with each Federal income tax return. Each such corporation must file that form with its return whether or not—

(i) An apportionment plan is in effect; or

(ii) Any change is made in the group's apportionment of its section 1561(a) tax benefit items from the previous year.

(2) *Exception for component members that are members of a consolidated group.* If one or more of the component members of a controlled group of corporations are also members of a consolidated group, the parent of such consolidated group shall file only one form on behalf of all of such members. Such form shall contain the information required for each such member.

(b) *No apportionment plan in effect.* If the component members of a controlled group of corporations do not have an apportionment plan in effect, the amounts of the section 1561(a) items must be divided equally among all such members. For purposes of the preceding sentence, if any component members of a controlled group of corporations are also members of a consolidated group, such members will each be treated as a separate component member of the controlled group.

(c) *Apportionment plan in effect*—(1) *Adoption of plan.* The component members of a controlled group of corporations consent to the adoption (or amendment) of an apportionment plan by checking the box to that effect on such form. For purposes of this paragraph (c)—

(i) An apportionment plan that is adopted (including a plan that has been amended) continues in effect until it is terminated;

(ii) A consolidated group is treated as one component member of such group; and

(iii) The members must allocate the amounts of the section 1561(a) items between or among themselves as described in the plan.

(2) *Limitation on adopting a plan*—(i) *Sufficient statute of limitations period.* The members may only adopt or amend such a plan if there is at least one year remaining in the statutory period (including any extensions thereof) for the assessment of a deficiency against every member the tax liability of which would be increased by the adoption of such a plan.

(ii) *Insufficient statute of limitations period.* If any member cannot satisfy the requirement of paragraph (c)(2)(i) of this section, the members may not adopt or amend such a plan unless the member not satisfying such requirement has entered into an agreement with the Internal Revenue Service to extend the statute of limitations for the limited purpose of assessing any deficiency against such member attributable to the adoption of such a plan.

(3) *Termination of plan.* An apportionment plan that is in effect for the component members of a controlled group with respect to a particular December 31 is terminated with respect to a succeeding December 31 if—

(i) Each member of such group consents to the termination of such a plan for such succeeding December 31 by checking the box to that effect on its form;

(ii) The controlled group ceases to remain in existence (within the meaning of section 1563(a)) during the calendar year ending on such succeeding December 31;

(iii) Any corporation which was a component member of such group on the particular December 31 is not a component member of such group on such succeeding December 31; or

(iv) Any corporation which was not a component member of such group on the particular December 31 is a component member of such group on such succeeding December 31.

(d) *Effective date*—(1) *Applicability date.* This section applies to any taxable year beginning on or after December 22, 2006. However, taxpayers may apply this section to any Federal income tax return filed on or after December 22, 2006.

(2) *Expiration date.* The applicability of this section will expire on December 21, 2009.

[T.D. 9304, 71 FR 76908, Dec. 22, 2006]

§ 1.1563–1T Definition of controlled group of corporations and component members and related concepts (temporary).

(a) *Controlled group of corporations*—(1) *In general.* For purposes of sections 1561 through 1563, the term *controlled group of corporations* means any group of corporations which is either a *parent-subsidiary controlled group* (as defined in paragraph (a)(2) of this section), a *brother-sister controlled group* (as defined in paragraph (a)(3)(i) of this section), a *combined group* (as defined in paragraph (a)(4) of this section), or a *life insurance controlled group* (as defined in paragraph (a)(5) of this section). For the exclusion of certain stock for purposes of applying the definitions contained in this paragraph, see section 1563(c) and § 1.1563–2.

(2) *Parent-subsidiary controlled group.* (i) The term *parent-subsidiary controlled group* means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(A) Stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (directly and with the application of § 1.1563–3(b)(1), relating to options) by one or more of the other corporations; and

(B) The common parent corporation owns (directly and with the application of § 1.1563–3(b)(1), relating to options) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(ii) The definition of a parent-subsidiary controlled group of corporations may be illustrated by the following examples:

Example 1. P Corporation owns stock possessing 80 percent of the total combined voting power of all classes of stock entitled to vote of S Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P and S.

Example 2. Assume the same facts as in *Example 1.* Assume further that S owns stock possessing 80 percent of the total value of shares of all classes of stock of T Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, and T. The result would be the same if P, rather than S, owned the T stock.

Example 3. L Corporation owns 80 percent of the only class of stock of M Corporation and M, in turn, owns 40 percent of the only class of stock of O Corporation. L also owns 80 percent of the only class of stock of N Corporation and N, in turn, owns 40 percent of the only class of stock of O. L is the common parent of a parent-subsidiary controlled group consisting of member corporations L, M, N, and O.

Example 4. X Corporation owns 75 percent of the only class of stock of Y and Z Corporations; Y owns all the remaining stock of Z; and Z owns all the remaining stock of Y. Since intercompany stockholdings are excluded (that is, are not treated as outstanding) for purposes of determining whether X owns stock possessing at least 80 percent of the voting power or value of at least one of the other corporations, X is treated as the owner of stock possessing 100 percent of the voting power and value of Y and of Z for purposes of paragraph (a)(2)(i)(B) of this section. Also, stock possessing 100 percent of the voting power and value of Y and Z is owned by the other corporations in the group within the meaning of paragraph (a)(2)(i)(A) of this section. (X and Y together own stock possessing 100 percent of the voting power and value of Z, and X and Z together own stock possessing 100 percent of the voting power and value of Y.) Therefore, X is the common parent of a parent-subsidiary controlled group of corporations consisting of member corporations X, Y, and Z.

(3) *Brother-sister controlled group*—(i) *In general.* The term *brother-sister controlled group* means two or more corporations if the same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of the rules contained in § 1.1563–3(b)) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

(ii) *Additional stock ownership requirement for purposes of certain other provisions of law.* For purposes of any provision of law (other than sections 1561 through 1563) that incorporates the section 1563(a) definition of a controlled group, the term *brother-sister controlled group* means two or more corporations if the same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of the rules contained in § 1.1563–3(b)) stock possessing—

(A) At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each corporation (the 80 percent requirement);

(B) More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation (the more-than-50 percent identical ownership requirement); and

(C) The five or fewer persons whose stock ownership is considered for purposes of the 80 percent requirement must be the same persons whose stock ownership is considered for purposes of the more-than-50 percent identical ownership requirement.

(iii) *Examples.* The principles of paragraph (a)(3)(ii) of this section may be illustrated by the following examples:

Example 1. (i) The outstanding stock of corporations P, Q, R, S, and T, which have only one class of stock outstanding is owned by the following unrelated individuals:

CORPORATIONS

Individuals	P (percent)	Q (percent)	R (percent)	S (percent)	T (percent)	Identical ownership
A	55	51	55	55	55	51.

CORPORATIONS—Continued

Individuals	P (percent)	Q (percent)	R (percent)	S (percent)	T (percent)	Identical ownership
B	45	49				(45% in P & Q).
C			45			
D				45		
E					45	
Total	100	100	100	100	100	

(ii) Corporations P and Q are members of a brother-sister controlled group of corporations. Although the more-than-50 percent identical ownership requirement is met for all 5 corporations, corporations R, S, and T are not members because at least 80 percent of the stock of each of those corporations is not owned by the same 5 or fewer persons whose stock ownership is considered for purposes of the more-than-50 percent identical ownership requirement.

Example 2. (i) The outstanding stock of corporations U and V, which have only one class of stock outstanding, is owned by the following unrelated individuals:

Individuals	Corporations	
	U (percent)	V (percent)
A	12	12
B	12	12
C	12	12
D	12	12
E	13	13
F	13	13
G	13	13
H	13	13
Total	100	100

(ii) Any group of five of the shareholders will own more than 50 percent of the stock in each corporation, in identical holdings. However, U and V are not members of a brother-sister controlled group because at least 80 percent of the stock of each corporation is not owned by the same five or fewer persons.

Example 3. (i) Corporations X and Y each have two classes of stock outstanding, voting common and non-voting common. (None of this stock is excluded from the definition of stock under section 1563(c).) Unrelated individuals A and B own the following percentages of the class of stock entitled to vote (voting) and of the total value of shares of all classes of stock (value) in each of corporations X and Y:

Individuals	Corporations	
	X	Y
A	100% voting, 60% value	75% voting, 60% value.
B	0% voting, 10% value	25% voting, 10% value.

(ii) No other shareholder of X owns (or is considered to own) any stock in Y. X and Y are a brother-sister controlled group of corporations. The group meets the more-than-50 percent identical ownership requirement because A and B own more than 50 percent of the total value of shares of all classes of stock of X and Y in identical holdings. (The group also meets the more-than-50 percent identical ownership requirement because of A's voting stock ownership.) The group meets the 80 percent requirement because A and B own at least 80 percent of the total combined voting power of all classes of stock entitled to vote.

Example 4. Assume the same facts as in *Example 3* except that the value of the stock owned by A and B is not more than 50 percent of the total value of shares of all classes of stock of each corporation in identical holdings. X and Y are not a brother-sister controlled group of corporations. The group meets the more-than-50 percent identical ownership requirement because A owns more than 50 percent of the total combined voting power of the voting stock of each corporation. For purposes of the 80 percent requirement, B's voting stock in Y cannot be combined with A's voting stock in Y since B, who does not own any voting stock in X, is not a person whose ownership is considered for purposes of the more-than-50 percent identical ownership requirement. Because no other shareholder owns stock in both X and Y, these other shareholders' stock ownership is not counted towards meeting either the more-than-50 percent identical ownership requirement or the 80 percent ownership requirement.

(iv) *Special rule if prior law applies.* Paragraph (a)(3)(ii) of this section, as amended by TD 8179, applies to taxable years ending on or after December 31, 1970. See, however, the transitional rule in paragraph (d) of this section.

(4) *Combined group.* (i) The term *combined group* means any group of three or more corporations if—

(A) Each such corporation is a member of either a parent-subsidiary controlled group of corporations or a

brother-sister controlled group of corporations; and

(B) At least one of such corporations is the common parent of a parent-subsidiary controlled group and also is a member of a brother-sister controlled group.

(ii) The definition of a combined group of corporations may be illustrated by the following examples:

Example 1. Smith, an individual, owns stock possessing 80 percent of the total combined voting power of all classes of the stock of corporations X and Y. Y, in turn, owns stock possessing 80 percent of the total combined voting power of all classes of the stock of corporation Z. X, Y, and Z are members of the same combined group since—

(i) X, Y, and Z are each members of either a parent-subsidiary or brother-sister controlled group of corporations; and

(ii) Y is the common parent of a parent-subsidiary controlled group of corporations consisting of Y and Z, and also is a member of a brother-sister controlled group of corporations consisting of X and Y.

Example 2. Assume the same facts as in *Example 1*, and further assume that corporation X owns 80 percent of the total value of shares of all classes of stock of corporation T. X, Y, Z, and T are members of the same combined group.

(5) *Life insurance controlled group.* (i) The term *life insurance controlled group* means two or more life insurance companies each of which is a member of a controlled group of corporations described in paragraph (a)(2), (a)(3)(i), or (a)(4) of this section and to which §1.1502–47(f)(6) does not apply. Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of a controlled group described in such paragraph (a)(2), (a)(3)(i), or (a)(4). For purposes of this section, the common parent of the controlled group described in paragraph (a)(2) of this section shall be referred to as the common parent of the life insurance controlled group.

(ii) The following examples illustrate the definition of a life insurance controlled group. In these examples, L indicates a life company, another letter indicates a nonlife company and each corporation uses the calendar year as its taxable year.

Example 1. Since January 1, 1999, corporation P has owned all the stock of corporations L_1 and Y, and L_1 has owned all the stock of corporation X. On January 1, 2005, Y acquired all of the stock of corporation L_2. Since L_1 and L_2 are members of a parent-subsidiary controlled group of corporations, such companies are treated as members of a life insurance controlled group separate from the parent-subsidiary controlled group consisting of P, X and Y. For purposes of this section, P is referred to as the common parent of the life insurance controlled group even though P is not a member of such group.

Example 2. The facts are the same as in *Example 1*, except that, beginning with the 2005 tax year, the P affiliated group elected to file a consolidated return and P made a section 1504(c)(2) election. Pursuant to paragraph (a)(5)(i) of this section, L_1 and L_2 are not members of a separate life insurance controlled group. Instead, P, X, Y, L_1 and L_2 constitute one controlled group. *See* §1.1502–47(f)(6).

(6) *Voting power of stock.* For purposes of this section, and §§1.1563–2 and 1.1563–3, in determining whether the stock owned by a person (or persons) possesses a certain percentage of the total combined voting power of all classes of stock entitled to vote of a corporation, consideration will be given to all the facts and circumstances of each case. A share of stock will generally be considered as possessing the voting power accorded to such share by the corporate charter, by-laws, or share certificate. On the other hand, if there is any agreement, whether express or implied, that a shareholder will not vote his stock in a corporation, the formal voting rights possessed by his stock may be disregarded in determining the percentage of the total combined voting power possessed by the stock owned by other shareholders in the corporation, if the result is that the corporation becomes a component member of a controlled group of corporations. Moreover, if a shareholder agrees to vote his stock in a corporation in the manner specified by another shareholder in the corporation, the voting rights possessed by the stock owned by the first shareholder may be considered to be possessed by the stock owned by such other shareholder if the result is that the corporation becomes a component member of a controlled group of corporations.

(b) *Component members*—(1) *In general*—(i) *Definition.* For purposes of sections 1561 through 1563, a corporation is

with respect to its taxable year a component member of a controlled group of corporations for the group's testing date if such corporation—

(A) Is a member of such controlled group on such testing date and is not treated as an excluded member under paragraph (b)(2) of this section; or

(B) Is not a member of such controlled group on such testing date but is treated as an additional member under paragraph (b)(3) of this section.

(ii) *Member of a controlled group of corporations.* For purposes of sections 1561 through 1563, a member of a controlled group is a corporation connected with other member(s) of a controlled group under the stock ownership rules and the stock qualification rules set forth in section 1563. Under the above rules, for a corporation to qualify as a component member of the group with respect to a group's December 31st testing date (or the short-year testing date for a short-year member), that corporation does not have to be a member of that group on that group's testing date. In addition, a corporation that is a member of a controlled group on the group's testing date does not necessarily qualify as a component member of that group with respect to that testing date.

(iii) *Additional concepts used in applying the controlled group rules*—

(A) *Testing date* is the date used for determining the status of controlled group members as either component members or excluded members. That testing date is then also used to determine which taxable years of those component members are to be subjected to the controlled group rules. Generally, a member's testing date is the December 31st date included within that member's taxable year, whether such member is on a calendar or fiscal taxable year. However, if a component member of a controlled group has a short taxable year that does not include a December 31st date, then the last day of that short taxable year becomes that member's testing date; and

(B) *Testing period* is the time period used for determining the status of controlled group members as either component members or excluded members. The testing period begins on the first day of a member's taxable year and ends on the day before its testing date (Generally, the testing date is December 31st, but for a component member having a short taxable year not ending on December 31st, the testing date for the short taxable year of that member (and only that member) becomes the last day of that member's short taxable year). Thus, for a member on a fiscal taxable year, the portion of its taxable year beginning after December 31st and ending on the last day of its taxable year is not taken into account for determining its status as a component member or an excluded member.

(2) *Excluded members*—(i) A corporation, which is a member of a controlled group of corporations on the group's testing date, a date included within that member's taxable year, but who was a member of such group for less than one-half of the number of days of its testing period, shall be treated as an excluded member of such group for that group's testing date.

(ii) A corporation which is a member of a controlled group of corporations on a testing date shall be treated as an excluded member of such group on such date if, for its taxable year including such date, such corporation is—

(A) Exempt from taxation under section 501(a) (except a corporation which is subject to tax on its unrelated business taxable income under section 511) or 521 for such taxable year;

(B) A foreign corporation not subject to taxation under section 882(a) for the taxable year;

(C) An S corporation (as defined in section 1361) for purposes of any tax benefit item described in section 1561(a) to which it is not subject;

(D) A franchised corporation (as defined in section 1563(f)(4) and § 1.1563–4); or

(E) An insurance company subject to taxation under section 801, unless such insurance company (without regard to this paragraph (b)(2)(ii)(E)) is a component member of a life insurance controlled group described in paragraph (a)(5)(i) of this section or unless § 1.1502–47(f)(6) applies (which treats a life insurance company, for which a section 1504(c)(2) election is effective, as a member (whether eligible or ineligible) of a life-nonlife affiliated group).

(3) *Additional members.* A corporation shall be treated as an additional member of a controlled group of corporations, that is, an additional component member, on the group's testing date if it—

(i) Is not a member of such group on such date;

(ii) Is not described, with respect to such taxable year, in paragraph (b)(2)(ii)(A), (B), (C), (D), or (E) of this section; and

(iii) Was a member of such group for one-half (or more) of the number of days in its testing period.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. Brown, an individual, owns all of the stock of corporations W and X on each day of 1964. W and X each uses the calendar year as its taxable year. On January 1, 1964, Brown also owns all the stock of corporation Y (a fiscal year corporation with a taxable year beginning on July 1, 1964, and ending on June 30, 1965), which stock he sells on October 15, 1964. On December 1, 1964, Brown purchases all the stock of corporation Z (a fiscal year corporation with a taxable year beginning on September 1, 1964, and ending on August 31, 1965). On December 31, 1964, W, X, and Z are members of the same controlled group. However, the component members of the group on such December 31 are W, X, and Y. Under paragraph (b)(2)(i) of this section, Z is treated as an excluded member of the group on December 31, 1964, since Z was a member of the group for less than one-half of the number of days (29 out of 121 days) during the period beginning on September 1, 1964 (the first day of its taxable year) and ending on December 30, 1964. Under paragraph (b)(3) of this section, Y is treated as an additional member of the group on December 31, 1964, since Y was a member of the group for at least one-half of the number of days (107 out of 183 days) during the period beginning on July 1, 1964 (the first day of its taxable year) and ending on December 30, 1964.

Example 2. On January 1, 1964, corporation P owns all the stock of corporation S, which in turn owns all the stock of corporation S–1. On November 1, 1964, P purchases all of the stock of corporation X from the public and sells all of the stock of S to the public. Corporation X owns all the stock of corporation Y during 1964. P, S, S–1, X, and Y file their returns on the basis of the calendar year. On December 31, 1964, P, X, and Y are members of a parent-subsidiary controlled group of corporations; also, corporations S and S–1 are members of a different parent-subsidiary controlled group on such date. However, since X and Y have been members of the parent-subsidiary controlled group of which P is the common parent for less than one-half the number of days during the period January 1 through December 30, 1964, they are not component members of such group on such date. On the other hand, X and Y have been members of a parent-subsidiary controlled group of which X is the common parent for at least one-half the number of days during the period January 1 through December 30, 1964, and therefore they are component members of such group on December 31, 1964. Also since S and S–1 were members of the parent-subsidiary controlled group of which P is the common parent for at least one-half the number of days in the taxable years of each such corporation during the period January 1 through December 30, 1964, P, S, and S–1 are component members of such group on December 31, 1964.

Example 3. Throughout 1964, corporation M owns all the stock of corporation F which, in turn, owns all the stock of corporations L–1, L–2, X, and Y. M is a domestic mutual insurance company subject to taxation under section 821, F is a foreign corporation not engaged in a trade or business within the United States, L–1 and L–2 are domestic life insurance companies subject to taxation under section 802, and X and Y are domestic corporations subject to tax under section 11 of the Code. Each corporation uses the calendar year as its taxable year. On December 31, 1964, M, F, L–1, L–2, X, and Y are members of a parent-subsidiary controlled group of corporations. However, under paragraph (b)(2)(ii) of this section, M, F, L–1, and L–2 are treated as excluded members of the group on December 31, 1964. Thus, on December 31, 1964, the component members of the parent-subsidiary controlled group of which M is the common parent include only X and Y. Furthermore, since paragraph (b)(2)(ii)(E) of this section does not result in L–1 and L–2 being treated as excluded members of a life insurance controlled group, L–1 and L–2 are component members of a life insurance controlled group on December 31, 1964.

(5) *Application of constructive ownership rules.* For purposes of paragraphs (b)(2)(i) and (3) of this section, it is necessary to determine whether a corporation was a member of a controlled group of corporations for one-half (or more) of the number of days in its taxable year which precede the December 31 falling within such taxable year. Therefore, the constructive ownership rules contained in §1.1563–3(b) (to the extent applicable in making such determination) must be applied on a day-by-day basis. For example, if P Corporation owns all the stock of X Corporation on each day of 1964, and on

December 30, 1964, acquires an option to purchase all the stock of Y Corporation (a calendar-year taxpayer which has been in existence on each day of 1964), the application of §1.1563–3(b)(1) on a day-by-day basis results in Y being a member of the brother-sister controlled group on only one day of Y's 1964 year which precedes December 31, 1964. Accordingly, since Y is not a member of such group for one-half or more of the number of days in its 1964 year preceding December 31, 1964, Y is treated as an excluded member of such group on December 31, 1964.

(c) *Overlapping groups*—(1) *In general.* If on a December 31 a corporation is a component member of a controlled group of corporations by reason of ownership of stock possessing at least 80 percent of the total value of shares of all classes of stock of the corporation, and if on such December 31 such corporation is also a component member of another controlled group of corporations by reason of ownership of other stock (that is, stock not used to satisfy the at-least-80 percent total value test) possessing at least 80 percent of the total combined voting power of all classes of stock of the corporation entitled to vote, then such corporation shall be treated as a component member only of the controlled group of which it is a component member by reason of the ownership of at least 80 percent of the total value of its shares.

(2) *Brother-sister controlled groups*—(i) *One corporation.* If on a December 31, a corporation would, without the application of this paragraph (c)(2), be a component member of more than one brother-sister controlled group on such date, the corporation will be treated as a component member of only one such group on such date. Such corporation may elect the group in which it is to be included by including on or with its income tax return for the taxable year that includes such date a statement entitled, ''STATEMENT TO ELECT CONTROLLED GROUP PURSUANT TO §1.1563–1T(c)(2).'' This statement must include—

(A) A description of each of the controlled groups in which the corporation could be included. The description must include the name and employer identification number of each component member of each such group and the stock ownership of the component members of each such group; and

(B) The following representation: [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF CORPORATION] ELECTS TO BE TREATED AS A COMPONENT MEMBER OF THE [INSERT DESIGNATION OF GROUP].

(ii) *Multiple corporations.* If more than one corporation would, without the application of this paragraph (c)(2), be a component member of more than one controlled group, those corporations electing to be component members of the same group must file a single statement. The statement must contain the information described in paragraph (c)(2)(i) of this section, plus the names and employer identification numbers of all other corporations designating the same group. The original statement must be included on or with the original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such return) of the corporation that, among those corporations which would (without the application of this paragraph (c)(2)) belong to more than one group, has the taxable year including such December 31 which ends on the earliest date. That corporation must provide a copy of the statement to each other corporation included in the statement and represent in its statement that it has done so. Either the original or a copy of the statement must be retained by each corporation as part of its records. See §1.6001–1(e).

(iii) *Election*—(A) *Election filed.* An election filed under this paragraph (c)(2) is irrevocable and effective until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(B) *Election not filed.* In the event no election is filed in accordance with the provisions of this paragraph (c)(2), then the Internal Revenue Service will determine the group in which such corporation is to be included. Such determination will be binding for all subsequent years unless the corporation files a valid election with respect to any such subsequent year or until a change

in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(iv) The provisions of this paragraph (c)(2) may be illustrated by the following examples (in which it is assumed that all the individuals are unrelated):

Example 1. (i) On each day of 1970 all the outstanding stock of corporations M, N, and P is held in the following manner:

Individuals	Corporations		
	M (percent)	N (percent)	P (percent)
A	55	40	5
B	40	20	40
C	5	40	55

(ii) Since the more-than-50 percent identical ownership requirement of section 1563(a)(2) is met with respect to corporations M and N and with respect to corporations N and P, but not with respect to corporations M, N, and P, corporation N would, without the application of this paragraph (c)(2), be a component member on December 31, 1970, of overlapping groups consisting of M and N and of N and P. If N does not file an election in accordance with paragraph (c)(2)(i) of this section, the Internal Revenue Service will determine the group in which N is to be included.

Example 2. (i) On each day of 1970, all the outstanding stock of corporations S, T, W, X, and Z is held in the following manner:

Individuals	Corporations				
	S	T	W	X	Z
D	52	52	52	52	52
E	40	2	2	2	2
F	2	40	2	2	2
G	2	2	40	2	2
H	2	2	2	40	2
I	2	2	2	2	40

(ii) On December 31, 1970, the more-than-50 percent identical ownership requirement of section 1563(a)(2) may be met with regard to any combination of the corporations but all five corporations cannot be included as component members of a single controlled group because the inclusion of all the corporations in a single group would be dependent upon taking into account the stock ownership of more than five persons. Therefore, if the corporations do not file a statement in accordance with paragraph (c)(2)(ii) of this section, the Internal Revenue Service will determine the group in which each corporation is to be included. The corporations or the Internal Revenue Service, as the case may be, may designate that three corporations be included in one group and two corporations in another, or that any four corporations be included in one group and that the remaining corporation not be included in any group.

(d) *Transitional rules*—(1) *In general.* Treasury decision 8179 amended paragraph (a)(3)(ii) of this section to revise the definition of a brother-sister controlled group of corporations. In general, those amendments are effective for taxable years ending on or after December 31, 1970.

(2) *Limited nonretroactivity.* (i) Under the authority of section 7805(b), the Internal Revenue Service will treat an old group as a brother-sister controlled group corporations for purposes of applying sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 of the Employment Retirement Income Security Act of 1974 (ERISA) in a plan year or taxable year beginning before March 2, 1988, to the extent necessary to prevent an adverse effect on any old member (or any other corporation), or on any plan or other entity described in such sections (including plans, etc., of corporations not part of such old group), that would result solely from the retroactive effect of the amendment to this section by TD 8179. An adverse effect includes the disqualification of a plan or the disallowance of a deduction or credit for a contribution to a plan. The Internal Revenue Service, however, will not treat an old member as a member of an old group to the extent that such treatment will have an adverse effect on that old member.

(ii) Section 7805(b) will not be applied pursuant to paragraph (d)(2)(i) of this section to treat an old member of an old group as a member of a brother-sister controlled group to prevent an adverse effect for a taxable year if, for that taxable year, that old member treats or has treated itself as not being a member of that old group for purposes of sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 and Title IV of ERISA for such taxable year (such as by filing, with respect to such taxable year, a return, amended return, or claim for credit or refund in which the amount of any deduction, credit, limitation, or tax due

is determined by treating itself as not being a member of the old group for purposes of those sections). However, the fact that one or more (but not all) of the old members do not qualify for section 7805(b) treatment because of the preceding sentence will not preclude that old member (or members) from being treated as a member of the old group under paragraph (d)(2)(i) of this section in order to prevent the disallowance of a deduction or credit of another old member (or other corporation) or to prevent the disqualification of, or other adverse effect on, another old member's plan (or other entity) described in the sections of the Code and ERISA enumerated in such paragraph.

(3) *Election of general nonretroactivity*. In the case of a taxable year ending on or after December 31, 1970, and before March 2, 1988, an old group will be treated as a brother-sister controlled group of corporations for all purposes of the Code for such taxable year if—

(i) Each old member files a statement consenting to such treatment for such taxable year with the District Director having audit jurisdiction over its return within six months after March 2, 1988; and

(ii) No old member—

(A) Files or has filed, with respect to such taxable year, a return, amended return, or claim for credit or refund in which the amount of any deduction, credit, limitation, or tax due is determined by treating any old member as not a member of the old group; or

(B) Treats the employees of all members of the old group as not being employed by a single employer for purposes of sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 of ERISA for such taxable year.

(4) *Definitions*. For purposes of this paragraph (d)—

(i) An *old group* is a brother-sister controlled group of corporations, determined by applying paragraph (a)(3)(ii) of this section as in effect before the amendments made by Treasury decision 8179, that is not a brother-sister controlled group of corporations, determined by applying paragraph (a)(3)(ii) of this section as amended by such Treasury decision; and

(ii) An *old member* is any corporation that is a member of an old group.

(5) *Election to choose between membership in more than one controlled group*. If—

(i) An old member has filed an election under paragraph (c)(2) of this section to be treated as a component member of an old group for a December 31 before March 2, 1988; and

(ii) That corporation would (without regard to such paragraph) be a component member of more than one brother-sister controlled group (not including an old group) on the December 31, that corporation may make an election under that paragraph by filing an amended return on or before September 2, 1988. This paragraph (d)(5) does not apply to a corporation that is treated as a member of an old group under paragraph (d)(3) of this section.

(6) *Refunds*. See section 6511(a) for period of limitation on filing claims for credit or refund.

(e) *Effective date*—(1) *Applicability date*. Paragraph (b) of this section applies to any taxable year beginning on or after *December 26, 2007*. However, taxpayers may apply paragraph (b) of this section to any Federal income tax return filed on or after *December 26, 2007*. Paragraphs (a) and (b) (as contained in 26 CFR part 1 in effect on April 1, 2007), and paragraphs (c)(1), (c)(2)(iv) and (d) of this section apply to taxable years beginning on or after December 22, 2006. However, taxpayers may apply the paragraphs described in the preceding sentence to any Federal income tax return filed on or after December 22, 2006. Paragraphs (c)(2)(i) through (iii) of this section apply to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date*. The applicability of paragraph (b) of this section will expire on December 21, 2010. The applicability of paragraphs (a) and (b) (as contained in 26 CFR part 1 in effect on April 1, 2007), and paragraphs (c)(1), (c)(2)(iv) and (d) of this section will expire on December 21, 2009. The applicability of paragraphs (c)(2)(i) through

(iii) of this section will expire on May 26, 2009.

[T.D. 9264, 71 FR 30605, May 30, 2006, as amended by T.D. 9304, 71 FR 76909, Dec. 22, 2006; 72 FR 3490, Jan. 25. 2007; T.D. 9369, 72 FR 72932, Dec. 26, 2007]

§ 1.1563–2 Excluded stock.

(a) *Certain stock excluded.* For purposes of sections 1561 through 1563 and the regulations thereunder, the term ''stock'' does not include:

(1) Nonvoting stock which is limited and preferred as to dividends, and

(2) Treasury stock.

(b) *Stock treated as excluded stock*—(1) *Parent-subsidiary controlled group.* If a corporation (hereinafter in this paragraph referred to as ''parent corporation'') owns 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock in another corporation (hereinafter in this paragraph referred to as ''subsidiary corporation''), the provisions of subparagraph (2) of this paragraph shall apply. For purposes of this subparagraph, stock owned by a corporation means stock owned directly plus stock owned with the application of the constructive ownership rules of paragraph (b)(1) and (4) of § 1.1563–3, relating to options and attribution from corporations. In determining whether the stock owned by a corporation possesses the requisite percentage of the total combined voting power of all classes of stock entitled to vote of another corporation, see paragraph (a)(6) of § 1.1563–1.

(2) *Stock treated as not outstanding.* If the provisions of this subparagraph apply, then for purposes of determining whether the parent corporation or the subsidiary corporation is a member of a parent-subsidiary controlled group of corporations within the meaning of paragraph (a)(2) of § 1.1563–1, the following stock of the subsidiary corporation shall, except as otherwise provided in paragraph (c) of this section, be treated as if it were not outstanding:

(i) *Plan of deferred compensation.* Stock in the subsidiary corporation held by a trust which is part of a plan of deferred compensation for the benefit of the employees of the parent corporation or the subsidiary corporation. The term ''plan of deferred compensation'' shall have the same meaning such term has in section 406(a)(3) and the regulations thereunder.

(ii) *Principal stockholders and officers.* Stock in the subsidiary corporation owned (directly and with the application of the rules contained in paragraph (b) of § 1.1563–3) by an individual who is a principal stockholder or officer of the parent corporation. A principal stockholder of the parent corporation is an individual who owns (directly and with the application of the rules contained in paragraph (b) of § 1.1563–3) 5 percent or more of the total combined voting power of all classes of stock entitled to vote or 5 percent or more of the total value of shares of all classes of stock of the parent corporation. An officer of the parent corporation includes the president, vice-presidents, general manager, treasurer, secretary, and comptroller of such corporation, and any other person who performs duties corresponding to those normally performed by persons occupying such positions.

(iii) *Employees.* Stock in the subsidiary corporation owned (directly and with the application of the rules contained in paragraph (b) of § 1.1563–3) by an employee of the subsidiary corporation if such stock is subject to conditions which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the direct owner's right) to dispose of such stock and which run in favor of the parent or subsidiary corporation. In general, any condition which extends, directly or indirectly, to the parent corporation or the subsidiary corporation preferential rights with respect to the acquisition of the employee's (or direct owner's) stock will be considered to be a condition described in the preceding sentence. It is not necessary, in order for a condition to be considered to be in favor of the parent corporation or the subsidiary corporation, that the parent or subsidiary be extended a discriminatory concession with respect to the price of the stock. For example, a condition whereby the parent corporation is given a right of first refusal with respect to any stock of the subsidiary

corporation offered by an employee for sale is a condition which substantially restricts or limits the employee's right to dispose of such stock and runs in favor of the parent corporation. Moreover, any legally enforceable condition which prohibits the employee from disposing of his stock without the consent of the parent (or a subsidiary of the parent) will be considered to be a substantial limitation running in favor of the parent corporation.

(iv) *Controlled exempt organization.* Stock in the subsidiary corporation owned (directly and with the application of the rules contained in paragraph (b) of § 1.1563–3) by an organization (other than the parent corporation):

(*a*) To which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies, and

(*b*) Which is controlled directly or indirectly by the parent corporation or subsidiary corporation, by an individual, estate, or trust that is a principal stockholder of the parent corporation, by an officer of the parent corporation, or by any combination thereof.

The terms ''principal stockholder of the parent corporation'' and ''officer of the parent corporation'' shall have the same meanings in this subdivision as in subdivision (ii) of this subparagraph. The term ''control'' as used in this subdivision means control in fact and the determination of whether the control requirement of (*b*) of this subdivision is met will depend upon all the facts and circumstances of each case, without regard to whether such control is legally enforceable and irrespective of the method by which such control is exercised or exercisable.

(3) *Brother-sister controlled group.* If five or fewer persons (hereinafter referred to as common owners) who are individuals, estates, or trusts own (directly and with the application of the rules contained in paragraph (b) of § 1.1563–3) stock possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock in a corporation, the provisions of subparagraph (4) of this paragraph shall apply. In determining whether the stock owned by such person or persons possesses the requisite percentage of the total combined voting power of all classes of stock entitled to vote of a corporation, see paragraph (a)(6) of § 1.1563–1.

(4) *Stock treated as not outstanding.* If the provisions of this subparagraph apply, then for purposes of determining whether a corporation is a member of a brother-sister controlled group of corporations within the meaning of paragraph (a)(3) of § 1.1563–1, the following stock of such corporation shall, except as otherwise provided in paragraph (c) of this section, be treated as if it were not outstanding:

(i) *Exempt employees' trust.* Stock in such corporation held by an employees' trust described in section 401(a) which is exempt from tax under section 501(a), if such trust is for the benefit of the employees of such corporation.

(ii) *Employees.* Stock in such corporation owned (directly and with the application of the rules contained in paragraph (b) of § 1.1563–3) by an employee of such corporation if such stock is subject to conditions which run in favor of a common owner of such corporation (or in favor of such corporation) and which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the record owner's right) to dispose of such stock. The principles of subparagraph (2)(iii) of this paragraph shall apply in determining whether a condition satisfies the requirements of the preceding sentence. Thus, in general, a condition which extends, directly or indirectly, to a common owner or such corporation preferential rights with respect to the acquisition of the employee's (or record owner's) stock will be considered to be a condition which satisfies such requirements. For purposes of this subdivision, if a condition which restricts or limits an employee's right (or record owner's right) to dispose of his stock also applies to the stock in such corporation held by such common owner pursuant to a bona fide reciprocal stock purchase arrangement, such condition shall not be treated as one which restricts or limits the employee's (or record owner's) right to dispose of such

stock. An example of a reciprocal stock purchase arrangement is an agreement whereby a common owner and the employee are given a right of first refusal with respect to stock of the employer corporation owned by the other party. If, however, the agreement also provides that the common owner has the right to purchase the stock of the employer corporation owned by the employee in the event that the corporation should discharge the employee for reasonable cause, the purchase arrangement would not be reciprocal within the meaning of this subdivision.

(iii) *Controlled exempt organization.* Stock in such corporation owned (directly and with the application of the rules contained in paragraph (b) of §1.1563–3) by an organization:

(*a*) To which section 501(c)(3) (relating to certain educational and charitable organizations which are exempt from tax) applies, and

(*b*) Which is controlled directly or indirectly by such corporation, by an individual, estate, or trust that is a principal stockholder of such corporation, by an officer of such corporation, or by any combination thereof.

The terms ''principal stockholder'' and ''officer'' shall have the same meanings in this subdivision as in subparagraph (2)(ii) of this paragraph. The term ''control'' as used in this subdivision means control in fact and the determination of whether the control requirement of (*b*) of this subdivision is met will depend upon all the facts and circumstances of each case, without regard to whether such control is legally enforceable and irrespective of the method by which such control is exercised or exercisable.

(5) *Other controlled groups.* The provisions of subparagraphs (1), (2), (3), and (4) of this paragraph shall apply in determining whether a corporation is a member of a combined group (within the meaning of paragraph (a)(4) of §1.1563–1) or an insurance group (within the meaning of paragraph (a)(5) of §1.1563–1). For example, under paragraph (a)(4) of §1.1563–1, in order for a corporation to be a member of a combined group such corporation must be a member of a parent-subsidiary group or a brother-sister group. Accordingly, the excluded stock rules provided by this paragraph are applicable in determining whether the corporation is a member of such group.

(6) *Meaning of employee.* For purposes of this section §§1.1563–3 and 1.1563–4, the term ''employee'' has the same meaning such term is given in section 3306(i) of the Code (relating to definitions for purposes of the Federal Unemployment Tax Act). Accordingly, the term employee as used in such sections includes an officer of a corporation.

(7) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. Corporation P owns 70 of the 100 shares of the only class of stock of corporation S. The remaining shares of S are owned as follows: 4 shares by Jones (the general manager of P), and 26 shares by Smith (who also owns 5 percent of the total combined voting power of the stock of P). P satisfies the 50 percent stock ownership requirement of subparagraph (1) of this paragraph with respect to S. Since Jones is an officer of P and Smith is a principal stockholder of P, under subparagraph (2)(ii) of this paragraph the S stock owned by Jones and Smith is treated as not outstanding for purposes of determining whether P and S are members of a parent-subsidiary controlled group of corporations within the meaning of paragraph (a)(2) of §1.1563–1. Thus, P is considered to own stock possessing 100 percent (70÷70) of the total voting power and value of all the S stock. Accordingly, P and S are members of a parent-subsidiary controlled group of corporations.

Example 2. Assume the same facts as in example (1) and further assume that Jones owns 15 shares of the 100 shares of the only class of stock of corporation S–1, and corporation S owns 75 shares of such stock. P satisfies the 50 percent stock ownership requirement of subparagraph (1) of this paragraph with respect to S–1 since P is considered as owning 52.5 percent (70 percent× 75 percent) of the S–1 stock with the application of paragraph (b)(4) of §1.1563–3. Since Jones is an officer of P, under subparagraph (2)(ii) of this paragraph, the S–1 stock owned by Jones is treated as not outstanding for purposes of determining whether S–1 is a member of the parent-subsidiary controlled group of corporations. Thus, S is considered to own stock possessing 88.2 percent (75÷85) of the voting power and value of the S–1 stock. Accordingly, P, S, and S–1 are members of a parent-subsidiary controlled group of corporations.

Example 3. Corporation X owns 60 percent of the only class of stock of corporation Y. Davis, the president of Y, owns the remaining 40 percent of the stock of Y. Davis has

agreed that if he offers his stock in Y for sale he will first offer the stock to X at a price equal to the fair market value of the stock on the first date the stock is offered for sale. Since Davis is an employee of Y within the meaning of section 3306(i) of the Code, and his stock in Y is subject to a condition which substantially restricts or limits his right to dispose of such stock and runs in favor of X, under subparagraph (2)(iii) of this paragraph such stock is treated as if it were not outstanding for purposes of determining whether X and Y are members of a parent-subsidiary controlled group of corporations. Thus, X is considered to own stock possessing 100 percent of the voting power and value of the stock of Y. Accordingly, X and Y are members of a parent-subsidiary controlled group of corporations. The result would be the same if Davis's wife, instead of Davis, owned directly the 40 percent stock interest in Y and such stock was subject to a right of first refusal running in favor of X.

(c) *Exception*—(1) *General*. If stock of a corporation is owned by a person directly or with the application of the rules contained in paragraph (b) of § 1.1563–3 and such ownership results in the corporation being a component member of a controlled group of corporations on a December 31, then the stock shall not be treated as excluded stock under the provisions of paragraph (b) of this section if the result of applying such provisions is that such corporation is not a component member of a controlled group of corporations on such December 31.

(2) *Illustration*. The provisions of this paragraph may be illustrated by the following example:

Example. On each day of 1965, corporation P owns directly 50 of the 100 shares of the only class of stock of corporation S. Jones, an officer of P, owns directly 30 shares of S stock and P has an option to acquire such 30 shares from Jones. The remaining shares of S are owned by unrelated persons. If, pursuant to the provisions of paragraph (b)(2)(ii) of this section, the 30 shares of S stock owned directly by Jones is treated as not outstanding, the result is that P would be treated as owning stock possessing only 71 percent (50÷70) of the total voting power and value of S stock, and S would not be a component member of a controlled group of corporations on December 31, 1965. However, since P is considered as owning the 30 shares of S stock with the application of paragraph (b)(1) of this section, and such ownership plus the S stock directly owned by P (50 shares) results in S being a component member of a controlled group of corporations on December 31, 1965, the provisions of this paragraph apply. Therefore, the provisions of paragraph (b)(2)(ii) of this section do not apply with respect to the 30 shares of S stock, and on December 31, 1965, S is a component member of a controlled group of corporations consisting of P and S.

[T.D. 6845, 30 FR 9753, Aug. 5, 1965, as amended by T.D. 7181, 37 FR 8070, Apr. 4, 1972]

§ 1.1563–3 Rules for determining stock ownership.

(a) *In general*. In determining stock ownership for purposes of §§ 1.1562–5, 1.1563–1, 1.1563–2, and this section, the constructive ownership rules of paragraph (b) of this section apply to the extent such rules are referred to in such sections. The application of such rules shall be subject to the operating rules and special rules contained in paragraphs (c) and (d) of this section.

(b) *Constructive ownership*—(1) *Options*. If a person has an option to acquire any outstanding stock of a corporation, such stock shall be considered as owned by such person. For purposes of this subparagraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock. For example, assume Smith owns an option to purchase 100 shares of the outstanding stock of M Corporation. Under this subparagraph, Smith is considered to own such 100 shares. The result would be the same if Smith owned an option to acquire the option (or one of a series of options) to purchase 100 shares of M stock.

(2) *Attribution from partnerships*. (i) Stock owned, directly or indirectly, by or for a partnership shall be considered as owned by any partner having an interest of 5 percent or more in either the capital or profits of the partnership in proportion to his interest in capital or profits, whichever such proportion is the greater.

(ii) The provisions of this subparagraph may be illustrated by the following example:

Example. Green, Jones, and White, unrelated individuals, are partners in the GJW partnership. The partners' interests in the capital and profits of the partnership are as follows:

Partner	Capital	Profits
	Percent	Percent
Green	36	25
Jones	60	71
White	4	4

The GJW partnership owns the entire outstanding stock (100 shares) of X Corporation. Under this subparagraph, Green is considered to own the X stock owned by the partnership in proportion to his interest in capital (36 percent) or profits (25 percent), whichever such proportion is the greater. Therefore, Green is considered to own 36 shares of the X stock. However, since Jones has a greater interest in the profits of the partnership, he is considered to own the X stock in proportion to his interest in such profits. Therefore, Jones is considered to own 71 shares of the X stock. Since White does not have an interest of 5 percent or more in either the capital or profits of the partnership, he is not considered to own any shares of the X stock.

(3) *Attribution from estates or trusts.* (i) Stock owned, directly or indirectly, by or for an estate or trust shall be considered as owned by any beneficiary who has an actuarial interest of 5 percent or more in such stock, to the extent of such actuarial interest. For purposes of this subparagraph, the actuarial interest of each beneficiary shall be determined by assuming the maximum exercise of discretion by the fiduciary in favor of such beneficiary and the maximum use of such stock to satisfy his rights as a beneficiary. A beneficiary of an estate or trust who cannot under any circumstances receive any interest in stock held by the estate or trust, including the proceeds from the disposition thereof, or the income therefrom, does not have an actuarial interest in such stock. Thus, where stock owned by a decedent's estate has been specifically bequeathed to certain beneficiaries and the remainder of the estate is bequeathed to other beneficiaries, the stock is attributable only to the beneficiaries to whom it is specifically bequeathed. Similarly, a remainderman of a trust who cannot under any circumstances receive any interest in the stock of a corporation which is a part of the corpus of the trust (including any accumulated income therefrom or the proceeds from a disposition thereof) does not have an actuarial interest in such stock. However, an income beneficiary of a trust does have an actuarial interest in stock if he has any right to the income from such stock even though under the terms of the trust instrument such stock can never be distributed to him. The factors and methods prescribed in § 20.2031–7 of this chapter (Estate Tax Regulations) for use in ascertaining the value of an interest in property for estate tax purposes shall be used for purposes of this subdivision in determining a beneficiary's actuarial interest in stock owned directly or indirectly by or for a trust.

(ii) For the purposes of this subparagraph, property of a decedent shall be considered as owned by his estate if such property is subject to administration by the executor or administrator for the purposes of paying claims against the estate and expenses of administration notwithstanding that, under local law, legal title to such property vests in the decedent's heirs, legatees or devisees immediately upon death. With respect to an estate, the term ''beneficiary'' includes any person entitled to receive property of the decedent pursuant to a will or pursuant to laws of descent and distribution. A person shall no longer be considered a beneficiary of an estate when all the property to which he is entitled has been received by him, when he no longer has a claim against the estate arising out of having been a beneficiary, and when there is only a remote possibility that it will be necessary for the estate to seek the return of property or to seek payment from him by contribution or otherwise to satisfy claims against the estate or expenses of administration. When pursuant to the preceding sentence, a person ceases to be a beneficiary, stock owned by the estate shall not thereafter be considered owned by him.

(iii) Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under Subpart E, Part I, Subchapter J of the Code (relating to grantors and others treated as substantial owners) is considered as owned by such person.

(iv) This subparagraph does not apply to stock owned by any employees' trust described in section 401(a) which

is exempt from tax under section 501(a).

(4) *Attribution from corporations.* (i) Stock owned, directly or indirectly, by or for a corporation shall be considered as owned by any person who owns (within the meaning of section 1563(d)) 5 percent or more in value or its stock in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation.

(ii) The provisions of this subparagraph may be illustrated by the following example:

Example. Brown, an individual, owns 60 shares of the 100 shares of the only class of outstanding stock of corporation P. Smith, an individual, owns 4 shares of the P stock, and corporation X owns 36 shares of the P stock. Corporation P owns, directly and indirectly, 50 shares of the stock of corporation S. Under this subparagraph, Brown is considered to own 30 shares of the S stock ($\frac{60}{100}\times 50$), and X is considered to own 18 shares of the S stock ($\frac{36}{100}\times 50$). Since Smith does not own 5 percent or more in value of the P stock, he is not considered as owning any of the S stock owned by P. If, in this example, Smith's wife had owned directly 1 share of the P stock, Smith (and his wife) would each own 5 shares of the P stock, and therefore Smith (and his wife) would be considered as owning 2.5 shares of the S stock ($\frac{5}{100}\times 50$).

(5) *Spouse.* (i) Except as provided in subdivision (ii) of this subparagraph, an individual shall be considered to own the stock owned, directly or indirectly, by or for his spouse, other than a spouse who is legally separated from the individual under a decree of divorce, whether interlocutory or final, or a decree of separate maintenance.

(ii) An individual shall not be considered to own stock in a corporation owned, directly or indirectly, by or for his spouse on any day of a taxable year of such corporation, provided that each of the following conditions are satisfied with respect to such taxable year:

(*a*) Such individual does not, at any time during such taxable year, own directly any stock in such corporation.

(*b*) Such individual is not a member of the board of directors or an employee of such corporation and does not participate in the management of such corporation at any time during such taxable year.

(*c*) Not more than 50 percent of such corporation's gross income for such taxable year was derived from royalties, rents, dividends, interest, and annuities.

(*d*) Such stock in such corporation is not, at any time during such taxable year, subject to conditions which substantially restrict or limit the spouse's right to dispose of such stock and which run in favor of the individual or his children who have not attained the age of 21 years. The principles of paragraph (b)(2)(iii) of § 1.1563–2 shall apply in determining whether a condition is a condition described in the preceding sentence.

(iii) For purposes of subdivision (ii)(*c*) of this subparagraph, the gross income of a corporation for a taxable year shall be determined under section 61 and the regulations thereunder. The terms ''royalties'', ''rents'', ''dividends'', ''interest'', and ''annuities'' shall have the same meanings such terms are given for purposes of section 1244(c). See paragraph (e)(1)(ii), (iii), (iv), (v), and (vi) of § 1.1244(c)–1.

(6) *Children, grandchildren, parents, and grandparents.* (i) An individual shall be considered to own the stock owned, directly or indirectly, by or for his children who have not attained the age of 21 years, and, if the individual has not attained the age of 21 years, the stock owned, directly or indirectly, by or for his parents.

(ii) If an individual owns (directly, and with the application of the rules of this paragraph but without regard to this subdivision) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock in a corporation, then such individual shall be considered to own the stock in such corporation owned, directly or indirectly, by or for his parents, grandparents, grandchildren, and children who have attained the age of 21 years. In determining whether the stock owned by an individual possesses the requisite percentage of the total combined voting power of all classes of stock entitled to vote of a corporation, see paragraph (a)(6) of § 1.1563–1.

(iii) For purposes of section 1563, and §§ 1.1563–1 through 1.1563–4, a legally

adopted child of an individual shall be treated as a child of such individual by blood.

(iv) The provisions of this subparagraph may be illustrated by the following example:

Example. (a) *Facts.* Individual F owns directly 40 shares of the 100 shares of the only class of stock of Z Corporation. His son, M (20 years of age), owns directly 30 shares of such stock, and his son, A (30 years of age), owns directly 20 shares of such stock. The remaining 10 shares of the Z stock are owned by an unrelated person.

(b) *F's ownership.* Individual F owns 40 shares of the Z stock directly and is considered to own the 30 shares of Z stock owned directly by M. Since, for purposes of the more-than-50-percent stock ownership test contained in subdivision (ii) of this subparagraph, F is treated as owning 70 shares or 70 percent of the total voting power and value of the Z stock, he is also considered as owning the 20 shares owned by his adult son, A. Accordingly, F is considered as owning a total of 90 shares of the Z stock.

(c) *M's ownership.* Minor son, M, owns 30 shares of the Z stock directly, and is considered to own the 40 shares of Z stock owned directly by his father, F. However, M is not considered to own the 20 shares of Z stock owned directly by his brother, A, and constructively by F, because stock constructively owned by F by reason of family attribution is not considered as owned by him for purposes of making another member of his family the constructive owner of such stock. See paragraph (c)(2) of this section. Accordingly, M owns and is considered as owning a total of 70 shares of the Z stock.

(d) *A's ownership.* Adult son, A, owns 20 shares of the Z stock directly. Since, for purposes of the more-than-50-percent stock ownership test contained in subdivision (ii) of this subparagraph, A is treated as owning only the Z stock which he owns directly, he does not satisfy the condition precedent for the attribution of Z stock from his father. Accordingly, A is treated as owning only the 20 shares of Z stock which he owns directly.

(c) *Operating rules and special rules*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, stock constructively owned by a person by reason of the application of subparagraph (1), (2), (3), (4), (5), or (6) of paragraph (b) of this section shall, for purposes of applying such subparagraphs, be treated as actually owned by such person.

(2) *Members of family.* Stock constructively owned by an individual by reason of the application of subparagraph (5) or (6) of paragraph (b) of this section shall not be treated as owned by him for purposes of again applying such subparagraphs in order to make another the constructive owner of such stock.

(3) *Precedence of option attribution.* For purposes of this section, if stock may be considered as owned by a person under subparagraph (1) of paragraph (b) of this section (relating to option attribution) and under any other subparagraph of such paragraph, such stock shall be considered as owned by such person under subparagraph (1) of such paragraph.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. A, 30 years of age, has a 90 percent interest in the capital and profits of a partnership. The partnership owns all the outstanding stock of corporation X and X owns 60 shares of the 100 outstanding shares of corporation Y. Under subparagraph (1) of this paragraph, the 60 shares of Y constructively owned by the partnership by reason of subparagraph (4) of paragraph (b) of this section is treated as actually owned by the partnership for purposes of applying subparagraph (2) of paragraph (b) of this section. Therefore, A is considered as owning 54 shares of the Y stock (90 percent of 60 shares).

Example 2. Assume the same facts as in example (1). Assume further that B, who is 20 years of age and the brother of A, directly owns 40 shares of Y stock. Although the stock of Y owned by B is considered as owned by C (the father of A and B) under paragraph (b)(6)(i) of this section, under subparagraph (2) of this paragraph such stock may not be treated as owned by C for purposes of applying paragraph (b)(6)(ii) of this section in order to make A the constructive owner of such stock.

Example 3. Assume the same facts assumed for purposes of example (2), and further assume that C has an option to acquire the 40 shares of Y stock owned by his son, B. The rule contained in subparagraph (2) of this paragraph does not prevent the reattribution of such 40 shares to A because, under subparagraph (3) of this paragraph, C is considered as owning the 40 shares by reason of option attribution and not by reason of family attribution. Therefore, since A satisfies the more-than-50-percent stock ownership test contained in paragraph (b)(6)(ii) of this section with respect to Y, the 40 shares of Y stock constructively owned by C are reattributed to A, and A is considered as owning a total of 94 shares of Y stock.

(d) *Special rule of section 1563 (f)(3)(B)*—(1) *In general*. If the same stock of a corporation is owned (within the meaning of section 1563(d)) by two or more persons, then such stock shall be treated as owned by the person whose ownership of such stock results in the corporation being a component member of a controlled group on a December 31 which has at least one other component member on such date.

(2) *Component member of more than one group*. (i) If, by reason of subparagraph (1) of this paragraph, a corporation would (but for this subparagraph) become a component member of more than one controlled group on a December 31, such corporation shall be treated as a component member of only one such controlled group on such date. The determination as to which group such corporation is treated as a component member of shall be made in accordance with the rules contained in paragraphs (d)(2)(ii), (iii) and (iv) of this section.

(ii) In any case in which a corporation is a component member of a controlled group of corporations on a December 31 as a result of treating each share of its stock as owned only by the person who owns such share directly, then each such share shall be treated as owned by the person who owns such share directly.

(iii) If the application of subdivision (ii) of this subparagraph does not result in a corporation being treated as a component member of only one controlled group on a December 31, then the stock of such corporation described in subparagraph (1) of this paragraph shall be treated as owned by the one person described in such subparagraph who owns, directly and with the application of the rules contained in paragraph (b) (1), (2), (3), and (4) of this section, the stock possessing the greatest percentage of the total value of shares of all classes of stock of the corporation.

(iv) *Statement*. If the application of paragraph (d)(2)(ii) or (iii) of this section does not result in a corporation being treated as a component member of only one controlled group of corporations on a December 31, then such corporation will be treated as a component member of only one such group on such date. Such corporation may elect the group in which it is to be included by including on or with its income tax return a statement entitled, ''STATEMENT TO ELECT CONTROLLED GROUP PURSUANT TO §1.1563–3(d)(2)(iv).'' The statement must include—

(A) A description of each of the controlled groups in which the corporation could be included. The description must include the name and employer identification number of each component member of each such group and the stock ownership of the component members of each such group; and

(B) The following representation: [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF CORPORATION] ELECTS TO BE TREATED AS A COMPONENT MEMBER OF THE [INSERT DESIGNATION OF GROUP].

(v) *Election*—(A) *Election filed*. An election filed under paragraph (d)(2)(iv) of this section is irrevocable and effective until paragraph (d)(2)(ii) or (iii) of this section applies or until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(B) *Election not filed*. In the event no election is filed in accordance with the provisions of paragraph (d)(2)(iv) of this section, then the Internal Revenue Service will determine the group in which such corporation is to be included. Such determination will be binding for all subsequent years unless the corporation files a valid election with respect to any such subsequent year or until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(3) *Examples*. The provisions of this paragraph may be illustrated by the following examples, in which each corporation referred to uses the calendar year as its taxable year and the stated facts are assumed to exist on each day of 1970 (unless otherwise provided in the example):

Example 1. Jones owns all the stock of corporation X and has an option to purchase from Smith all the outstanding stock of corporation Y. Smith owns all the outstanding stock of corporation Z. Since the Y stock is

considered as owned by two or more persons, under subparagraph (2)(ii) of this paragraph the Y stock is treated as owned only by Smith since he has direct ownership of such stock. Therefore, on December 31, 1970, Y and Z are component members of the same brother-sister controlled group. If, however, Smith had owned his stock in corporation Z for less than one-half of the number of days of Z's 1970 taxable year, then under subparagraph (1) of this paragraph the Y stock would be treated as owned only by Jones since his ownership results in Y being a component member of a controlled group on December 31, 1970.

Example 2. Individual H owns directly all the outstanding stock of corporation M. W (the wife of H) owns directly all the outstanding stock of corporation N. Neither spouse is considered as owning the stock directly owned by the other because each of the conditions prescribed in paragraph (b)(5)(ii) of this section is satisfied with respect to each corporation's 1970 taxable year. H owns directly 60 percent of the only class of stock of corporation P and W owns the remaining 40 percent of the P stock. Under subparagraph (2)(iii) of this paragraph, the stock of P is treated as owned only by H since H owns (directly and with the application of the rules contained in paragraph (b)(1), (2), (3), and (4) of this section) the stock possessing the greatest percentage of the total value of shares of all classes of stock of P. Accordingly, on December 31, 1970, P is treated as a component member of a brother-sister group consisting of M and P.

Example 3. Unrelated individuals A and B each own 49 percent of all the outstanding stock of corporation R, which in turn owns 70 percent of the only class of outstanding stock of corporation S. The remaining 30 percent of the stock of corporation S is owned by unrelated individual C. C also owns the remaining 2 percent of the stock of corporation R. Under the attribution rule of paragraph (b)(4) of this section A and B are each considered to own 34.3 percent of the stock of corporation S. Accordingly, since five or fewer persons own at least 80 percent of the stock of corporations R and S and also own more than 50 percent identically (A's and B's identical ownership each is 34.3 percent, C's identical ownership is 2 percent), on December 31, 1970, corporations R and S are treated as component members of the same brother-sister controlled group for purposes of paragraph (a)(3)(ii) of §1.1563–1T.

(e) *Effective/applicability date.* Paragraph (d)(2)(iv) and (v) of this section apply to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (d)(2)(iv) and (v) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.1563–3 as contained in 26 CFR part 1 in effect on April 1, 2006.

[T.D. 6845, 30 FR 9755, Aug. 5, 1965, as amended by T.D. 7181, 37 FR 8070, Apr. 25, 1972; T.D. 7779, 46 FR 29474, June 2, 1981; T.D. 8179, 53 FR 6613, Mar. 2, 1988; T.D. 9264, 71 FR 30606, 30608, May 30, 2006; T.D. 9304, 71 FR 76913, Dec. 22, 2006; T.D. 9329, 72 FR 32806, 32807, June 14, 2007]

§1.1563–4 Franchised corporations.

(a) *In general.* For purposes of paragraph (b)(2)(ii)(*d*) of §1.1563–1, a member of a controlled group of corporations shall be considered to be a franchised corporation for a taxable year if each of the following conditions is satisfied for one-half (or more) of the number of days preceding the December 31 included within such taxable year (or, if such taxable year does not include a December 31, for one-half or more of the number of days in such taxable year preceding the last day of such year):

(1) Such member is franchised to sell the products of another member, or the common owner, of such controlled group.

(2) More than 50 percent (determined on the basis of cost) of all the goods held by such member primarily for sale to its customers are acquired from members or the common owner of the controlled group, or both.

(3) The stock of such member is to be sold to an employee (or employees) of such member pursuant to a bona fide plan designed to eliminate the stock ownership of the parent corporation (as defined in paragraph (b)(1) of §1.1563–2) or of the common owner (as defined in paragraph (b)(3) of §1.1563–2) in such member.

(4) Such employee owns (or such employees in the aggregate own) directly more than 20 percent of the total value of shares of all classes of stock of such member. For purposes of this subparagraph, the determination of whether an employee (or employees) owns the requisite percentage of the total value of the stock of the member shall be made without regard to paragraph (b) of

§ 1.1563–2, relating to certain stock treated as excluded stock. Furthermore, if the corporation has more than one class of stock outstanding, the relative voting rights as between each such class of stock shall be disregarded in making such determination.

(b) *Plan for elimination of stock ownership.* (1) A plan referred to in paragraph (a)(3) of this section must:

(i) Provide a reasonable selling price for the stock of the member, and

(ii) Require that a portion of the employee's compensation or dividends, or both, from such member be applied to the purchase of such stock (or to the purchase of notes, bonds, debentures, or similar evidences of indebtedness of such member held by the parent corporation or the common owner).

It is not necessary, in order to satisfy the requirements of subdivision (ii) of this subparagraph, that the plan require that a percentage of every dollar of the compensation and dividends be applied to the purchase of the stock (or the indebtedness). The requirements of such subdivision are satisfied if an otherwise qualified plan provides that under certain specified conditions (such as a requirement that the member earn a specified profit) no portion of the compensation and/or dividends need be applied to the purchase of the stock (or indebtedness), provided such conditions are reasonable.

(2) A plan for the elimination of the stock ownership of the parent corporation or of the common owner will satisfy the requirements of paragraph (a)(3) of this section and subparagraph (1) of this paragraph even though it does not require that the stock of the member be sold to an employee (or employees) if it provides for the redemption of the stock of the member held by the parent or common owner and under the plan the amount of such stock to be redeemed during any period is calculated by reference to the profits of such member during such period.

[T.D. 6845, 30 FR 9757, Aug. 5, 1965]

PROCEDURE AND ADMINISTRATION

INFORMATION AND RETURNS

Returns and Records

SOURCE: Sections 1.6001–1 through 1.6091–4 contained in T.D. 6500, 25 FR 12108, Nov. 26, 1960, unless otherwise noted.

RECORDS, STATEMENTS, AND SPECIAL RETURNS

§ 1.6001–1 Records.

(a) *In general.* Except as provided in paragraph (b) of this section, any person subject to tax under subtitle A of the Code (including a qualified State individual income tax which is treated pursuant to section 6361(a) as if it were imposed by chapter 1 of subtitle A), or any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.

(b) *Farmers and wage-earners.* Individuals deriving gross income from the business of farming, and individuals whose gross income includes salaries, wages, or similar compensation for personal services rendered, are required with respect to such income to keep such records as will enable the district director to determine the correct amount of income subject to the tax. It is not necessary, however, that with respect to such income individuals keep the books of account or records required by paragraph (a) of this section. For rules with respect to the records to be kept in substantiation of traveling and other business expenses of employees, see § 1.162–17.

(c) *Exempt organizations.* In addition to such permanent books and records as are required by paragraph (a) of this section with respect to the tax imposed by section 511 on unrelated business income of certain exempt organizations, every organization exempt from tax under section 501(a) shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross

income, receipts and disbursements. Such organizations shall also keep such books and records as are required to substantiate the information required by section 6033. See section 6033 and §§ 1.6033–1 through 1.6033–3.

(d) *Notice by district director requiring returns statements, or the keeping of records.* The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for tax under subtitle A of the Code, including qualified State individual income taxes, which are treated pursuant to section 6361(a) as if they were imposed by chapter 1 of subtitle A.

(e) *Retention of records.* The books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 7122, 36 FR 11025, June 8, 1971; T.D. 7577, 43 FR 59357, Dec. 20, 1978; T.D. 8308, 55 FR 35593, Aug. 31, 1990]

§ 1.6001–2 Returns.

For rules relating to returns required to be made by every individual, estate, or trust which is liable for one or more qualified State individual income taxes, as defined in section 6362, for a taxable year, see paragraph (b) of § 301.6361–1 of this chapter (Regulations on procedure and Administration).

[T.D. 7577, 43 FR 59357, Dec. 20, 1978]

TAX RETURNS OR STATEMENTS

§ 1.6011–1 General requirement of return, statement, or list.

(a) *General rule.* Every person subject to any tax, or required to collect any tax, under Subtitle A of the Code, shall make such returns or statements as are required by the regulations in this chapter. The return or statement shall include therein the information required by the applicable regulations or forms.

(b) *Use of prescribed forms.* Copies of the prescribed return forms will so far as possible be furnished taxpayers by district directors. A taxpayer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Taxpayers not supplied with the proper forms should make application therefor to the district director in ample time to have their returns prepared, verified, and filed on or before the due date with the internal revenue office where such returns are required to be filed. Each taxpayer should carefully prepare his return and set forth fully and clearly the information required to be included therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the Code. In the absence of a prescribed form, a statement made by a taxpayer disclosing his gross income and the deductions therefrom may be accepted as a tentative return, and, if filed within the prescribed time, the statement so made will relieve the taxpayer from liability for the addition to tax imposed for the delinquent filing of the return, provided that without unnecessary delay such a tentative return is supplemented by a return made on the proper form.

(c) *Tax withheld on nonresident aliens and foreign corporations.* For requirements respecting the return of the tax required to be withheld under chapter 3 of the Code on nonresident aliens and foreign corporations and tax-free covenant bonds, see § 1.1461–2.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6922, 32 FR 8713, June 17, 1967]

§ 1.6011–2 Returns, etc., of DISC's and former DISC's.

(a) *Records and information.* Every DISC and former DISC (as defined in section 992(a)) must comply with section 6001 and the regulations thereunder, relating to required records, statements, and special returns. Thus, for example, a DISC is required to maintain the books of account or records described in § 1.6001–1(a). In addition, every DISC must furnish to each of its shareholders on or before the last day of the second month following the close of the taxable year of the DISC a copy of Schedule K (Form 1120–DISC) disclosing the amounts of

actual distributions and deemed distributions from the DISC to such shareholder for the taxable year of the DISC. In the case of a deficiency distribution to meet qualification requirements, see §1.992–3(a)(4) for requirements that distribution be designated in the form of a communication sent to a shareholder and service center at the time of distribution.

(b) *Returns*—(1) *Requirement of return.* Every DISC (as defined in section 992(a)(1)) shall make a return of income. A former DISC (as defined in section 992(a)(3)) shall also make a return of income in addition to any other return required. The return required of a DISC or former DISC under this section shall be made on Form 1120–DISC. The provisions of §1.6011–1 shall apply with respect to a DISC and former DISC. A former DISC should indicate clearly on Form 1120–DISC that it is making a return of income as a former DISC (for example, by labeling at the top of the Form 1120–DISC ''Former DISC''). In the case of a former DISC, those items on the form which pertain to the computation of taxable income shall not be completed, but Schedules J, K, L, and M must be completed. Except as otherwise specifically provided in the Code or regulations, the return of a DISC or former DISC is considered to be an income tax return.

(2) *Existence of DISC.* A corporation which is a DISC and which is in existence during any portion of a taxable year is required to make a return for that fractional part of its taxable year during which it was in existence.

[T.D. 7533, 43 FR 6603, Feb. 15, 1978]

§1.6011–3 Requirement of statement from payees of certain gambling winnings.

(a) *General rule.* Except as provided in paragraph (c) of this section, any person receiving a payment with respect to a wager in a sweepstakes, wagering pool, lottery, or other wagering transaction (including a parimutuel pool with respect to horse races, dog races, or jai alai) shall make a statement to the payer of such winnings upon the payer's demand. Such statements shall accompany the payer's return made with respect to the payment as required pursuant to section 3402(q) or 6041, as the case may be.

(b) *Contents of statement.* The statement referred to in paragraph (a) shall contain information (in addition to that required under section 6041(c)) as to the amount, if any, of winnings from identical wagers to which the recipient is entitled. If any person other than the recipient is entitled to all or a portion of the payment, the statement shall also include information as to the amount, if any, of winnings from identical wagers to which each such person is entitled. The statement shall be provided on Form W-2G or, if persons other than the recipient are entitled to all or a portion of such payment, on Form 5754.

(c) *Exception.* The requirement of paragraph (a) of this section does not apply with respect to any payment of winnings—

(1) From a slot machine play, or a bingo or keno game,

(2) Which is subject to withholding under section 3402(q) without regard to the existence of winnings from identical wagers, or

(3) For which no return of information under section 6041 is required of the payer.

(d) *Meaning of terms,* For purposes of this section, the terms ''sweepstakes'', ''wagering pool'', ''lottery'', ''other wagering transaction'' and ''identical wagers'' shall have the same meanings as ascribed to them under §31.3402(q)–1.

[T.D. 7919, 48 FR 46297, Oct. 12, 1983]

§1.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* Every taxpayer that has participated, as described in paragraph (c)(3) of this section, in a reportable transaction within the meaning of paragraph (b) of this section and who is required to file a tax return must file within the time prescribed in paragraph (e) of this section a disclosure statement in the form prescribed by paragraph (d) of this section. The fact that a transaction is a reportable transaction shall not affect the legal determination of whether the taxpayer's treatment of the transaction is proper.

(b) *Reportable transactions*—(1) *In general*. A reportable transaction is a transaction described in any of the paragraphs (b)(2) through (7) of this section. The term transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan.

(2) *Listed transactions*. A listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

(3) *Confidential transactions*—(i) *In general*. A confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a minimum fee.

(ii) *Conditions of confidentiality*. A transaction is considered to be offered to a taxpayer under conditions of confidentiality if the advisor who is paid the minimum fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies. A transaction is treated as confidential even if the conditions of confidentiality are not legally binding on the taxpayer. A claim that a transaction is proprietary or exclusive is not treated as a limitation on disclosure if the advisor confirms to the taxpayer that there is no limitation on disclosure of the tax treatment or tax structure of the transaction.

(iii) *Minimum fee*. For purposes of this paragraph (b)(3), the minimum fee is—

(A) $250,000 for a transaction if the taxpayer is a corporation;

(B) $50,000 for all other transactions unless the taxpayer is a partnership or trust, all of the owners or beneficiaries of which are corporations (looking through any partners or beneficiaries that are themselves partnerships or trusts), in which case the minimum fee is $250,000.

(iv) *Determination of minimum fee*. For purposes of this paragraph (b)(3), in determining the minimum fee, all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a transaction are taken into account. Fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent return preparation fees are unreasonable in light of the facts and circumstances. For purposes of this paragraph (b)(3), a taxpayer also is treated as paying fees to an advisor if the taxpayer knows or should know that the amount it pays will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property. The IRS will scrutinize carefully all of the facts and circumstances in determining whether consideration received in connection with a confidential transaction constitutes fees.

(v) *Related parties*. For purposes of this paragraph (b)(3), persons who bear a relationship to each other as described in section 267(b) or 707(b) will be treated as the same person.

(4) *Transactions with contractual protection*—(i) *In general*. A transaction with contractual protection is a transaction for which the taxpayer or a related party (as described in section 267(b) or 707(b)) has the right to a full or partial refund of fees (as described in paragraph (b)(4)(ii) of this section) if all or part of the intended tax consequences from the transaction are not sustained. A transaction with contractual protection also is a transaction for which fees (as described in paragraph (b)(4)(ii) of this section) are contingent on the taxpayer's realization of tax benefits from the transaction. All the facts and circumstances relating to the transaction will be considered when determining whether a fee is refundable or contingent, including the right to reimbursements of amounts that the

parties to the transaction have not designated as fees or any agreement to provide services without reasonable compensation.

(ii) *Fees*. Paragraph (b)(4)(i) of this section only applies with respect to fees paid by or on behalf of the taxpayer or a related party to any person who makes or provides a statement, oral or written, to the taxpayer or related party (or for whose benefit a statement is made or provided to the taxpayer or related party) as to the potential tax consequences that may result from the transaction.

(iii) *Exceptions*—(A) *Termination of transaction*. A transaction is not considered to have contractual protection solely because a party to the transaction has the right to terminate the transaction upon the happening of an event affecting the taxation of one or more parties to the transaction.

(B) *Previously reported transaction*. If a person makes or provides a statement to a taxpayer as to the potential tax consequences that may result from a transaction only after the taxpayer has entered into the transaction and reported the consequences of the transaction on a filed tax return, and the person has not previously received fees from the taxpayer relating to the transaction, then any refundable or contingent fees are not taken into account in determining whether the transaction has contractual protection. This paragraph (b)(4) does not provide any substantive rules regarding when a person may charge refundable or contingent fees with respect to a transaction. See Circular 230, 31 CFR part 10, for the regulations governing practice before the IRS.

(5) *Loss transactions*—(i) *In general*. A loss transaction is any transaction resulting in the taxpayer claiming a loss under section 165 of at least—

(A) $10 million in any single taxable year or $20 million in any combination of taxable years for corporations;

(B) $10 million in any single taxable year or $20 million in any combination of taxable years for partnerships that have only corporations as partners (looking through any partners that are themselves partnerships), whether or not any losses flow through to one or more partners; or

(C) $2 million in any single taxable year or $4 million in any combination of taxable years for all other partnerships, whether or not any losses flow through to one or more partners;

(D) $2 million in any single taxable year or $4 million in any combination of taxable years for individuals, S corporations, or trusts, whether or not any losses flow through to one or more shareholders or beneficiaries; or

(E) $50,000 in any single taxable year for individuals or trusts, whether or not the loss flows through from an S corporation or partnership, if the loss arises with respect to a section 988 transaction (as defined in section 988(c)(1) relating to foreign currency transactions).

(ii) *Cumulative losses*. In determining whether a transaction results in a taxpayer claiming a loss that meets the threshold amounts over a combination of taxable years as described in paragraph (b)(5)(i) of this section, only losses claimed in the taxable year that the transaction is entered into and the five succeeding taxable years are combined.

(iii) *Section 165 loss*—(A) For purposes of this section, in determining the thresholds in paragraph (b)(5)(i) of this section, the amount of a section 165 loss is adjusted for any salvage value and for any insurance or other compensation received. See § 1.165–1(c)(4). However, a section 165 loss does not take into account offsetting gains, or other income or limitations. For example, a section 165 loss does not take into account the limitation in section 165(d) (relating to wagering losses) or the limitations in sections 165(f), 1211, and 1212 (relating to capital losses). The full amount of a section 165 loss is taken into account for the year in which the loss is sustained, regardless of whether all or part of the loss enters into the computation of a net operating loss under section 172 or a net capital loss under section 1212 that is a carryback or carryover to another year. A section 165 loss does not include any portion of a loss, attributable to a capital loss carryback or carryover from another year, that is treated as a deemed capital loss under section 1212.

(B) For purposes of this section, a section 165 loss includes an amount deductible pursuant to a provision that treats a transaction as a sale or other disposition, or otherwise results in a deduction under section 165. A section 165 loss includes, for example, a loss resulting from a sale or exchange of a partnership interest under section 741 and a loss resulting from a section 988 transaction.

(6) *Transactions of interest.* A transaction of interest is a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a transaction of interest.

(7) [Reserved]

(8) *Exceptions*—(i) *In general.* A transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction under paragraphs (b)(3) through (7) of this section, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of this section. The Commissioner may make a determination by individual letter ruling under paragraph (f) of this section that an individual letter ruling request on a specific transaction satisfies the reporting requirements of this section with regard to that transaction for the taxpayer who requests the individual letter ruling.

(ii) *Special rule for RICs.* For purposes of this section, a regulated investment company (RIC) as defined in section 851 or an investment vehicle that is owned 95 percent or more by one or more RICs at all times during the course of the transaction is not required to disclose a transaction that is described in any of paragraphs (b)(3) through (5) and (b)(7) of this section unless the transaction is also a listed transaction or a transaction of interest.

(c) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Taxpayer.* The term *taxpayer* means any person described in section 7701(a)(1), including S corporations. Except as otherwise specifically provided in this section, the term *taxpayer* also includes an affiliated group of corporations that joins in the filing of a consolidated return under section 1501.

(2) *Corporation.* When used specifically in this section, the term *corporation* means an entity that is required to file a return for a taxable year on any 1120 series form, or successor form, excluding S corporations.

(3) *Participation*—(i) *In general*—(A) *Listed transactions.* A taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under paragraph (b)(2) of this section. A taxpayer also has participated in a listed transaction if the taxpayer knows or has reason to know that the taxpayer's tax benefits are derived directly or indirectly from tax consequences or a tax strategy described in published guidance that lists a transaction under paragraph (b)(2) of this section. Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance also may identify types or classes of persons that will not be treated as participants in a listed transaction.

(B) *Confidential transactions.* A taxpayer has participated in a confidential transaction if the taxpayer's tax return reflects a tax benefit from the transaction and the taxpayer's disclosure of the tax treatment or tax structure of the transaction is limited in the manner described in paragraph (b)(3) of this section. If a partnership's, S corporation's or trust's disclosure is limited, and the partner's, shareholder's, or beneficiary's disclosure is not limited, then the partnership, S corporation, or trust, and not the partner, shareholder, or beneficiary, has participated in the confidential transaction.

(C) *Transactions with contractual protection.* A taxpayer has participated in a transaction with contractual protection if the taxpayer's tax return reflects a tax benefit from the transaction and, as described in paragraph (b)(4) of this section, the taxpayer has the right to the full or partial refund of fees or the fees are contingent. If a partnership, S corporation, or trust has the right to a full or partial refund of

fees or has a contingent fee arrangement, and the partner, shareholder, or beneficiary does not individually have the right to the refund of fees or a contingent fee arrangement, then the partnership, S corporation, or trust, and not the partner, shareholder, or beneficiary, has participated in the transaction with contractual protection.

(D) *Loss transactions.* A taxpayer has participated in a loss transaction if the taxpayer's tax return reflects a section 165 loss and the amount of the section 165 loss equals or exceeds the threshold amount applicable to the taxpayer as described in paragraph (b)(5)(i) of this section. If a taxpayer is a partner in a partnership, shareholder in an S corporation, or beneficiary of a trust and a section 165 loss as described in paragraph (b)(5) of this section flows through the entity to the taxpayer (disregarding netting at the entity level), the taxpayer has participated in a loss transaction if the taxpayer's tax return reflects a section 165 loss and the amount of the section 165 loss that flows through to the taxpayer equals or exceeds the threshold amounts applicable to the taxpayer as described in paragraph (b)(5)(i) of this section. For this purpose, a tax return is deemed to reflect the full amount of a section 165 loss described in paragraph (b)(5) of this section allocable to the taxpayer under this paragraph (c)(3)(i)(D), regardless of whether all or part of the loss enters into the computation of a net operating loss under section 172 or net capital loss under section 1212 that the taxpayer may carry back or carry over to another year.

(E) *Transactions of interest.* A taxpayer has participated in a transaction of interest if the taxpayer is one of the types or classes of persons identified as participants in the transaction in the published guidance describing the transaction of interest.

(F) [Reserved]

(G) *Shareholders of foreign corporations—(1) In general.* A reporting shareholder of a foreign corporation participates in a transaction described in paragraphs (b)(2) through (5) and (b)(7) of this section if the foreign corporation would be considered to participate in the transaction under the rules of this paragraph (c)(3) if it were a domestic corporation filing a tax return that reflects the items from the transaction. A reporting shareholder of a foreign corporation participates in a transaction described in paragraph (b)(6) of this section only if the published guidance identifying the transaction includes the reporting shareholder among the types or classes of persons identified as participants. A reporting shareholder (and any successor in interest) is considered to participate in a transaction under this paragraph (c)(3)(i)(G) only for its first taxable year with or within which ends the first taxable year of the foreign corporation in which the foreign corporation participates in the transaction, and for the reporting shareholder's five succeeding taxable years.

(*2*) *Reporting shareholder*. The term *reporting shareholder* means a United States shareholder (as defined in section 951(b)) in a controlled foreign corporation (as defined in section 957) or a 10 percent shareholder (by vote or value) of a qualified electing fund (as defined in section 1295).

(ii) *Examples*. The following examples illustrate the provisions of paragraph (c)(3)(i) of this section:

Example 1. Notice 2003–55 (2003–2 CB 395), which modified and superseded Notice 95–53 (1995–2 CB 334) (see § 601.601(d)(2) of this chapter), describes a lease stripping transaction in which one party (the transferor) assigns the right to receive future payments under a lease of tangible property and treats the amount realized from the assignment as its current income. The transferor later transfers the property subject to the lease in a transaction intended to qualify as a transferred basis transaction, for example, a transaction described in section 351. The transferee corporation claims the deductions associated with the high basis property subject to the lease. The transferor's and transferee corporation's tax returns reflect tax positions described in Notice 2003–55. Therefore, the transferor and transferee corporation have participated in the listed transaction. In the section 351 transaction, the transferor will have received stock with low value and high basis from the transferee corporation. If the transferor subsequently transfers the high basis/low value stock to a taxpayer in another transaction intended to qualify as a transferred basis transaction and the taxpayer uses the stock to generate a loss, and if the taxpayer knows or has reason to know that the tax loss claimed was derived indirectly from the lease stripping

transaction, then the taxpayer has participated in the listed transaction. Accordingly, the taxpayer must disclose the transaction and the manner of the taxpayer's participation in the transaction under the rules of this section. For purposes of this example, if a bank lends money to the transferor, transferee corporation, or taxpayer for use in their transactions, the bank has not participated in the listed transaction because the bank's tax return does not reflect tax consequences or a tax strategy described in the listing notice (nor does the bank's tax return reflect a tax benefit derived from tax consequences or a tax strategy described in the listing notice) nor is the bank described as a participant in the listing notice.

Example 2. XYZ is a limited liability company treated as a partnership for tax purposes. X, Y, and Z are members of XYZ. X is an individual, Y is an S corporation, and Z is a partnership. XYZ enters into a confidential transaction under paragraph (b)(3) of this section. XYZ and X are bound by the confidentiality agreement, but Y and Z are not bound by the agreement. As a result of the transaction, XYZ, X, Y, and Z all reflect a tax benefit on their tax returns. Because XYZ's and X's disclosure of the tax treatment and tax structure are limited in the manner described in paragraph (b)(3) of this section and their tax returns reflect a tax benefit from the transaction, both XYZ and X have participated in the confidential transaction. Neither Y nor Z has participated in the confidential transaction because they are not subject to the confidentiality agreement.

Example 3. P, a corporation, has an 80% partnership interest in PS, and S, an individual, has a 20% partnership interest in PS. P, S, and PS are calendar year taxpayers. In 2006, PS enters into a transaction and incurs a section 165 loss (that does not meet any of the exceptions to a section 165 loss identified in published guidance) of $12 million and offsetting gain of $3 million. On PS' 2006 tax return, PS includes the section 165 loss and the corresponding gain. PS must disclose the transaction under this section because PS' section 165 loss of $12 million is equal to or greater than $2 million. P is allocated $9.6 million of the section 165 loss and $2.4 million of the offsetting gain. P does not have to disclose the transaction under this section because P's section 165 loss of $9.6 million is not equal to or greater than $10 million. S is allocated $2.4 million of the section 165 loss and $600,000 of the offsetting gain. S must disclose the transaction under this section because S's section 165 loss of $2.4 million is equal to or greater than $2 million.

(4) *Substantially similar.* The term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term *substantially similar* must be broadly construed in favor of disclosure. For example, a transaction may be substantially similar to a listed transaction even though it involves different entities or uses different Internal Revenue Code provisions. (See for example, Notice 2003–54 (2003–2 CB 363), describing a transaction substantially similar to the transactions in Notice 2002–50 (2002–2 CB 98), and Notice 2002–65 (2002–2 CB 690).) The following examples illustrate situations where a transaction is the same as or substantially similar to a listed transaction under paragraph (b)(2) of this section. (Such transactions may also be reportable transactions under paragraphs (b)(3) through (7) of this section.) See § 601.601(d)(2)(ii)(*b*) of this chapter. The following examples illustrate the provisions of this paragraph (c)(4):

Example 1. Notice 2000–44 (2000–2 CB 255) (see § 601.601(d)(2)(ii)(*b*) of this chapter), sets forth a listed transaction involving offsetting options transferred to a partnership where the taxpayer claims basis in the partnership for the cost of the purchased options but does not adjust basis under section 752 as a result of the partnership's assumption of the taxpayer's obligation with respect to the options. Transactions using short sales, futures, derivatives or any other type of offsetting obligations to inflate basis in a partnership interest would be the same as or substantially similar to the transaction described in Notice 2000–44. Moreover, use of the inflated basis in the partnership interest to diminish gain that would otherwise be recognized on the transfer of a partnership asset would also be the same as or substantially similar to the transaction described in Notice 2000–44. See § 601.601(d)(2)(ii)(*b*).

Example 2. Notice 2001–16 (2001–1 CB 730) (see § 601.601(d)(2)(ii)(*b*) of this chapter), sets forth a listed transaction involving a seller (X) who desires to sell stock of a corporation (T), an intermediary corporation (M), and a buyer (Y) who desires to purchase the assets (and not the stock) of T. M agrees to facilitate the sale to prevent the recognition of the gain that T would otherwise report. Notice 2001–16 describes M as a member of a consolidated group that has a loss within the

group or as a party not subject to tax. Transactions utilizing different intermediaries to prevent the recognition of gain would be the same as or substantially similar to the transaction described in Notice 2001–16. An example is a transaction in which M is a corporation that does not file a consolidated return but which buys T stock, liquidates T, sells assets of T to Y, and offsets the gain on the sale of those assets with currently generated losses. See § 601.601(d)(2)(ii)(*b*).

(5) *Tax*. The term *tax* means Federal income tax.

(6) *Tax benefit*. A tax benefit includes deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as an entity exempt from Federal income taxation, and any other tax consequences that may reduce a taxpayer's Federal income tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss, or credit.

(7) *Tax return*. The term *tax return* means a Federal income tax return and a Federal information return.

(8) *Tax treatment*. The tax treatment of a transaction is the purported or claimed Federal income tax treatment of the transaction.

(9) *Tax structure*. The tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed Federal income tax treatment of the transaction.

(d) *Form and content of disclosure statement*. A taxpayer required to file a disclosure statement under this section must file a completed Form 8886, ''Reportable Transaction Disclosure Statement'' (or a successor form), in accordance with this paragraph (d) and the instructions to the form. The Form 8886 (or a successor form) is the disclosure statement required under this section. The form must be attached to the appropriate tax return(s) as provided in paragraph (e) of this section. If a copy of a disclosure statement is required to be sent to the Office of Tax Shelter Analysis (OTSA) under paragraph (e) of this section, it must be sent in accordance with the instructions to the form. To be considered complete, the information provided on the form must describe the expected tax treatment and all potential tax benefits expected to result from the transaction, describe any tax result protection (as defined in § 301.6111–3(c)(12) of this chapter) with respect to the transaction, and identify and describe the transaction in sufficient detail for the IRS to be able to understand the tax structure of the reportable transaction and the identity of all parties involved in the transaction. An incomplete Form 8886 (or a successor form) containing a statement that information will be provided upon request is not considered a complete disclosure statement. If the form is not completed in accordance with the provisions in this paragraph (d) and the instructions to the form, the taxpayer will not be considered to have complied with the disclosure requirements of this section. If a taxpayer receives one or more reportable transaction numbers for a reportable transaction, the taxpayer must include the reportable transaction number(s) on the Form 8886 (or a successor form). See § 301.6111–3(d)(2) of this chapter.

(e) *Time of providing disclosure*—(1) *In general*. The disclosure statement for a reportable transaction must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. In addition, a disclosure statement for a reportable transaction must be attached to each amended return that reflects a taxpayer's participation in a reportable transaction. A copy of the disclosure statement must be sent to OTSA at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction. If a reportable transaction results in a loss which is carried back to a prior year, the disclosure statement for the reportable transaction must be attached to the taxpayer's application for tentative refund or amended tax return for that prior year. In the case of a taxpayer that is a partner in a partnership, a shareholder in an S corporation, or a beneficiary of a trust, the disclosure statement for a reportable transaction must be attached to the partnership, S corporation, or trust's tax return for each taxable year in which the partnership, S corporation, or trust participates in the transaction under the rules of paragraph (c)(3)(i) of this section. If a taxpayer who is a partner in

a partnership, a shareholder in an S corporation, or a beneficiary of a trust receives a timely Schedule K–1 less than 10 calendar days before the due date of the taxpayer's return (including extensions) and, based on receipt of the timely Schedule K–1, the taxpayer determines that the taxpayer participated in a reportable transaction within the meaning of paragraph (c)(3) of this section, the disclosure statement will not be considered late if the taxpayer discloses the reportable transaction by filing a disclosure statement with OTSA within 60 calendar days after the due date of the taxpayer's return (including extensions). The Commissioner in his discretion may issue in published guidance other provisions for disclosure under § 1.6011–4.

(2) *Special rules*—(i) *Listed transactions and transactions of interest*. In general, if a transaction becomes a listed transaction or a transaction of interest after the filing of a taxpayer's tax return (including an amended return) reflecting the taxpayer's participation in the listed transaction or transaction of interest and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction or transaction of interest, then a disclosure statement must be filed, regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction or a transaction of interest, with OTSA within 90 calendar days after the date on which the transaction became a listed transaction or a transaction of interest. The Commissioner also may determine the time for disclosure of listed transactions and transactions of interest in the published guidance identifying the transaction.

(ii) *Loss transactions*. If a transaction becomes a loss transaction because the losses equal or exceed the threshold amounts as described in paragraph (b)(5)(i) of this section, a disclosure statement must be filed as an attachment to the taxpayer's tax return for the first taxable year in which the threshold amount is reached and to any subsequent tax return that reflects any amount of section 165 loss from the transaction.

(3) *Multiple disclosures*. The taxpayer must disclose the transaction in the time and manner provided for under the provisions of this section regardless of whether the taxpayer also plans to disclose the transaction under other published guidance, for example, § 1.6662–3(c)(2).

(4) *Example*. The following example illustrates the application of this paragraph (e):

Example. In January of 2008, F, a calendar year taxpayer, enters into a transaction that at the time is not a listed transaction and is not a transaction described in any of the paragraphs (b)(3) through (7) of this section. All the tax benefits from the transaction are reported on F's 2008 tax return filed timely in April 2009. On May 2, 2011, the IRS publishes a notice identifying the transaction as a listed transaction described in paragraph (b)(2) of this section. Upon issuance of the May 2, 2011 notice, the transaction becomes a reportable transaction described in paragraph (b) of this section. The period of limitations on assessment for F's 2008 taxable year is still open. F is required to file Form 8886 for the transaction with OTSA within 90 calendar days after May 2, 2011.

(f) *Rulings and protective disclosures*—(1) *Rulings*. If a taxpayer requests a ruling on the merits of a specific transaction on or before the date that disclosure would otherwise be required under this section, and receives a favorable ruling as to the transaction, the disclosure rules under this section will be deemed to have been satisfied by that taxpayer with regard to that transaction, so long as the request fully discloses all relevant facts relating to the transaction which would otherwise be required to be disclosed under this section. If a taxpayer requests a ruling as to whether a specific transaction is a reportable transaction on or before the date that disclosure would otherwise be required under this section, the Commissioner in his discretion may determine that the submission satisfies the disclosure rules under this section for the taxpayer requesting the ruling for that transaction if the request fully discloses all relevant facts relating to the transaction which would otherwise be required to be disclosed under this section. The potential obligation of the taxpayer to disclose the transaction

under this section will not be suspended during the period that the ruling request is pending.

(2) *Protective disclosures.* If a taxpayer is uncertain whether a transaction must be disclosed under this section, the taxpayer may disclose the transaction in accordance with the requirements of this section and comply with all the provisions of this section, and indicate on the disclosure statement that the disclosure statement is being filed on a protective basis. The IRS will not treat disclosure statements filed on a protective basis any differently than other disclosure statements filed under this section. For a protective disclosure to be effective, the taxpayer must comply with these disclosure regulations by providing to the IRS all information requested by the IRS under this section.

(g) *Retention of documents.* (1) In accordance with the instructions to Form 8886 (or a successor form), the taxpayer must retain a copy of all documents and other records related to a transaction subject to disclosure under this section that are material to an understanding of the tax treatment or tax structure of the transaction. The documents must be retained until the expiration of the statute of limitations applicable to the final taxable year for which disclosure of the transaction was required under this section. (This document retention requirement is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) The documents may include the following:

(i) Marketing materials related to the transaction;

(ii) Written analyses used in decision-making related to the transaction;

(iii) Correspondence and agreements between the taxpayer and any advisor, lender, or other party to the reportable transaction that relate to the transaction;

(iv) Documents discussing, referring to, or demonstrating the purported or claimed tax benefits arising from the reportable transaction; and documents, if any, referring to the business purposes for the reportable transaction.

(2) A taxpayer is not required to retain earlier drafts of a document if the taxpayer retains a copy of the final document (or, if there is no final document, the most recent draft of the document) and the final document (or most recent draft) contains all the information in the earlier drafts of the document that is material to an understanding of the purported tax treatment or tax structure of the transaction.

(h) *Effective/applicability date*—(1) *In general.* This section applies to transactions entered into on or after August 3, 2007. However, this section applies to transactions of interest entered into on or after November 2, 2006. Paragraph (f)(1) of this section applies to ruling requests received on or after November 1, 2006. Otherwise, the rules that apply with respect to transactions entered into before August 3, 2007, are contained in § 1.6011–4 in effect prior to August 3, 2007 (see 26 CFR part 1 revised as of April 1, 2007).

(2) [Reserved]

[T.D. 9350, 72 FR 43149, August 3, 2007]

§ 1.6011–5 Required use of magnetic media for corporate income tax returns.

The return of a corporation that is required to be filed on magnetic media under § 301.6011–5 of this chapter must be filed in accordance with Internal Revenue Service revenue procedures, publications, forms, or instructions, including those posted electronically. (See § 601.601(d)(2) of this chapter).

[T.D. 9364, 72 FR 63810, Nov. 13, 2007]

§ 1.6012–1 Individuals required to make returns of income.

(a) *Individual citizen or resident*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, an income tax return must be filed by every individual for each taxable year beginning before January 1, 1973, during which he receives $600 or more of gross income, and for each taxable year beginning after December 31, 1972, during which he receives $750 or more of gross income, if such individual is:

(i) A citizen of the United States, whether residing at home or abroad,

(ii) A resident of the United States even though not a citizen thereof, or

(iii) An alien bona fide resident of Puerto Rico or any section 931 possession, as defined in § 1.931–1(c)(1), during the entire taxable year

(2) *Special rules.* (i) For taxable years beginning before January 1, 1970, an individual who is described in subparagraph (1) of this paragraph and who has attained the age of 65 before the close of his taxable year must file an income tax return only if he receives $1,200 or more of gross income during his taxable year.

(ii) For taxable years beginning after December 31, 1969, and before January 1, 1973, an individual described in subparagraph (1) of this paragraph (other than an individual referred to in section 142(b)):

(*a*) Who is not married (as determined by applying section 143(a) and the regulations thereunder) must file an income tax return only if he receives $1,700 or more of gross income during his taxable year, except that if such an individual has attained the age of 65 before the close of his taxable year an income tax return must be filed by such individual only if he receives $2,300 or more of gross income during his taxable year.

(*b*) Who is entitled to make a joint return under section 6013 and the regulations thereunder must file an income tax return only if his gross income received during his taxable year, when combined with the gross income of his spouse received during his taxable year, is $2,300 or more. However, if such individual or his spouse has attained the age of 65 before the close of the taxable year an income tax return must be filed by such individual only if their combined gross income is $2,900 or more. If both the individual and his spouse have attained the age of 65 before the close of the taxable year such return must be filed only if their combined gross income is $3,500 or more. However, this subdivision (ii)(*b*) shall not apply if the individual and his spouse did not have the same household as their home at the close of their taxable year, if such spouse files a separate return for a taxable year which includes any part of such individual's taxable year, or if any other taxpayer is entitled to an exemption for such individual or his spouse under section 151(e) for such other taxpayer's taxable year beginning in the calendar year in which such individual's taxable year begins. For example, a married student more than half of whose support is furnished by his father must file an income tax return if he receives $600 or more of gross income during his taxable year.

(iii) For taxable years beginning after December 31, 1972, an individual described in subparagraph (1) of this paragraph (other than an individual referred to in section 142(b)):

(*a*) Who is not married (as determined by applying section 143(a) and the regulations thereunder) must file an income tax return only if he receives $1,750 or more of gross income during his taxable year, except that if such an individual has attained the age of 65 before the close of his taxable year an income tax return must be filed by such individual only if he receives $2,500 or more of gross income during his taxable year.

(*b*) Who is entitled to make a joint return under section 6013 and the regulations thereunder must file an income tax return only if his gross income received during his taxable year, when combined with the gross income of his spouse received during his taxable year, is $2,500 or more. However, if such individual or his spouse has attained the age of 65 before the close of the taxable year an income tax return must be filed by such individual only if their combined gross income is $3,250 or more. If both the individual and his spouse attain the age of 65 before the close of the taxable year such return must be filed only if their combined gross income is $4,000 or more. However, this subdivision (iii)(*b*) shall not apply if the individual and his spouse did not have the same household as their home at the close of their taxable year, if such spouse files a separate return for a taxable year which includes any part of such individual's taxable year, or if any other taxpayer is entitled to an exemption for the taxpayer or his spouse under section 151(e) for such other taxpayer's taxable year beginning in the calendar year in which such individual's taxable year begins. For example, a married student more than half of whose support is furnished

by his father must file an income tax return if he receives $750 or more of gross income during the taxable year.

(iv) For purposes of section 6012(a)(1)(A)(ii) and subdivisions (ii)(*b*) and (iii)(*b*) of this subparagraph, an individual and his spouse are considered to have the same household as their home at the close of a taxable year if the same household constituted the principal place of abode of both the individual and his spouse at the close of such taxable year (or on the date of death, if the individual or his spouse died within the taxable year). The individual and his spouse will be considered to have the same household as their home at the close of the taxable year notwithstanding a temporary absence from the household due to special circumstances, as, for example, in the case of a nonpermanent failure on the part of the individual and his spouse to have a common abode by reason of illness, education, business, vacation, or military service. For example, A, a calendar-year individual under 65 years of age, is married to B, also under 65 years of age, and is a member of the Armed Forces of the United States. During 1970 A is transferred to an overseas base. A and B give up their home, which they had jointly occupied until that time; B moves to the home of her parents for the duration of A's absence. They fully intend to set up a new joint household upon A's return. Neither A nor B must file a return for 1970 if their combined gross income for the year is less than $2,300 and if no other taxpayer is entitled to a dependency exemption for A or B under section 151(e).

(v) In the case of a short taxable year referred to in section 443(a)(1), an individual described in subparagraph (1) of this paragraph shall file an income tax return if his gross income received during such short taxable year equals or exceeds his own personal exemption allowed by section 151(b) (prorated as provided in section 443(c)) and, when applicable, his additional exemption for age 65 or more allowed by section 151(c)(1) (prorated as provided in section 443(c)).

(vi) For rules relating to returns required to be made by every individual who is liable for one or more qualified State individual income taxes, as defined in section 6362, for a taxable year, see paragraph (b) of § 301.6361–1 of this chapter (Regulations on Procedure and Administration).

(vii) For taxable years beginning after December 31, 1978, an individual who receives payments during the calendar year in which the taxable year begins under section 3507 (relating to advance payment of earned income credit) must file an income tax return.

(3) *Earned income from without the United States and gain from sale of residence.* For the purpose of determining whether an income tax return must be filed for any taxable year beginning after December 31, 1957, gross income shall be computed without regard to the exclusion provided for in section 911 (relating to earned income from sources without the United States). For the purpose of determining whether an income tax return must be filed for any taxable year ending after December 31, 1963, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to sale of residence by individual who has attained age 65). In the case of an individual claiming an exclusion under section 121, he shall attach Form 2119 to the return required under this paragraph and in the case of an individual claiming an exclusion under section 911, he shall attach Form 2555 to the return required under this paragraph.

(4) *Return of income of minor.* A minor is subject to the same requirements and elections for making returns of income as are other individuals. Thus, for example, for a taxable year beginning after December 31, 1972, a return must be made by or for a minor who has an aggregate of $1,750 of gross income from funds held in trust for him and from his personal services, regardless of the amount of his taxable income. The return of a minor must be made by the minor himself or must be made for him by his guardian or other person charged with the care of the minor's person or property. See paragraph (b)(3) of § 1.6012–3. See § 1.73–1 for inclusion in the minor's gross income of amounts received for his personal services. For the amount of tax which is considered to have been properly assessed against the parent, if not paid

by the child, see section 6201(c) and paragraph (c) of § 301.6201–1 of this chapter (Regulations on Procedure and Administration).

(5) *Returns made by agents.* The return of income may be made by an agent if, by reason of disease or injury, the person liable for the making of the return is unable to make it. The return may also be made by an agent if the taxpayer is unable to make the return by reason of continuous absence from the United States (including Puerto Rico as if a part of the United States) for a period of at least 60 days prior to the date prescribed by law for making the return. In addition, a return may be made by an agent if the taxpayer requests permission, in writing, of the district director for the internal revenue district in which is located the legal residence or principal place of business of the person liable for the making of the return, and such district director determines that good cause exists for permitting the return to be so made. However, assistance in the preparation of the return may be rendered under any circumstances. Whenever a return is made by an agent it must be accompanied by a power of attorney (or copy thereof) authorizing him to represent his principal in making, executing, or filing the return. A form 2848, when properly completed, is sufficient. In addition, where one spouse is physically unable by reason of disease or injury to sign a joint return, the other spouse may, with the oral consent of the one who is incapacitated, sign the incapacitated spouse's name in the proper place on the return followed by the words ''By _____ Husband (or Wife),'' and by the signature of the signing spouse in his own right, provided that a dated statement signed by the spouse who is signing the return is attached to and made a part of the return stating:

(i) The name of the return being filed,

(ii) The taxable year,

(iii) The reason for the inability of the spouse who is incapacitated to sign the return, and

(iv) That the spouse who is incapacitated consented to the signing of the return.

The taxpayer and his agent, if any, are responsible for the return as made and incur liability for the penalties provided for erroneous, false, or fraudulent returns.

(6) *Form of return.* Form 1040 is prescribed for general use in making the return required under this paragraph. Form 1040A is an optional short form which, in accordance with paragraph (a)(7) of this section, may be used by certain taxpayers. A taxpayer otherwise entitled to use Form 1040A as his return for any taxable year may not make his return on such form if he elects not to take the standard deduction provided in section 141, and in such case he must make his return on Form 1040. For taxable years beginning before January 1, 1970, a taxpayer entitled under section 6014 and § 1.6014–1 to elect not to show his tax on his return must, if he desires to exercise such election, make his return on Form 1040A. Form 1040W is an optional short form which, in accordance with paragraph (a)(8) of this section, may be used only with respect to taxable years beginning after December 31, 1958, and ending before December 31, 1961.

(7)(i) *Use of Form 1040A.* Form 1040A may be filed only by those individuals entitled to use such form as provided by and in accordance with the instructions for such form.

(ii) *Computation and payment of tax.* Unless a taxpayer is entitled to elect under section 6014 and § 1.6014–1 not to show the tax on Form 1040A and does so elect, he shall compute and show on his return on Form 1040A the amount of the tax imposed by subtitle A of the Code and shall, without notice and demand therefor, pay any unpaid balance of such tax not later than the date fixed for filing the return.

(iii) *Change of election to use Form 1040A.* A taxpayer who has elected to make his return on Form 1040A may change such election. Such change of election shall be within the time and subject to the conditions prescribed in section 144(b) and § 1.144–2 relating to change of election to take, or not to take the standard deduction.

(8) *Use of Form 1040W for certain taxable years*—(i) *In general.* An individual may use Form 1040W as his return for

any taxable year beginning after December 31, 1958, and ending before December 31, 1961, in which the gross income of the individual, regardless of the amount thereof:

(*a*) Consists entirely of remuneration for personal services performed as an employee (whether or not such remuneration constitutes wages as defined in section 3401(a)), dividends, or interest, and

(*b*) Does not include more than $200 from dividends and interest.

For purposes of determining whether gross income from dividends and interest exceeds $200, dividends from domestic corporations are taken into account to the extent that they are includible in gross income. For purposes of this subparagraph, any reference to Form 1040 in §§1.4–2, 1.142–1, and 1.144–1 and this section shall also be deemed a reference to Form 1040W.

(ii) *Change of election to use Form 1040W.* A taxpayer who has elected to make his return on Form 1040W may change such election. Such change of election shall be within the time and subject to the conditions prescribed in section 144(b) and §1.144–2, relating to change of election to take, or not to take, the standard deduction.

(iii) *Joint return of husband and wife on Form 1040W.* A husband and wife, eligible under section 6013 and the regulations thereunder to file a joint return for the taxable year, may, subject to the provisions of this subparagraph, make a joint return on Form 1040W for any taxable year beginning after December 31, 1958, and ending before December 31, 1961, in which the aggregate gross income of the spouses (regardless of amount) consists entirely of remuneration for personal services performed as an employee (whether or not such remuneration constitutes wages as defined in section 3401(a)), dividends, or interest, and does not include more than $200 from dividends and interest. For purposes of determining whether gross income from sources to which the $200 limitation applies exceeds such amount in cases where both spouses receive dividends from domestic corporations, the amount of such dividends received by each spouse is taken into account to the extent that such dividends are includible in gross income. See section 116 and §§1.116–1 and 1.116–2. If a joint return is made by husband and wife on Form 1040W, the liability for the tax shall be joint and several.

(9) *Items of tax preference.* For a taxable year ending after December 31, 1969, an individual shall attach Form 4625 to the return required by this paragraph if during the year the individual:

(i) Has items of tax preference (described in section 57) in excess of its minimum tax exemption (determined under §1.58–1) or

(ii) Uses a net operating loss carryover from a prior taxable year in which it deferred minimum tax under section 56(b).

(b) *Return of nonresident alien individual*—(1) *Requirement of return*—(i) *In general.* Except as otherwise provided in subparagraph (2) of this paragraph, every nonresident alien individual (other than one treated as a resident under section 6013 (g) or (h)) who is engaged in trade or business in the United States at any time during the taxable year or who has income which is subject to taxation under subtitle A of the Code shall make a return on Form 1040NR. For this purpose it is immaterial that the gross income for the taxable year is less than the minimum amount specified in section 6012(a) for making a return. Thus, a nonresident alien individual who is engaged in a trade or business in the United States at any time during the taxable year is required to file a return on Form 1040 NR even though (*a*) he has no income which is effectively connected with the conduct of a trade or business in the United States, (*b*) he has no income from sources within the United States, or (*c*) his income is exempt from income tax by reason of an income tax convention or any section of the Code. However, if the nonresident alien individual has no gross income for the taxable year, he is not required to complete the return schedules but must attach a statement to the return indicating the nature of any exclusions claimed and the amount of such exclusions to the extent such amounts are readily determinable.

(ii) *Treaty income.* If the gross income of a nonresident alien individual includes treaty income, as defined in

paragraph (b)(1) of §1.871–12, a statement shall be attached to the return on Form 1040NR showing with respect to that income:

(*a*) The amounts of tax withheld,

(*b*) The names and post office addresses of withholding agents, and

(*c*) Such other information as may be required by the return form, or by the instructions issued with respect to the form, to show the taxpayer's entitlement to the reduced rate of tax under the tax convention.

(2) *Exceptions*—(i) *Return not required when tax is fully paid at source.* A nonresident alien individual (other than one treated as a resident under section 6013 (g) or (h)) who at no time during the taxable year is engaged in a trade or business in the United States is not required to make a return for the taxable year if his tax liability for the taxable year is fully satisfied by the withholding of tax at source under chapter 3 of the Code. This subdivision does not apply to a nonresident alien individual who has income for the taxable year which is treated under section 871 (c) or (d) and §1.871–9 (relating to students or trainees) or §1.871–10 (relating to real property income) as income which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual, or to a nonresident alien individual making a claim under §301.6402–3 of this chapter (Procedure and Administration Regulations) for the refund of an overpayment of tax for the taxable year. In addition, this subdivision does not apply to a nonresident alien individual who has income for the taxable year that is treated under section 871(b)(1) as effectively connected with the conduct of a trade or business within the United States by reason of the operation of section 897. For purposes of this subdivision, some of the items of income from sources within the United States upon which the tax liability will not have been fully satisfied by the withholding of tax at source under chapter 3 of the Code are:

(*a*) Interest upon so-called tax-free covenant bonds upon which, in accordance with section 1451 and §1.1451–1, a tax of only 2 percent is required to be withheld at the source,

(*b*) In the case of bonds or other evidences of indebtedness issued after September 28, 1965, amounts described in section 871(a)(1)(C),

(*c*) Capital gains described in section 871(a)(2) and paragraph (d) of §1.871– 7, and

(*d*) Accrued interest received in connection with the sale of bonds between interest dates, which, in accordance with paragraph (h) of §1.1441–4, is not subject to withholding of tax at the source.

(ii) *Return of individual for taxable year of change of U.S. citizenship or residence*—(*a*) If an alien individual becomes a citizen or resident of the United States during the taxable year and is a citizen or resident of the United States on the last day of such year, he must make a return on Form 1040 for the taxable year. However, a separate schedule is required to be attached to this return to show the income tax computation for the part of the taxable year during which the alien was neither a citizen nor resident of the United States, unless an election under section 6013 (g) or (h) is in effect for the alien. A Form 1040NR, clearly marked ''Statement'' across the top, may be used as such a separate schedule.

(*b*) If an individual abandons his U.S. citizenship or residence during the taxable year and is not a citizen or resident of the United States on the last day of such year, he must make a return on Form 1040NR for the taxable year, even if an election under section 6013(g) was in effect for the taxable year preceding the year of abandonment. However, a separate schedule is required to be attached to this return to show the income tax computation for the part of the taxable year during which the individual was a citizen or resident of the United States. A Form 1040, clearly marked ''Statement'' across the top, may be used as such a separate schedule.

(*c*) A return is required under this subdivision (ii) only if the individual is otherwise required to make a return for the taxable year.

(iii) *Beneficiaries of estates or trusts.* A nonresident alien individual who is a beneficiary of an estate or trust which is engaged in trade or business in the

United States is not required to make a return for the taxable year merely because he is deemed to be engaged in trade or business within the United States under section 875(2). However, such nonresident alien beneficiary will be required to make a return if he otherwise satisfies the conditions of subparagraph (1)(i) of this paragraph for making a return.

(iv) *Certain alien residents of Puerto Rico*. This paragraph does not apply to a nonresident alien individual who is a bona fide resident of Puerto Rico during the taxable year. See section 876 and paragraph (a)(1)(iii) of this section.

(3) *Representative or agent for nonresident alien individual*—(i) *Cases where power of attorney is not required*. The responsible representative or agent within the United States of a nonresident alien individual shall make on behalf of his nonresident alien principal a return of, and shall pay the tax on, all income coming within his control as representative or agent which is subject to the income tax under subtitle A of the Code. The agency appointment will determine how completely the agent is substituted for the principal for tax purposes. Any person who collects interest or dividends on deposited securities of a nonresident alien individual, executes ownership certificates in connection therewith, or sells such securities under special instructions shall not be deemed merely by reason of such acts to be the responsible representative or agent of the nonresident alien individual. If the responsible representative or agent does not have a specific power of attorney from the nonresident alien individual to file a return in his behalf, the return shall be accompanied by a statement to the effect that the representative or agent does not possess specific power of attorney to file a return for such individual but that the return is being filed in accordance with the provisions of this subdivision.

(ii) *Cases where power of attorney is required*. Whenever a return of income of a nonresident alien individual is made by an agent acting under a duly authorized power of attorney for that purpose, the return shall be accompanied by the power of attorney in proper form, or a copy thereof, specifically authorizing him to represent his principal in making, executing, and filing the income tax return. Form 2848 may be used for this purpose. The agent, as well as the taxpayer, may incur liability for the penalties provided for erroneous, false, or fraudulent returns. For the requirements regarding signing of returns, see § 1.6061–1. The rules of paragraph (e) of § 601.504 of this chapter (Statement of Procedural Rules) shall apply under this subparagraph in determining whether a copy of a power of attorney must be certified.

(iii) *Limitation*. A return of income shall be required under this subparagraph only if the nonresident alien individual is otherwise required to make a return in accordance with this paragraph.

(4) *Disallowance of deductions and credits*. For provisions disallowing deductions and credits when a return of income has not been filed by or on behalf of a nonresident alien individual, see section 874(a) and the regulations thereunder.

(5) *Effective date*. This paragraph shall apply for taxable years beginning after December 31, 1966, except that it shall not be applied to require (i) the filing of a return for any taxable year ending before January 1, 1974, which, pursuant to instructions applicable to the return, is not required to be filed or (ii) the amendment of a return for such a taxable year which, pursuant to such instructions, is required to be filed. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.6012–1(b) (Revised as of January 1, 1967).

(c) *Cross reference*. For returns by fiduciaries for individuals, estates, and trusts, see § 1.6012–3.

(Sec. 1445 (98 Stat. 655; 26 U.S.C. 1445), sec. 6012 (68A Stat. 732; 26 U.S.C. 6012), and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

[T.D. 6500, 25 FR 12108, Nov. 26, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.6012–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 1.6012–2 Corporations required to make returns of income.

(a) *In general*—(1) *Requirement of return*. Except as provided in paragraphs

(e) and (g)(1) of this section with respect to charitable and other organizations having unrelated business income and to certain foreign corporations, respectively, every corporation, as defined in section 7701(a)(3), subject to taxation under subtitle A of the Code shall make a return of income regardless of whether it has taxable income or regardless of the amount of its gross income.

(2) *Existence of corporation.* A corporation in existence during any portion of a taxable year is required to make a return. If a corporation was not in existence throughout an annual accounting period (either calendar year or fiscal year), the corporation is required to make a return for that fractional part of a year during which it was in existence. A corporation is not in existence after it ceases business and dissolves, retaining no assets, whether or not under State law it may thereafter be treated as continuing as a corporation for certain limited purposes connected with winding up its affairs, such as for the purpose of suing and being sued. If the corporation has valuable claims for which it will bring suit during this period, it has retained assets and therefore continues in existence. A corporation does not go out of existence if it is turned over to receivers or trustees who continue to operate it. If a corporation has received a charter but has never perfected its organization and has transacted no business and has no income from any source, it may upon presentation of the facts to the district director be relieved from the necessity of making a return. In the absence of a proper showing of such facts to the district director, a corporation will be required to make a return.

(3) *Form of return.* The return required of a corporation under this section shall be made on Form 1120 unless the corporation is a type for which a special form is prescribed. The special forms of returns and schedules required of particular types of corporations are set forth in paragraphs (b) to (g), inclusive, of this section.

(b) *Personal holding companies.* A personal holding company, as defined in section 542, including a foreign corporation within the definition of such section, shall attach Schedule PH, Computation of U.S. Personal Holding Company Tax, to the return required by paragraph (a) or (g), as the case may be, of this section.

(c) *Insurance companies*—(1) *Domestic life insurance companies*—(i) *In general.* A life insurance company subject to tax under section 801 shall make a return on Form 1120–L, ''U.S. Life Insurance Company Income Tax Return.'' Except as provided in paragraph (c)(4) of this section, such company shall file with its return—

(A) A copy of its annual statement which shows the reserves used by the company in computing the taxable income reported on its return; and

(B) A copy of Schedule A (real estate) and of Schedule D (bonds and stocks), or any successor thereto, of such annual statement.

(ii) *Mutual savings banks.* Mutual savings banks conducting life insurance business and meeting the requirements of section 594 are subject to partial tax computed on Form 1120, ''U.S. Corporation Income Tax Return,'' and partial tax computed on Form 1120–L. The Form 1120–L is attached as a schedule to Form 1120, together with the annual statement and schedules required to be filed with Form 1120–L.

(2) *Domestic nonlife insurance companies.* Every domestic insurance company other than a life insurance company shall make a return on Form 1120–PC, ''U.S. Property and Casualty Insurance Company Income Tax Return.'' This includes organizations described in section 501(m)(1) that provide commercial-type insurance and organizations described in section 833. Except as provided in paragraph (c)(4) of this section, such company shall file with its return a copy of its annual statement (or a pro forma annual statement), including the underwriting and investment exhibit (or any successor thereto) for the year covered by such return.

(3) *Foreign insurance companies.* The provisions of paragraphs (c)(1) and (c)(2) of this section concerning the returns and statements of insurance companies subject to tax under section 801 or section 831 also apply to foreign insurance companies subject to tax under those sections, except that the copy of the annual statement required

to be submitted with the return shall, in the case of a foreign insurance company that is not required to file an annual statement, be a copy of the pro forma annual statement relating to the United States business of such company.

(4) *Exception for insurance companies filing their Federal income tax returns electronically*. If an insurance company described in paragraph (c)(1), (c)(2), or (c)(3) of this section files its Federal income tax return electronically, it should not include on or with such return its annual statement (or pro forma annual statement), or any portion thereof. Such statement must be available at all times for inspection by authorized Internal Revenue Service officers or employees and retained for so long as such statements may be material in the administration of any internal revenue law. See § 1.6001–1(e).

(5) *Definition*. For purposes of this section, the term *annual statement* means the annual statement, the form of which is approved by the National Association of Insurance Commissioners (NAIC), which is filed by an insurance company for the year with the insurance departments of States, Territories, and the District of Columbia. The term annual statement also includes a pro forma annual statement if the insurance company is not required to file the NAIC annual statement.

(d) *Affiliated groups*. For the forms to be used by affiliated corporations filing a consolidated return, see § 1.1502–75.

(e) *Charitable and other organizations with unrelated business income*. Every organization described in section 511(a)(2) which is subject to the tax imposed by section 511(a)(1) on its unrelated business taxable income shall make a return on Form 990–T for each taxable year if it has gross income, included in computing unrelated business taxable income for such taxable year, of $1,000 or more. The filing of a return of unrelated business income does not relieve the organization of the duty of filing other required returns.

(f) *Subchapter T cooperatives*—(1) *In general*. For taxable years ending on or after December 31, 2007, a cooperative organization described in section 1381 (including a farmers' cooperative exempt from tax under section 521) is required to make a return, whether or not it has taxable income and regardless of the amount of its gross income, on Form 1120–C, ''U.S. Income Tax Return for Cooperative Associations,'' or such other form as may be designated by the Commissioner.

(2) *Farmers' cooperatives*. For taxable years ending before December 31, 2007, a farmers' cooperative organization described in section 521(b)(1) (including a farmers' cooperative that is not exempt from tax under section 521) is required to make a return on Form 990–C, ''Farmers' Cooperative Association Income Tax Return.''

(3) *Effective/applicability date*. This paragraph (f) is applicable on or after July 30, 2007.

(g) *Returns by foreign corporations*—(1) *Requirement of return*—(i) *In general*. Except as otherwise provided in subparagraph (2) of this paragraph, every foreign corporation which is engaged in trade or business in the United States at any time during the taxable year or which has income which is subject to taxation under subtitle A of the Code (relating to income taxes) shall make a return on Form 1120–F. Thus, for example, a foreign corporation which is engaged in trade or business in the United States at any time during the taxable year is required to file a return on Form 1120–F even though (*a*) it has no income which is effectively connected with the conduct of a trade or business in the United States, (*b*) it has no income from sources within the United States, or (*c*) its income is exempt from income tax by reason of an income tax convention or any section of the Code. However, if the foreign corporation has no gross income for the taxable year, it is not required to complete the return schedules but must attach a statement to the return indicating the nature of any exclusions claimed and the amount of such exclusions to the extent such amounts are readily determinable.

(ii) *Treaty income*. If the gross income of a foreign corporation includes treaty income, as defined in paragraph (b)(1) of § 1.871–12, a statement shall be attached to the return on Form 1120–F showing with respect to that income:

(*a*) The amounts of tax withheld,

(*b*) The names and post office addresses of withholding agents, and

(*c*) Such other information as may be required by the return form or by the instructions issued with respect to the form, to show the taxpayer's entitlement to the reduced rate of tax under the tax convention.

(iii) *Balance sheet and reconciliation of income.* At the election of the taxpayer, the balance sheets and reconciliation of income, as shown on Form 1120–F, may be limited to:

(*a*) The assets of the corporation located in the United States and to its other assets used in the trade or business conducted in the United States, and

(*b*) Its income effectively connected with the conduct of a trade or business in the United States and its other income from sources within the United States.

(2) *Exceptions*—(i) *Return not required when tax is fully paid at source*—(*a*) *In general.* A foreign corporation which at no time during the taxable year is engaged in a trade or business in the United States is not required to make a return for the taxable year if its tax liability for the taxable year is fully satisfied by the withholding of tax at source under chapter 3 of the Code. For purposes of this subdivision, some of the items of income from sources within the United States upon which the tax liability will not have been fully satisfied by the withholding of tax at source under chapter 3 of the Code are:

(*1*) Interest upon so-called tax-free covenant bonds upon which, in accordance with section 1451 and § 1.1451–1, a tax of only 2 percent is required to be withheld at source,

(*2*) In the case of bonds or other evidence of indebtedness issued after September 25, 1965, amounts described in section 881(a)(3),

(*3*) Accrued interest received in connection with the sale of bonds between interest dates, which, in accordance with paragraph (h) of § 1.1441–4, is not subject to withholding of tax at source.

(*b*) *Corporations not included.* This subdivision (i) shall not apply:

(*1*) To a foreign corporation which has income for the taxable year which is treated under section 882(d) or (e) and § 1.882–2 as income which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that corporation,

(*2*) To a foreign corporation making a claim under § 301.6402–3 of this chapter (Procedure and Administration Regulations) for the refund of an overpayment of tax for the taxable year, or

(*3*) To a foreign corporation described in paragraph (c)(2)(i) of § 1.532–1 whose accumulated taxable income for the taxable year is determined under paragraph (b)(2) of § 1.535–1.

(ii) *Beneficiaries of estates or trusts.* A foreign corporation which is a beneficiary of an estate or trust which is engaged in trade or business in the United States is not required to make a return for the taxable year merely because it is deemed to be engaged in trade or business within the United States under section 875(2). However, such foreign corporation will be required to make a return if it otherwise satisfies the conditions of subparagraph (1)(i) of this paragraph for making a return.

(iii) *Special returns and schedules.* The provisions of paragraphs (b) through (f) of this section shall apply to a foreign corporation except that a foreign corporation which is an insurance company to which paragraph (c)(3) of this section applies shall make a return on Form 1120–F and not on Form 1120. If a foreign corporation which is an insurance company to which paragraph (c)(1) or (2) of this section applies has income for the taxable year from sources within the United States which is not effectively connected for that year with the conduct of a trade or business in the United States by that corporation, the corporation shall attach to its return on Form 1120L or 1120M, as the case may be, a separate schedule showing the nature and amount of the items of such income, the rate of tax applicable thereto, and the amount of tax withheld therefrom under chapter 3 of the Code.

(3) *Representative or agent for foreign corporation*—(i) *Cases where power of attorney is not required.* The responsible representative or agent within the United States of a foreign corporation shall make on behalf of his principal a return of, and shall pay the tax on, all

income coming within his control as representative or agent which is subject to the income tax under subtitle A of the Code. The agency appointment will determine how completely the agent is substituted for the principal for tax purposes. Any person who collects interest or dividends on deposited securities of a foreign corporation, executes ownership certificates in connection therewith, or sells such securities under special instructions shall not be deemed merely by reason of such acts to be the responsible representative or agent of the foreign corporation. If the responsible representative or agent does not have a specific power of attorney from the foreign corporation to file a return in its behalf, the return shall be accompanied by a statement to the effect that the representative or agent does not possess specific power of attorney to file a return for such corporation but that the return is being filed in accordance with the provisions of this subdivision.

(ii) *Cases where power of attorney is required*. Whenever a return of income of a foreign corporation is made by an agent acting under a duly authorized power of attorney for that purpose, the return shall be accompanied by the power of attorney in proper form, or a copy thereof specifically authorizing him to represent his principal in making, executing, and filing the income tax return. Form 2848 may be used for this purpose. The agent, as well as the taxpayer, may incur liability for the penalties provided for erroneous, false, or fraudulent returns. For the requirements regarding signing of returns, see § 1.6062–1. The rules of paragraph (e) of § 601.504 of this chapter (Statement of Procedural Rules) shall apply under this subparagraph in determining whether a copy of a power of attorney must be certified.

(iii) *Limitation*. A return of income shall be required under this subparagraph only if the foreign corporation is otherwise required to make a return in accordance with this paragraph.

(4) *Disallowance of deductions and credits*. For provisions disallowing deductions and credits when a return of income has not been filed by or on behalf of a foreign corporation, see section 882(c)(2) and the regulations thereunder, and paragraph (b) (2) and (3) of § 1.535–1.

(5) *Effective date*. This paragraph shall apply for taxable years beginning after December 31, 1966, except that it shall not be applied to require (i) the filing of a return for any taxable year ending before January 1, 1974, which, pursuant to instructions applicable to the return, is not required to be filed or (ii) the amendment of a return for such a taxable year which, pursuant to such instructions, is required to be filed. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.6012–2(g) (Revised as of January 1, 1967).

(h) *Electing small business corporations*. An electing small business corporation, whether or not subject to the tax imposed by section 1378, shall make a return on Form 1120–S. See also section 6037 and the regulations thereunder.

(i) *Items of tax preference*—(1) *In general*. Every corporation required to make a return under this section, and having items of tax preference (described in section 57 and the regulation thereunder) in an amount specified by Form 4626, shall file such form as part of its return.

(2) *Organizations with unrelated business income and foreign corporations*. Regardless of the provisions of paragraphs (e) and (g) of this section, any organization described in either such paragraph having items of tax preference (described in section 57 and the regulations thereunder) in any amount entering into the computation or unrelated business income is required to make a return on form 990–T or form 120F, respectively, and to attach the required form as part of such return.

(j) *Other provisions*. For returns by fiduciaries for corporations, see § 1.6012–3. For information returns by corporations regarding payments of dividends, see §§ 1.6042–1 to 1.6042–3, inclusive; regarding corporate dissolutions or liquidations, see § 1.6043–1; regarding distributions in liquidation, see § 1.6043–2; regarding payments of patronage dividends, see §§ 1.6044–1 to 1.6044–4, inclusive; and regarding certain payments of interest, see §§ 1.6049–1 and 1.6049–2. For information returns of officers, directors, and shareholders of foreign personal holding companies, as defined in

section 552, see §§ 1.6035–1 and 1.6035–2. For returns as to formation or reorganization of foreign corporations, see §§ 1.6046–1 to 1.6046–3, inclusive.

(k) *Effective/applicability date.* Paragraph (c) of this section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (c) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.6012–2 as contained in 26 CFR part 1 in effect on April 1, 2006.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.6012–2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 1.6012–3 Returns by fiduciaries.

(a) *For estates and trusts*—(1) *In general.* Every fiduciary, or at least one of joint fiduciaries, must make a return of income on form 1041 (or by use of a composite return pursuant to § 1.6012–5) and attach the required form if the estate or trust has items of tax preference (as defined in section 57 and the regulations thereunder) in any amount:

(i) For each estate for which he acts if the gross income of such estate for the taxable year is $600 or more;

(ii) For each trust for which he acts, except a trust exempt under section 501(a), if such trust has for the taxable year any taxable income, or has for the taxable year gross income of $600 or more regardless of the amount of taxable income; and

(iii) For each estate and each trust for which he acts, except a trust exempt under section 501(a), regardless of the amount of income for the taxable year, if any beneficiary of such estate or trust is a nonresident alien.

(iv) For each trust electing to be taxed as, or as part of, an estate under section 645 for which a trustee acts, and for each related estate joining in a section 645 election for which an executor acts, if the aggregate gross income of the electing trust(s) and related estate, if any, joining in the election for the taxable year is $600 or more. (For the respective filing requirements of the trustee of each electing trust and executor of any related estate, see § 1.645–1).

(2) *Wills and trust instruments.* At the request of the Internal Revenue Service, a copy of the will or trust instrument (including any amendments), accompanied by a written declaration of the fiduciary under the penalties of perjury that it is a true and complete copy, shall be filed together with a statement by the fiduciary indicating the provisions of the will or trust instrument (including any amendments) which, in the fiduciary's opinion, determine the extent to which the income of the estate or trust is taxable to the estate or trust, the beneficiaries, or the grantor, respectively.

(3) *Domiciliary and ancillary representatives.* In the case of an estate required to file a return under subparagraph (1) of this paragraph, having both domiciliary and ancillary representatives, the domiciliary and ancillary representatives must each file a return on Form 1041. The domiciliary representative is required to include in the return rendered by him as such domiciliary representative the entire income of the estate. The return of the ancillary representative shall be filed with the district director for his internal revenue district and shall show the name and address of the domiciliary representative, the amount of gross income received by the ancillary representative, and the deductions to be claimed against such income, including any amount of income properly paid or credited by the ancillary representative to any legatee, heir, or other beneficiary. If the ancillary representative for the estate of a nonresident alien is a citizen or resident of the United States, and the domiciliary representative is a nonresident alien, such ancillary representative is required to render the return otherwise required of the domiciliary representative.

(4) *Two or more trusts.* A trustee of two or more trusts must make a separate return for each trust, even though such trusts were created by the same grantor for the same beneficiary or beneficiaries.

(5) *Trusts with unrelated business income.* Every fiduciary for a trust described in section 511(b)(2) which is subject to the tax imposed on its unrelated business taxable income by section 511(b)(1) shall make a return on Form 990–T for each taxable year if the trust has gross income, included in computing unrelated business taxable income for such taxable year, of $1,000 or more. The filing of a return of unrelated business income does not relieve the fiduciary of such trust from the duty of filing other required returns.

(6) *Charitable remainder trusts.* Every fiduciary for a charitable remainder annuity trust (as defined in § 1.664–2) or a charitable remainder unitrust (as defined in § 1.664–3) shall make a return on Form 1041–B for each taxable year of the trust even though it is nonexempt because it has unrelated business taxable income. The return on Form 1041–B shall be made in accordance with the instructions for the form and shall be filed with the designated Internal Revenue office on or before the 15th day of the fourth month following the close of the taxable year of the trust. A copy of the instrument governing the trust, accompanied by a written declaration of the fiduciary under the penalties of perjury that it is a true and complete copy, shall be attached to the return for the first taxable year of the trust.

(7) *Certain trusts described in section 4947(a)(1).* For taxable years beginning after December 31, 1980, in the case of a trust described in section 4947(a)(1) which has no taxable income for a taxable year, the filing requirements of section 6012 and this section shall be satisfied by the filing, pursuant to § 53.6011–1 of this chapter (Foundation Excise Tax Regulations) and § 1.6033–2(a), by the fiduciary of such trust of—

(i) Form 990–PF if such trust is treated as a private foundation, or

(ii) Form 990 if such trust is not treated as a private foundation.

When the provisions of this paragraph (a)(7) are met, the fiduciary shall not be required to file Form 1041.

(8) *Estate and trusts liable for qualified tax.* In the case of an estate or trust which is liable for one or more qualified State individual income taxes, as defined in section 6362, for a taxable year, see paragraph (b) of § 301.6361–1 of this chapter (Regulations on Procedure and Administration) for rules relating to returns required to be made.

(9) *A trust any portion of which is treated as owned by the grantor or another person pursuant to sections 671 through 678.* In the case of a trust any portion of which is treated as owned by the grantor or another person under the provisions of subpart E (section 671 and following) part I, subchapter J, chapter 1 of the Internal Revenue Code see § 1.671–4.

(b) *For other persons*—(1) *Decedents.* The executor or administrator of the estate of a decedent, or other person charged with the property of a decedent, shall make the return of income required in respect of such decedent. For the decedent's taxable year which ends with the date of his death, the return shall cover the period during which he was alive. For the filing of returns of income for citizens and alien residents of the United States, and alien residents of Puerto Rico, see paragraph (a) of § 1.6012–1. For the filing of a joint return after death of spouse, see paragraph (d) of § 1.6013–1.

(2) *Nonresident alien individuals*—(i) *In general.* A resident or domestic fiduciary or other person charged with the care of the person or property of a nonresident alien individual shall make a return for that individual and pay the tax unless:

(*a*) The nonresident alien individual makes a return of, and pays the tax on, his income for the taxable year,

(*b*) A responsible representative or agent in the United States of the nonresident alien individual makes a return of, and pays the tax on, the income of such alien individual for the taxable year, or

(*c*) The nonresident alien individual has appointed a person in the United States to act as his agent for the purpose of making a return of income and, if such fiduciary is required to file a Form 1041 for an estate or trust of which such alien individual is a beneficiary, such fiduciary attaches a copy of the agency appointment to his return on Form 1041.

(ii) *Income to be returned.* A return of income shall be required under this subparagraph only if the nonresident alien individual is otherwise required

to make a return in accordance with paragraph (b) of § 1.6012–1. The provisions of that paragraph shall apply in determining the form of return to be used and the income to be returned.

(iii) *Disallowance of deductions and credits*. For provisions disallowing deductions and credits when a return of income has not been filed by or on behalf of a nonresident alien individual, see section 874 and the regulations thereunder.

(iv) *Alien resident of Puerto Rico*. This subparagraph shall not apply to the return of a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year. See § 1.876–1.

(v) *Cross reference*. For requirements of withholding tax at source on nonresident alien individuals and of returns with respect to such withheld taxes, see §§ 1.1441–1 to 1.1465–1, inclusive.

(3) *Persons under a disability*. A fiduciary acting as the guardian of a minor, or as the guardian or committee of an insane person, must make the return of income required in respect of such person unless, in the case of a minor, the minor himself makes the return or causes it to be made.

(4) *Corporations*. A receiver, trustee in dissolution, trustee in bankruptcy, or assignee, who, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns. Such return shall be filed whether or not the receiver, trustee, or assignee is operating the property or business of the corporation. A receiver in charge of only a small part of the property of a corporation, such as a receiver in mortgage foreclosure proceedings involving merely a small portion of its property, need not make the return of income. See also § 1.6041–1, relating to returns regarding information at source; §§ 1.6042–1 to 1.6042–3, inclusive, relating to returns regarding payments of dividends; §§ 1.6044–1 to 1.6044–4, inclusive, relating to returns regarding payments of patronage dividends; and §§ 1.6049–1 and 1.6049–2, relating to returns regarding certain payments of interest.

(5) *Individuals in receivership*. A receiver who stands in the place of an individual must make the return of income required in respect of such individual. A receiver of only part of the property of an individual need not file a return, and the individual must make his own return.

(c) *Joint fiduciaries*. In the case of joint fiduciaries, a return is required to be made by only one of such fiduciaries. A return made by one of joint fiduciaries shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(d) *Other provisions*. For the definition of the term ''fiduciary'', see section 7701(a)(6) and the regulations thereunder. For information returns required to be made by fiduciaries under section 6041, see § 1.6041–1. As to further duties and liabilities of fiduciaries, see section 6903 and § 301.6903–1 of this chapter (Regulations on Procedure and Administration).

[T.D. 6500, 25 FR 12108, Nov. 26, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.6012–3, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 1.6012–4 Miscellaneous returns.

For returns by regulated investment companies of tax on undistributed capital gain designated for special treatment under section 852(b)(3)(D), see § 1.852–9. For returns with respect to tax withheld on nonresident aliens and foreign corporations and on tax-free covenant bonds, see §§ 1.1461–1 to 1.1465–1, inclusive. For returns of tax on transfers to avoid income tax, see § 1.1494–1. For the requirement of an annual report by persons completing a Government contract, see 26 CFR (1939) 17.16 (Treasury Decision 4906, approved June 23, 1939), and 26 CFR (1939) 16.15 (Treasury Decision 4909, approved June 28, 1939) , as made applicable to section 1471 of the 1954 Code by Treasury Decision 6091, approved August 16, 1954 (19

FR 5167, C.B. 1954–2, 47). See also § 1.1471–1.

[T.D. 7332, 39 FR 44231, Dec. 23, 1974]

EDITORIAL NOTE: For the convenience of the user §§ 16.15 and 17.16 of 26 CFR (1939) are set forth below:

§ 16.15 Annual reports for income taxable years.

(a) *General requirements.* Every contracting party completing a contract or subcontract within the contracting party's income-taxable year ending after April 3, 1939 shall file with the district director of internal revenue for the internal revenue district in which the contracting party's Federal income tax returns are required to be filed an annual report on the prescribed form of the profit and excess profit on all contracts and subcontracts coming within the scope of the act and the regulations in this part and completed within the particular income-taxable year. There shall be included as a part of such a report a statement, preferably in columnar form, showing separately for each such contract or subcontract completed by the contracting party within the income-taxable year the total contract price, the cost of performing the contract or subcontract and the resulting profit or loss on each contract or subcontract together with a summary statement showing in detail the computation of the net profit or net loss upon all contracts and subcontracts completed within the income-taxable year and the amount of the excess profit, if any, for the income-taxable year covered by the report. A copy of the report made to the Secretary of the Army (see § 16.14) with respect to each contract or subcontract covered in the annual report, shall be filed as a part of such annual report. In case the income-taxable year of the contracting party is a period of less than twelve months (see § 16.1), the report required by this section shall be made for such period and not for a full year.

(b) *Time for filing annual reports.* Annual reports of contracts and subcontracts coming within the scope of the act and the regulations in this part completed by a contracting party within an income-taxable year must be filed on or before the 15th day of the ninth month following the close of the contracting party's income-taxable year. It is important that the contracting party render on or before the due date an annual report as nearly complete and final as it is possible for the contracting party to prepare. An extension of time granted the contracting party for filing its Federal income tax return does not serve to extend the time for filing the annual report required by this section. Authority consistent with authorizations for granting extensions of time for filing Federal income tax returns is hereby delegated to the various collectors of internal revenue for granting extensions of time for filing the reports required by this section. Application for extensions of time for filing such reports should be addressed to the district director of internal revenue for the district in which the contracting party files its Federal income tax returns and must contain a full recital of the causes for the delay.

§ 17.16 Annual reports for income-taxable years.

(a) *General requirements.* Every contracting party completing a contract or subcontract within the contracting party's income-taxable year ending after April 3, 1939 shall file, with the district director of internal revenue for the internal revenue district in which the contracting party's Federal income tax return is required to be filed, annual reports on the prescribed forms of the profit and excess profit on all contracts and subcontracts coming within the scope of the act. If any contracts or subcontracts so completed by the contracting party were entered into for the construction or manufacture of any complete naval vessel or any portion thereof, the profit and excess profit on all such contracts and subcontracts completed within the income-taxable year ending after April 3, 1939 shall be computed in accordance with the provisions of § 17.6. If any contracts or subcontracts so completed by the contracting party were entered into for the construction or manufacture of any complete naval aircraft or any portion thereof, the profit and excess profit on all such contracts and subcontracts completed within the income-taxable year ending after April 3, 1939 shall be computed in accordance with the provisions of § 17.7. There shall be included as a part of the annual report a statement, preferably in columnar form, showing separately for each contract or subcontract completed by the contracting party within the income-taxable year and covered by the report, the total contract price, the cost of performing the contract or subcontract and resulting profit or loss on each contract or subcontract together with a summary statement showing in detail the computation of the net profit or net loss upon each group of contracts and subcontracts covered by the report and the amount of the excess profit, if any, with respect to each group of contracts and subcontracts covered by the report. A copy of the report made to the Secretary of the Navy (see § 17.15) with respect to each contract or subcontract covered in the annual report, shall be filed as a part of such annual report. In case the income-taxable year of the contracting party is a period of less than twelve months (see § 17.1), the reports required by this section shall be made for such period and not for a full year.

(b) *Time for filing annual reports.* Annual reports of contracts and subcontracts completed by a contracting party within an income-taxable year ending after April 3, 1939 shall be filed on or before the 15th day of the ninth month following the close of the contracting party's income-taxable year. It is important that the contracting party render on or before the due date annual reports as nearly complete and final as it is possible for the contracting party to prepare. An extension of time granted the contracting party for filing its Federal income tax return does not serve to extend the time for filing the annual reports required by this section. Authority consistent with authorizations for granting extensions of time for filing Federal income tax returns is hereby delegated to the various district directors of internal revenue for granting extensions of time for filing the reports required by this section. Application for extension of time for filing such reports should be addressed to the district director of internal revenue for the district in which the contracting party files its Federal income tax returns and must contain a full recital of the causes for the delay.

§ 1.6012–5 Composite return in lieu of specified form.

The Commissioner may authorize the use, at the option of a person required to make a return, of a composite return in lieu of any form specified in this part for use by such a person, subject to such conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate. Such composite return shall consist of a form prescribed by the Commissioner and an attachment or attachments of magnetic tape or other approved media. Notwithstanding any provisions in this part to the contrary, a single form and attachment may comprise the returns of more than one such person. To the extent that the use of a composite return has been authorized by the Commissioner, references in this part to a specific form for use by such a person shall be deemed to refer also to a composite return under this section.

[T.D. 7200, 37 FR 16544, Aug. 16, 1972]

§ 1.6012–6 Returns by political organizations.

(a) *Requirement of return*—(1) *In general.* For taxable years beginning after December 31, 1974, every political organization described in section 527(e)(1), and every fund described in section 527(f)(3) or section 527(g), and every organization described in section 501(c) and exempt from taxation under section 501(a) shall make a return of income within the time provided in section 6072(b), if a tax is imposed on such an organization or fund by section 527(b).

(2) *Taxable years beginning after December 31, 1971, and before January 1, 1975.* For taxable years beginning after December 31, 1971, and before January 1, 1975, any political organization which would be described in section 527(e)(1) if such section applied to such years shall not be required to make a return if such organization would not be required to make a return under paragraph (a)(1) of this section.

(b) *Form of return.* The return required by an organization or fund upon which a tax is imposed by section 527(b) shall be made on Form 1120–POL.

[T.D. 7516, 42 FR 57312, Nov. 2, 1977; 43 FR 2721, Jan. 19, 1978]

§ 1.6013–1 Joint returns.

(a) *In general.* (1) A husband and wife may elect to make a joint return under section 6013(a) even though one of the spouses has no gross income or deductions. For rules for determining whether individuals occupy the status of husband and wife for purposes of filing a joint return, see paragraph (a) of § 1.6013–4. For any taxable year with respect to which a joint return has been filed, separate returns shall not be made by the spouses after the time for filing the return of either has expired. See, however, paragraph (d)(5) of this section for the right of an executor to file a late separate return for a deceased spouse and thereby disaffirm a timely joint return made by the surviving spouse.

(2) A joint return of a husband and wife (if not made by an agent of one or both spouses) shall be signed by both spouses. The provisions of paragraph (a)(5) of § 1.6012–1, relating to returns made by agents, shall apply where one spouse signs a return as agent for the other, or where a third party signs a return as agent for one or both spouses.

(b) *Nonresident alien.* A joint return shall not be made if either the husband or wife at any time during the taxable

year is a nonresident alien, unless an election is in effect for the taxable year under section 6013 (g) or (h) and the regulations thereunder.

(c) *Different taxable years.* Except as otherwise provided in this section, a husband and wife shall not file a joint return if they have different taxable years.

(d) *Joint return after death.* (1) Section 6013(a)(2) provides that a joint return may be made for the survivor and the deceased spouse or for both deceased spouses if the taxable years of such spouses begin on the same day and end on different days only because of the death of either or both. Thus, if a husband and wife make this return on a calendar year basis, and the wife dies on August 1, 1956, a joint return may be made with respect to the calendar year 1956 of the husband and the taxable year of the wife beginning on January 1, 1956, and ending with her death on August 1, 1956. Similarly, if husband and wife both make their returns on the basis of a fiscal year beginning on July 1 and the wife dies on October 1, 1956, a joint return may be made with respect to the fiscal year of the husband beginning on July 1, 1956, and ending on June 30, 1957, and with respect to the taxable year of the wife beginning on July 1, 1956, and ending with her death on October 1, 1956.

(2) The provision allowing a joint return to be made for the taxable year in which the death of either or both spouses occurs is subject to two limitations. The first limitation is that if the surviving spouse remarries before the close of his taxable year, he shall not make a joint return with the first spouse who died during the taxable year. In such a case, however, the surviving spouse may make a joint return with his new spouse provided the other requirements with respect to the filing of a joint return are met. The second limitation is that the surviving spouse shall not make a joint return with the deceased spouse if the taxable year of either spouse is a fractional part of a year under section 443(a)(1) resulting from a change of accounting period. For example, if a husband and wife make their returns on the calendar year basis and the wife dies on March 1, 1956, and thereafter the husband receives permission to change his annual accounting period to a fiscal year beginning July 1, 1956, no joint return shall be made for the short taxable year ending June 30, 1956. Similarly, if a husband and wife who make their returns on a calendar year basis receive permission to change to a fiscal year beginning July 1, 1956, and the wife dies on June 1, 1956, no joint return shall be made for the short taxable year ending June 30, 1956.

(3) Section 6013(a)(3) provides for the method of making a joint return in the case of the death of one spouse or both spouses. The general rule is that, in the case of the death of one spouse, or of both spouses, the joint return with respect to the decedent may be made only by his executor or administrator, as defined in paragraph (c) of § 1.6013–4. An exception is made to this general rule whereby, in the case of the death of one spouse, the joint return may be made by the surviving spouse with respect to both him and the decedent if all the following conditions exist:

(i) No return has been made by the decedent for the taxable year in respect of which the joint return is made;

(ii) No executor or administrator has been appointed at or before the time of making such joint return; and

(iii) No executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse.

These conditions are to be applied with respect to the return for each of the taxable years of the decedent for which a joint return may be made if more than one such taxable year is involved. Thus, in the case of husband and wife on the calendar year basis, if the wife dies in February 1957, a joint return for the husband and wife for 1956 may be made if the conditions set forth in this subparagraph are satisfied with respect to such return. A joint return also may be made by the survivor for both himself and the deceased spouse for the calendar year 1957 if it is separately determined that the conditions set forth in this subparagraph are satisfied with respect to the return for such year. If, however, the deceased spouse should, prior to her death, make a return for 1956, the surviving spouse may not

thereafter make a joint return for himself and the deceased spouse for 1956.

(4) If an executor or administrator is appointed at or before the time of making the joint return or before the last day prescribed by law for filing the return of the surviving spouse, the surviving spouse cannot make a joint return for himself and the deceased spouse whether or not a separate return for the deceased spouse is made by such executor or administrator. In such a case, any return made solely by the surviving spouse shall be treated as his separate return. The joint return, if one is to be made, must be made by both the surviving spouse and the executor or administrator. In determining whether an executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse, an extension of time for making the return is included.

(5) If the surviving spouse makes the joint return provided for in subparagraph (3) of this paragraph and thereafter an executor or administrator of the decedent is appointed, the executor or administrator may disaffirm such joint return. This disaffirmance, in order to be effective, must be made within one year after the last day prescribed by law for filing the return of the surviving spouse (including any extension of time for filing such return) and must be made in the form of a separate return for the taxable year of the decedent with respect to which the joint return was made. In the event of such proper disaffirmance the return made by the survivor shall constitute his separate return, that is, the joint return made by him shall be treated as his return and the tax thereon shall be computed by excluding all items properly includible in the return of the deceased spouse. The separate return made by the executor or administrator shall constitute the return of the deceased spouse for the taxable year.

(6) The time allowed the executor or administrator to disaffirm the joint return by the making of a separate return does not establish a new due date for the return of the deceased spouse. Accordingly, the provisions of sections 6651 and 6601, relating to delinquent returns and delinquency in payment of tax, are applicable to such return made by the executor in disaffirmance of the joint return.

(e) *Return of surviving spouse treated as joint return.* For provisions relating to the treatment of the return of a surviving spouse as a joint return for each of the next two taxable years following the year of the death of the spouse, see section 2 and § 1.2–2.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 7274, 38 FR 11345, May 7, 1973; T.D. 7670, 45 FR 6929, Jan. 31, 1980]

§ 1.6013–2 Joint return after filing separate return.

(a) *In general.* (1) Where an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse under section 6013(a), and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may, under conditions hereinafter set forth, make a joint return for such taxable year. The joint return filed pursuant to section 6013(b) shall constitute the return of the husband and wife for such year, and all payments, credits, refunds, or other repayments, made or allowed with respect to the separate return of either spouse are to be taken into account in determining the extent to which the tax based on the joint return has been paid.

(2) If a joint return is made under section 6013(b), any election, other than the election to file a separate return, made by either spouse in his separate return for the taxable year with respect to the treatment of any income, deduction, or credit of such spouse shall not be changed in the making of the joint return where such election would have been irrevocable if the joint return had not been made. Thus, if one spouse has made an irrevocable election to adopt and use the last-in, first-out inventory method under section 472, this election may not be changed upon making the joint return under section 6013(b).

(3) A joint return made under section 6013(b) after the death of either spouse shall, with respect to the decedent, be made only by his executor or administrator. Thus, where no executor or administrator has been appointed, a joint

return cannot be made under section 6013(b).

(4) A nonresidential alien treated as a resident under section 6013 (g) or (h) for any taxable year ending on or after December 31, 1975, and the alien's U.S. citizen or resident spouse may file a joint return for that taxable year, even though one or both of the spouses have previously filed separate returns for that taxable year. In this case, the rule in paragraph (a)(3) of this section does not apply.

(b) *Limitations with respect to making of election.* A joint return shall not be made under section 6013(b)(1) with respect to a taxable year:

(1) Beginning on or before July 30, 1996, unless there is paid in full at or before the time of the filing of the joint return the amount shown as tax upon such joint return; or

(2) After the expiration of three years from the last day prescribed by law for filing the return for such taxable year determined without regard to any extension of time granted to either spouse; or

(3) After there has been mailed to either spouse, with respect to such taxable year, a notice of deficiency under section 6212, if the spouse, as to such notice, files a petition with the Tax Court of the United States within the time prescribed in section 6213; or

(4) After either spouse has commenced a suit in any court for the recovery of any part of the tax for such taxable year; or

(5) After either spouse has entered into a closing agreement under section 7121 with respect to such taxable year, or after any civil or criminal case arising against either spouse with respect to such taxable year has been compromised under section 7122.

(c) *When return deemed filed; assessment and collection; credit or refund.* (1) For the purpose of section 6501, relating to the period of limitations upon assessment and collection, and section 6651, relating to delinquent returns, a joint return made under section 6013(b) shall be deemed to have been filed, giving due regard to any extension of time granted to either spouse, on the following date:

(i) Where both spouses filed separate returns, prior to making the joint return under section 6013(b), on the date the last separate return of either spouse was filed for the taxable year, but not earlier than the last date prescribed by law for the filing of the return of either spouse;

(ii) Where only one spouse was required and did file a return prior to the making of the joint return under section 6013(b), on the date of the filing of the separate return, but not earlier than the last day prescribed by law for the filing of such return; or

(iii) Where both spouses were required to file a return, but only one spouse did so file, on the date of the filing of the joint return under section 6013(b).

(2) For the purpose of section 6511, relating to refunds and credits, a joint return made under section 6013(b) shall be deemed to have been filed on the last date prescribed by law for filing the return for such taxable year, determined without regard to any extension of time granted to either spouse for filing the return or paying the tax.

(d) *Additional time for assessment.* In the case of a joint return made under section 6013(b), the period of limitations provided in sections 6501 and 6502 shall not be less than one year after the date of the actual filing of such joint return. The expiration of the one year is to be determined without regard to the rules provided in paragraph (c)(1) of this section, relating to the application of sections 6501 and 6651 with respect to a joint return made under section 6013(b).

(e) *Additions to the tax and penalties.* (1) Where the amount shown as the tax by the husband and wife on a joint return made under section 6013(b) exceeds the aggregate of the amounts shown as tax on the separate return of each spouse, and such excess is attributable to negligence, intentional disregard of rules and regulations, or fraud at the time of the making of such separate return, there shall be assessed, collected, and paid in the same manner as if it were a deficiency an additional amount as provided by the following:

(i) If any part of such excess is attributable to negligence, or intentional disregard of rules and regulations, at the time of the making of such separate return, but without any intent to

defraud, this additional amount shall be 5 percent of the total amount of the excess.

(ii) If any part of such excess is attributable to fraud with intent to evade tax at the time of the making of such separate return, this additional amount shall be 50 percent of the total amount of the excess. The latter addition is in lieu of the 50 percent addition to the tax provided in section 6653(b).

(2) For purposes of section 7206 (1) and (2) and section 7207 (relating to criminal penalties in the case of fraudulent returns), the term ''return'' includes a separate return filed by a spouse with respect to a taxable year for which a joint return is made under section 6013(b) after the filing of a separate return.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 7670, 45 FR 6929, Jan. 31, 1980; T.D. 8725, 62 FR 39117, July 22, 1997]

§ 1.6013–3 Treatment of joint return after death of either spouse.

For purposes of section 21 (relating to change in rates during a taxable year), section 443 (relating to returns for a period of less than 12 months), and section 7851(a)(1)(A) (relating to the applicability of certain provisions of the Internal Revenue Code of 1954 and the Internal Revenue Code of 1939), where the husband and wife have different taxable years because of death of either spouse, the joint return shall be treated as if the taxable years of both ended on the date of the closing of the surviving spouse's taxable year. Thus, in cases where the Internal Revenue Code of 1939 otherwise would apply to the taxable year of the decedent spouse and the Internal Revenue Code of 1954 would apply to the taxable year of the surviving spouse, this provision makes the Internal Revenue Code of 1954 applicable to the taxable years of both spouses if a joint return is filed.

§ 1.6013–4 Applicable rules.

(a) *Status as husband and wife.* For the purpose of filing a joint return under section 6013, the status as husband and wife of two individuals having taxable years beginning on the same day shall be determined:

(1) If the taxable year of each individual is the same, as of the close of such year; and

(2) If the close of the taxable year is different by reason of the death of one spouse, as of the time of such death.

An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married. However, the mere fact that spouses have not lived together during the course of the taxable year shall not prohibit them from making a joint return. A husband and wife who are separated under an interlocutory decree of divorce retain the relationship of husband and wife until the decree becomes final. The fact that the taxpayer and his spouse are divorced or legally separated at any time after the close of the taxable year shall not deprive them of their right to file a joint return for such taxable year under section 6013.

(b) *Computation of income, deductions, and tax.* If a joint return is made, the gross income and adjusted gross income of husband and wife on the joint return are computed in an aggregate amount and the deductions allowed and the taxable income are likewise computed on an aggregate basis. Deductions limited to a percentage of the adjusted gross income, such as the deduction for charitable, etc., contributions and gifts, under section 170, will be allowed with reference to such aggregate adjusted gross income. A similar rule is applied in the case of the limitation of section 1211(b) on the allowance of losses resulting from the sale or exchange of capital assets (see § 1.1211–1). Although there are two taxpayers on a joint return, there is only one taxable income. The tax on the joint return shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several. For computation of tax in the case of a joint return, see § 1.2–1. For tax in the case of a joint return of husband and wife electing to pay the optional tax under section 3, see § 1.3–1. For the election not to show on a joint return the amount of tax due in connection therewith, see paragraph (c) of § 1.6014–1 and paragraph (d) of § 1.6014–2. For separate computations of the self-employment

tax of each spouse on a joint return, see paragraph (b) of § 1.6017–1.

(c) *Definition of executor or administrator*. For purposes of section 6013 the term ''executor or administrator'' means the person who is actually appointed to such office and not a person who is merely in charge of the property of the decedent.

(d) *Return signed under duress*. If an individual asserts and establishes that he or she signed a return under duress, the return is not a joint return. The individual who signed such return under duress is not jointly and severally liable for the tax shown on the return or any deficiency in tax with respect to the return. The return is adjusted to reflect only the tax liability of the individual who voluntarily signed the return, and the liability is determined at the applicable rates in section 1(d) for married individuals filing separate returns. Section 6212 applies to the assessment of any deficiency in tax on such return.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 7102, 36 FR 5497, Mar. 24, 1971; T.D. 9003, 67 FR 47285, July 18, 2002]

§ 1.6013–6 Election to treat nonresident alien individual as resident of the United States.

(a) *Election for special treatment*—(1) *In general*. Two individuals who are husband and wife at the close of a taxable year ending on or after December 31, 1975, may make an election under this section for that taxable year if, at the close of that year, one spouse is a citizen or resident of the United States and the other spouse is a nonresident alien. The effect of the election is that each spouse is treated as a resident of the United States for purposes of chapters 1, 5, and 24 and sections 6012, 6013, 6072, and 6091 of the Code for the entire taxable year. An election made under this section is in effect for the taxable year for which made and for all subsequent years of the husband and wife, except:

(i) Any taxable year for which the election is suspended, as described in paragraph (a)(3) of this section, and

(ii) Any taxable year for which the election is terminated in accordance with paragraph (b) of this section and all subsequent taxable years.

A husband and wife may not make an election if an election previously made under this section by either spouse has been terminated under paragraph (b) of this section.

(2) *Particular rules*. (i) As used in paragraph (a)(3) of this section, the term ''U.S. spouse'' means any married individual who is a citizen or resident of the United States at any time during a taxable year.

(ii) An individual's residence is determined by application of the principles of §§ 301.7701(b)–1 through 301.7701(b)–9 of this chapter relating to what constitutes residence in the United States by an alien individual.

(iii) Whether two individuals are married at the close of a taxable year is determined by application of the rules in § 1.6013–4(a).

(iv) The provisions of section 879 and the regulations thereunder shall not apply for any taxable year for which an election under this section is in effect.

(v) An individual who makes an election under this section may not, for United States income tax purposes, claim under any United States income tax treaty not to be a U.S. resident. The relationship of U.S. income tax treaties and the election under this section is illustrated by the following example.

Example. H, a U.S. citizen, is married to W, a nonresident alien of the United States and a domiciliary of country X. H and W maintain their only permanent home in country X. W receives both U.S. source and country X source interest during the taxable year. The interest is not effectively connected with a permanent establishment or a fixed base in any country. H and W make the section 6013 (g) election. Under article ii (1) of the United States—country X Income Tax Convention interest derived and beneficially owned by a resident of one contracting state is exempt from tax in the other contracting state. Article 4 (1) of the treaty provides that an individual is a resident of a contracting state if subject to tax in that country by reason of the individual's domicile, residence, or citizenship. Under article 4 (1) of the treaty, W is a resident of country X by virtue of her domicile in country X and also of the United States by virtue of the section 6013 (g) election. Article 4 (2) of the treaty provides that if an individual is a resident of both the United States and country X by reason of article 4 (1), the individual shall be deemed to be a resident of the contracting state in

which he or she has a permanent home available. Because W's sole permanent home is in country X, under article 4 (2) of the treaty W is treated as a resident of country X for purposes of the treaty. Because W has elected under section 6013(g) to be treated as a U.S. resident (and thus to be taxed on worldwide income), W may not, for U.S. income tax purposes, claim under the treaty not to be a U.S. resident. W, therefore, is subject to U.S. income tax on the interest. For purposes of country X income tax, W is considered a resident of country X under the treaty.

(3) *Suspension of election.* (i) An election made under this section is suspended and is not in effect for a taxable year subsequent to the first taxable year for which made if neither spouse is a U.S. spouse during that subsequent taxable year. Thus, for example, the election is in suspense if both spouses are nonresident aliens for the entire taxable year.

(ii) If either spouse dies during any taxable year for which the election under this section is in effect, other than the first taxable year for which the election is to be in effect, the taxable year shall include, solely for purposes of this paragraph (a)(3), only those days during the taxable year on which both spouses are alive. Thus, for example, if the U.S. spouse dies during the taxable year, the election is not suspended for that year even if the surviving nonresident alien spouse never acquires U.S. citizenship or residency. Similarly, if the nonresident alien spouse dies during the taxable year, the election is not suspended for that year even if the surviving U.S. spouse subsequently abandons U.S. citizenship or residency. However, if neither spouse was a U.S. spouse at any time during the period of the taxable year when both spouses were alive, the election is suspended for that year even if the surviving spouse subsequently acquires U.S. citizenship or residency.

For the effect of the death of either spouse on the status of the election in subsequent taxable years, see paragraph (b)(2) of this section.

(4) *Time and manner of making an election.* (i) A husband and wife shall make the election under this section by attaching a statement to a joint return for the first taxable year for which the election is to be in effect. The election must be made before the expiration of the period prescribed by section 6511(a) (or section 6511(c) if the period is extended by agreement) for making a claim for credit or refund. If either or both spouses die after the close of the taxable year but before the joint return is filed, the election may be made by the executor, administrator, or other person charged with the property of the deceased spouse. If the election is made with a joint amended return, the amended return should be made on Form 1040 or 1040A, the word ''Amended'' should be written clearly on the front of the return, and an amended return also must be filed for each subsequent taxable year as to which a return previously has been filed by either spouse.

(ii) The statement must contain a declaration that the election is being made and that the requirements of paragraph (a)(1) of this section are met for the taxable year. The statement must also contain the name, address, and taxpayer identifying number of each spouse. If the election is being made on behalf of a deceased spouse, the statement must contain the name and address of the executor, administrator, or other person making the election on behalf of the decreased spouse. The statement must be signed by both persons making the election.

(b) *Termination of election*—(1) *Revocation.* (i) An election under this section shall terminate if either spouse revokes the election. An election that is revoked terminates as of the first taxable year for which the last day prescribed by section 6072(a) and 6081(a) for filing the return of tax has not yet occurred.

(ii) Revocation of the election is made by filing a statement of revocation in the following manner. If the spouse revoking the election is required to file a return under section 6012, the statement is filed by attaching it to the return for the first taxable year to which the revocation applies. If the spouse revoking the election is not required to file a return under section 6012, but files a claim for refund under section 6511, the statement is filed by attaching it to the claim for refund. If the spouse revoking the election is not required to file a return and does not file a claim for refund, the statement is

filed by submitting it to the service center director with whom was filed the most recent joint return of the spouses. The revocation may, if the revoking spouse dies after the close of the first taxable year to which the revocation applies but before the return, claim for refund, or statement of revocation is filed, be made by the executor, administrator or other person charged with the property of the deceased spouse.

(iii) A revocation of the election is effective as of a particular taxable year if it is filed on or before the last day prescribed by section 6072(a) and 6081(a) for filing the return of tax for that taxable year. However, the revocation is not final until that last day.

(iv) The statement of revocation must contain a declaration that the election under this section is being revoked. The statement must also contain the name, address, and taxpayer identifying number of each spouse. If the revocation is being made on behalf of a deceased spouse, the statement must contain the name and address of the executor, administrator, or other person revoking the election on behalf of the deceased spouse. The statement must also include a list of the States, foreign countries, and possessions of the United States which have community property laws and in which:

(A) Each spouse is domiciled, or

(B) real property is located from which either of the spouses receives income.

The statement must be signed by the person revoking the election.

(2) *Death*. An election under this section shall terminate if either spouse dies. An election that terminates on account of death terminates as of the first taxable year of the surviving spouse following the taxable year in which the death occurred. However, if the surviving spouse is a citizen or resident of the United States who is entitled to the benefits of section 2, the election terminates as of the first taxable year following the last taxable year for which the surviving spouse is entitled to the benefits of section 2. If both spouses die within the same taxable year, the election terminates as of the first day after the close of the taxable year in which the deaths occurred.

(3) *Legal separation*. An election under this section terminates if the spouses legally separate under a degree of divorce or of separate maintenance. An election that terminates on account of legal separation terminates as of the close of the taxable year preceding the taxable year in which the separation occurs. The rules in § 1.6013–4(a) are relevant in determining whether two spouses are legally separated.

(4) *Inadequate records*. An election under this section may be terminated by the Commissioner if it is determined that either spouse has failed to keep adequate records. An election that is terminated on account of inadequate records terminates as of the close of the taxable year preceding the taxable year for which the Commissioner determines that the election should be terminated. Adequate records are the books, records, and other information reasonably necessary to ascertain the amount of liability for taxes under chapters 1, 5, and 24 of the code of either spouse for the taxable year. Adequate records also includes the granting of access to the books and records.

(c) *Illustrations*. The application of this section is illustrated by the following examples. In each case the individual's taxable year is the calendar year and the spouses are not legally separated.

Example 1. W, a U.S. citizen for the entire taxable year 1979, is married to H, a nonresident alien individual. W and H may make the section 6013(g) election for 1979 by filing the statement of election with a joint return. If W and H make the election, income from sources within and without the United States received by W and H in 1979 and subsequent years must be included in gross income for each taxable year unless the election later is terminated or suspended. While W and H must file a joint return for 1979, joint or separate returns may be filed for subsequent years.

Example 2. H and W are husband and wife and are both nonresident alien individuals. In June 1980 H becomes a U.S. resident and remains a resident for the balance of the year. H and W may make the section 6013(g) election for 1980. If H and W make the election, income from sources within and without the United States received by H and W for the entire taxable year 1980 and subsequent years must be included in gross income for each taxable year, unless the election later is terminated or suspended.

Example 3. . W, a U.S. resident on December 31, 1981, is married to H, a nonresident alien. W and H make the section 6013(g) election and file joint returns for 1981 and succeeding years. On January 10, 1987, W becomes a nonresident alien. H has remained a nonresident alien. W and H may file a joint return or separate returns for 1987. As neither W or H is a U.S. resident at any time during 1988, their election is suspended for 1988. If W and H have U.S. source or foreign source income effectively connected with the conduct of a U.S. trade or business in 1988, they must file separate returns as nonresident aliens. W becomes a U.S. resident again on January 5, 1990. Their election no longer is in suspense. Income from sources within and without the United States received by W or H in the years their election is not suspended must be included in gross income for each taxable year.

Example 4. H, a U.S. citizen for the entire taxable year 1979, is married to W, who is not a U.S. citizen. While W believes that she is a U.S. resident, H and W make the section 6013(g) election for 1979 to cover the possibility that later it would be determined that she is a nonresident alien during 1979. The election for 1979 will not be considered evidence that W was a nonresident alien in prior years. Income from sources within and without the United States received by H and W in 1979 and subsequent years must be included in gross income for each taxable year, unless the election later is terminated or suspended.

[T.D. 7670, 45 FR 6929, Jan. 31, 1980, as amended by T.D. 7842, 47 FR 49842, Nov. 3, 1982; T.D. 8411, 57 FR 15241, Apr. 27, 1992]

§ 1.6013–7 Joint return for year in which nonresident alien becomes resident of the United States.

(a) *Election for special treatment*—(1) *In general.* Two individuals who are husband and wife at the close of a taxable year ending on or after December 31, 1975, may make an election under this section for that taxable year if one spouse is a citizen or resident of the United States on the last day of that taxable year and the other spouse is a nonresident alien at the beginning of that taxable year and a citizen or resident of the United States at the close of that taxable year. Two married individuals who are nonresident aliens at the beginning of a taxable year and who are U.S. citizens or residents on the last day of that taxable year qualify for the election. The effect of the election is that each spouse is treated as a resident of the United States for purposes of chapters 1, 5, and 24 and sections 6012, 6013, 6072, and 6091 of the code for all of that taxable year. A husband and wife may not make an election if an election has previously been made under this section by either spouse.

(2) *Particular rules.* The rules in subdivisions (ii) through (v) of § 1.6013–6(a)(2) are applicable to this section.

(3) *Time and manner of making an election.* A husband and wife shall make the election under this section in accordance with the rules in § 1.6013–6(a)(4).

(b) *Section 6013(g) election in effect.* If an election under section 6013(g) is in effect for a year subsequent to the first taxable year for which made and during that subsequent year the husband and wife meet the requirements of section 6013(h) and paragraph (a)(1) of this section, then the election under section 6013(g) shall apply to that subsequent taxable year. A separate election under section 6013(h) is not required for that subsequent taxable year.

[T.D. 7670, 45 FR 6931, Jan. 31, 1980]

§ 1.6014–1 Tax not computed by taxpayer for taxable years beginning before January 1, 1970.

(a) *In general.* If an individual is entitled under paragraph (a)(7) of § 1.6012–1 to use as his return Form 1040A, he may elect not to show thereon the amount of the tax due in connection with such return if his gross income is less than $5,000.

(b) *Computation and payment of tax.* A taxpayer who, in accordance with paragraph (a) of this section, elects not to show the tax on Form 1040A is not required to pay the unpaid balance of such tax at the time he files the return. In such case, the tax will be computed for the taxpayer by the Internal Revenue Service, and a notice will be mailed to the taxpayer stating the amount of tax due. Where it is determined that a refund of tax is due, the Internal Revenue Service will send such refund to the taxpayer. See paragraph (c) of § 301.6402–3 of this chapter (Regulations on Procedure and Administration).

(c) *Joint return.* (1) A husband and wife who, pursuant to paragraph (a)(7) of § 1.6012–1, file a joint return on Form

1040A may elect not to show the tax on such return if their aggregate gross income for the taxable year is less than $5,000.

(2) The tax computed for the taxpayer who files Form 1040A and elects not to show thereon the tax due shall be the lesser of the following amounts:

(i) A tax computed as though the return on Form 1040A constituted the separate returns of the spouses, or

(ii) A tax computed as though the return on Form 1040A constituted a joint return.

(d) *Married individuals filing separate returns.* In the case of a married individual who files a separate return and who elects under this section not to show his tax on Form 1040A his tax shall be computed with reference to the 10-percent standard deduction rather than the minimum standard deduction.

(e) This section shall apply to taxable years beginning before January 1, 1970.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6581, 26 FR 11678, Dec. 6, 1961; T.D. 6792, 30 FR 531, Jan. 15, 1965; T.D. 7102, 36 FR 5497, Mar. 24, 1971]

§ 1.6014–2 Tax not computed by taxpayer for taxable years beginning after December 31, 1969.

(a) *In general.* An individual subject to the tax imposed by section 1 of the Code may, in accordance with the instructions applicable to the income tax return to be filed, elect, for any taxable year beginning after December 31, 1969, not to show on his income tax return for such year the amount of tax due in connection with such return.

(b) *Restriction on making an election.* The election pursuant to this section shall not be made by an individual who does not file his return (or amended return) making such election on or before the date prescribed in section 6072(a) for the filing of the original return (determined without regard to any extension of time).

(c) *Effects of election.* (1) A taxpayer who, in accordance with the provisions of this section, elects not to show the tax on his income tax return is not required to pay the unpaid balance of such tax at the time he files the return. In such case, the tax will be computed for the taxpayer by the Internal Revenue Service, and a notice will be mailed to the taxpayer stating the amount of tax due. Where it is determined that a refund of tax is due, the Internal Revenue Service will send such refund to the taxpayer. See paragraph (c) of § 301.6402–3 of this chapter (Regulations on Procedure and Administration). The computation of tax by the Internal Revenue Service shall be treated for purposes of this chapter as if made by the taxpayer, and such computation or the issuance of a notice or refund pursuant thereto shall not relieve the taxpayer of liability for any deficiency (although the deficiency is based upon an amount of tax different from that computed for the taxpayer by the Internal Revenue Service) or affect the rights of the Internal Revenue Service with respect to any subsequent audit or other review of the taxpayer's return.

(2) Where the election provided for in this section is made by a taxpayer who takes the standard deduction and who has adjusted gross income of less than $10,000, such election constitutes an election to pay the tax imposed by section 3.

(3) A taxpayer who makes an election under section 6014 shall not be precluded from claiming:

(i) Status as a head of household or a surviving spouse;

(ii) The credit under section 31 (relating to tax withheld on wages);

(iii) The credit under section 37 (relating to retirement income);

(iv) The credit under section 38 (relating to investment in certain depreciable property);

(v) The credit under section 39 (relating to certain uses of gasoline and lubricating oil);

(vi) The credit under section 41 (relating to contributions to candidates for public office);

(vii) The credit under section 42 (relating to personal exemptions);

(viii) The credit under section 43 (relating to earned income);

(ix) The credit under section 44 (relating to purchase of new principal residence); or

(x) The credit under section 45 (relating to overpayments of tax).

(d) *Joint returns.* (1) A husband and wife who file a joint return may elect not to show the tax on such return in

accordance with the rules prescribed in paragraphs (a) and (b) of this section.

(2) The tax computed for a husband and wife who elect pursuant to this section not to show their tax on their joint income tax return shall be the lesser of the following amounts:

(i) A tax computed as though the return of income constituted a joint return, or

(ii) If sufficient information is provided for the taxable income of each spouse to be determined, a tax computed as though the return of income constituted the separate returns of the spouses.

(e) *Married individuals filing separate returns.* This section shall apply to married individuals filing separate returns unless otherwise provided in the instructions accompanying a return. The instructions may require the taxpayer to attach to his return a statement to the effect that his tax and the tax of his spouse were determined in accordance with the rules of sections 141(d) and 142(a).

(f) *Revocation of election.* An election pursuant to this section may be revoked on an amended return (whether such return is filed before or after the date prescribed in section 6072(a) for filing the original return).

[T.D. 7102, 36 FR 5497, Mar. 24, 1971, as amended by T.D. 7298, 38 FR 35234, Dec. 26, 1973; T.D. 7391, 40 FR 55856, Dec. 2, 1975]

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[T.D. 9003, 67 FR 47285, July 18, 2002]

§ 1.6015–1 Relief from joint and several liability on a joint return.

(a) *In general.* (1) An individual who qualifies and elects under section 6013 to file a joint Federal income tax return with another individual is jointly and severally liable for the joint Federal income tax liabilities for that year. A spouse or former spouse may be relieved of joint and several liability for Federal income tax for that year under the following three relief provisions:

(i) Innocent spouse relief under § 1.6015–2.

(ii) Allocation of deficiency under § 1.6015–3.

(iii) Equitable relief under § 1.6015–4.

(2) A requesting spouse may submit a single claim electing relief under both or either §§ 1.6015–2 and 1.6015–3, and requesting relief under § 1.6015–4. However, equitable relief under § 1.6015–4 is available only to a requesting spouse who fails to qualify for relief under §§ 1.6015–2 and 1.6015–3. If a requesting spouse elects the application of either § 1.6015–2 or 1.6015–3, the Internal Revenue Service will consider whether relief is appropriate under the other elective provision and, to the extent relief is unavailable under either, under § 1.6015–4. If a requesting spouse seeks relief only under § 1.6015–4, the Secretary may not grant relief under § 1.6015–2 or 1.6015–3 in the absence of an affirmative election made by the requesting spouse under either of those sections. If in the course of reviewing a request for relief only under § 1.6015–4, the IRS determines that the requesting spouse may qualify for relief under § 1.6015–2 or 1.6015–3 instead of § 1.6015–4, the Internal Revenue Service will correspond with the requesting spouse to see if the requesting spouse would like to amend his or her request to elect the application of § 1.6015–2 or 1.6015–3. If the requesting spouse chooses to amend the claim for relief, the requesting spouse must submit an affirmative election under § 1.6015–2 or 1.6015–3. The amended claim for relief will relate back to the original claim for purposes of determining the timeliness of the claim.

(3) Relief is not available for liabilities that are required to be reported on a joint Federal income tax return but are not income taxes imposed under Subtitle A of the Internal Revenue Code (e.g., domestic service employment taxes under section 3510).

(b) *Duress.* For rules relating to the treatment of returns signed under duress, see § 1.6013–4(d).

(c) *Prior closing agreement or offer in compromise*—(1) *In general.* A requesting

spouse is not entitled to relief from joint and several liability under §1.6015–2, 1.6015–3, or 1.6015–4 for any tax year for which the requesting spouse has entered into a closing agreement with the Commissioner that disposes of the same liability that is the subject of the claim for relief. In addition, a requesting spouse is not entitled to relief from joint and several liability under §1.6015–2, 1.6015–3, or 1.6015–4 for any tax year for which the requesting spouse has entered into an offer in compromise with the Commissioner. For rules relating to the effect of closing agreements and offers in compromise, see sections 7121 and 7122, and the regulations thereunder.

(2) *Exception for agreements relating to TEFRA partnership proceedings.* The rule in paragraph (c)(1) of this section regarding the unavailability of relief from joint and several liability when the liability to which the claim for relief relates was the subject of a prior closing agreement entered into by the requesting spouse, shall not apply to an agreement described in section 6224(c) with respect to partnership items (or any penalty, addition to tax, or additional amount that relates to adjustments to partnership items) that is entered into while the requesting spouse is a party to a pending partnership-level proceeding conducted under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding). If, however, a requesting spouse enters into a closing agreement pertaining to any penalty, addition to tax, or additional amount that relates to adjustments to partnership items, at a time when the requesting spouse is not a party to a pending TEFRA partnership proceeding (e.g., in connection with an affected items proceeding), then the provisions of paragraph (c)(1) shall apply. Similarly, if a requesting spouse enters into a closing agreement with respect to both partnership items (including affected items) and nonpartnership items, while the requesting spouse is a party to a pending TEFRA partnership proceeding, the provisions of paragraph (c)(1) shall apply to the portion of the closing agreement that relates to nonpartnership items and the provisions of this paragraph (c)(2) shall apply to the remainder of the closing agreement.

(3) *Examples.* The following examples illustrate the rules of this paragraph (c):

Example 1. H and W file joint returns for taxable years 2002–2004, on which they claim losses attributable to H's limited partnership interest in Partnership A. In January 2006, the Internal Revenue Service commences an audit under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding) regarding Partnership A's 2002–2004 taxable years, and sends H and W a notice under section 6223(a)(1). In September 2007, H files a bankruptcy petition under chapter 7 of the Bankruptcy Code and receives a discharge in April 2008. In August 2008, H and W enter into a closing agreement with the Internal Revenue Service, in which H and W agree to the disallowance of some of the claimed losses from Partnership A for taxable years 2002 through 2007. W may not later claim relief from joint and several liability under section 6015 as to the disallowed losses attributable to Partnership A for taxable years 2002 to 2007. This is because at the time W entered into the closing agreement, H's partnership items attributable to Partnership A had converted to nonpartnership items as a result of H's filing of the bankruptcy petition. The conversion of H's items also terminated W's status as a partner in the TEFRA partnership proceeding regarding Partnership A. Consequently, the closing agreement did not pertain to partnership items and W was not a party to a pending partnership-level proceeding regarding Partnership A when she entered into the closing agreement. Accordingly, the exception in paragraph (c)(2) of this section for agreements relating to TEFRA partnership proceedings does not apply.

Example 2. H and W file a joint return for taxable year 2002, on which they claim $25,000 in losses attributable to H's general partnership interest in Partnership B. In November 2003, the Service proposes a deficiency in tax relating to H's and W's 2002 joint return arising from omitted taxable interest income in the amount of $2,000 that is attributable to H. In July 2005, the Internal Revenue Service commences a TEFRA partnership proceeding regarding Partnership B's 2002 and 2003 taxable years, and sends H and W a notice under section 6223(a)(1). In March 2006, H and W enter into a closing agreement with the Service. The closing agreement provides for the disallowance of the claimed losses from Partnership B in excess of H's and W's out-of-pocket expenditures relating to Partnership B for taxable year 2002 and any subsequent year(s) in which H and W

claimed losses from Partnership B. In addition, H and W agree to the imposition of the accuracy-related penalty under section 6662 with respect to the disallowed losses attributable to partnership B. In the closing agreement, H and W also agree to the deficiency resulting from the omitted interest income for taxable year 2002. W may not later claim relief from joint and several liability under section 6015 as to the deficiency in tax attributable to the omitted income of $2,000 for taxable year 2002, because this portion of the closing agreement pertains to nonpartnership items. In contrast, W may claim relief from joint and several liability as to the disallowed losses and accuracy-related penalty attributable to Partnership B for taxable year 2002 or any subsequent year(s). This is because this portion of the closing agreement pertains to partnership and affected items and was entered into at a time when W was a party to the pending partnership-level proceeding regarding Partnership B. Consequently, W never had the opportunity to raise the innocent spouse defense in the course of that TEFRA partnership proceeding. (See § 1.6015–5(b)(5) relating to premature claims).

(d) *Fraudulent scheme.* If the Secretary establishes that a spouse transferred assets to the other spouse as part of a fraudulent scheme, relief is not available under section 6015, and section 6013(d)(3) applies to the return. For purposes of this section, a fraudulent scheme includes a scheme to defraud the Service or another third party, including, but not limited to, creditors, ex-spouses, and business partners.

(e) *Res judicata and collateral estoppel.* A requesting spouse is barred from relief from joint and several liability under section 6015 by res judicata for any tax year for which a court of competent jurisdiction has rendered a final decision on the requesting spouse's tax liability if relief under section 6015 was at issue in the prior proceeding, or if the requesting spouse meaningfully participated in that proceeding and could have raised relief under section 6015. A requesting spouse has not meaningfully participated in a prior proceeding if, due to the effective date of section 6015, relief under section 6015 was not available in that proceeding. Also, any final decisions rendered by a court of competent jurisdiction regarding issues relevant to section 6015 are conclusive and the requesting spouse may be collaterally estopped from relitigating those issues.

(f) *Community property laws*—(1) *In general.* In determining whether relief is available under § 1.6015–2, 1.6015–3, or 1.6015–4, items of income, credits, and deductions are generally allocated to the spouses without regard to the operation of community property laws. An erroneous item is attributed to the individual whose activities gave rise to such item. See § 1.6015–3(d)(2).

(2) *Example.* The following example illustrates the rule of this paragraph (f):

Example. (i) H and W are married and have lived in State A (a community property state) since 1987. On April 15, 2003, H and W file a joint Federal income tax return for the 2002 taxable year. In August 2005, the Internal Revenue Service proposes a $17,000 deficiency with respect to the 2002 joint return. A portion of the deficiency is attributable to $20,000 of H's unreported interest income from his individual bank account. The remainder of the deficiency is attributable to $30,000 of W's disallowed business expense deductions. Under the laws of State A, H and W each own ½ of all income earned and property acquired during the marriage.

(ii) In November 2005, H and W divorce and W timely elects to allocate the deficiency. Even though the laws of State A provide that ½ of the interest income is W's, for purposes of relief under this section, the $20,000 unreported interest income is allocable to H, and the $30,000 disallowed deduction is allocable to W. The community property laws of State A are not considered in allocating items for this purpose.

(g) *Scope of this section and §§ 1.6015–2 through 1.6015–9.* This section and §§ 1.6015–2 through 1.6015–9 do not apply to any portion of a liability for any taxable year for which a claim for credit or refund is barred by operation of law or rule of law.

(h) *Definitions*—(1) *Requesting spouse.* A requesting spouse is an individual who filed a joint return and elects relief from Federal income tax liability arising from that return under § 1.6015–2 or 1.6015–3, or requests relief from Federal income tax liability arising from that return under § 1.6015–4.

(2) *Nonrequesting spouse.* A nonrequesting spouse is the individual with whom the requesting spouse filed the joint return for the year for which relief from liability is sought.

(3) *Item.* An item is that which is required to be separately listed on an individual income tax return or any required attachments. Items include, but are not limited to, gross income, deductions, credits, and basis.

(4) *Erroneous item.* An erroneous item is any item resulting in an understatement or deficiency in tax to the extent that such item is omitted from, or improperly reported (including improperly characterized) on an individual income tax return. For example, unreported income from an investment asset resulting in an understatement or deficiency in tax is an erroneous item. Similarly, ordinary income that is improperly reported as capital gain resulting in an understatement or deficiency in tax is also an erroneous item. In addition, a deduction for an expense that is personal in nature that results in an understatement or deficiency in tax is an erroneous item of deduction. An erroneous item is also an improperly reported item that affects the liability on other returns (e.g., an improper net operating loss that is carried back to a prior year's return). Penalties and interest are not erroneous items. Rather, relief from penalties and interest will generally be determined based on the proportion of the total erroneous items from which the requesting spouse is relieved. If a penalty relates to a particular erroneous item, see §1.6015–3(d)(4)(iv)(B).

(5) *Election or request.* A qualifying election under §1.6015–2 or 1.6015–3, or request under §1.6015–4, is the first timely claim for relief from joint and several liability for the tax year for which relief is sought. A qualifying election also includes a requesting spouse's second election to seek relief from joint and several liability for the same tax year under §1.6015–3 when the additional qualifications of paragraphs (h)(5)(i) and (ii) of this section are met—

(i) The requesting spouse did not qualify for relief under §1.6015–3 when the Internal Revenue Service considered the first election solely because the qualifications of §1.6015–3(a) were not satisfied; and

(ii) At the time of the second election, the qualifications for relief under §1.6015–3(a) are satisfied.

(i) [Reserved]

(j) *Transferee liability*—(1) *In general.* The relief provisions of section 6015 do not negate liability that arises under the operation of other laws. Therefore, a requesting spouse who is relieved of joint and several liability under §1.6015–2, 1.6015–3, or 1.6015–4 may nevertheless remain liable for the unpaid tax (including additions to tax, penalties, and interest) to the extent provided by Federal or state transferee liability or property laws. For the rules regarding the liability of transferees, see sections 6901 through 6904 and the regulations thereunder. In addition, the requesting spouse's property may be subject to collection under Federal or state property laws.

(2) *Example.* The following example illustrates the rule of this paragraph (j):

Example. H and W timely file their 1998 joint income tax return on April 15, 1999. H dies in March 2000, and the executor of H's will transfers all of the estate's assets to W. In July 2001, the Internal Revenue Service assesses a deficiency for the 1998 return. The items giving rise to the deficiency are attributable to H. W is relieved of the liability under section 6015, and H's estate remains solely liable. The Internal Revenue Service may seek to collect the deficiency from W to the extent permitted under Federal or state transferee liability or property laws.

[T.D. 9003, 67 FR 47285, July 18, 2002]

§ 1.6015–2 Relief from liability applicable to all qualifying joint filers.

(a) *In general.* A requesting spouse may be relieved of joint and several liability for tax (including additions to tax, penalties, and interest) from an understatement for a taxable year under this section if the requesting spouse elects the application of this section in accordance with §§1.6015–1(h)(5) and 1.6015–5, and—

(1) A joint return was filed for the taxable year;

(2) On the return there is an understatement attributable to erroneous items of the nonrequesting spouse;

(3) The requesting spouse establishes that in signing the return he or she did not know and had no reason to know of the understatement; and

(4) It is inequitable to hold the requesting spouse liable for the deficiency attributable to the understatement.

(b) *Understatement*. The term *understatement* has the meaning given to such term by section 6662(d)(2)(A) and the regulations thereunder.

(c) *Knowledge or reason to know*. A requesting spouse has knowledge or reason to know of an understatement if he or she actually knew of the understatement, or if a reasonable person in similar circumstances would have known of the understatement. For rules relating to a requesting spouse's actual knowledge, see § 1.6015–3(c)(2). All of the facts and circumstances are considered in determining whether a requesting spouse had reason to know of an understatement. The facts and circumstances that are considered include, but are not limited to, the nature of the erroneous item and the amount of the erroneous item relative to other items; the couple's financial situation; the requesting spouse's educational background and business experience; the extent of the requesting spouse's participation in the activity that resulted in the erroneous item; whether the requesting spouse failed to inquire, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question; and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns (e.g., omitted income from an investment regularly reported on prior years' returns).

(d) *Inequity*. All of the facts and circumstances are considered in determining whether it is inequitable to hold a requesting spouse jointly and severally liable for an understatement. One relevant factor for this purpose is whether the requesting spouse significantly benefitted, directly or indirectly, from the understatement. A significant benefit is any benefit in excess of normal support. Evidence of direct or indirect benefit may consist of transfers of property or rights to property, including transfers that may be received several years after the year of the understatement. Thus, for example, if a requesting spouse receives property (including life insurance proceeds) from the nonrequesting spouse that is beyond normal support and traceable to items omitted from gross income that are attributable to the nonrequesting spouse, the requesting spouse will be considered to have received significant benefit from those items. Other factors that may also be taken into account, if the situation warrants, include the fact that the requesting spouse has been deserted by the nonrequesting spouse, the fact that the spouses have been divorced or separated, or that the requesting spouse received benefit on the return from the understatement. For guidance concerning the criteria to be used in determining whether it is inequitable to hold a requesting spouse jointly and severally liable under this section, see Rev. Proc. 2000–15 (2000–1 C.B. 447), or other guidance published by the Treasury and IRS (see § 601.601(d)(2) of this chapter).

(e) *Partial relief*—(1) *In general*. If a requesting spouse had no knowledge or reason to know of only a portion of an erroneous item, the requesting spouse may be relieved of the liability attributable to that portion of that item, if all other requirements are met with respect to that portion.

(2) *Example*. The following example illustrates the rules of this paragraph (e):

Example. H and W are married and file their 2004 joint income tax return in March 2005. In April 2006, H is convicted of embezzling $2 million from his employer during 2004. H kept all of his embezzlement income in an individual bank account, and he used most of the funds to support his gambling habit. H and W had a joint bank account into which H and W deposited all of their reported income. Each month during 2004, H transferred an additional $10,000 from the individual account to H and W's joint bank account. W paid the household expenses using this joint account, and regularly received the bank statements relating to the account. W had no knowledge or reason to know of H's embezzling activities. However, W did have knowledge and reason to know of $120,000 of the $2 million of H's embezzlement income at the time she signed the joint return because that amount passed through the couple's joint bank account. Therefore, W may be relieved of the liability arising from $1,880,000 of the unreported embezzlement income, but she may not be relieved of the liability for the deficiency arising from $120,000 of the unreported embezzlement income of which she knew and had reason to know.

[T.D. 9003, 67 FR 47285, July 18, 2002]

§ 1.6015–3 Allocation of deficiency for individuals who are no longer married, are legally separated, or are not members of the same household.

(a) *Election to allocate deficiency.* A requesting spouse may elect to allocate a deficiency if, as defined in paragraph (b) of this section, the requesting spouse is divorced, widowed, or legally separated, or has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date an election for relief is filed. For purposes of this section, the marital status of a deceased requesting spouse will be determined on the earlier of the date of the election or the date of death in accordance with section 7703(a)(1). Subject to the restrictions of paragraph (c) of this section, an eligible requesting spouse who elects the application of this section in accordance with §§1.6015–1(h)(5) and 1.6015–5 generally may be relieved of joint and several liability for the portion of any deficiency that is allocated to the nonrequesting spouse pursuant to the allocation methods set forth in paragraph (d) of this section. Relief may be available to both spouses filing the joint return if each spouse is eligible for and elects the application of this section.

(b) *Definitions*—(1) *Divorced.* A determination of whether a requesting spouse is divorced for purposes of this section will be made in accordance with section 7703 and the regulations thereunder. Such determination will be made as of the date the election is filed.

(2) *Legally separated.* A determination of whether a requesting spouse is legally separated for purposes of this section will be made in accordance with section 7703 and the regulations thereunder. Such determination will be made as of the date the election is filed.

(3) *Members of the same household*—(i) *Temporary absences.* A requesting spouse and a nonrequesting spouse are considered members of the same household during either spouse's temporary absences from the household if it is reasonable to assume that the absent spouse will return to the household, and the household or a substantially equivalent household is maintained in anticipation of such return. Examples of temporary absences may include, but are not limited to, absence due to incarceration, illness, business, vacation, military service, or education.

(ii) *Separate dwellings.* A husband and wife who reside in the same dwelling are considered members of the same household. In addition, a husband and wife who reside in two separate dwellings are considered members of the same household if the spouses are not estranged or one spouse is temporarily absent from the other's household within the meaning of paragraph (b)(3)(i) of this section.

(c) *Limitations*—(1) *No refunds.* Relief under this section is only available for unpaid liabilities resulting from understatements of liability. Refunds are not authorized under this section.

(2) *Actual knowledge*—(i) *In general.* If, under section 6015(c)(3)(C), the Secretary demonstrates that, at the time the return was signed, the requesting spouse had actual knowledge of an erroneous item that is allocable to the nonrequesting spouse, the election to allocate the deficiency attributable to that item is invalid, and the requesting spouse remains liable for the portion of the deficiency attributable to that item. The Service, having both the burden of production and the burden of persuasion, must establish, by a preponderance of the evidence, that the requesting spouse had actual knowledge of the erroneous item in order to invalidate the election.

(A) *Omitted income.* In the case of omitted income, knowledge of the item includes knowledge of the receipt of the income. For example, assume W received $5,000 of dividend income from her investment in X Co. but did not report it on the joint return. H knew that W received $5,000 of dividend income from X Co. that year. H had actual knowledge of the erroneous item (i.e., $5,000 of unreported dividend income from X Co.), and no relief is available under this section for the deficiency attributable to the dividend income from X Co. This rule applies equally in situations where the other spouse has unreported income although the spouse does not have an actual receipt of cash

(e.g., dividend reinvestment or a distributive share from a flow-through entity shown on Schedule K–1, ''Partner's Share of Income, Credits, Deductions, etc.'').

(B) *Deduction or credit—(1) Erroneous deductions in general.* In the case of an erroneous deduction or credit, knowledge of the item means knowledge of the facts that made the item not allowable as a deduction or credit.

(*2*) *Fictitious or inflated deduction.* If a deduction is fictitious or inflated, the IRS must establish that the requesting spouse actually knew that the expenditure was not incurred, or not incurred to that extent.

(ii) *Partial knowledge.* If a requesting spouse had actual knowledge of only a portion of an erroneous item, then relief is not available for that portion of the erroneous item. For example, if H knew that W received $1,000 of dividend income and did not know that W received an additional $4,000 of dividend income, relief would not be available for the portion of the deficiency attributable to the $1,000 of dividend income of which H had actual knowledge. A requesting spouse's actual knowledge of the proper tax treatment of an item is not relevant for purposes of demonstrating that the requesting spouse had actual knowledge of an erroneous item. For example, assume H did not know W's dividend income from X Co. was taxable, but knew that W received the dividend income. Relief is not available under this section. In addition, a requesting spouse's knowledge of how an erroneous item was treated on the tax return is not relevant to a determination of whether the requesting spouse had actual knowledge of the item. For example, assume that H knew of W's dividend income, but H failed to review the completed return and did not know that W omitted the dividend income from the return. Relief is not available under this section.

(iii) *Knowledge of the source not sufficient.* Knowledge of the source of an erroneous item is not sufficient to establish actual knowledge. For example, assume H knew that W owned X Co. stock, but H did not know that X Co. paid dividends to W that year. H's knowledge of W's ownership in X Co. is not sufficient to establish that H had actual knowledge of the dividend income from X Co. In addition, a requesting spouse's actual knowledge may not be inferred when the requesting spouse merely had reason to know of the erroneous item. Even if H's knowledge of W's ownership interest in X Co. indicates a reason to know of the dividend income, actual knowledge of such dividend income cannot be inferred from H's reason to know. Similarly, the IRS need not establish that a requesting spouse knew of the source of an erroneous item in order to establish that the requesting spouse had actual knowledge of the item itself. For example, assume H knew that W received $1,000, but he did not know the source of the $1,000. W and H omit the $1,000 from their joint return. H has actual knowledge of the item giving rise to the deficiency ($1,000), and relief is not available under this section.

(iv) *Factors supporting actual knowledge.* To demonstrate that a requesting spouse had actual knowledge of an erroneous item at the time the return was signed, the IRS may rely upon all of the facts and circumstances. One factor that may be relied upon in demonstrating that a requesting spouse had actual knowledge of an erroneous item is whether the requesting spouse made a deliberate effort to avoid learning about the item in order to be shielded from liability. This factor, together with all other facts and circumstances, may demonstrate that the requesting spouse had actual knowledge of the item, and the requesting spouse's election would be invalid with respect to that entire item. Another factor that may be relied upon in demonstrating that a requesting spouse had actual knowledge of an erroneous item is whether the requesting spouse and the nonrequesting spouse jointly owned the property that resulted in the erroneous item. Joint ownership is a factor supporting a finding that the requesting spouse had actual knowledge of an erroneous item. For purposes of this paragraph, a requesting spouse will not be considered to have had an ownership interest in an item based solely on the operation of community property law. Rather, a requesting spouse who resided in a community property state at the time the return

was signed will be considered to have had an ownership interest in an item only if the requesting spouse's name appeared on the ownership documents, or there otherwise is an indication that the requesting spouse asserted dominion and control over the item. For example, assume H and W live in State A, a community property state. After their marriage, H opens a bank account in his name. Under the operation of the community property laws of State A, W owns ½ of the bank account. However, W does not have an ownership interest in the account for purposes of this paragraph (c)(2)(iv) because the account is not held in her name and there is no other indication that she asserted dominion and control over the item.

(v) *Abuse exception*. If the requesting spouse establishes that he or she was the victim of domestic abuse prior to the time the return was signed, and that, as a result of the prior abuse, the requesting spouse did not challenge the treatment of any items on the return for fear of the nonrequesting spouse's retaliation, the limitation on actual knowledge in this paragraph (c) will not apply. However, if the requesting spouse involuntarily executed the return, the requesting spouse may choose to establish that the return was signed under duress. In such a case, § 1.6013–4(d) applies.

(3) *Disqualified asset transfers*—(i) *In general*. The portion of the deficiency for which a requesting spouse is liable is increased (up to the entire amount of the deficiency) by the value of any disqualified asset that was transferred to the requesting spouse. For purposes of this paragraph (c)(3), the value of a disqualified asset is the fair market value of the asset on the date of the transfer.

(ii) *Disqualified asset defined*. A disqualified asset is any property or right to property that was transferred from the nonrequesting spouse to the requesting spouse if the principal purpose of the transfer was the avoidance of tax or payment of tax (including additions to tax, penalties, and interest).

(iii) *Presumption*. Any asset transferred from the nonrequesting spouse to the requesting spouse during the 12-month period before the mailing date of the first letter of proposed deficiency (e.g., a 30-day letter or, if no 30-day letter is mailed, a notice of deficiency) is presumed to be a disqualified asset. The presumption also applies to any asset that is transferred from the nonrequesting spouse to the requesting spouse after the mailing date of the first letter of proposed deficiency. The presumption does not apply, however, if the requesting spouse establishes that the asset was transferred pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree. If the presumption does not apply, but the Internal Revenue Service can establish that the purpose of the transfer was the avoidance of tax or payment of tax, the asset will be disqualified, and its value will be added to the amount of the deficiency for which the requesting spouse remains liable. If the presumption applies, a requesting spouse may still rebut the presumption by establishing that the principal purpose of the transfer was not the avoidance of tax or payment of tax.

(4) *Examples*. The following examples illustrate the rules in this paragraph (c):

Example 1. Actual knowledge of an erroneous item. (i) H and W file their 2001 joint Federal income tax return on April 15, 2002. On the return, H and W report W's self-employment income, but they do not report W's self-employment tax on that income. H and W divorce in July 2003. In August 2003, H and W receive a 30-day letter from the Internal Revenue Service proposing a deficiency with respect to W's unreported self-employment tax on the 2001 return. On November 4, 2003, H files an election to allocate the deficiency to W. The erroneous item is the self-employment income, and it is allocable to W. H knows that W earned income in 2001 as a self-employed musician, but he does not know that self-employment tax must be reported on and paid with a joint return.

(ii) H's election to allocate the deficiency to W is invalid because, at the time H signed the joint return, H had actual knowledge of W's self-employment income. The fact that H was unaware of the tax consequences of that income (i.e., that an individual is required to pay self-employment tax on that income) is not relevant.

Example 2. Actual knowledge not inferred from a requesting spouse's reason to know. (i) H has long been an avid gambler. H supports his gambling habit and keeps all of his gambling winnings in an individual bank account, held solely in his name. W knows about H's gambling habit and that he keeps

a separate bank account, but she does not know whether he has any winnings because H does not tell her, and she does not otherwise know of H's bank account transactions. H and W file their 2001 joint Federal income tax return on April 15, 2002. On October 31, 2003, H and W receive a 30-day letter proposing a $100,000 deficiency relating to H's unreported gambling income. In February 2003, H and W divorce, and in March 2004, W files an election under section 6015(c) to allocate the $100,000 deficiency to H.

(ii) While W may have had reason to know of the gambling income because she knew of H's gambling habit and separate account, W did not have actual knowledge of the erroneous item (i.e., the gambling winnings). The Internal Revenue Service may not infer actual knowledge from W's reason to know of the income. Therefore, W's election to allocate the $100,000 deficiency to H is valid.

Example 3. Actual knowledge and failure to review return. (i) H and W are legally separated. In February 1999, W signs a blank joint Federal income tax return for 1998 and gives it to H to fill out. The return was timely filed on April 15, 1999. In September 2001, H and W receive a 30-day letter proposing a deficiency relating to $100,000 of unreported dividend income received by H with respect to stock of ABC Co. owned by H. W knew that H received the $100,000 dividend payment in August 1998, but she did not know whether H reported that payment on the joint return.

(ii) On January 30, 2002, W files an election to allocate the deficiency from the 1998 return to H. W claims she did not review the completed joint return, and therefore, she had no actual knowledge that there was an understatement of the dividend income. W's election to allocate the deficiency to H is invalid because she had actual knowledge of the erroneous item (dividend income from ABC Co.) at the time she signed the return. The fact that W signed a blank return is irrelevant. The result would be the same if W had not reviewed the completed return or if W had reviewed the completed return and had not noticed that the item was omitted.

Example 4. Actual knowledge of an erroneous item of income. (i) H and W are legally separated. In June 2004, a deficiency is proposed with respect to H's and W's 2002 joint Federal income tax return that is attributable to $30,000 of unreported income from H's plumbing business that should have been reported on a Schedule C. No Schedule C was attached to the return. At the time W signed the return, W knew that H had a plumbing business but did not know whether H received any income from the business. W's election to allocate to H the deficiency attributable to the $30,000 of unreported plumbing income is valid.

(ii) Assume the same facts as in paragraph (i) of this *Example 5* except that, at the time W signed the return, W knew that H received $20,000 of plumbing income. W's election to allocate to H the deficiency attributable to the $20,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the $10,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

(iii) Assume the same facts as in paragraph (i) of this *Example 5* except that, at the time W signed the return, W did not know the exact amount of H's plumbing income. W did know, however, that H received at least $8,000 of plumbing income. W's election to allocate to H the deficiency attributable to $8,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the remaining $22,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

(iv) Assume the same facts as in paragraph (i) of this *Example 5* except that H reported $26,000 of plumbing income on the return and omitted $4,000 of plumbing income from the return. At the time W signed the return, W knew that H was a plumber, but she did not know that H earned more than $26,000 that year. W's election to allocate to H the deficiency attributable to the $4,000 of unreported plumbing income is valid because she did not have actual knowledge that H received plumbing income in excess of $26,000.

(v) Assume the same facts as in paragraph (i) of this *Example 5* except that H reported only $20,000 of plumbing income on the return and omitted $10,000 of plumbing income from the return. At the time W signed the return, W knew that H earned at least $26,000 that year as a plumber. However, W did not know that, in reality, H earned $30,000 that year as a plumber. W's election to allocate to H the deficiency attributable to the $6,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the $4,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

Example 5. Actual knowledge of a deduction that is an erroneous item. (i) H and W are legally separated. In February 2005, a deficiency is asserted with respect to their 2002 joint Federal income tax return. The deficiency is attributable to a disallowed $1,000 deduction for medical expenses H claimed he incurred. At the time W signed the return, W knew that H had not incurred any medical expenses. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is invalid because W had actual knowledge that H had not incurred any medical expenses.

(ii) Assume the same facts as in paragraph (i) of this *Example 6* except that, at the time W signed the return, W did not know whether

H had incurred any medical expenses. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is valid because she did not have actual knowledge that H had not incurred any medical expenses.

(iii) Assume the same facts as in paragraph (i) of this *Example 6* except that the Internal Revenue Service disallowed $400 of the $1,000 medical expense deduction. At the time W signed the return, W knew that H had incurred some medical expenses but did not know the exact amount. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is valid because she did not have actual knowledge that H had not incurred medical expenses (in excess of the floor amount under section 213(a)) of more than $600.

(iv) Assume the same facts as in paragraph (i) of this *Example 6* except that H claims a medical expense deduction of $10,000 and the Internal Revenue Service disallows $9,600. At the time W signed the return, W knew H had incurred some medical expenses but did not know the exact amount. W also knew that H incurred medical expenses (in excess of the floor amount under section 213(a)) of no more than $1,000. W's election to allocate to H the deficiency attributable to the portion of the overstated deduction of which she had actual knowledge ($9,000) is invalid. W's election to allocate the deficiency attributable to the portion of the overstated deduction of which she had no knowledge ($600) is valid.

Example 6. Disqualified asset presumption. (i) H and W are divorced. In May 1999, W transfers $20,000 to H, and in April 2000, H and W receive a 30-day letter proposing a $40,000 deficiency on their 1998 joint Federal income tax return. The liability remains unpaid, and in October 2000, H elects to allocate the deficiency under this section. Seventy-five percent of the net amount of erroneous items are allocable to W, and 25% of the net amount of erroneous items are allocable to H.

(ii) In accordance with the proportionate allocation method (see paragraph (d)(4) of this section), H proposes that $30,000 of the deficiency be allocated to W and $10,000 be allocated to himself. H submits a signed statement providing that the principal purpose of the $20,000 transfer was not the avoidance of tax or payment of tax, but he does not submit any documentation indicating the reason for the transfer. H has not overcome the presumption that the $20,000 was a disqualified asset. Therefore, the portion of the deficiency for which H is liable ($10,000) is increased by the value of the disqualified asset ($20,000). H is relieved of liability for $10,000 of the $30,000 deficiency allocated to W, and remains jointly and severally liable for the remaining $30,000 of the deficiency (assuming that H does not qualify for relief under any other provision).

Example 7. Disqualified asset presumption inapplicable. On May 1, 2001, H and W receive a 30-day letter regarding a proposed deficiency on their 1999 joint Federal income tax return relating to unreported capital gain from H's sale of his investment in Z stock. W had no actual knowledge of the stock sale. The deficiency is assessed in November 2001, and in December 2001, H and W divorce. According to a decree of divorce, H must transfer ½ of his interest in mutual fund A to W. The transfer takes place in February 2002. In August 2002, W elects to allocate the deficiency to H. Although the transfer of ½ of H's interest in mutual fund A took place after the 30-day letter was mailed, the mutual fund interest is not presumed to be a disqualified asset because the transfer of H's interest in the fund was made pursuant to a decree of divorce.

Example 8. Overcoming the disqualified asset presumption. (i) H and W are married for 25 years. Every September, on W's birthday, H gives W a gift of $500. On February 28, 2002, H and W receive a 30-day letter from the Internal Revenue Service relating to their 1998 joint individual Federal income tax return. The deficiency relates to H's Schedule C business, and W had no knowledge of the items giving rise to the deficiency. H and W are legally separated in June 2003, and, despite the separation, H continues to give W $500 each year for her birthday. H is not required to give such amounts pursuant to a decree of divorce or separate maintenance.

(ii) On January 27, 2004, W files an election to allocate the deficiency to H. The $1,500 transferred from H to W from February 28, 2001 (a year before the 30-day letter was mailed) to the present is presumed disqualified. However, W may overcome the presumption that such amounts were disqualified by establishing that such amounts were birthday gifts from H and that she has received such gifts during their entire marriage. Such facts would show that the amounts were not transferred for the purpose of avoidance of tax or payment of tax.

(d) *Allocation*—(1) *In general.* (i) An election to allocate a deficiency limits the requesting spouse's liability to that portion of the deficiency allocated to the requesting spouse pursuant to this section.

(ii) Only a requesting spouse may receive relief. A nonrequesting spouse who does not also elect relief under this section remains liable for the entire amount of the deficiency. Even if both spouses elect to allocate a deficiency under this section, there may be a portion of the deficiency that is not allocable, for which both spouses remain jointly and severally liable.

(2) *Allocation of erroneous items.* For purposes of allocating a deficiency under this section, erroneous items are generally allocated to the spouses as if separate returns were filed, subject to the following four exceptions:

(i) *Benefit on the return.* An erroneous item that would otherwise be allocated to the nonrequesting spouse is allocated to the requesting spouse to the extent that the requesting spouse received a tax benefit on the joint return.

(ii) *Fraud.* The Internal Revenue Service may allocate any item between the spouses if the Internal Revenue Service establishes that the allocation is appropriate due to fraud by one or both spouses.

(iii) *Erroneous items of income.* Erroneous items of income are allocated to the spouse who was the source of the income. Wage income is allocated to the spouse who performed the services producing such wages. Items of business or investment income are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, the erroneous item of income is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment, subject to the limitations of paragraph (c) of this section. In the absence of clear and convincing evidence supporting a different allocation, an erroneous income item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations in paragraph (c) of this section and the exceptions in paragraph (c)(2)(iv) of this section. For rules regarding the effect of community property laws, see § 1.6015–1(f) and paragraph (c)(2)(iv) of this section.

(iv) *Erroneous deduction items.* Erroneous deductions related to a business or investment are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, an erroneous deduction item is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment. In the absence of clear and convincing evidence supporting a different allocation, an erroneous deduction item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations in paragraph (c) of this section and the exceptions in paragraph (d)(4) of this section. Deduction items unrelated to a business or investment are also generally allocated 50% to each spouse, unless the evidence shows that a different allocation is appropriate.

(3) *Burden of proof.* Except for establishing actual knowledge under paragraph (c)(2) of this section, the requesting spouse must prove that all of the qualifications for making an election under this section are satisfied and that none of the limitations (including the limitation relating to transfers of disqualified assets) apply. The requesting spouse must also establish the proper allocation of the erroneous items.

(4) *General allocation method*—(i) *Proportionate allocation.* (A) The portion of a deficiency allocable to a spouse is the amount that bears the same ratio to the deficiency as the net amount of erroneous items allocable to the spouse bears to the net amount of all erroneous items. This calculation may be expressed as follows:

$$X = (\text{deficiency}) \times \frac{\text{net amount of erroneous items allocable to the spouse}}{\text{net amount of all erroneous items}}$$

where X = the portion of the deficiency allocable to the spouse.

(B) The proportionate allocation applies to any portion of the deficiency other than—

(*1*) Any portion of the deficiency attributable to erroneous items allocable to the nonrequesting spouse of which the requesting spouse had actual knowledge;

(*2*) Any portion of the deficiency attributable to separate treatment items (as defined in paragraph (d)(4)(ii) of this section);

(*3*) Any portion of the deficiency relating to the liability of a child (as defined in paragraph (d)(4)(iii) of this section) of the requesting spouse or nonrequesting spouse;

(*4*) Any portion of the deficiency attributable to alternative minimum tax under section 55;

(*5*) Any portion of the deficiency attributable to accuracy-related or fraud penalties;

(*6*) Any portion of the deficiency allocated pursuant to alternative allocation methods authorized under paragraph (d)(6) of this section.

(ii) *Separate treatment items*. Any portion of a deficiency that is attributable to an item allocable solely to one spouse and that results from the disallowance of a credit, or a tax or an addition to tax (other than tax imposed by section 1 or section 55) that is required to be included with a joint return (a separate treatment item) is allocated separately to that spouse. If such credit or tax is attributable in whole or in part to both spouses, then the IRS will determine on a case by case basis how such item will be allocated. Once the proportionate allocation is made, the liability for the requesting spouse's separate treatment items is added to the requesting spouse's share of the liability.

(iii) *Child's liability*. Any portion of a deficiency relating to the liability of a child of the requesting and nonrequesting spouse is allocated jointly to both spouses. For purposes of this paragraph, a child does not include the taxpayer's stepson or stepdaughter, unless such child was legally adopted by the taxpayer. If the child is the child of only one of the spouses, and the other spouse had not legally adopted such child, any portion of a deficiency relating to the liability of such child is allocated solely to the parent spouse.

(iv) *Allocation of certain items*—(A) *Alternative minimum tax*. Any portion of a deficiency relating to the alternative minimum tax under section 55 will be allocated appropriately.

(B) *Accuracy-related and fraud penalties*. Any accuracy-related or fraud penalties under section 6662 or 6663 are allocated to the spouse whose item generated the penalty.

(5) *Examples*. The following examples illustrate the rules of this paragraph (d). In each example, assume that the requesting spouse or spouses qualify to elect to allocate the deficiency, that any election is timely made, and that the deficiency remains unpaid. In addition, unless otherwise stated, assume that neither spouse has actual knowledge of the erroneous items allocable to the other spouse. The examples are as follows:

Example 1. Allocation of erroneous items. (i) H and W file a 2003 joint Federal income tax return on April 15, 2004. On April 28, 2006, a deficiency is assessed with respect to their 2003 return. Three erroneous items give rise to the deficiency—

(A) Unreported interest income, of which W had actual knowledge, from H's and W's joint bank account;

(B) A disallowed business expense deduction on H's Schedule C; and

(C) A disallowed Lifetime Learning Credit for W's post-secondary education, paid for by W.

(ii) H and W divorce in May 2006, and in September 2006, W timely elects to allocate the deficiency. The erroneous items are allocable as follows:

(A) The interest income would be allocated ½ to H and ½ to W, except that W has actual knowledge of it. Therefore, W's election to allocate the portion of the deficiency attributable to this item is invalid, and W remains jointly and severally liable for it.

(B) The business expense deduction is allocable to H.

(C) The Lifetime Learning Credit is allocable to W.

Example 2. Proportionate allocation. (i) W and H timely file their 2001 joint Federal income tax return on April 15, 2002. On August 16, 2004, a $54,000 deficiency is assessed with respect to their 2001 joint return. H and W divorce on October 14, 2004, and W timely elects to allocate the deficiency. Five erroneous items give rise to the deficiency—

(A) A disallowed $15,000 business deduction allocable to H;

(B) $20,000 of unreported income allocable to H;

(C) A disallowed $5,000 deduction for educational expense allocable to H;

(D) A disallowed $40,000 charitable contribution deduction allocable to W; and

(E) A disallowed $40,000 interest deduction allocable to W.

(ii) In total, there are $120,000 worth of erroneous items, of which $80,000 are attributable to W and $40,000 are attributable to H.

	W's items
$40,000	charitable deduction
40,000	interest deduction
$80,000	

	H's items
$15,000	business deduction
20,000	unreported income
5,000	education deduction
$40,000	

(iii) The ratio of erroneous items allocable to W to the total erroneous items is ⅔ ($80,000/$120,000). W's liability is limited to $36,000 of the deficiency (⅔ of $54,000). The Internal Revenue Service may collect up to $36,000 from W and up to $54,000 from H (the total amount collected, however, may not exceed $54,000). If H also made an election, there would be no remaining joint and several liability, and the Internal Revenue Service would be permitted to collect $36,000 from W and $18,000 from H.

Example 3. Proportionate allocation with joint erroneous item. (i) On September 4, 2001, W elects to allocate a $3,000 deficiency for the 1998 tax year to H. Three erroneous items give rise to the deficiency—

(A) Unreported interest in the amount of $4,000 from a joint bank account;

(B) A disallowed deduction for business expenses in the amount of $2,000 attributable to H's business; and

(C) Unreported wage income in the amount of $6,000 attributable to W's second job.

(ii) The erroneous items total $12,000. Generally, income, deductions, or credits from jointly held property that are erroneous items are allocable 50% to each spouse. However, in this case, both spouses had actual knowledge of the unreported interest income. Therefore, W's election to allocate the portion of the deficiency attributable to this item is invalid, and W and H remain jointly and severally liable for this portion. Assume that this portion is $1,000. W may allocate the remaining $2,000 of the deficiency.

	H's items
$2,000	business deduction

	W's items
$6,000	wage income

Total allocable items: $8,000

(iii) The ratio of erroneous items allocable to W to the total erroneous items is ¾ ($6,000/$8,000). W's liability is limited to $1,500 of the deficiency (¾ of $2,000) allocated to her. The Internal Revenue Service may collect up to $2,500 from W (¾ of the total allocated deficiency plus $1,000 of the deficiency attributable to the joint bank account interest) and up to $3,000 from H (the total amount collected, however, cannot exceed $3,000).

(iv) Assume H also elects to allocate the 1998 deficiency. H is relieved of liability for ¾ of the deficiency, which is allocated to W. H's relief totals $1,500 (¾ of $2,000). H remains liable for $1,500 of the deficiency (¼ of the allocated deficiency plus $1,000 of the deficiency attributable to the joint bank account interest).

Example 4. Separate treatment items (STIs). (i) On September 1, 2006, a $28,000 deficiency is assessed with respect to H's and W's 2003 joint return. The deficiency is the result of 4 erroneous items—

(A) A disallowed Lifetime Learning Credit of $2,000 attributable to H;

(B) A disallowed business expense deduction of $8,000 attributable to H;

(C) Unreported income of $24,000 attributable to W; and

(D) Unreported self-employment tax of $14,000 attributable to W.

(ii) H and W both elect to allocate the deficiency.

(iii) The $2,000 Lifetime Learning Credit and the $14,000 self-employment tax are STIs totaling $16,000. The amount of erroneous items included in computing the proportionate allocation ratio is $32,000 ($24,000 unreported income and $8,000 disallowed business expense deduction). The amount of the deficiency subject to proportionate allocation is reduced by the amount of STIs ($28,000 − $16,000 = $12,000).

(iv) Of the $32,000 of proportionate allocation items, $24,000 is allocable to W, and $8,000 is allocable to H.

W's share of allocable items	H's share of allocable items
¾ ($24,000/$32,000)	¼ ($8,000/$32,000)

(v) W's liability for the portion of the deficiency subject to proportionate allocation is limited to $9,000 (¾ of $12,000) and H's liability for such portion is limited to $3,000 (¼ of $12,000).

(vi) After the proportionate allocation is completed, the amount of the STIs is added to each spouse's allocated share of the deficiency.

W's share of total deficiency	
$ 9,000	allocated deficiency
14,000	self-employment tax
$23,000	

H's share of total deficiency	
$3,000	allocated deficiency
2,000	Lifetime Learning Credit
$5,000	

(vii) Therefore, W's liability is limited to $23,000 and H's liability is limited to $5,000.

Example 5. Requesting spouse receives a benefit on the joint return from the nonrequesting spouse's erroneous item. (i) In 2001, H reports gross income of $4,000 from his business on Schedule C, and W reports $50,000 of wage income. On their 2001 joint Federal income tax return, H deducts $20,000 of business expenses resulting in a net loss from his business of $16,000. H and W divorce in September 2002, and on May 22, 2003, a $5,200 deficiency is assessed with respect to their 2001 joint return. W elects to allocate the deficiency. The deficiency on the joint return results from a disallowance of all of H's $20,000 of deductions.

(ii) Since H used only $4,000 of the disallowed deductions to offset gross income from his business, W benefitted from the other $16,000 of the disallowed deductions used to offset her wage income. Therefore, $4,000 of the disallowed deductions are allocable to H and $16,000 of the disallowed deductions are allocable to W. W's liability is limited to $4,160 (4/5 of $5,200). If H also elected to allocate the deficiency, H's election to allocate the $4,160 of the deficiency to W would be invalid because H had actual knowledge of the erroneous items.

Example 6. Calculation of requesting spouse's benefit on the joint return when the nonrequesting spouse's erroneous item is partially disallowed. Assume the same facts as in Example 5, except that H deducts $18,000 for business expenses on the joint return, of which $16,000 are disallowed. Since H used only $2,000 of the $16,000 disallowed deductions to offset gross income from his business, W received benefit on the return from the other $14,000 of the disallowed deductions used to offset her wage income. Therefore, $2,000 of the disallowed deductions are allocable to H and $14,000 of the disallowed deductions are allocable to W. W's liability is limited to $4,550 (7/8 of $5,200).

(6) *Alternative allocation methods*—(i) *Allocation based on applicable tax rates.* If a deficiency arises from two or more erroneous items that are subject to tax at different rates (e.g., ordinary income and capital gain items), the deficiency will be allocated after first separating the erroneous items into categories according to their applicable tax rate. After all erroneous items are categorized, a separate allocation is made with respect to each tax rate category using the proportionate allocation method of paragraph (d)(4) of this section.

(ii) *Allocation methods provided in subsequent published guidance.* Additional alternative methods for allocating erroneous items under section 6015(c) may be prescribed by the Treasury and IRS in subsequent revenue rulings, revenue procedures, or other appropriate guidance.

(iii) *Example.* The following example illustrates the rules of this paragraph (d)(6):

Example. Allocation based on applicable tax rates. H and W timely file their 1998 joint Federal income tax return. H and W divorce in 1999. On July 13, 2001, a $5,100 deficiency is assessed with respect to H's and W's 1998 return. Of this deficiency, $2,000 results from unreported capital gain of $6,000 that is attributable to W and $4,000 of capital gain that is attributable to H (both gains being subject to tax at the 20% marginal rate). The remaining $3,100 of the deficiency is attributable to $10,000 of unreported dividend income of H that is subject to tax at a marginal rate of 31%. H and W both timely elect to allocate the deficiency, and qualify under this section to do so. There are erroneous items subject to different tax rates; thus, the alternative allocation method of this paragraph (d)(6) applies. The three erroneous items are first categorized according to their applicable tax rates, then allocated. Of the total amount of 20% tax rate items ($10,000), 60% is allocable to W and 40% is allocable to H. Therefore, 60% of the $2,000 deficiency attributable to these items (or $1,200) is allocated to W. The remaining 40% of this portion of the deficiency ($800) is allocated to H. The only 31% tax rate item is allocable to H. Accordingly, H is liable for $3,900 of the deficiency ($800 + $3,100), and W is liable for the remaining $1,200.

[T.D. 9003, 67 FR 47285, July 18, 2002]

§ 1.6015–4 Equitable relief.

(a) A requesting spouse who files a joint return for which a liability remains unpaid and who does not qualify for full relief under § 1.6015–2 or 1.6015–3 may request equitable relief under this section. The Internal Revenue Service has the discretion to grant equitable relief from joint and several liability to a requesting spouse when, considering all of the facts and circumstances, it would be inequitable to hold the requesting spouse jointly and severally liable.

(b) This section may not be used to circumvent the limitation of § 1.6015–3(c)(1) (i.e., no refunds under § 1.6015–3). Therefore, relief is not available under this section to obtain a refund of liabilities already paid, for which the requesting spouse would otherwise qualify for relief under § 1.6015–3.

(c) For guidance concerning the criteria to be used in determining whether it is inequitable to hold a requesting spouse jointly and severally liable under this section, see Rev. Proc. 2000–15 (2000–1 C.B. 447), or other guidance published by the Treasury and IRS (see § 601.601(d)(2) of this chapter).

[T.D. 9003, 67 FR 47285, July 18, 2002]

§ 1.6015–5 Time and manner for requesting relief.

(a) *Requesting relief*. To elect the application of § 1.6015–2 or 1.6015–3, or to request equitable relief under § 1.6015–4, a requesting spouse must file Form 8857, ''Request for Innocent Spouse Relief'' (or other specified form); submit a written statement containing the same information required on Form 8857, which is signed under penalties of perjury; or submit information in the manner prescribed by the Treasury and IRS in forms, relevant revenue rulings, revenue procedures, or other published guidance (see § 601.601(d)(2) of this chapter).

(b) *Time period for filing a request for relief*—(1) *In general*. To elect the application of § 1.6015–2 or 1.6015–3, or to request equitable relief under § 1.6015–4, a requesting spouse must file Form 8857 or other similar statement with the Internal Revenue Service no later than two years from the date of the first collection activity against the requesting spouse after July 22, 1998, with respect to the joint tax liability.

(2) *Definitions*—(i) *Collection activity*. For purposes of this paragraph (b), collection activity means a section 6330 notice; an offset of an overpayment of the requesting spouse against a liability under section 6402; the filing of a suit by the United States against the requesting spouse for the collection of the joint tax liability; or the filing of a claim by the United States in a court proceeding in which the requesting spouse is a party or which involves property of the requesting spouse. Collection activity does not include a notice of deficiency; the filing of a Notice of Federal Tax Lien; or a demand for payment of tax. The term *property of the requesting spouse*, for purposes of this paragraph (b), means property in which the requesting spouse has an ownership interest (other than solely through the operation of community property laws), including property owned jointly with the nonrequesting spouse.

(ii) *Section 6330 notice*. A section 6330 notice refers to the notice sent, pursuant to section 6330, providing taxpayers notice of the Service's intent to levy and of their right to a collection due process (CDP) hearing.

(3) *Requests for relief made before commencement of collection activity*. An election or request for relief may be made before collection activity has commenced. For example, an election or request for relief may be made in connection with an audit or examination of the joint return or a demand for payment, or pursuant to the CDP hearing procedures under section 6320 in connection with the filing of a Notice of Federal Tax Lien. For more information on the rules regarding collection due process for liens, see the Treasury regulations under section 6320. However, no request for relief may be made before the date specified in paragraph (b)(5) of this section.

(4) *Examples*. The following examples illustrate the rules of this paragraph (b):

Example 1. On January 11, 2000, a section 6330 notice is mailed to H and W regarding their 1997 joint Federal income tax liability. The Internal Revenue Service levies on W's

employer on June 5, 2000. The Internal Revenue Service levies on H's employer on July 10, 2000. An election or request for relief must be made by January 11, 2002, which is two years after the Internal Revenue Service sent the section 6330 notice.

Example 2. The Internal Revenue Service offsets an overpayment against a joint liability for 1995 on January 12, 1998. The offset only partially satisfies the liability. The Internal Revenue Service takes no other collection actions. On July 24, 2001, W elects relief with respect to the unpaid portion of the 1995 liability. W's election is timely because the Internal Revenue Service has not taken any collection activity after July 22, 1998; therefore, the two-year period has not commenced.

Example 3. Assume the same facts as in *Example 2*, except that the Internal Revenue Service sends a section 6330 notice on January 22, 1999. W's election is untimely because it is filed more than two years after the first collection activity after July 22, 1998.

Example 4. H and W do not remit full payment with their timely filed joint Federal income tax return for the 1989 tax year. No collection activity is taken after July 22, 1998, until the United States files a suit against both H and W to reduce the tax assessment to judgment and to foreclose the tax lien on their jointly-held business property on July 1, 1999. H elects relief on October 2, 2000. The election is timely because it is made within two years of the filing of a collection suit by the United States against H.

Example 5. W files a Chapter 7 bankruptcy petition on July 10, 2000. On September 5, 2000, the United States files a proof of claim for her joint 1998 income tax liability. W elects relief with respect to the 1998 liability on August 20, 2002. The election is timely because it is made within two years of the date the United States filed the proof of claim in W's bankruptcy case.

(5) *Premature requests for relief*. The Internal Revenue Service will not consider premature claims for relief under § 1.6015–2, 1.6015–3, or 1.6015–4. A premature claim is a claim for relief that is filed for a tax year prior to the receipt of a notification of an audit or a letter or notice from the IRS indicating that there may be an outstanding liability with regard to that year. Such notices or letters do not include notices issued pursuant to section 6223 relating to TEFRA partnership proceedings. A premature claim is not considered an election or request under § 1.6015–1(h)(5).

(c) *Effect of a final administrative determination*—(1) *In general*. A requesting spouse is entitled to only one final administrative determination of relief under § 1.6015–1 for a given assessment, unless the requesting spouse properly submits a second request for relief that is described in § 1.6015–1(h)(5).

(2) *Example*. The following example illustrates the rule of this paragraph (c):

Example: In January 2001, W becomes a limited partner in partnership P, and in February 2001, she starts her own business from which she earns $100,000 of net income for the year. H and W file a joint return for tax year 2001, on which they claim $20,000 in losses from their investment in P, and they omit W's self-employment tax. In March 2003, the Internal Revenue Service commences an audit under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding) and sends H and W a notice under section 6223(a)(1). In September 2003, the Internal Revenue Service audits H's and W's 2001 joint return regarding the omitted self-employment tax. H may file a claim for relief from joint and several liability for the self-employment tax liability because he has received a notification of an audit indicating that there may be an outstanding liability on the joint return. However, his claim for relief regarding the TEFRA partnership proceeding is premature under paragraph (b)(5) of this section. H will have to wait until the Internal Revenue Service sends him a notice of computational adjustment or assesses the liability resulting from the TEFRA partnership proceeding before he files a claim for relief with respect to any such liability. The assessment relating to the TEFRA partnership proceeding is separate from the assessment for the self-employment tax; therefore, H's subsequent claim for relief for the liability from the TEFRA partnership proceeding is not precluded by his previous claim for relief from the self-employment tax liability under this paragraph (c).

[T.D. 9003, 67 FR 47285, July 18, 2002, as amended at 67 FR 54735, Aug. 26, 2002]

§ 1.6015–6 Nonrequesting spouse's notice and opportunity to participate in administrative proceedings.

(a) *In general*. (1) When the Internal Revenue Service receives an election under § 1.6015–2 or 1.6015–3, or a request for relief under § 1.6015–4, the Internal Revenue Service must send a notice to the nonrequesting spouse's last known address that informs the nonrequesting spouse of the requesting spouse's claim for relief. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

The notice must provide the nonrequesting spouse with an opportunity to submit any information that should be considered in determining whether the requesting spouse should be granted relief from joint and several liability. A nonrequesting spouse is not required to submit information under this section. Upon the request of either spouse, the Internal Revenue Service will share with one spouse the information submitted by the other spouse, unless such information would impair tax administration.

(2) The Internal Revenue Service must notify the nonrequesting spouse of the Service's preliminary and final determinations with respect to the requesting spouse's claim for relief under section 6015.

(b) *Information submitted.* The Internal Revenue Service will consider all of the information (as relevant to each particular relief provision) that the nonrequesting spouse submits in determining whether relief from joint and several liability is appropriate, including information relating to the following—

(1) The legal status of the requesting and nonrequesting spouses' marriage;

(2) The extent of the requesting spouse's knowledge of the erroneous items or underpayment;

(3) The extent of the requesting spouse's knowledge or participation in the family business or financial affairs;

(4) The requesting spouse's education level;

(5) The extent to which the requesting spouse benefitted from the erroneous items;

(6) Any asset transfers between the spouses;

(7) Any indication of fraud on the part of either spouse;

(8) Whether it would be inequitable, within the meaning of §§ 1.6015–2(d) and 1.6015–4, to hold the requesting spouse jointly and severally liable for the outstanding liability;

(9) The allocation or ownership of items giving rise to the deficiency; and

(10) Anything else that may be relevant to the determination of whether relief from joint and several liability should be granted.

(c) *Effect of opportunity to participate.* The failure to submit information pursuant to paragraph (b) of this section does not affect the nonrequesting spouse's ability to seek relief from joint and several liability for the same tax year. However, information that the nonrequesting spouse submits pursuant to paragraph (b) of this section is relevant in determining whether relief from joint and several liability is appropriate for the nonrequesting spouse should the nonrequesting spouse also submit an application for relief.

[T.D. 9003, 67 FR 47285, July 18, 2002]

§ 1.6015–7 Tax Court review.

(a) *In general.* Requesting spouses may petition the Tax Court to review the denial of relief under § 1.6015–1.

(b) *Time period for petitioning the Tax Court.* Pursuant to section 6015(e), the requesting spouse may petition the Tax Court to review a denial of relief under § 1.6015–1 within 90 days after the date notice of the Service's final determination is mailed by certified or registered mail (90-day period). If the IRS does not mail the requesting spouse a final determination letter within 6 months of the date the requesting spouse files an election under § 1.6015–2 or 1.6015–3, the requesting spouse may petition the Tax Court to review the election at any time after the expiration of the 6-month period, and before the expiration of the 90-day period. The Tax Court also may review a claim for relief if Tax Court jurisdiction has been acquired under another section of the Internal Revenue Code such as section 6213(a) or 6330(d).

(c) *Restrictions on collection and suspension of the running of the period of limitations*—(1) *Restrictions on collection under § 1.6015–2 or 1.6015–3.* Unless the Internal Revenue Service determines that collection will be jeopardized by delay, no levy or proceeding in court shall be made, begun, or prosecuted against a requesting spouse electing the application of § 1.6015–2 or 1.6015–3 for the collection of any assessment to which the election relates until the expiration of the 90-day period described in paragraph (b) of this section, or if a petition is filed with the Tax Court, until the decision of the Tax Court becomes final under section 7481. For more information regarding the date on which a decision of the Tax Court

becomes final, see section 7481 and the regulations thereunder. Notwithstanding the above, if the requesting spouse appeals the Tax Court's decision, the Internal Revenue Service may resume collection of the liability from the requesting spouse on the date the requesting spouse files the notice of appeal, unless the requesting spouse files an appeal bond pursuant to the rules of section 7485. Jeopardy under this paragraph (c)(1) means conditions exist that would require an assessment under section 6851 or 6861 and the regulations thereunder.

(2) *Waiver of the restrictions on collection*. A requesting spouse may, at any time (regardless of whether a notice of the Service's final determination of relief is mailed), waive the restrictions on collection in paragraph (c)(1) of this section.

(3) *Suspension of the running of the period of limitations*—(i) *Relief under § 1.6015–2 or 1.6015–3*. The running of the period of limitations in section 6502 on collection against the requesting spouse of the assessment to which an election under § 1.6015–2 or 1.6015–3 relates is suspended for the period during which the Internal Revenue Service is prohibited by paragraph (c)(1) of this section from collecting by levy or a proceeding in court and for 60 days thereafter. However, if the requesting spouse signs a waiver of the restrictions on collection in accordance with paragraph (c)(2) of this section, the suspension of the period of limitations in section 6502 on collection against the requesting spouse will terminate on the date that is 60 days after the date the waiver is filed with the Internal Revenue Service.

(ii) *Relief under § 1.6015–4*. If a requesting spouse seeks only equitable relief under § 1.6015–4, the restrictions on collection of paragraph (c)(1) of this section do not apply. Accordingly, the request for relief does not suspend the running of the period of limitations on collection.

(4) *Definitions*—(i) *Levy*. For purposes of this paragraph (c), levy means an administrative levy or seizure described by section 6331.

(ii) *Proceedings in court*. For purposes of this paragraph (c), proceedings in court means suits filed by the United States for the collection of Federal tax. Proceedings in court does not refer to the filing of pleadings and claims and other participation by the Internal Revenue Service or the United States in suits not filed by the United States, including Tax Court cases, refund suits, and bankruptcy cases.

(iii) *Assessment to which the election relates*. For purposes of this paragraph (c), the assessment to which the election relates is the entire assessment of the deficiency to which the election relates, even if the election is made with respect to only part of that deficiency.

[T.D. 9003, 67 FR 47285, July 18, 2002]

§ 1.6015–8 Applicable liabilities.

(a) *In general*. Section 6015 applies to liabilities that arise after July 22, 1998, and to liabilities that arose prior to July 22, 1998, that were not paid on or before July 22, 1998.

(b) *Liabilities paid on or before July 22, 1998*. A requesting spouse seeking relief from joint and several liability for amounts paid on or before July 22, 1998, must request relief under section 6013(e) and the regulations thereunder.

(c) *Examples*. The following examples illustrate the rules of this section:

Example 1. H and W file a joint Federal income tax return for 1995 on April 15, 1996. There is an understatement on the return attributable to an omission of H's wage income. On October 15, 1998, H and W receive a 30-day letter proposing a deficiency on the 1995 joint return. W pays the outstanding liability in full on November 30, 1998. In March 1999, W files Form 8857, requesting relief from joint and several liability under section 6015(b). Although W's liability arose prior to July 22, 1998, it was unpaid as of that date. Therefore, section 6015 is applicable.

Example 2. H and W file their 1995 joint Federal income tax return on April 15, 1996. On October 14, 1997, a deficiency of $5,000 is assessed regarding a disallowed business expense deduction attributable to H. On June 30, 1998, the Internal Revenue Service levies on the $3,000 in W's bank account in partial satisfaction of the outstanding liability. On August 31, 1998, W files a request for relief from joint and several liability. The liability arose prior to July 22, 1998. Section 6015 is applicable to the $2,000 that remained unpaid as of July 22, 1998, and section 6013(e) is applicable to the $3,000 that was paid prior to July 22, 1998.

[T.D. 9003, 67 FR 47285, July 18, 2002]

§ 1.6015–9 Effective date.

Sections 1.6015–0 through 1.6015–9 are applicable for all elections under § 1.6015–2 or 1.6015–3 or any requests for relief under § 1.6015–4 filed on or after July 18, 2002.

[T.D. 9003, 67 FR 47285, July 18, 2002]

§ 1.6016–1 Declarations of estimated income tax by corporations.

(a) *Requirement*. For taxable years ending on or after December 31, 1955, a declaration of estimated tax shall be made by every corporation (including unincorporated business enterprises electing to be taxed as domestic corporations under section 1361), which is subject to taxation under section 11 or 1201(a), or subchapter L, chapter 1 of the Code (relating to insurance companies), if its income tax under such sections or such subchapter L for the taxable year can reasonably be expected to exceed the sum of $100,000 plus the amount of any estimated credits allowable under section 32 (relating to tax withheld at source on nonresident aliens and foreign corporations and on tax-free covenant bonds), section 33 (relating to taxes of foreign countries and possessions of the United States), and section 38 (relating to investment in certain depreciable property).

(b) *Definition of estimated tax*. The term ''estimated tax'', in the case of a corporation, means the excess of the amount which such corporation estimates as its income tax liability for the taxable year under section 11 or 1201(a), or subchapter L, chapter 1 of the Code, over the sum of $100,000 and any estimated credits under sections 32, 33, and 38. However, for the rule with respect to the limitation upon the $100,000 exemption for members of certain electing affiliated groups, see section 243(b)(3)(C)(v) and the regulations thereunder.

(c) *Examples*. The application of this section may be illustrated by the following examples:

Example 1. M, a corporation subject to tax under section 11, reasonably anticipates that it will have taxable income of $224,000 for the calendar year 1964. The normal tax and surtax result in an expected liability of $105,000. M determines that it will not have any allowable credits under sections 32, 33, and 38 for 1964. Since M's expected tax ($105,000) exceeds the exemption ($100,000), a declaration of estimated tax is required to be filed, reporting an estimated tax of $5,000 ($105,000 – $100,000) for the calendar year 1964.

Example 2. Under the facts stated in example (1), except that M estimates it will have an allowable foreign tax credit under section 33 in the amount of $4,000 and an allowable investment credit under section 38 in the amount of $3,000, no declaration is required, since M's expected tax ($105,000) does not exceed the $100,000 plus the allowable credits totaling $7,000.

[T.D. 6768, 29 FR 14921, Nov. 4, 1964]

§ 1.6016–2 Contents of declaration of estimated tax.

(a) *In general*. The declaration of estimated tax by a corporation shall be made on Form 1120–ES. For the purpose of making the declaration, the estimated tax should be based upon the amount of gross income which the taxpayer can reasonably be expected to receive or accrue as the case may be, depending upon the method of accounting upon the basis of which the taxable income is computed, and the amount of the estimated allowable deductions and credits to be taken into account. Such amounts of gross income, deductions, and credits should be determined upon the basis of facts and circumstances existing as at the time prescribed for the filing of the declaration as well as those reasonably to be anticipated for the taxable year.

(b) *Use of prescribed form*. Copies of Form 1120–ES will so far as possible be furnished taxpayers by district directors. A taxpayer will not be excused from making a declaration, however, by the fact that no form has been furnished. Taxpayers not supplied with the proper form should make application therefor to the district director in ample time to have their declarations prepared, verified, and filed with the district director on or before the date prescribed for filing the declaration. If the prescribed form is not available a statement disclosing the estimated income tax after the exemption and the credits, if any, should be filed as a tentative declaration within the prescribed time, accompanied by the payment of the required installment. Such tentative declaration should be supplemented, without unnecessary delay, by a declaration made on the proper form.

§ 1.6016–3 Amendment of declaration.

In the making of a declaration of estimated tax the corporation is required to take into account the then existing facts and circumstances as well as those reasonably to be anticipated relating to prospective gross income, allowable deductions, and estimated credits for the taxable year. Amended or revised declarations may be made in any case in which the corporation estimates that its gross income, deductions, or credits will materially change the estimated tax reported in the previous declaration. However, for the rule with respect to the number of amended declarations which may be filed for taxable years beginning after December 31, 1963, see paragraph (d)(2) of § 1.6074–1. Such amended declaration may be made on either Form 1120–ES (marked ''Amended'') or on the reverse side of the installment notice furnished the corporation by the district director. See, however, paragraph (b) of § 1.6016–2 for procedure to be followed if the prescribed form is not available.

[T.D. 6768, 29 FR 14922, Nov. 4, 1964]

§ 1.6016–4 Short taxable year.

(a) *Requirement of declaration.* No declaration may be made for a period of more than 12 months. For purposes of this section a taxable year of 52 or 53 weeks, in the case of a corporation which computes its taxable income in accordance with the election permitted by section 441(f), shall be deemed a period of 12 months. For special rules affecting the time for filing declarations and paying estimated tax by such corporation, see paragraph (b) of § 1.441–2. A separate declaration is required where a corporation is required to submit an income tax return for a period of less than 12 months, but only if such short period ends on or after December 31, 1955. However, no declaration is required if the short taxable year:

(1) Begins on or before December 31, 1963, and is:

(i) A period of less than 9 months, or

(ii) A period of 9 or more months but less than 12 months and the requirements of section 6016(a) are not met before the 1st day of the last month in the short taxable year, or

(2) Begins after December 31, 1963, and is:

(i) A period of less than 4 months, or

(ii) A period of 4 or more months but less than 12 months and the requirements of section 6016(a) are not met before the 1st day of the last month in the short taxable year.

(b) *Income placed on an annual basis.* In cases where the short taxable year results from a change of annual accounting period, for the purpose of determining whether the anticipated income for a short taxable year will result in an estimated tax liability requiring the filing of a declaration, such income shall be placed on an annual basis in the manner prescribed in section 443(b)(1). If a tax computed on such annualized income exceeds the sum of $100,000 and any credits under part IV, of subchapter A, chapter 1 of the Code, the estimated tax shall be the same part of the excess so computed as the number of months in the short period is of 12 months. Thus, for example, a corporation which changes from a calendar year basis to a fiscal year basis beginning October 1, 1956, will have a short taxable year beginning January 1, 1956, and ending September 30, 1956. If on or before August 31, 1956, the taxpayer anticipates that it will have income of $264,000 for the 9-month taxable year the estimated tax is computed as follows:

(1) Anticipated taxable income for 9 months	$264,000
(2) Annualized income ($264,000×12÷9)	352,000
(3) Tax liability on item (2)	177,540
(4) Item (3) reduced by $100,000 (there are no credits under part IV, subchapter A, chapter 1 of the Code)	77,540
(5) Estimated tax for 9-month period ($77,540×9÷12)	58,155

Since the tax liability on the annualized income is in excess of $100,000, a declaration is required to be filed, reporting an estimated tax of $58,155 for the 9-month taxable period. This paragraph has no application where the short taxable year does not result from a change in the taxpayer's annual accounting period.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6768, 29 FR 14922, Nov. 4, 1964]

§ 1.6017–1 Self-employment tax returns.

(a) *In general.* (1) Every individual, other than a nonresident alien, having net earnings from self-employment, as defined in section 1402, of $400 or more for the taxable year shall make a return of such earnings. For purposes of this section, an individual who is a resident of the Virgin Islands, Puerto Rico, or (for any taxable year beginning after 1960) Guam or American Samoa is not to be considered a nonresident alien individual. See paragraph (d) of § 1.1402(b)–1. A return is required under this section if an individual has self-employment income, as defined in section 1402(b), even though he may not be required to make a return under section 6012 for purposes of the tax imposed by section 1 or 3. Provisions applicable to returns under section 6012(a) shall be applicable to returns under this section.

(2) Except as otherwise provided in this subparagraph, the return required by this section shall be made on Form 1040. The form to be used by residents of the Virgin Islands, Guam, or American Samoa is From 1040SS. In the case of a resident of Puerto Rico who is not required to make a return of income under section 6012(a), the form to be used is Form 1040SS, except that Form 1040PR shall be used if it is furnished by the Internal Revenue Service to such resident for use in lieu of Form 1040SS.

(b) *Joint returns.* (1) In the case of a husband and wife filing a joint return under section 6013, the tax on self-employment income is computed on the separate self-employment income of each spouse, and not on the aggregate of the two amounts. The requirement of section 6013(d)(3) that in the case of a joint return the tax is computed on the aggregate income of the spouses is not applicable with respect to the tax on self-employment income. Where the husband and wife each has net earnings from self-employment of $400 or more, it will be necessary for each to complete separate schedules of the computation of self-employment tax with respect to the net earnings of each spouse, despite the fact that a joint return is filed. If the net earnings from self-employment of either the husband or the wife are less than $400, such net earnings are not subject to the tax on self-employment income, even though they must be shown on the joint return for purposes of the tax imposed by section 1 or 3.

(2) Except as otherwise expressly provided, section 6013 is applicable to the return of the tax on self-employment income; therefore, the liability with respect to such tax in the case of a joint return is joint and several.

(c) *Social security account numbers.* (1) Every individual making a return of net earnings from self-employment for any period commencing before January 1, 1962, is required to show thereon his social security account number, or, if he has no such account number, to make application therefor on Form SS–5 before filing such return. However, the failure to apply for or receive a social security account number will not excuse the individual from the requirement that he file such return on or before the due date thereof. Form SS–5 may be obtained from any district office of the Social Security Administration or from any district director. The application shall be filed with a district office of the Social Security Administration or, in the case of an individual not in the United States, with the district office of the Social Security Administration at Baltimore, Md. An individual who has previously secured a social security account number as an employee shall use that account number on his return of net earnings from self-employment.

(2) For provisions applicable to the securing of identifying numbers and the reporting thereof on returns and schedules for periods commencing after December 31, 1961, see § 1.6109–1.

(d) *Declaration of estimated tax with respect to taxable years beginning after December 31, 1966.* For taxable years beginning after December 31, 1966, section 6015 provides that the term ''estimated tax'' includes the amount which an individual estimates as the amount of self-employment tax imposed by chapter 2 for the taxable year. Thus, individuals upon whom self-employment tax is imposed by section 1401 must make a declaration of estimated tax if they meet the requirements of section

6015(a); except as otherwise provided under section 6015(i).

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6691, 28 FR 12816, Dec. 3, 1963; T.D. 7427, 41 FR 34028, Aug. 12, 1976]

INFORMATION RETURNS

§ 1.6031(a)–1 Return of partnership income.

(a) *Domestic partnerships*—(1) *Return required*. Except as provided in paragraphs (a)(3) and (c) of this section, every domestic partnership must file a return of partnership income under section 6031 (partnership return) for each taxable year on the form prescribed for the partnership return. The partnership return must be filed for the taxable year of the partnership regardless of the taxable years of the partners. For taxable years of a partnership and of a partner, see section 706 and § 1.706–1. For the rules governing partnership statements to partners and nominees, see § 1.6031(b)–1T. For the rules requiring the disclosure of certain transactions, see § 1.6011–4T.

(2) *Content of return*. The partnership return must contain the information required by the prescribed form and the accompanying instructions.

(3) *Special rule*. (i) A partnership that has no income, deductions, or credits for federal income tax purposes for a taxable year is not required to file a partnership return for that year.

(ii) The Commissioner may, in guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii)(*b*) of this chapter), provide for an exception to partnership reporting under section 6031 and for conditions for the exception, if all or substantially all of a partnership's income is derived from the holding or disposition of tax-exempt obligations (as defined in section 1275(a)(3) and § 1.1275–1(e)) or shares in a regulated investment company (as defined in section 851(a)) that pays exempt-interest dividends (as defined in section 852(b)(5)).

(4) *Failure to file*. For the consequences of a failure to comply with the requirements of section 6031(a) and this paragraph (a), see sections 6229(a), 6231(f), 6698, and 7203.

(b) *Foreign partnerships*—(1) *General rule*. (i) *Filing requirement*. A foreign partnership is not required to file a partnership return, if the foreign partnership does not have gross income that is (or is treated as) effectively connected with the conduct of a trade or business within the United States (ECI) and does not have gross income (including gains) derived from sources within the United States (U.S.-source income). Except as provided in paragraphs (b)(2) and (3) of this section, a foreign partnership that has ECI or has U.S.-source income that is not ECI must file a partnership return for its taxable year in accordance with the rules for domestic partnerships in paragraph (a) of this section.

(ii) *Special rule*. For purposes of this paragraph (b)(1) and paragraph (b)(3)(iii) of this section, a foreign partnership will not be considered to have derived income from sources within the United States solely because a U.S. partner marks to market his pro rata share of PFIC stock held by the foreign partnership pursuant to an election under section 1296.

(2) *Foreign partnerships with de minimis U.S.-source income and de minimis U.S. partners*. A foreign partnership (other than a withholding foreign partnership, as defined in § 1.1441–5(c)(2)(i)) that has $20,000 or less of U.S.-source income and has no ECI during its taxable year is not required to file a partnership return if, at no time during the partnership taxable year, one percent or more of any item of partnership income, gain, loss, deduction, or credit is allocable in the aggregate to direct United States partners. The United States partners must directly report their shares of the allocable items of partnership income, gain, loss, deduction, and credit.

(3) *Filing obligations for certain other foreign partnerships with no ECI*—(i) *General requirements for modified filing obligations*. A foreign partnership will be subject to the modified filing obligations in paragraphs (b)(3)(ii) and (iii) of this section if, in addition to satisfying the requirements contained in paragraphs (b)(3)(ii) and (iii) of this section—

(A) The partnership is not a withholding foreign partnership as defined in § 1.1441–5(c)(2)(i);

(B) Forms 1042 and 1042–S are filed by the partnership with respect to the amounts subject to reporting under §1.1461–1(b) and (c), unless the partnership is not required to file such returns under §1.1461–1(b)(2) and (c)(4), in which case Forms 1042 and 1042–S must be filed by another withholding agent or agents; and

(C) The tax liability of the partners with respect to such amounts has been fully satisfied by the withholding of tax at the source, if applicable, under chapter 3 of the Internal Revenue Code.

(ii) *Foreign partnerships with U.S.-source income but no U.S. partners.* A foreign partnership that has U.S.-source income is not required to file a partnership return if the partnership has no ECI and no United States partners at any time during the partnership's taxable year.

(iii) *Foreign partnerships with U.S.-source income and U.S. partners.* Except as provided in paragraph (b)(2) of this section, a foreign partnership with one or more United States partners that has U.S.-source income but no ECI must file a partnership return. However, such a foreign partnership need not file Statements of Partner's Share of Income, Credit, Deduction, etc. (Schedules K–1) for any partners other than its direct United States partners and its passthrough partners (whether U.S. or foreign) through which United States partners hold an interest in the foreign partnership. Schedules K–1 that are not excepted from filing under this paragraph (b)(3)(iii) must contain the same information required of a domestic partnership filing under paragraph (a) of this section.

(4) *Information or returns required of partners who are United States persons*—(i) *In general.* If a United States person is a partner in a partnership that is not required to file a partnership return, the district director or director of the relevant service center may require that person to render the statements or provide the information necessary to verify the accuracy of the reporting by that person of any items of partnership income, gain, loss, deduction, or credit.

(ii) *Controlled foreign partnerships.* Certain United States persons who are partners in a foreign partnership controlled (within the meaning of section 6038(e)(1)) by United States persons may be required to provide information with respect to the partnership under section 6038.

(5) *Certain partnership elections.* For a partnership that is not otherwise required to file a partnership return, if an election that can only be made by the partnership under section 703 (affecting the computation of taxable income derived from a partnership) is to be made by or for the partnership, a return on the form prescribed for the partnership return must be filed for the partnership. Unless otherwise provided in the form or the accompanying instructions, a return filed solely to make an election need only contain a written statement citing paragraph (b)(5)(ii) of this section, listing the name and address of the partnership making the election, and clearly identifying the specific election being made. A return filed under paragraph (b)(5)(ii) of this section solely to make an election is not a partnership return. Thus, such a return is not a return filed under section 6031(a) for purposes of sections 6501 (except regarding the specific election issue), 6231(a)(1)(A), and 6233. The return must be signed by—

(i) Each partner that is a partner in the partnership at the time the election is made; or

(ii) Any partner of the partnership who is authorized (under local law or the partnership's organizational documents) to make the election and who represents to having such authorization under penalties of perjury.

(6) *Exclusion for certain organizations.* The return requirement of section 6031 and this section does not apply to the International Telecommunications Satellite Organization, the International Maritime Satellite Organization, or any organization that is a successor of either.

(c) *Partnerships excluded from the application of subchapter K of the Internal Revenue Code*—(1) *Wholly excluded*—(i) *Year of election.* An eligible partnership as described in §1.761–2(a) that elects to be excluded from all the provisions of subchapter K of chapter 1 of the Internal Revenue Code in the manner specified by §1.761–2(b)(2)(i) must timely file

the form prescribed for the partnership return for the taxable year for which the election is made. In lieu of the information otherwise required, the return must contain or be accompanied by the information required by § 1.761–2(b)(2)(i).

(ii) *Subsequent years*. Except as otherwise provided in paragraph (c)(1)(i) of this section, an eligible partnership that elects to be wholly excluded from the application of subchapter K is not required to file a partnership return.

(2) *Deemed excluded*. An eligible partnership that is deemed to have elected exclusion from the application of subchapter K beginning with its first taxable year, as specified in § 1.761–2(b)(2)(ii), is not required to file a partnership return.

(d) *Definitions*—(1) *Partnership*. For the meaning of the term partnership, see § 1.761–1(a).

(2) *United States person*. In applying this section, a United States person is a person described in section 7701(a)(30); the government of the United States, a State, or the District of Columbia (including an agency or instrumentality thereof); or a corporation created or organized in Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa, if the requirements of section 881(b)(1)(A), (B), and (C) are met for such corporation. The term does not include an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa, as determined under § 301.7701(b)–1(d) of this chapter.

(3) *United States partner*. In applying this section, a United States partner is any United States person who holds a direct or indirect interest in the partnership.

(4) *Indirect interest*. An indirect interest is any interest held through one or more passthrough partners, as defined in section 6231(a)(9).

(e) *Procedural requirements*—(1) *Place for filing*. The return of a partnership must be filed with the service center prescribed in the relevant IRS revenue procedure, publication, form, or instructions to the form (see § 601.601(d)(2)).

(2) *Time for filing*. The return of a partnership must be filed on or before the fifteenth day of the fourth month following the close of the taxable year of the partnership.

(3) *Magnetic media filing*. For magnetic media filing requirements with respect to partnerships, see section 6011(e)(2) and the regulations thereunder.

(f) *Effective dates*. This section applies to taxable years of a partnership beginning after December 31, 1999, except that—

(1) Paragraph (b)(3) of this section applies to taxable years of a foreign partnership beginning after December 31, 2000; and

(2) Paragraph (a)(3)(ii) of this section applies to taxable years of a partnership beginning on or after November 5, 2003.

[T.D. 8841, 64 FR 61500, Nov. 12, 1999, as amended by T.D. 9000, 67 FR 41328, June 18, 2002; T.D. 9094, 68 FR 63734, Nov. 10, 2003; 68 FR 70584, Dec. 18, 2003; T.D. 9123, 69 FR 24078, May 3, 2004; T.D. 9177, 70 FR 7176, Feb. 11, 2005]

§ 1.6031(b)–1T Statements to partners (temporary).

(a) *Statement required to be furnished to partners*—(1) *In general*. Except as provided in this paragraph (a)(1) and paragraph (a)(2)(ii) of this section, any partnership required under section 6031(a) and the regulations thereunder to file a partnership return for a taxable year shall furnish to every person who was a partner (within the meaning of section 7701(a)(2)) at any time during the taxable year a written statement containing the information described in paragraph (a)(3) of this section. This section shall not apply to a real estate mortgage investment conduit (REMIC) treated as a partnership under subtitle F of the Code by reason of section 860F(e). For the reporting requirements applicable to REMICs see § 1.6031(b)–2T.

(2) *Special rules applicable to partnership interests held by nominees*—(i) *Statements furnished to nominees*. For any partnership taxable year beginning after October 22, 1986, a partnership shall provide a person that holds (directly or indirectly) an interest in such partnership as a nominee on behalf of another person at any time during such

year with a statement under paragraph (a)(1) of this section with respect to such interest if—

(A) Such nominee has not furnished the statement required under §1.6031(c)–1T(a)(1)(i) to the partnership with respect to such other person;

(B) Such nominee either holds legal title to such partnership interest in its own name or is identified in a statement provided to the partnership pursuant to §1.6031(c)–1T(a)(1)(i) by another nominee as the person on whose behalf such other nominee holds such interest; and

(C) Such nominee is not a person described in §1.6031(c)–1T(a)(2) (relating to the special rule for clearing agencies).

In such case, the partnership shall assume, for purposes of this section, that the nominee is the beneficial owner of the partnership interest.

(ii) *Statements not required to be furnished to partners holding partnership interests through nominees.* A partnership shall not be required to furnish a statement under paragraph (a)(1) of this section to a partner with respect to any portion of such partner's interest in the partnership that is owned through a nominee if—

(A) Such nominee has not furnished (or is not required to furnish under §1.6031(c)–1T(a)(2)), a statement to the partnership under §1.6031(c)–1T(a)(1)(i) with respect to such partner; and

(B) Such partner has not furnished (or is not required to furnish) a statement to the partnership under §1.6031(c)–1T(a)(3), with respect to such interest in the partnership.

(3) *Contents of statement.* The statement required under paragraph (a)(1) of this section shall include the following information:

(i) The partner's distributive share of partnership income, gain, loss, deduction, or credit required to be shown on the partnership return (or, for taxable years beginning before January 1, 1987, the partner's distributive share of partnership income, gain, loss, deduction, or credit shown on the partnership return); and

(ii) To the extent provided by form or the accompanying instructions, any additional information that may be required to apply particular provisions of subtitle A of the Code to the partner with respect to items related to the partnership.

(b) *Time for furnishing statement.* The statement required to be furnished by the partnership under paragraph (a)(1) of this section shall be furnished on or before the day on which the partnership return for that taxable year is required to be filed (determined with regard to extensions). For partnership returns the due date for which (determined without regard to extensions) is before January 1, 1987, the statement required to be furnished by the partnership under paragraph (a)(1) of this section shall be furnished on or before the day on which the partnership return is filed.

(c) *Statement may be provided to agent.* If a partner designates another person, such as an attorney or an investment advisor, as the partner's (or nominee's) agent in dealing with the partnership, the partnership may provide the statement required under paragraph (a)(1) of this section with respect to such partner to such other person instead of the partner.

(d) *Penalties.* For penalties for failure to comply with the requirements of section 6031(b) and paragraph (a) of this section, see section 6722(a).

(e) *Effective date.* Except as otherwise provided in this section, the provisions of this section apply to partnership taxable years beginning after September 3, 1982.

[T.D. 8225, 53 FR 34490, Sept. 7, 1988]

§1.6031(b)–2T REMIC reporting requirements (temporary). [Reserved]

§1.6031(c)–1T Nominee reporting of partnership information (temporary).

(a) *Statements required to be furnished to partnership*—(1) *Statement from nominee*—(i) *In general.* Except as otherwise provided in this section, any person who holds, directly or indirectly, an interest in a partnership (required under section 6031(a) and the regulations thereunder to file a partnership return for a taxable year) as a nominee on behalf of another person at any time during the partnership taxable year shall furnish to the partnership a written

statement (or statements) for that taxable year with respect to such other person containing the information described in paragraph(a)(1)(ii) of this section.

(ii) *Contents of statement.* The statement required under paragraph (a)(1)(i) of this section shall, except as otherwise provided in paragraph (a)(4) of this section, include the following information:

(A) The name, address, and taxpayer identification number of the nominee;

(B) The name, address, and taxpayer identification number of such other person;

(C) Whether such other person is—

(*1*) A person that is not a United States person;

(*2*) A foreign government, an international organization, or any wholly-owned agency or instrumentality of either of the foregoing; or

(*3*) A tax-exempt entity (within the meaning of section 168(h)(2));

(D) A description of any interest in the partnership held by the nominee on behalf of such other person at the beginning of the partnership taxable year;

(E) A description of any interest in the partnership that the nominee acquires (within the meaning of paragraph (g)(1) of this section) on behalf of such other person during the partnership taxable year, the method of acquisition (e.g., purchase, exchange, acquisition at death, gift, or commencement of nominee relationship) and acquisition cost (within the meaning of paragraph (g)(2) of this section) of such interest, and the date of the acquisition of such interest; and

(F) A description of any interest in the partnership that the nominee transfers (within the meaning of paragraph (g)(5) of this section) on behalf of such other person during the partnership taxable year, the net proceeds from the transfer (within the meaning of paragraph (g)(6) of this section) of such interest, and the date of the transfer of such interest.

A description of a partnership interest must include sufficient detail to enable the partnership to furnish to such other person the statement required under § 1.6031(b)–1T (a).

(2) *Special rule for clearing agencies.* A clearing agency registered pursuant to the provisions of section 17A of the Securities Exchange Act of 1934 (or its nominee) that holds an interest in a partnership as a nominee on behalf of another person shall not be required to furnish any statement described in paragraph (a)(1)(i) of this section with respect to such interest.

(3) *Special rule for brokers and financial institutions*—(i) *Additional statement required.* Any broker (within the meaning of paragraph (g)(3) of this section) or financial institution (within the meaning of paragraph (g)(4) of this section) that holds an interest in a partnership indirectly through a nominee described in paragraph (a)(2) of this section at any time during a partnership taxable year shall furnish (in addition to any statement (or statements) required under paragraph (a)(1)(i) of this section) to the partnership a written statement (or statements) containing the information described in paragraph (a)(3)(ii) of this section with respect to any interest in such partnership that it holds (directly or indirectly) for its own account at any time during such partnership taxable year.

(ii) *Contents of statement.* The statement required under paragraph (a)(3)(i) of this section shall, except as otherwise provided in paragraph (a)(4) of this section, include the following information:

(A) The name, address, and taxpayer identification number of the broker or financial institution;

(B) Whether such broker of financial institution is a person that is not a United States person;

(C) A description of any interest in the partnership held by the broker or financial institution for its own account at the beginning of the partnership taxable year;

(D) A description of any interest in the partnership that the broker or financial institution acquires for its own account during the partnership taxable year, the method of acquisition and acquisition cost of such interest, and the date of the acquisition of such interest; and

(E) A description of any interest in the partnership that the broker or financial institution transfers for its

own account during the partnership taxable year, the net proceeds from the transfer of such interest, and the date of the transfer of such interest.

A description of a partnership interest held by a broker or financial institution for its own account must include sufficient detail to enable the partnership to furnish to the broker or financial institution the statement required under § 1.6031(b)–1T (a).

(4) *Exception*—(i) *In general*. Except as otherwise provided in this paragraph (a)(4), any statement required under paragraph (a) (1)(i) or (3)(i) of this section for a taxable year is not required to include—

(A) That part of the information described in paragraph (a) (1)(ii)(E) and (3)(ii)(D) of this section regarding the method of acquisition and acquisition cost; or

(B) That part of the information described in paragraph (a)(1)(ii)(F) and (3)(ii)(E) of this section regarding the net proceeds from the transfer;

to the extent that, prior to the beginning of the partnership taxable year, the partnership has provided the nominee with a written statement that the nominee need not provide such information to the partnership, and the partnership has not modified or revoked such statement. For purposes of the preceding sentence, the modification or revocation of a statement furnished to a nominee is effective for a partnership taxable year if and only if the partnership notifies the nominee of such modification or revocation by a written statement more than 60 days before the beginning of the partnership taxable year. The nominee shall retain a copy of any statement that is furnished to it by the partnership under this paragraph (a)(4) in the nominee's records so long as the contents thereof may become material in the administration of any internal revenue law.

(ii) *Effect of election under section 754*. Paragraph (a)(4)(i)(A) of this section shall not apply to a partnership taxable year if—

(A) The partnership has an election in effect under section 754 (relating to optional adjustment to basis of partnership property) for such taxable year; and

(B) The nominee knows or has reason to know of such election more than 60 days before the beginning of such taxable year.

(5) *Examples*. The following examples illustrate the application of this paragraph (a):

Example 1. B, a broker, holds 50 units of interest in Partnership P, a calendar year partnership, in street name for customer A, the beneficial owner. B holds the units on behalf of A at all times during 1989. B must furnish a statement to P for calendar year 1989 under paragraph (a)(1)(i) of this section that includes the information required under paragraph (a)(1)(ii) (A) through (D) of this section. The description of the partnership interest held by B on A's behalf on January 1, 1989, must identify the number of units of P held by B on A's behalf at that time (50), and the class of the partnership interest (including the Committee on Uniform Security Identification Procedures (CUSIP) number of the partnership interest, if known).

Example 2. The facts are the same as in example (1), except that pursuant to A's instructions, B sells 25 of A's units of interest in P on August 1, 1989, receiving net proceeds from the transfer of $500. In addition to the information described in example (1), the statement that B must furnish to P must include the class of the partnership interest transferred (including the CUSIP number of the partnership interest, if known), the number of units transferred (25), the net proceeds from the transfer ($500), and the date of the transfer (August 1, 1989.)

Example 3. The facts are the same as in example (1), except that A is not the beneficial owner, but rather holds the units as a nominee on behalf of C, the beneficial owner, at all times during 1989. In addition to the statement that B must furnish to P (as described in Example (1) of this paragraph (a)(5)), A must furnish a statement to P for calendar year 1989 under paragraph (a)(1)(i) of this section that includes the information required under paragraph (a)(1)(ii) (A) through (D) of this section. If both A and B provide P with the statement required under paragraph (a)(1)(i) of this section, P must provide C with the statement required under § 1.6031(b)–1T (a)(1).

(b) *Time for furnishing statements*. A nominee may furnish to the partnership any statement required under paragraph (a) of this section annually, quarterly, monthly, or on any other basis, provided that all statements required to be furnished under paragraph

(a) of this section for a partnership taxable year shall be furnished on or before the last day of the first month following the close of such partnership taxable year.

(c) *Use of magnetic media.* A nominee required to furnish a written statement under paragraph (a) of this section, may, in lieu of furnishing such written statement, furnish the required information on magnetic tape or by other media if the partnership and the nominee so agree.

(d) *Use of single document.* Any person who holds interests in a partnership as a nominee on behalf of more than one other person during the partnership taxable year, may, in lieu of furnishing to the partnership a separate statement for each such other person, furnish to the partnership a single document which includes, for each such other person, the information described in paragraph (a)(1)(ii) of this section. To the extent that a single document is used, references in this section to the statement required under paragraph (a)(1)(i) of this section shall be deemed to refer also to the information included in a single document under this paragraph (d).

(e) *Retention of information.* The nominee shall retain a copy of any statement that is furnished to the partnership under this section in the nominee's records so long as the contents thereof may become material in the administration of any internal revenue law.

(f) *Use of agent.* If a partnership has designated another person, such as a clearing organization, as the partnership's agent for purposes of receiving the statements required under paragraph (a) of this section, such statements may be furnished to that other person instead of the partnership. If a nominee has designated another person as its agent for purposes of furnishing to the partnership (or its agent) the statements required under paragraph (a) of this section, that other person may furnish such statements to the partnership (or its agent) on behalf of the nominee.

(g) *Meaning of terms.* For purposes of this section, the following terms have the meanings set forth below:

(1) The term *acquires* means—

(i) A purchase or other acquisition of a partnership interest; or

(ii) The commencement of a nominee relationship, including the substitution of one nominee for another.

(2) The term *acquisition cost* means the sum of any money paid and the fair market value of any property (other than money) transferred to acquire a partnership interest increased by any expenses paid or incurred with respect to the acquisition (such as broker's fees or commissions).

(3) The term *broker* shall have the meaning set forth in paragraph (a)(1) of §1.6045ca–1.

(4) The term *financial institution* means a financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank or other similar organization.

(5) The term *transfer* means—

(i) A sale, exchange, or other disposition of a partnership interest; or

(ii) The termination of a nominee relationship, including the substitution of one nominee for another.

(6) The term *net proceeds from the transfer* means the sum of any money and the fair market value of any property (other than money) received in connection with a transfer of a partnership interest reduced by any expenses paid or incurred with respect to the transfer (such as broker's fees or commissions).

(7) The term *person* includes the United States, a State, the District of Columbia, a foreign government, a political subdivision of a State or foreign government, or an international organization.

(h) *Statement required by nominees that do not comply with §1.6031(c)–1T (a)*—(1) *In general.* Any person that—

(i) Holds an interest in a partnership as a nominee (other than a nominee described in paragraph (a)(3) of this section) on behalf of another person at any time during the partnership taxable year;

(ii) Does not furnish to such partnership the statement required under paragraph (a)(1)(i) of this section for such other person with respect to such interest in the partnership; and

(iii) Receives from such partnership the statement described in paragraph (a)(1) of § 1.6031(b)–1T with respect to such interest in the partnership;

shall furnish to such other person a written statement containing the information described in paragraph (h)(2) of this section with respect to such interest in the partnership.

(2) *Contents of statement*. The statement required under paragraph (h)(1) of this section shall contain the following information:

(i) The distributive share of partnership income, gain, loss, deduction or credit required to be shown on the partnership return that is allocable to such interest in the partnership; and

(ii) Any additional information that may be required to apply particular provisions of subtitle A of the Code to the beneficial owner of such interest in the partnership in connection with items related to the partnership.

(3) *Time for furnishing statements*. A nominee shall furnish the statement required under paragraph (h)(1) of this section within 30 days after receiving the statement described in paragraph (a) of § 1.6031(b)–1T.

(i) *REMICs*. This section shall not apply with respect to any interest in a real estate mortgage investment conduit (REMIC) treated as a partnership under subtitle F of the Code by reason of section 860F(e). For the nominee reporting requirements with respect to REMICs see § 1.6031(c)–2T.

(j) *Penalties*. [Reserved]

(k) *Effective date*—(1) *In general*. Except as otherwise provided in paragraph (k)(2) of this section, the provisions of this section shall apply to partnership taxable years beginning after October 22, 1986.

(2) *Transitional rule for taxable years beginning before January 1, 1989*. For partnership taxable years beginning before January 1, 1989,—

(i) Any statement that a nominee is required to furnish to a partnership under paragraph (a)(1) of this section shall not be required to include the following information:

(A) The information described in paragraph (a)(1)(ii)(C) of this section;

(B) That part of the information described in paragraph (a)(1)(ii)(E) of this section regarding the method of acquisition and acquisition cost of a partnership interest; or

(C) That part of the information described in paragraph (a)(1)(ii)(F) of this section regarding the net proceeds from the transfer of a partnership interest.

(ii) A broker or financial institution shall not be required to furnish the additional statement described in paragraph (a)(3)(i) of this section.

[T.D. 8225, 53 FR 34491, Sept. 7, 1988]

§ 1.6031(c)–2T Nominee reporting of REMIC information (temporary). [Reserved]

§ 1.6032–1 Returns of banks with respect to common trust funds.

Every bank (as defined in section 581) maintaining a common trust fund shall make a return of income of the common trust fund, regardless of the amount of its taxable income. Member banks of an affiliated group that serve as co-trustees with respect to a common trust fund must act jointly in making a return for the fund. If a bank maintains more than one common trust fund, a separate return shall be made for each. No particular fund is prescribed for making the return under this section, but form 1065 may be used if it is designated by the bank as the return of a common trust fund. The return shall be made for the taxable year of the common trust fund and shall be filed on or before the 15th day of the fourth month following the close of such taxable year with the district director for the district in which the income tax return of the bank is filed. Such return shall state specifically with respect to the fund the items of gross income and the deductions allowed by subtitle A of the Code, shall include each participant's name and address, the participant's proportionate share of taxable income or net loss (exclusive of gains and losses from sales or exchanges of capital assets), the participant's proportionate share of gains and losses from sales or exchanges of capital assets, and the participant's share of items which enter into the determination of the tax imposed by section 56. See § 1.584–2 and § 1.58–5. If the common trust fund is maintained by two or more banks that

are members of the same affiliated group, the return must also identify the member bank in the group that has contributed each participant's property or money to the fund. A copy of the plan of the common trust fund must be filed with the return. If, however, a copy of such plan has once been filed with a return, it need not again be filed if the return contains a statement showing when and where it was filed. If the plan is amended in any way after such copy has been filed, a copy of the amendment must be filed with the return for the taxable year in which the amendment was made. For the signing of a return of a bank with respect to common trust funds, see § 1.6062–1, relating to the manner prescribed for the signing of a return of a corporation.

[T.D. 7564, 43 FR 40497, Sept. 12, 1978, as amended by T.D. 7935, 49 FR 1695, Jan. 13, 1984]

§ 1.6033–1 Returns by exempt organizations; taxable years beginning before January 1, 1970.

(a) *In general.* (1) Except as provided in section 6033(a) and paragraph (g) of this section, every organization exempt from taxation under section 501(a) shall file an annual return of information specifically stating its items of gross income, receipts and disbursements, and such other information as may be prescribed in the instructions issued with respect to the return. Such information return shall be filed annually regardless of the amount or source of the income or receipts of the organization. Except as provided in paragraph (d) of this section, such return shall be filed annually regardless of whether such organization is chartered by, or affiliated or associated with, any central, parent, or other organization.

(2)(i) Except as otherwise provided in this subparagraph, every organization exempt from taxation under section 501 (a), and required to file a return under section 6033 and this section, other than an organization described in section 401 (a), 501(c)(3), or 501(d), shall file its annual return on Form 990. However, such an exempt organization, instead of filing Form 990, may file its annual return on Form 990 (SF), a short form, if its gross receipts for the taxable year do not exceed $10,000 and its total assets on the last day of its taxable year do not exceed $10,000.

(ii) For purposes of this subparagraph and subparagraph (4) of this paragraph, ''gross receipts'' means the gross amount received by the organization during its annual accounting period from all sources without reduction for any costs or expenses including, for example, cost of goods or assets sold, cost of operations, or expenses of earning, raising, or collecting such amounts. Thus, ''gross receipts'' includes, but is not limited to, (*a*) the gross amount received as contributions, gifts, grants, and similar amounts without reduction for the expenses of raising and collecting such amounts, (*b*) the gross amount received as dues or assessments from members or affiliated organizations without reduction for expenses attributable to the receipt of such amounts, (*c*) gross sales or receipts from business activities (including business activities unrelated to the purpose for which the organization received an exemption, the net income or loss from which may be required to be reported on Form 990–T), (*d*) the gross amount received from the sale of assets without reduction for cost or other basis and expenses of sale, and (*e*) the gross amount received as investment income such as interest, dividends, rents, and royalties.

(3) Every employees' trust described in section 401 (a) which is exempt from taxation under section 501 (a) shall file an annual return on Form 990–P. The return shall include the information required by paragraph (b)(5)(ii) of § 1.401–1. In addition, the trust must file the information required to be filed by the employer pursuant to the provisions of § 1.404(a)–2, unless the employer has notified the trustee in writing that he has or will timely file such information. If the trustee has received such notification from the employer, then such notification, or a copy thereof, shall be retained by the trust as a part of its records.

(4) Except as otherwise provided in this subparagraph, every organization described in section 501(c)(3), which is required to file a return under section 6033 and this section, shall file its annual return on Form 990–A. However, such an exempt organization, instead

of filing Form 990–A, may file its annual return on Form 990–A (SF), a short form, if its gross receipts for the taxable year do not exceed $10,000 and its total assets on the last day of its taxable year do not exceed $10,000. For purposes of this subparagraph, ''gross receipts'' shall be defined in the manner prescribed in subparagraph (2)(ii) of this paragraph. The forms prescribed by this subparagraph shall be as follows:

(i) Form 990–A shall consist of parts I and II. Part I shall contain, in addition to information required in part II, such information as may be prescribed in the return and instructions which is required to be furnished by section 6033(a) or which is necessary to show whether or not such organization is exempt from tax under section 501(a). Part II, which shall be open to public inspection pursuant to section 6104 and other applicable sections and the regulations thereunder, shall contain principally the information required by section 6033(b) and the regulations thereunder. The information contained in part II, to be furnished by the organization in duplicate in the manner prescribed by the instructions issued with respect to the return, is as follows:

(*a*) Its gross income for the year. For this purpose, gross income includes tax-exempt income, but does not include contributions, gifts, grants, and similar amounts received. Whether or not an item constitutes a contribution, gift, grant, or similar amount, depends upon all the surrounding facts and circumstances.

(*b*) Its expenses attributable to such income and incurred within the year.

(*c*) Its disbursements out of income (including prior years' accumulations) made within the year for the purposes for which it is exempt. Information shall be included as to the class of activity with a separate total for each activity as well as the name, address, and amount received by each individual or organization receiving cash, other property, or services within the taxable year. If the donee is related by blood, marriage, adoption, or employment (including children of employees) to any person or corporation having an interest in the exempt organization, such as a creator, donor, director, trustee, or officer, the relationship of the donee shall be stated. Activities shall be classified according to purpose in greater detail than merely charitable, educational, religious, or scientific. For example, payments for nursing service, for laboratory construction, for fellowships, or for assistance to indigent families shall be so identified. Where the fair market value of the property at the time of disbursement is used as the measure of the disbursement, the book value of such property (and a statement of how book value was determined) shall also be furnished, and any difference between the fair market value at the time of disbursement and the book value should be reflected in the books of account. The expenses allocable to making the disbursements shall be set forth in such detail as is prescribed by the form or instructions.

(*d*) Its accumulation of income within the year. The amount of such accumulation is obtained by subtracting from the amount in (*a*) of this subdivision the sum of the amounts determined in (*b*) and (*c*) of this subdivision and the expenses allocable to carrying out the purposes for which it is exempt.

(*e*) Its aggregate accumulation of income at the beginning and end of the year. The aggregate accumulation of income shall be divided between that which is attributable to the gain or loss on the sale of assets (excluding inventory items) and that which is attributable to all other income. For this purpose expenses and disbursements shall be allocated on the basis of accounting records, the governing instrument, or applicable local law.

(*f*) Its disbursements out of principal in the current and prior years for the purposes for which it is exempt. In addition, the same type of information shall be required with respect to disbursements out of principal made in the current year as is prescribed by (*c*) of this subdivision with respect to disbursements out of income.

(*g*) A balance sheet showing its assets, liabilities, and net worth as of the beginning and end of such year. Detailed information on the assets, liabilities, and net worth shall be furnished

on the schedule provided for this purpose on the Form 990–A. Such schedule shall be supplemented by attachments where appropriate.

(*h*) The total of the contributions and gifts received by it during the year. A statement shall be included showing the gross amount of contributions and gifts collected by the organization, the expenses incurred by the organization in collecting such amount, and the net proceeds.

(*i*) In addition to the information required in (*a*) through (*h*) of this subdivision, the organization shall furnish such specific information and answer such specific questions as are required by the form or instructions.

(ii) Form 990–A (SF) is a short form consisting of a single part which contains such information as may be prescribed in the return and instructions which is required to be furnished by section 6033(a) or which is necessary to show whether or not such organization is exempt from tax under section 501(a). In addition, Form 990–A (SF) shall contain the information required by section 6033(b) which must be furnished in the manner prescribed in the instructions issued with respect to the return. Form 990–A (SF) shall be open to public inspection pursuant to section 6104 and other applicable sections and the regulations thereunder.

(5)(i) Every religious or apostolic association or corporation described in section 501 (d) which is exempt from taxation under section 501(a) shall file a return on Form 1065 for each taxable year, stating specifically the items of gross income and deductions, and its taxable income. There shall be attached to the return as a part thereof a statement showing the name and address of each member of the association or corporation and the amount of his distributive share of the taxable income of the association or corporation for such year.

(ii) If the taxable year of any member is different from the taxable year of the association or corporation, the distributive share of the taxable income of the association or corporation to be included in the gross income of the member for his taxable year shall be based upon the taxable income of the association or corporation for its taxable year ending with or within the taxable year of the member.

(b) *Accounting period for filing return.* A return on Form 990, 990–A, 990 (SF), 990–A (SF), or 990–P shall be on the basis of the established annual accounting period of the organization. If the organization has no such established accounting period, such return shall be on the basis of the calendar year.

(c) *Returns when exempt status not established.* An information return on Form 990, 990–A, 990 (SF), or 990–A (SF) is not required to be filed by an organization claiming an exempt status under section 501(a) prior to the establishment by the organization of such exempt status under section 501 and §1.501(a)–1. If the date for filing an income tax return and paying the tax occurs before the tax-exempt status of the organization has been established, the organization is required to file the income tax return and pay the tax. However, see sections 6081 and 6161 and the regulations thereunder for extensions of time for filing the return and paying the tax. Upon establishment of its exempt status, the organization may file a claim for a refund of income taxes paid for the period for which its exempt status is established.

(d) *Group returns.* (1) A central, parent, or like organization (referred to in this paragraph as ''central organization''), exempt under section 501(a) and described in section 501(c), although required to file a separate annual return for itself under section 6033 and paragraph (a) of this section, may file annually, in addition to such separate annual return, a group return on Form 990 or 990–A, 990 (SF), or 990–A (SF), as may be appropriate. Form 990 (SF) or 990–A (SF) may be used where each local organization qualifies under paragraph (a) of this section. Such group return may be filed for two or more of the local organizations, chapters, or the like (referred to in this paragraph as ''local organizations'') which are (i) affiliated with such central organization at the close of its annual accounting period, (ii) subject to the general supervision or control of the central organization, and (iii) exempt from taxation under the same paragraph of section 501(c) of the Code, although the

local organizations are not necessarily exempt under the paragraph under which the central organization is exempt.

(2)(i) The filing of the group return shall be in lieu of the filing of a separate return by each of the local organizations included in the group return. The group return shall include only those local organizations which in writing have authorized the central organization to include them in the group return, and which have made and filed, with the central organization, their statements, specifically stating their items of gross income, receipts, and disbursements, and such other information relating to them as is required to be stated in the group return. Such an authorization by a local organization shall be made annually, under the penalties of perjury, and shall be signed by a duly authorized officer of the local organization in his official capacity and shall contain the following statement, or a statement of like import: ''I hereby declare under the penalties of perjury that this authorization (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true, correct and complete and made in good faith for the taxable year stated.'' Such authorizations and statements shall be permanently retained by the central organization.

(ii) There shall be attached to the group return and made a part thereof a schedule showing the name and address of each of the local organizations and the total number thereof included in such return, and a schedule showing the name and address of each of the local organizations and the total number thereof not included in the group return.

(3) The group return shall be on the basis of the established annual accounting period of the central organization. Where such central organization has no established annual accounting period, such return shall be on the basis of the calendar year. The same income, receipts, and disbursements of a local organization shall not be included in more than one group return.

(4) The group return shall be filed in accordance with these regulations and the instructions issued with respect to Form 990, 990–A, 990 (SF), or 990–A (SF), whichever is appropriate, and shall be considered the return of each local organization included therein. The tax-exempt status of a local organization must be established under a group exemption letter issued to the central organization before a group return including the local organization will be considered as the return of the local organization. See §1.501(a)–1 for requirements for establishing a tax-exempt status.

(e) *Time and place for filing.* The annual return of information on Form 990, 990–A, 990 (SF), 990–A (SF), or 990–P shall be filed on or before the 15th day of the fifth calendar month following the close of the period for which the return is required to be filed. The annual return on Form 1065 required to be filed by a religious or apostolic association or corporation shall be filed on or before the 15th day of the fourth month following the close of the taxable year for which the return is required to be filed. Each such return shall be filed in accordance with the instructions applicable thereto.

(f) *Penalties.* For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

(g) *Organizations not required to file annual returns.* (1)(i) Annual returns on Form 990–A or Form 990–A (SF) are not required to be filed by an organization described in section 501(c)(3) which has established its right to exemption from taxation under section 501 (a) and which is:

(*a*) Organized and operated exclusively for religious purposes;

(*b*) Operated, supervised, or controlled by or in connection with an organization which is organized and operated exclusively for religious purposes;

(*c*) An educational organization which normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on; or

(*d*) A charitable organization, or an organization for the prevention of cruelty to children or animals, which is supported, in whole or in part, by funds contributed by the United States or any State or political subdivision thereof, or which is primarily supported by contributions of the general public.

(ii) An educational organization which normally maintains and has a regular faculty, curriculum, and student body and meets the conditions of subdivision (i)(*c*) of this subparagraph, which relieves it from the requirement of filing annual returns, shall not be considered as having thereafter failed to continue meeting such conditions if it is temporarily compelled to curtail or discontinue its normal and regular activities during the existence of abnormal circumstances and conditions.

(iii) An organization organized and operated exclusively for charitable purposes or for the prevention of cruelty to children or animals is ''primarily supported by contributions of the general public'' for any accounting period if more than 50 percent of its income and receipts for such period is actually derived from voluntary contributions and gifts made by the general public, as distinguished from a few contributors or donors or from related or associated persons. For purposes of this subdivision, the words ''related or associated persons'' refer to persons of a particular group who are connected with or are interested in the activities of the organization, such as founders, incorporators, shareholders, members, fiduciaries, officers, employees, or the like, or who are connected with such persons by family or business relationships. An organization claiming an exception from the filing of an information return under this subdivision must maintain adequate records in order to substantiate such claim. Furthermore, if it is doubtful to an organization that it falls within this exception for filing annual information returns, it must file the return on Form 990–A or Form 990–A (SF).

(2) The annual return on Form 990 or Form 990 (SF) need not be filed by:

(i) A fraternal beneficiary society, order, or association, described in section 501(c)(8), or

(ii) An organization described in section 501(c)(1) if it is a corporation wholly owned by the United States or any agency or instrumentality thereof, or is a wholly owned subsidiary of such a corporation,

which has established its exemption from tax under section 501(a).

(3) The provisions of section 6033(a) relieving certain specified types of organizations exempt from tax under section 501(a) from filing annual returns do not abridge or impair in any way the powers and authority of district directors or directors of service centers provided for in other provisions of the Code and in the regulations thereunder to require the filing of such returns by such organizations. See section 6001 and § 1.6001–1.

(h) *Records, statements, and other returns of tax-exempt organizations.* (1) An organization which has established its right to exemption from tax under section 501(a) and has also established that it is not required to file annually the return of information on Form 990, 990–A, 990 (SF), or 990–A (SF) shall immediately notify in writing the district director for the internal revenue district in which its principal office is located of any changes in its character, operations, or purpose for which it was originally created.

(2) Every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and following), chapter 1 of the Code, and of section 6033. See section 6001 and § 1.6001–1 with respect to the authority of the district director or directors of service centers to require such additional information and with respect to the permanent books of account or records to be kept by such organizations.

(3) An organization which has established its right to exemption from tax under section 501(a), including an organization which is relieved under section 6033 and this section from filing annual returns of information, is not,

however, relieved from the duty of filing other returns of information. See, for example, sections 6041 and 6051 and the regulations thereunder.

(i) *Unrelated business tax returns.* In addition to the foregoing requirements of this section, certain organizations otherwise exempt from tax under section 501(a) and described in section 501(c) (2), (3), (5), (6), or (17) or section 401(a) which are subject to tax on unrelated business taxable income are also required to file returns on Form 990–T. See paragraph (e) of § 1.6012–2 and paragraph (a)(5) of § 1.6012–3 for requirements with respect to such returns.

(j) *Effective date.* The provisions of this section shall apply with respect to returns filed for taxable years beginning before January 1, 1970.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6722, 29 FR 5075, Apr. 14, 1964; T.D. 6972, 33 FR 12907, Sept. 12, 1968; T.D. 6980, 33 FR 16446, Nov. 9, 1968; T.D. 7122, 36 FR 11026, June 8, 1971]

§ 1.6033–2 Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).

(a) *In general.* (1) Except as provided in section 6033(a)(2) and paragraph (g) of this section, every organization exempt from taxation under section 501(a) shall file an annual information return specifically setting forth its items of gross income, gross receipts and disbursements, and such other information as may be prescribed in the instructions issued with respect to the return. Except as provided in paragraph (d) of this section, such return shall be filed annually regardless of whether such organization is chartered by, or affiliated or associated with, any central, parent, or other organization.

(2)(i) Except as otherwise provided in this paragraph and paragraph (g) of this section, every organization exempt from taxation under section 501(a), and required to file a return under section 6033 and this section (including, for taxable years ending before December 31, 1972, private foundations, as defined in section 509(a)), other than an organization described in section 401(a) or 501(d), shall file its annual return on Form 990. For taxable years ending on or after December 31, 1972, every private foundation shall file Form 990–PF as its annual information return. For taxable years beginning after December 31, 1977, every section 501(c)(21) black lung trust shall file an annual information return on Form 990–BL or any other form prescribed by the Internal Revenue Service for that purpose.

(ii) The information generally required to be furnished by an organization exempt under section 501(a) is:

(*a*) Its gross income for the year. For this purpose, gross income includes tax-exempt income, but does not include contributions, gifts, grants, and similar amounts received. Whether an item constitutes a contribution, gift, grant, or similar amount depends upon all the surrounding facts and circumstances. The computation of gross income shall be made by subtracting the cost of goods sold from all receipts other than gross contributions, gifts, grants, and similar amounts received and nonincludible dues and assessments from members and affiliates.

(*b*) To the extent not included in gross income, its dues and assessments from members and affiliates for the year.

(*c*) Its expenses incurred within the year attributable to gross income.

(*d*) Its disbursements (including prior years' accumulations) made within the year for the purposes for which it is exempt.

(*e*) A balance sheet showing its assets, liabilities, and net worth as of the beginning and end of such year. Detailed information relating to the assets, liabilities, and net worth shall be furnished on the schedule provided for this purpose on the return required by this section. Such schedule shall be supplemented by attachments where appropriate.

(*f*) The total of the contributions, gifts, grants and similar amounts received by it during the taxable year, and the names and addresses of all persons who contributed, bequeathed, or devised $5,000 or more (in money or other property) during the taxable year. In the case of a private foundation (as defined in section 509(a)), the names and addresses of all persons who became substantial contributors (as defined in section 507(d)(2)) during the

taxable year shall be furnished. In addition, for its first taxable year beginning after December 31, 1969, each private foundation shall furnish the names and addresses of all persons who became substantial contributors before such taxable year. For special rules with respect to contributors and donors, see subdivision (iii) of this subparagraph.

(*g*) The names and addresses of all officers, directors, or trustees (or any person having responsibilities or powers similar to those of officers, directors, or trustees) of the organization, and, in the case of a private foundation, all persons who are foundation managers, within the meaning of section 4946(b)(1). Organizations described in section 501(c)(3) must also attach a schedule showing the names and addresses of the five employees (if any) who received the greatest amount of annual compensation in excess of $30,000; the total number of other employees who received annual compensation in excess of $30,000; the names and addresses of the five independent contractors (if any) who performed personal services of a professional nature for the organization (such as attorneys, accountants, and doctors, whether such services are performed by such persons in their individual capacity or as employees of a professional service corporation) and who received the greatest amount of compensation in excess of $30,000 from the organization for the year for the performance of such services; and the total number of other such independent contractors who received in excess of $30,000 for the year for the performance of such services.

(*h*) A schedule showing the compensation and other payments made during the organization's annual accounting period (or during the calendar year ending within such period) which are includible in the gross income of each individual whose name is required to be listed in (*g*) of this subdivision.

(*i*) For any taxable year ending on or after December 31, 1971, such information as is required by Forms 4848 and 4849 and, only with respect to any such taxable year ending before December 31, 1972, such information as is required by Form 2950. Such forms are required by this section to be filed by an organization exempt from tax under section 501(a) which is an employer who maintains a funded pension or annuity plan for its employees. See paragraph (g) of this section for exceptions from filing. Form 4849 need not be filed by the organization if the fiduciary for the plan has given written notification to the organization that such form will be filed as an attachment to Form 990–P filed by the fiduciary. Form 4848 (and Form 4849 if required to be filed by the organization) shall be filed as a separate return on or before the due date for Form 990. For rules relating to the extension of time for filing, see section 6081 and the regulations thereunder and the instructions for Form 4848. A central organization which files Form 990 as a group return under paragraph (d) of this section may also file Form 4848 as a group return. The rules provided by paragraph (d) of this section with respect to a group return filed on Form 990 shall apply to a group return filed on Form 4848. Unless otherwise expressly provided therein, an authorization to include a local organization in a group for purposes of filing Form 990 as a group return shall be treated as an authorization to include such local organization in a group for purposes of filing Form 4848 as a group return. A group return on Form 4848 shall be filed in accordance with this section and the instructions to Form 4848 and shall be considered the return of each local organization included therein. In addition to the information required to be furnished by Forms 4848 and 4849, the district director may require any further information that he considers necessary to determine qualification of the plan under section 401 or the taxability under section 403(b) of a beneficiary under an annuity purchased by a section 501(c)(3) organization.

(*j*) In the case of a private foundation liable for tax imposed under chapter 42, such information as is required by Form 4720.

(*k*) Its lobbying expenditures, grass roots expenditures, exempt purpose expenditures, lobbying nontaxable amount, and grass roots nontaxable amount for the taxable year and for prior taxable years that are base years (within the meaning of § 1.501(h)–

3(c)(7)), if the organization has an election under section 501(h) in effect for the taxable year. An organization that is a member of an affiliated group of organizations (as defined in § 56.4911–7(e)) but that is not a member of a limited affiliated group (as defined in § 56.4911–10(b)) shall report this information based on the expenditures of all members of the group during the taxable year of the group that ends with or within the member's taxable year and for prior taxable years of the group that are base years (within the meaning of § 56.4911–9(b)). For additional information required to be furnished by members of an affiliated group of organizations, and by controlling members in a limited affiliated group, see §§ 56.4911–9(d) and 56.4911–10(f)(1), respectively.

(iii) *Special rules.* In providing the names and addresses of contributors and donors under subdivision (ii)(*f*) of this subparagraph:

(*a*) An organization described in section 501(c)(3) which meets the 33⅓ percent-of-support test of the regulations under section 170(b)(1)(A)(vi) (without regard to whether such organization otherwise qualifies as an organization described in section 170(b)(1)(A)) is required to provide the name and address of a person who contributed, bequeathed, or devised $5,000 or more during the year only if his amount is in excess of 2 percent of the total contributions, bequests and devises received by the organization during the year.

(*b*) An organization other than a private foundation is required to report only the names and addresses of contributors of whom it has actual knowledge. For instance, an organization need not require an employer who withholds contributions from the compensation of employees and pays over to the organization periodically the total amounts withheld, to specify the amounts paid over with respect to a particular employee. In such case, unless the organization has actual knowledge that a particular employee gave more than $5,000 (and in excess of 2 percent if (*a*) of this subdivision is applicable), the organization need report only the name and address of the employer, and the total amount paid over by him.

(*c*) Separate and independent gifts made by one person in a particular year need be aggregated to determine if his contributions and bequests exceed $5,000 (and in excess of 2 percent if (*a*) of this subdivision is applicable), only if such gifts are of $1,000 or more.

(*d*)(*1*) Organizations described in section 501(c) (8) or (10) (and, for taxable years beginning after December 31, 1970, organizations described in section 501(c)(7)) that receive contributions or bequests to be used exclusively for purposes described in section 170(c)(4), 2055(a)(3), or 2522(a)(3), must attach a schedule with respect to all gifts which aggregate more than $1,000 from any one person showing the name of the donor, the amount of the contribution or bequest, the specific purpose for which such amount was received, and the specific use to which such amount was put. In the case of an amount set aside for such purposes, the organization shall indicate the manner in which such amount is held (for instance, whether such amount is commingled with amounts held for other purposes). If the contribution or bequest was transferred to another organization, the schedule must include the name of the transferee organization, a description of the nature of such organization, and a description of the relationship between the transferee and transferor organizations.

(*2*) For taxable years beginning after December 31, 1970, such organizations must also attach a statement showing the total dollar amount of contributions and bequests received for such purposes which are $1,000 or less.

(iv) *Listing of States.* A private foundation is required to attach to its return required by this section a list of all States:

(*a*) To which the organization reports in any fashion concerning its organization, assets, or activities, or

(*b*) With which the organization has registered (or which it has otherwise notified in any manner) that it intends to be, or is, a charitable organization or a holder of property devoted to a charitable purpose.

(3)(i) For taxable years beginning after December 31, 1969, and ending before December 31, 1971, every employee's trust described in section 401(a)

which is exempt from taxation under section 501(a) shall file an annual return on Form 990–P. The return shall include the information required by paragraph (b)(5)(ii) of § 1.401–1. For such years, in addition, the trust must file the information required to be filed by the employer pursuant to the provisions of § 1.404(a)–2, unless the employer has notified the trustee in writing that he has filed or will timely file such information. If the trustee has received such notification from the employer, then such notification, or a copy thereof, shall be retained by the trust as a part of its records.

(ii) For taxable years ending on or after December 31, 1971, and before December 31, 1975, every employee's trust described in section 401(a) which is exempt from taxation under section 501(a) shall file an annual return on Form 990–P. The trust shall furnish such information as is required by such form and the instructions issued with respect thereto.

(4) For taxable years beginning after December 31, 1980, trusts described in section 4947(a)(1) and nonexempt private foundations shall comply with the requirements of section 6033 and this section in the same manner as organizations described in section 501(c)(3) which are exempt from tax under section 501(a). This section shall be applied for taxable years beginning after December 31, 1980 as if trusts described in section 4947(a)(1) and nonexempt private foundations were described in section 501(c)(3). Therefore, for purposes of this section, all references to exempt organizations shall include section 4947(a)(1) trusts and nonexempt private foundations and all references to private foundations shall include section 4947(a)(1) trusts that would be private foundations if they were described in section 501(c)(3) and all nonexempt private foundations. Similarly, for purposes of paragraph (a)(2)(ii)(d), the purposes for which a section 4947(a)(1) trust or a nonexempt private foundation is organized shall be treated as the purposes for which it is exempt. For purposes of this section, the term ''nonexempt private foundation'' means a taxable organization (other than a section 4947(a)(1) trust) that is a private foundation. See section 509(b) and § 1.509(b)–1. See also section 642(c)(6) and § 1.642(c)–4.

(b) *Accounting period for filing return.* A return required by this section shall be on the basis of the established annual accounting period of the organization. If the organization has no such established accounting period, such return shall be on the basis of the calendar year.

(c) *Returns when exempt status not established.* An organization claiming an exempt status under section 501(a) prior to the establishment of such exempt status under section 501 and § 1.501(a)–1, shall file a return required by this section in accordance with the instructions applicable thereto. In such case the organization must indicate on such return that it is being filed in the belief that the organization is exempt under section 501(a), but that the Internal Revenue Service has not yet recognized such exemption.

(d) *Group returns.* (1) A central, parent, or like organization (referred to in this paragraph as ''central organization''), exempt under section 501(a) and described in section 501(c) (other than a private foundation), although required to file a separate annual return for itself under section 6033 and paragraph (a) of this section, may file annually, in addition to such separate annual return, a group return on Form 990. Such group return may be filed for two or more of the local organizations, chapters, or the like (referred to in this paragraph as ''local organizations'') which are (i) affiliated with such central organization at the close of its annual accounting period, (ii) subject to the general supervision or control of the central organization, and (iii) exempt from taxation under the same paragraph of section 501(c) of the Code, although the local organizations are not necessarily exempt under the paragraph under which the central organization is exempt. Such group return may not be filed for a local organization which is a private foundation.

(2)(i) The filing of the group return shall be in lieu of the filing of a separate return by each of the local organizations included in the group return. The group return shall include only those local organizations which in

writing have authorized the central organization to include them in the group return, and which have made and filed, with the central organization, their statements, specifically stating their items of gross income, receipts, and disbursements, and such other information relating to them as is required to be stated in the group return. Such an authorization and statement by a local organization shall be made under the penalties of perjury, shall be signed by a duly authorized officer of the local organization in his official capacity, and shall contain the following statement, or a statement of like import: ''I hereby declare under the penalties of perjury that this authorization (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true, correct and complete and made in good faith.'' Such authorization and statement with respect to a local organization shall be retained by the central organization until the expiration of 6 years after the last taxable year for which a group return filed by such central organization includes such local organization.

(ii) There shall be attached to the group return and made a part thereof a schedule showing the name, address, and employer identification number of each of the local organizations and the total number thereof included in such return, and a schedule showing the name, address, and employer identification number of each of the local organizations and the total number thereof not included in the group return.

(3) The group return shall be on the basis of the established annual accounting period of the central organization. Where such central organization has no established annual accounting period, such return shall be on the basis of the calendar year. The same income, receipts, and disbursements of a local organization shall not be included in more than one group return.

(4) The group return shall be filed in accordance with these regulations and the instructions issued with respect to Form 990, and shall be considered the return of each local organization included therein. The tax exempt status of a local organization must be established under a group exemption letter issued to the central organization before a group return including the local organization will be considered as the return of the local organization. See §1.501(a)–1 for requirements for establishing a tax-exempt status.

(5) In providing the information required by paragraph (a)(2)(ii) (*f*), (*g*), and (*h*) of this section, such information may be provided:

(i) With respect to the central or parent organization on its Form 990, and with respect to the local organizations on separate schedules attached to the group return for the year, or

(ii) On a consolidated basis for all the local organizations and the central or parent organization on the group return.

Such information need be provided only with respect to those local organizations which are not excepted from filing under the provisions of paragraph (g) of this section. A central or parent organization shall indicate whether it has provided such information in the manner described in subdivision (i) or in subdivision (ii) of this subparagraph, and may not change the manner in which it provides such information without the consent of the Commissioner.

(e) *Time and place for filing*. The annual return required by this section shall be filed on or before the 15th day of the fifth calendar month following the close of the period for which the return is required to be filed. The annual return on Form 1065 required to be filed by a religious or apostolic association or corporation shall be filed on or before the 15th day of the fourth month following the close of the taxable year for which the return is required to be filed. Each such return shall be filed in accordance with the instructions applicable thereto.

(f) *Penalties and additions to tax*. For penalties and additions to tax for failure to file a return and filing a false or fraudulent return, see sections 6652, 7203, 7206, and 7207.

(g) *Organizations not required to file annual returns*. (1) Annual returns required by this section are not required to be filed by an organization exempt

from taxation under section 501(a) which is:

(i) A church, an interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church (as defined in paragraph (h) of this section);

(ii) An exclusively religious activity of any religious order;

(iii) An organization (other than a private foundation) the gross receipts of which in each taxable year are normally not more than $5,000 (as described in subparagraph (3) of this paragraph);

(iv) A mission society sponsored by or affiliated with one or more churches or church denominations, more than one-half of the activities of which society are conducted in, or directed at persons in foreign countries;

(v) A State institution, the income of which is excluded from gross income under section 115(a);

(vi) An organization described in section 501(c)(1); or

(vii) An educational organization (below college level) that is described in section 170(b)(1)(A)(ii), that has a program of a general academic nature, and that is affiliated (within the meaning of paragraph (h)(2) of this section) with a church or operated by a religious order.

(2) The provisions of section 6033(a) relieving certain specified types of organizations exempt from taxation under section 501(a) from filing annual returns do not abridge or impair in any way the powers and authority of district directors or directors of service centers provided for in other provisions of the Code and in regulations thereunder to require the filing of returns or notices by such organizations. See section 6001 and § 1.6001–1.

(3) For purposes of subparagraph (1)(iii) of this paragraph, the gross receipts (as defined in subparagraph (4) of this paragraph) of an organization are normally not more than $5,000 if:

(i) In the case of an organization which has been in existence for 1 year or less, the organization has received, or donors have pledged to give, gross receipts of $7,500 or less during the first taxable year of the organization,

(ii) In the case of an organization which has been in existence for more than one but less than 3 years, the average of the gross receipts received by the organization in its first 2 taxable years is $6,000 or less, and

(iii) In the case of an organization which has been in existence for 3 years or more, the average of the gross receipts received by the organization in the immediately preceding 3 taxable years, including the year for which the return would be required to be filed, is $5,000 or less.

(4) For purposes of this paragraph and paragraph (a)(2) of this section, ''gross receipts'' means the gross amount received by the organization during its annual accounting period from all sources without reduction for any costs or expenses including, for example, cost of goods or assets sold, cost of operations, or expenses of earning, raising, or collecting such amounts. Thus ''gross receipts'' includes, but is not limited to (i) the gross amount received as contributions, gifts, grants, and similar amounts without reduction for the expenses of raising and collecting such amounts, (ii) the gross amount received as dues or assessments from members or affiliated organizations without reduction for expenses attributable to the receipt of such amounts, (iii) gross sales or receipts from business activities (including business activities unrelated to the purpose for which the organization qualifies for exemption, the net income or loss from which may be required to be reported on Form 990–T), (iv) the gross amount received from the sale of assets without reduction for cost or other basis and expenses of sale, and (v) the gross amount received as investment income, such as interest, dividends, rents, and royalties.

(5) [Reserved]

(6) The Commissioner may relieve any organization or class of organizations from filing, in whole or in part, the annual return required by this section where he determines that such returns are not necessary for the efficient administration of the internal revenue laws.

(h) *Integrated auxiliary*—(1) *In general*. For purposes of this title, the *term integrated auxiliary of a church* means an organization that is—

(i) Described both in sections 501(c)(3) and 509(a) (1), (2), or (3);

(ii) Affiliated with a church or a convention or association of churches; and

(iii) Internally supported.

(2) *Affiliation*. An organization is affiliated with a church or a convention or association of churches, for purposes of paragraph (h)(1)(ii) of this section, if—

(i) The organization is covered by a group exemption letter issued under applicable administrative procedures, (such as Rev. Proc. 80–27 (1980–1 C.B. 677); See §601.601(a)(2)(ii)(*b*)), to a church or a convention or association of churches;

(ii) The organization is operated, supervised, or controlled by or in connection with (as defined in §1.509(a)–4) a church or a convention or association of churches; or

(iii) Relevant facts and circumstances show that it is so affiliated.

(3) *Facts and circumstances*. For purposes of paragraph (h)(2)(iii) of this section, relevant facts and circumstances that indicate an organization is affiliated with a church or a convention or association of churches include the following factors. However, the absence of one or more of the following factors does not necessarily preclude classification of an organization as being affiliated with a church or a convention or association of churches—

(i) The organization's enabling instrument (corporate charter, trust instrument, articles of association, constitution or similar document) or bylaws affirm that the organization shares common religious doctrines, principles, disciplines, or practices with a church or a convention or association of churches;

(ii) A church or a convention or association of churches has the authority to appoint or remove, or to control the appointment or removal of, at least one of the organization's officers or directors;

(iii) The corporate name of the organization indicates an institutional relationship with a church or a convention or association of churches;

(iv) The organization reports at least annually on its financial and general operations to a church or a convention or association of churches;

(v) An institutional relationship between the organization and a church or a convention or association of churches is affirmed by the church, or convention or association of churches, or a designee thereof; and

(vi) In the event of dissolution, the organization's assets are required to be distributed to a church or a convention or association of churches, or to an affiliate thereof within the meaning of this paragraph (h).

(4) *Internal support*. An organization is internally supported, for purposes of paragraph (h)(1)(iii) of this section, unless it both—

(i) Offers admissions, goods, services or facilities for sale, other than on an incidental basis, to the general public (except goods, services, or facilities sold at a nominal charge or for an insubstantial portion of the cost); and

(ii) Normally receives more than 50 percent of its support from a combination of governmental sources, public solicitation of contributions, and receipts from the sale of admissions, goods, performance of services, or furnishing of facilities in activities that are not unrelated trades or businesses.

(5) *Special rule*. Men's and women's organizations, seminaries, mission societies, and youth groups that satisfy paragraphs (h)(1) (i) and (ii) of this section are integrated auxiliaries of a church regardless of whether such an organization meets the internal support requirement under paragraph (h)(1)(iii) of this section.

(6) *Effective date*. This paragraph (h) applies for returns filed for taxable years beginning after December 31, 1969. For returns filed for taxable years beginning after December 31, 1969 but beginning before December 20, 1995, the definition for the term *integrated auxiliary of a church* set forth in §1.6033–2(g)(5) (as contained in the 26 CFR edition revised as of April 1, 1995) may be used as an alternative definition to such term set forth in this paragraph (h).

(7) *Examples of internal support.* The internal support test of this paragraph (h) is illustrated by the following examples, in each of which it is assumed that the organization's provision of goods and services does not constitute an unrelated trade or business:

Example 1. Organization A is described in sections 501(c)(3) and 509(a)(2) and is affiliated (within the meaning of this paragraph (h)) with a church. Organization A publishes a weekly newspaper as its only activity. On an incidental basis, some copies of Organization A's publication are sold to nonmembers of the church with which it is affiliated. Organization A advertises for subscriptions at places of worship of the church. Organization A is internally supported, regardless of its sources of financial support, because it does not offer admissions, goods, services, or facilities for sale, other than on an incidental basis, to the general public. Organization A is an integrated auxiliary.

Example 2. Organization B is a retirement home described in sections 501(c)(3) and 509(a)(2). Organization B is affiliated (within the meaning of this paragraph (h)) with a church. Admission to Organization B is open to all members of the community for a fee. Organization B advertises in publications of general distribution appealing to the elderly and maintains its name on non-denominational listings of available retirement homes. Therefore, Organization B offers its services for sale to the general public on more than an incidental basis. Organization B receives a cash contribution of $50,000 annually from the church. Fees received by Organization B from its residents total $100,000 annually. Organization B does not receive any government support or contributions from the general public. Total support is $150,000 ($100,000 + $50,000), and $100,000 of that total is from receipts from the performance of services (66⅔% of total support). Therefore, Organization B receives more than 50 percent of its support from receipts from the performance of services. Organization B is not internally supported and is not an integrated auxiliary.

Example 3. Organization C is a hospital that is described in sections 501(c)(3) and 509(a)(1). Organization C is affiliated (within the meaning of this paragraph (h)) with a church. Organization C is open to all persons in need of hospital care in the community, although most of Organization C's patients are members of the same denomination as the church with which Organization C is affiliated. Organization C maintains its name on hospital listings used by the general public, and participating doctors are allowed to admit all patients. Therefore, Organization C offers its services for sale to the general public on more than an incidental basis. Organization C annually receives $250,000 in support from the church, $1,000,000 in payments from patients and third party payors (including Medicare, Medicaid and other insurers) for patient care, $100,000 in contributions from the public, $100,000 in grants from the federal government (other than Medicare and Medicaid payments) and $50,000 in investment income. Total support is $1,500,000 ($250,000 + $1,000,000 + $100,000 + $100,000 + $50,000), and $1,200,000 ($1,000,000 + $100,000 + $100,000) of that total is support from receipts from the performance of services, government sources, and public contributions (80% of total support). Therefore, Organization C receives more than 50 percent of its support from receipts from the performance of services, government sources, and public contributions. Organization C is not internally supported and is not an integrated auxiliary.

(i) *Records, statements, and other returns of tax-exempt organizations.* (1) An organization which is exempt from taxation under section 501(a) and is not required to file annually an information return required by this section shall immediately notify in writing the district director for the internal revenue district in which its principal office is located of any changes in its character, operations, or purpose for which it was originally created.

(2) Every organization which is exempt from tax, whether or not it is required to file an annual information return, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status and administering the provisions of subchapter F (section 501 and following), chapter 1 of subtitle A of the Code, section 6033, and chapter 42 of subtitle D of the Code. See section 6001 and §1.6001–1 with respect to the authority of the district directors or directors of service centers to require such additional information and with respect to the books of account or records to be kept by such organizations.

(3) An organization which has established its exemption from taxation under section 501(a), including an organization which is relieved under section 6033 and this section from filing annual returns of information, is not relieved of the duty of filing other returns of information. See, for example, sections 6041, 6043, 6051, 6057, and 6058 and the regulations thereunder.

(j) *Unrelated business tax returns*. In addition to the foregoing requirements of this section, certain organizations otherwise exempt from tax under section 501(a) which are subject to tax on unrelated business taxable income are also required to file returns on Form 990–T. See paragraph (e) of § 1.6012–2 and paragraph (a)(5) of § 1.6012–3 for requirements with respect to such returns.

(k) *Effective/applicability date*. The provisions of this section shall apply with respect to returns filed for taxable years beginning after December 31, 1969. The applicability of paragraphs (a)(2)(ii)(*g*) and (a)(2)(ii)(*h*) of this section shall be limited to taxable years beginning before January 1, 2008.

[T.D. 7122, 36 FR 11026, June 8, 1971; 36 FR 11730, June 18, 1971]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.6033–2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 1.6033–2T Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980) (temporary).

(a)(1) through (a)(2)(ii)(*f*) [Reserved] For further guidance, see § 1.6033–2(a)(1) through (a)(2)(ii)(*f*).

(*g*) The names and addresses of all officers, directors, or trustees (or any person having responsibilities or powers similar to those of officers, directors or trustees) of the organization, and, in the case of a private foundation, all persons who are foundation managers, within the meaning of section 4946(b)(1). Organizations must also attach a schedule showing the names and addresses and/or total numbers of key employees, highly compensated employees and independent contractors as prescribed by publication, form or instructions.

(*h*) A schedule showing the compensation and other payments made to each person whose name is required to be listed in paragraph (a)(2)(ii)(*g*) of this section during the calendar year ending within the organization's annual accounting period, or during such other period as prescribed by publication, form or instructions

(a)(2)(ii)(*i*) through (*j*) [Reserved] For further guidance, see § 1.6033–2(a)(2)(ii)(i) through (j).

(k) *Effective/applicability date*—(1) *Effective date*. These regulations are effective on September 9, 2008.

(2) *Applicability date*. The regulations in paragraphs (a)(2)(ii)(*g*) and (a)(2)(ii)(*h*) of this section shall apply to taxable years beginning on or after January 1, 2008.

(3) *Expiration date*. The applicability of this section expires September 8, 2011.

[T.D. 9423, 73 FR 52555, Sept. 9, 2008]

§ 1.6033–3 Additional provisions relating to private foundations.

(a) *In general*. The foundation managers (as defined in section 4946(b)) of every organization (including a trust described in section 4947(a)(1)) which is (or is treated as) a private foundation (as defined in section 509) the assets of which are at least $5,000 at any time during a taxable year shall include the following information on its annual return in addition to that information required under § 1.6033–2(a):

(1) An itemized statement of its securities and all other assets at the close of the year, showing both book and market value,

(2) An itemized list of all grants and contributions made or approved for future payment during the year, showing the amount of each such grant or contribution, the name and address of the recipient (other than a recipient who is not a disqualified person and who receives, from the foundation, grants to indigent or needy persons that, in the aggregate, do not exceed $1,000 during the year), any relationship between any individual recipient and the foundation's managers or substantial contributors, and a concise statement of the purpose of each such grant or contribution,

(3) The address of the principal office of the foundation and (if different) of the place where its books and records are maintained,

(4) The names and addresses of its foundation managers (within the meaning of section 4946(b)), that are substantial contributors (within the meaning of section 507(d)(2)) or that own 10 percent or more of the stock of any corporation of which the foundation owns 10 percent or more of the stock, or corresponding interests in partnerships or other entities, in which the foundation has a 10 percent or greater interest.

For purposes of subparagraph (2) of this paragraph, the business address of an individual grant recipient or foundation manager may be used by the foundation in its annual return in lieu of the home address of such recipient or manager, and the term ''relationship'' shall include, but is not limited to, any case in which an individual recipient of a grant or contribution by a private foundation is (i) a member of the family (as defined in section 4946(d)) of a substantial contributor or foundation manager of such foundation, (ii) a partner of such substantial contributor or foundation manager, or (iii) an employee of such substantial contributor or foundation manager or of an organization which is effectively controlled (within the meaning of section 4946(a)(1)(H)(i) and the regulations thereunder), directly or indirectly, by one or more such substantial contributors or foundation managers.

(b) *Notice to public of availability of annual return.* A copy of the notice required by section 6104(d) (relating to public inspection of private foundations' annual returns), and proof of publication thereof, shall be filed with the annual return required by § 1.6033–2(a). A copy of such notice as published, and a statement signed by a foundation manager stating that such notice was published, setting forth the date of publication and the publication in which it appeared, shall be sufficient proof of publication for purposes of this paragraph.

(c) *Special rules*—(1) *Furnishing of copies to State officers.* The foundation managers of a private foundation shall furnish a copy of the annual return required by section 6033 and § 1.6033–2 to the Attorney General of:

(i) Each State which the foundation is required to list on its return pursuant to § 1.6033–2(a)(2)(iv),

(ii) The State in which is located the principal office of the foundation, and

(iii) The State in which the foundation was incorporated or created.

The annual return shall be sent to each Attorney General described in paragraphs (c)(1) (i), (ii), or (iii) of this section at the same time as it is sent to the Internal Revenue Service. Upon request the foundation managers shall also furnish a copy of the annual return to the Attorney General or other appropriate State officer (within the meaning of section 6104 (c)(2)) of any State. The foundation managers shall attach to each copy of the annual return sent to State officers under this subparagraph a copy of the Form 4720, if any, filed by the foundation for the year.

(2) *Cross-reference.* For additional rules with respect to private foundations' returns and the public inspection of such returns, see section 6104(d) and the regulations thereunder.

(d) *Special rules for certain foreign organizations.* The provisions of paragraphs (b) and (c) of this section shall not apply with respect to an organization described in section 4948(b). The foundation managers of such organizations are not required to publish notice of availability of the annual return for inspection, to make the annual return available at the principal office of the foundation for public inspection under section 6104(d), or to send copies of the annual return to State officers.

(e) *Effective date.* The provisions of this section shall apply with respect to returns filed for taxable years beginning after December 31, 1980.

[T.D. 8026, 50 FR 20756, May 20, 1985]

§ 1.6033–4 Required use of magnetic media for returns by organizations required to file returns under section 6033.

The return of an organization that is required to be filed on magnetic media under § 301.6033–4 of this chapter must be filed in accordance with Internal Revenue Service revenue procedures,

publications, forms, or instructions, including those posted electronically. (See § 601.601(d)(2) of this chapter).

[T.D. 9364, 72 FR 63810, Nov. 13, 2007]

§ 1.6033–5T Disclosure by tax-exempt entities that are parties to certain reportable transactions (temporary).

(a) *In general.* Every tax-exempt entity (as defined in section 4965(c)) shall file with the IRS on Form 8886–T, ''Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction'' (or a successor form), in accordance with this section and the instructions to the form, a disclosure of—

(1) Such entity's being a party (as defined in paragraph (b) of this section) to a prohibited tax shelter transaction (as defined in section 4965(e)); and

(2) The identity of any other party (whether taxable or tax-exempt) to such transaction that is known to the tax-exempt entity.

(b) *Definition of tax-exempt party to a prohibited tax shelter transaction*—(1) *In general.* For purposes of section 6033(a)(2), a tax-exempt entity is a party to a prohibited tax shelter transaction if the entity—

(i) Facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax indifferent or tax-favored status;

(ii) Enters into a listed transaction and the tax-exempt entity's tax return (whether an original or an amended return) reflects a reduction or elimination of its liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction; or

(iii) Is identified in published guidance, by type, class or role, as a party to a prohibited tax shelter transaction.

(2) Published guidance may identify which tax-exempt entities, by type, class or role, will not be treated as a party to a prohibited tax shelter transaction for purposes of section 6033(a)(2).

(c) *Frequency of disclosure.* A single disclosure is required for each prohibited tax shelter transaction.

(d) *By whom disclosure is made*—(1) *Tax-exempt entities referred to in section 4965(c)(1), (2) or (3).* In the case of tax-exempt entities referred to in section 4965(c)(1), (2) or (3), the disclosure required by this section must be made by the entity.

(2) *Tax-exempt entities referred to in section 4965(c)(4), (5), (6) or (7).* In the case of tax-exempt entities referred to in section 4965(c)(4), (5), (6) or (7), including a fully self-directed qualified plan, IRA, or other savings arrangement, the disclosure required by this section must be made by the entity manager (as defined in section 4965(d)(2)) of the entity.

(e) *Time and place for filing*—(1) *Tax-exempt entities described in paragraph (b)(1)(i) of this section*—

(i) *In general.* The disclosure required by this section shall be filed on or before May 15 of the calendar year following the close of the calendar year during which the tax-exempt entity entered into the prohibited tax shelter transaction.

(ii) *Subsequently listed transactions.* In the case of subsequently listed transactions (as defined in section 4965(e)(2)), the disclosure required by this section shall be filed on or before May 15 of the calendar year following the close of the calendar year during which the transaction was identified by the Secretary as a listed transaction.

(2) *Tax-exempt entities described in paragraph (b)(1)(ii) of this section.* The disclosure required by this section shall be filed on or before the date on which the first tax return (whether an original or an amended return) is filed which reflects a reduction or elimination of the tax-exempt entity's liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction.

(3) *Transition rule.* If a tax-exempt entity entered into a prohibited tax shelter transaction after May 17, 2006 and before January 1, 2007, the disclosure required by this section shall be filed—

(i) In the case of tax-exempt entities described in paragraph (b)(1)(i) of this section, on or before November 5, 2007;

(ii) In the case of tax-exempt entities described in paragraph (b)(1)(ii) of this section, on or before the later of—

(A) November 5, 2007; or

(B) The date on which the first tax return (whether an original or an amended return) is filed which reflects a reduction or elimination of the tax-exempt entity's liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction.

(4) Disclosure is not required with respect to any prohibited tax shelter transaction entered into by a tax-exempt entity on or before May 17, 2006.

(f) *Penalty for failure to provide disclosure statement*. See section 6652(c)(3) for penalties applicable to failure to disclose a prohibited tax shelter transaction in accordance with this section.

(g) *Effective date*—(1) *Applicability date*. This section applies with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

(2) *Expiration date*. This section will expire on July 6, 2010.

[T.D. 9335, 72 FR 36870, July 6, 2007; 72 FR 45890, Aug. 16, 2007]

§ 1.6033–6T Notification requirement for entities not required to file an annual information return under section 6033(a)(1) (taxable years beginning after December 31, 2006).

(a) *In general*. Except as otherwise provided in this paragraph, every organization exempt from taxation under section 501(a) that is not required to file a return described in § 1.6033–2(a)(2), other than an organization described in section 401(a) or 501(d), shall submit annually, in electronic form, a notification setting forth the items described in paragraph (b) of this section and such other information as may be prescribed in the instructions and publications issued with respect to the notification.

(b) *Organizations not required to submit annual notification*. (1) An organization exempt from taxation under section 501(a) that is required to file or files an annual information return under section 6033(a)(1) shall not submit an annual notification under section 6033(i). This includes the following types of organizations:

(i) Any organization included in a group return for that year under § 1.6033–2(d).

(ii) All private foundations required to file under § 1.6033–2(a)(2)(i) Form 990–PF, ''Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation.''

(iii) Section 509(a)(3) supporting organizations required to file under § 1.6033–2(a)(2)(i) Form 990, ''Return of Organization Exempt From Income Tax,'' or Form 990–EZ, ''Short Form Return or Organization Exempt From Income Tax.''

(iv) A section 501(c)(21) black lung trust required to file under § 1.6033–2(a)(2)(i) Form 990–BL.

(v) Any organization that is required to file or files an annual information return under section 6033(a)(1) on any other form prescribed by the Internal Revenue Service for that purpose.

(2) An organization exempt from taxation under section 501(a) that is not required to file a return under section 6033(a)(1) is also not required to submit an annual notification under section 6033(i). This includes the following types of organizations:

(i) A church, an interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church (as defined in § 1.6033–2(h)).

(ii) An exclusively religious activity of any religious order.

(iii) A mission society sponsored by or affiliated with one or more churches or church denominations, more than one-half of the activities of which society are conducted in, or directed at persons in, foreign countries.

(iv) An educational organization (below college level) described in section 170(b)(1)(A)(ii), that has a program of a general academic nature, and that is affiliated (within the meaning of § 1.6033–2(h)(2)) with a church or operated by a religious order.

(v) A State institution, the income of which is excluded from gross income under section 115(a);

(vi) An organization described in section 501(c)(1); or

(vii) An organization that is a governmental unit or an affiliate of a governmental unit exempt from Federal income tax under section 501(a).

(3) If an organization exempt from taxation under section 501(a) is not described in paragraph (b)(1) or (2) of this section, the organization must submit an annual notification. Thus, a black lung trust that normally has gross receipts of $25,000 or less is not required to file Form 990–BL but is required to submit electronic notification. A section 509(a)(3) supporting organization of a religious organization that normally has gross receipts of $5,000 or less is not required to file Form 990 or Form 990–EZ but is required to submit electronic notification.

(c) *Additional notification requirements*—(1) *In general.* Any organization described in paragraph (a)(1) of this section shall submit an annual notification described in section 6033(i)(1). The annual notification shall—

(i) Be in electronic form; and

(ii) Set forth—

(A) The legal name of the organization;

(B) Any name under which the organization operates or does business;

(C) The organization's mailing address and Internet Web site address (if any);

(D) The organization's taxpayer identification number;

(E) The name and address of a principal officer;

(F) Evidence of the continuing basis for the organization's exemption from the filing requirements under section 6033(a)(1); and

(G) Additional information necessary to process the notification.

(2) The mailing address required by section 6033(i)(1)(C) and submitted in the annual notification shall be the organization's last known address as provided by § 301.6212–2(a) of this chapter. This last known address may be updated as provided under § 301.6212–2 of this chapter, or by clear and concise notification. The Internal Revenue Service will use this last known address as the organization's address of record and will direct all mailings to this address.

(3) By submitting the annual notification described in this paragraph (c)(1), an organization acknowledges that it is not required to file a return under section 6033(a) because its annual gross receipts are not normally in excess of $25,000. In order to make this determination, the organization must keep records that enable it to calculate its gross receipts. All organizations are required to maintain records under section 6001. These records will provide evidence of the continuing basis for the organization's exemption from the filing requirements under section 6033(a)(1).

(4) If an organization that is required to submit an annual electronic notification files a complete Form 990 or Form 990–EZ the annual notification requirement shall be deemed satisfied. The annual notification requirement is not satisfied if the Form 990 or Form 990–EZ contains only those items of information that would have been required by submitting the notification in electronic form. Also, the filing of a complete Form 990 or Form 990–EZ, rather than the submission of an annual electronic notification, is the filing of a return that starts the period of limitations for assessment under section 6501(g)(2).

(d) *No effect on other filing requirements.* An organization that is relieved from filing an information return under section 6033(a) is still subject to the requirements of § 1.6033–2(i) and (j), concerning notice regarding changes in character, operations, or purpose; providing additional information; duty to file other returns of information; and duty to file unrelated business tax returns. If an organization is required to file an unrelated business tax return, Form 990–T, ''Exempt Organization Business Income Tax Return,'' the filing of that return does not relieve the organization from the requirement of submitting notification under section 6033(i).

(e) *Accounting period for submitting electronic notification.* An annual notification required by this section shall be on the basis of the established annual accounting period of the organization. If the organization has no established accounting period, annual notification shall be on the basis of the calendar year.

(f) *Time and place for submitting electronic notification*. The annual notification required by this section shall be submitted on or before the 15th day of the fifth calendar month following the close of the period for which the notification is required to be submitted. Thus, an organization with an accounting period ending December 31, 2007, is required to submit annual notification by May 15, 2008. The notification shall be submitted in accordance with instructions and publications, including those provided at the Internal Revenue Service Web site for exempt organizations.

(g) *Effective/applicability date*. These regulations are applicable to annual periods beginning after 2006.

(h) *Expiration date*. These regulations expire November 15, 2010.

[T.D. 9366, 72 FR 64149, Nov. 15, 2007; 72 FR 71061, Dec. 14, 2007]

§ 1.6034–1 Information returns required of trusts described in section 4947(a)(2) or claiming charitable or other deductions under section 642(c).

(a) *In general*. Every trust (other than a trust described in paragraph (b) of this section) claiming a charitable or other deduction under section 642(c) for the taxable year shall file, with respect to such taxable year, a return of information on form 1041–A. In addition, for taxable years beginning after December 31, 1969, every trust (other than a trust described in paragraph (b) of this section) described in section 4947(a)(2) (including trusts described in section 664) shall file such return for each taxable year, unless all transfers in trust occurred before May 27, 1969. The return shall set forth the name and address of the trust and the following information concerning the trust in such detail as is prescribed by the form or in the instructions issued with respect to such form:

(1) The amount of the charitable or other deduction taken under section 642(c) for the taxable year (and, for taxable years beginning prior to January 1, 1970, showing separately for each class of activity for which disbursements were made (or amounts were permanently set aside) the amounts which, during such year, were paid out (or which were permanently set aside) for charitable or other purposes under section 642(c));

(2) The amount paid out during the taxable year which represents amounts permanently set aside in prior years for which charitable or other deductions have been taken under section 642(c), and separately listing for each class of activity, for which disbursements were made, the total amount paid out;

(3) The amount for which charitable or other deductions have been taken in prior years under section 642(c) and which had not been paid out at the beginning of the taxable year;

(4)(i) The amount paid out of principal in the taxable year for charitable, etc., purposes, and separately listing for each such class of activity, for which disbursements were made, the total amount paid out;

(ii) The total amount paid out of principal in prior years for charitable, etc., purposes;

(5) The gross income of the trust for the taxable year and the expenses attributable thereto, in sufficient detail to show the different categories of income and of expense; and

(6) A balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of the taxable year.

(b) *Exceptions*—(1) *In general*. A trust is not required to file a Form 1041–A for any taxable year with respect to which the trustee is required by the terms of the governing instrument and applicable local law to distribute currently all of the income of the trust. For this purpose, the income of the trust shall be determined in accordance with section 643(b) and §§ 1.643(b)–1 and 1.643(b)–2.

(2) *Trusts described in section 4947(a)(1)*. For taxable years beginning after December 31, 1980, a trust described in section 4947(a)(1) is not required to file a Form 1041–A.

(c) *Time and place for filing return*. The return on form 1041–A shall be filed on or before the 15th day of the 4th month following the close of the taxable year of the trust, with the internal revenue officer designated by the instructions applicable to such form.

For extensions of time for filing returns under this section, see § 1.6081–1.

(d) *Other provisions.* For publicity of information on Form 1041–A, see section 6104 and the regulations thereunder in part 301 of this chapter. For provisions relating to penalties for failure to file a return required by this section, see section 6652(d). For the criminal penalties for a willful failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 7563, 43 FR 40221, Sept. 11, 1978; T.D. 8026, 50 FR 20757, May 20, 1985]

§ 1.6035–1 Returns of U.S. officers, directors and 10-percent shareholders of foreign personal holding companies for taxable years beginning after September 3, 1982.

(a) *Requirement of returns*—(1) *In general.* For taxable years of a foreign personal holding company beginning after September 3, 1982, each United States citizen or resident who is an officer, director, or 10-percent shareholder of the foreign personal holding company (as defined in section 552) shall file with his income tax return, on or before the date that return is due, Form 5471 and the applicable schedules to be completed in accordance with the instructions setting forth corporate, shareholder, and income information for the foreign personal holding company's annual accounting period that ends with or within the officer's, director's, or shareholder's taxable year. In the case of a foreign personal holding company which is a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period.

(2) *General corporate information.* The general foreign personal holding company information required by this section with respect to each taxable year is as follows:

(i) The name and address and employer identification number (if any) of the corporation;

(ii) The kind of business in which the corporation is engaged;

(iii) The date of its incorporation;

(iv) The country under the laws of which the corporation is incorporated;

(v) A description of each class of stock issued and outstanding by the corporation for the beginning and end of the annual accounting period;

(vi) The number of shares and par value of common stock of the corporation issued and outstanding as of the beginning and end of the taxable year;

(vii) The number of shares and par value of preferred stock of the corporation issued and outstanding as of the beginning and end of the taxable year, the rate of dividend on such stock and whether such dividend is cumulative or noncumulative; and

(viii) Any other information required by the appropriate form and its instructions.

For purposes of this paragraph, the term ''share'' includes any security convertible into a share in the corporation and any option granted by the corporation with respect to any share in the corporation.

(3) *Shareholder information.* The shareholder information required by this section is as follows:

(i) The name, address and taxpayer identification number (if any) of each person, whether foreign or U.S., who was a shareholder during the taxable year and the class and number of shares held by each, together with an explanation of any changes in stock holdings during the taxable year,

(ii) The name and address of each holder during the taxable year of securities convertible into stock of the corporation and the class, number, and face value of the securities held by each, together with and explanation of any changes in the holdings of such securities during the taxable year,

(iii) The name and address of each holder during the taxable year of any option granted by the corporation with respect to any share in the corporation, and a full description of the options held by each, together with an explanation of any changes in the holdings of such options during the taxable year, and

(iv) Any other information required by the appropriate form and its instructions.

(4) *Income information.* The income information required by this section is the gross income, deductions and credits, taxable income, foreign personal

holding company income, and undistributed foreign personal holding company income for the taxable year and other information required by the appropriate form and its instructions.

(b) *Persons required to file return*—(1) *In general*. The determination of whether a United States citizen or resident is person who is an officer, director, or 10-percent shareholder required to file a return with respect to any foreign corporation is made as of the date that Form 5471 is required to be filed. If there is no such person required to file on that date (because, for example, the corporation has been dissolved), then filing is required of the persons who were officers, directors or 10-percent shareholders on the last day of the most recent taxable year of the corporation for which there was such a person who was a United States citizen or resident.

(2) *10-percent shareholder*. (i) The term ''10-percent shareholder'' means any individual who owns directly or indirectly (within the meaning of section 544) 10 percent or more in value of the outstanding stock of a foreign corporation.

(ii) An individual who does not own 10 percent or more in value of the outstanding stock directly but is required to file solely by attribution of another United States person's stock ownership is excused from filing if the direct owner that is an individual furnishes all the information required.

(3) *Two or more persons required to submit the same information*. If two or more persons are required to furnish the information for the same foreign personal holding company for the same period, one person may make one return on Form 5471. The single Form 5471 may be filed with the income tax return of any one of the persons and shall disclose the name, address, and identifying number of each other person or persons on whose behalf the return is filed. Each person on whose behalf the return is filed remains liable for any penalties imposed under sections 6679, 7203, 7206, and 7207.

(4) *Statement required*. Any United States citizen or resident required to furnish information under this section with his return who does not do so by reason of the provisions of subparagraph (2)(ii) or (3) of this paragraph shall file a statement with his income tax return indicating that such requirement has been or will be satisfied and identifying the return with which the information was or will be filed and the place of filing.

(c) *Separate returns for each corporation*. If a person is required to file returns under section 6035 and this section with respect to more than one foreign personal holding company, separate returns must be filed with respect to each company.

(d) *Corrective filing*. If an information return with respect to a taxable year of a foreign personal holding company beginning after September 3, 1982, is filed before [date which is 30 days after the date of publication of a Treasury decision in the FEDERAL REGISTER] and that return does not contain all of the information required by this section, then the filer of the return shall file an amended information return containing all of such information within 90 days after June 4, 1985.

(e) *Penalties*—(1) *Criminal penalties*. For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

(2) *Civil penalties*. For civil penalties for failure to file a proper foreign personal holding company information return, see section 6679 and the regulations thereunder.

[T.D. 8028, 50 FR 23408, June 4, 1985; 50 FR 26359, June 26, 1985, as amended by T.D. 8573, 59 FR 64301, Dec. 14, 1994]

§ 1.6035–2 Returns of U.S. officers and directors of foreign personal holding companies for taxable years beginning before September 4, 1982.

For rules relating to information returns required to be filed by officers and directors of foreign personal holding companies for taxable years beginning before September 4, 1982, see section 6035(a) (as in effect before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) and 26 CFR 1.6035–1 (Revised as of April 1, 1981).

[T.D. 8028, 50 FR 23409, June 4, 1985]

§ 1.6035–3 Returns of 50-percent U.S. shareholders of foreign personal holding companies for taxable years beginning before September 4, 1982.

For rules relating to information returns required to be filed by shareholders of foreign personal holding companies for taxable years beginning before September 4, 1982, see section 6035(b) (as in effect before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) and 26 CFR 1.6035–2 (Revised as of April 1, 1961).

[T.D. 8028, 50 FR 23409, June 4, 1985]

§ 1.6036–1 Notice of qualification as executor or receiver.

For provisions relating to the notice required of fiduciaries, see the regulations under section 6036 contained in part 301 of this chapter (Regulations on Procedure and Administration).

§ 1.6037–1 Return of electing small business corporation.

(a) *In general*. Every small business corporation (as defined in section 1371(a)) which has made an election under section 1372(a) not to be subject to the tax imposed by chapter 1 of the Code shall file, with respect to each taxable year for which the election is in effect, a return of income on Form 1120–S. The return shall set forth the items of gross income and the deductions allowable in computing taxable income as required by the return form or in the instructions issued with respect thereto and shall be signed in accordance with section 6062 by the person authorized to sign a return. The return shall also set forth the following information concerning the electing small business corporation:

(1) The names and addresses of all persons owning stock in the corporation at any time during the taxable year;

(2) The number of shares of stock owned by each shareholder at all times during the taxable year;

(3) The amount of money and other property distributed by the corporation during the taxable year to each shareholder;

(4) The date of each distribution of money and other property; and

(5) Such other information as is required by the form or by the instructions issued with respect to such form.

(b) *Time and place for filing return*. The return shall be filed on or before the 15th day of the third month following the close of the taxable year with the internal revenue officer designated in the instructions applicable to Form 1120–S. (See section 6072.)

(c) *Other provisions*. The return on Form 1120–S will be treated as a return filed by the corporation under section 6012, relating to persons required to make returns of income, for purposes of the provisions of chapter 66 of the Code, relating to limitations. Thus, for example, the period of limitation on assessment and collection of any corporate tax found to be due upon a subsequent determination that the corporation was not entitled to the benefits of subchapter S, chapter 1 of the Code, will run from the date of filing the return under section 6037, or from the date prescribed for filing such return, whichever is the later. For the rules requiring the disclosure of certain transactions, see § 1.6011–4T.

(d) *Penalties*. For criminal penalties for failure to file a return, supply information, or pay tax, and for filing a false or fraudulent return, statement, or other document, see sections 7203, 7206, and 7207.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 7012, 34 FR 7690, May 15, 1969; T.D. 9000, 67 FR 41328, June 18, 2002]

§ 1.6037–2 Required use of magnetic media for income tax returns of electing small business corporations.

The return of an electing small business corporation that is required to be filed on magnetic media under § 301.6037–2 of this chapter must be filed in accordance with Internal Revenue Service revenue procedures, publications, forms, or instructions, including those posted electronically. (See § 601.601(d)(2) of this chapter).

[T.D. 9363, 72 FR 63810, Nov. 13, 2007]

§ 1.6038–1 Information returns required of domestic corporations with respect to annual accounting periods of certain foreign corporations beginning before January 1, 1963.

(a) *Requirement of return.* For taxable years beginning after December 31, 1960, every domestic corporation shall make a separate annual information return on Form 2952, in duplicate, with respect to each foreign corporation which it controls, as defined in paragraph (b) of this section, and with respect to each foreign subsidiary, as defined in paragraph (c) of this section, for each annual accounting period (described in paragraph (d) of this section) of each such controlled foreign corporation or foreign subsidiary beginning after December 31, 1960, and before January 1, 1963. Such information shall not be required to be furnished, however, with respect to a corporation defined in section 1504(d) of the Code which makes a consolidated return for the taxable year. For annual accounting periods beginning after December 31, 1962, see § 1.6038–2.

(b) *Control.* A domestic corporation shall be deemed to be in control of a foreign corporation if at any time during its taxable year it owns more than 50 percent of the voting stock of such foreign corporation.

(c) *Foreign subsidiary.* A foreign corporation more than 50 percent of the voting stock of which is owned by a controlled foreign corporation at any time during the annual accounting period of such controlled foreign corporation shall be considered a foreign subsidiary.

(d) *Period covered by return*—(1) *Controlled foreign corporation.* The information with respect to a controlled foreign corporation shall be furnished for its annual accounting period ending with or within the domestic corporation's taxable year.

(2) *Foreign subsidiary.* The information with respect to a foreign subsidiary shall be furnished for such subsidiary's annual accounting period ending with or within the controlled foreign corporation's annual accounting period.

(3) *Annual accounting period defined.* For purposes of this section, the annual accounting period of a controlled foreign corporation or of a foreign subsidiary is the annual period on the basis of which the controlled foreign corporation or foreign subsidiary regularly computes its income in keeping its books. The term ''annual accounting period'' may refer to a period of less than 1 year, where for example the foreign income, war profits, and excess profits taxes are determined on the basis of an accounting period of less than 1 year as described in section 902(c)(2).

(e) *Contents of return.* The return on Form 2952 shall contain the following information with respect to each controlled corporation and each foreign subsidiary:

(1) The name and address of the corporation;

(2) The principal place of business of the corporation;

(3) The date of incorporation and the country under whose laws incorporated;

(4) The nature of the corporation's business;

(5) As regards the outstanding stock of the corporation:

(i) A description of each class of the corporation's stock, and

(ii) The number of shares of each class outstanding at the beginning and the end of the annual accounting period;

(6) A list showing the name and address of, and the number of shares of each class of the corporation's stock held by, each citizen or resident of the United States, and each domestic corporation, who is a shareholder of record owning at any time during the annual accounting period 5 percent or more in value of any class of the corporation's outstanding stock;

(7) The amount of the corporation's gross receipts, net profits before taxes and provision for foreign income taxes, for the annual accounting period, as reflected on the financial statements required under paragraph (f) of this section to be filed with the return; and

(8) A summary showing the total amount of each of the following types of transactions of the corporation,

which took place during the annual accounting period, with the domestic corporation or any shareholder of the domestic corporation owning at the time of the transaction 10 percent or more of the value of any class of stock outstanding of the domestic corporation:

(i) Sales and purchases of stock in trade;

(ii) Purchases of property of a character which is subject to the allowance for depreciation;

(iii) Compensation paid and compensation received for the rendition of technical, managerial, engineering, construction, scientific, or like services;

(iv) Commissions paid and commissions received;

(v) Rents and royalties paid and rents and royalties received;

(vi) Amounts loaned and amounts borrowed (other than open accounts which arise and are collected in the ordinary course of business);

(vii) Dividends paid and dividends received;

(viii) Interest paid and interest received; and

(ix) Premiums received for insurance or reinsurance.

If the domestic corporation is a bank, as defined in section 581, or is controlled within the meaning of section 368(c) by a bank, the term ''transactions'' shall not, as to a corporation with respect to which a return is filed, include banking transactions entered into on behalf of customers; in any event, however, deposits in accounts between a controlled foreign corporation or a foreign subsidiary and the domestic corporation or a 10-percent shareholder described in this subparagraph and withdrawals from such accounts shall be summarized by reporting end-of-month balances.

(f) *Financial statements*. The following information with respect to each controlled foreign corporation and each foreign subsidiary shall be attached to and filed as part of the return required by this section:

(1) A statement of the corporation's profit and loss for the annual accounting period;

(2) A balance sheet as of the end of the annual accounting period of the corporation showing:

(i) The corporation's assets,

(ii) The corporation's liabilities, and

(iii) The corporation's net worth; and

(3) An analysis of changes in the corporation's surplus accounts during the annual accounting period including both opening and closing balances.

The statements listed in subparagraphs (1), (2), and (3) of this paragraph shall be prepared in conformity with generally accepted accounting principles, and in such form and detail as is customary for the corporation's accounting records.

(g) *Method of reporting*. All amounts furnished under paragraphs (e) and (f) of this section shall be expressed in United States currency with a statement of the exchange rates used.

(h) *Time and place for filing return*. Returns on Form 2952 required under paragraph (a) of this section shall be filed with the domestic corporation's income tax return on or before the fifteenth day of the third month following the close of such corporation's taxable year.

(i) *Extensions of time for filing*. District directors are authorized to grant reasonable extensions of time for filing returns on Form 2952 in accordance with the applicable provisions of § 1.6081–1. An application by a domestic corporation for an extension of time for filing a return of income shall also be considered as an application for an extension of time for filing returns on Form 2952.

(j) *Failure to furnish information*—(1) *Effect on foreign tax credit*. (i) Failure by a domestic corporation to furnish, in accordance with the provisions of this section, any return or any information in any return, required to be filed for a taxable year under authority of section 6038 on or before the date prescribed in paragraph (h) of this section (determined with regard to any extension of time for such filing) shall affect the application of section 902 as provided in subparagraph (2) of this paragraph. Such failure shall affect the application of section 902 to such domestic corporation or to any person who acquires from any person any portion (but only to the extent of such portion) of the interest of such domestic corporation in any controlled foreign corporation or foreign subsidiary.

(ii) Where the domestic corporation, having filed the return required by this section except for an omission of, or error with respect to, some of the information referred to in paragraphs (e) and (f) of this section, establishes to the satisfaction of the Commissioner that such omission or error was inadvertent or for reasonable cause and that such domestic corporation has substantially complied with this section, such omission or error shall not constitute a failure under this section.

(2) *Reduction of foreign taxes.* In the application of section 902 to the domestic corporation or person referred to in subparagraph (1)(i) of this paragraph for any taxable year, the amount of taxes paid or deemed paid by each controlled foreign corporation and each foreign subsidiary for the accounting period or periods for which the domestic corporation was required for the taxable year of the failure to furnish information under this section shall be reduced by 10 percent. The 10 percent reduction is not limited to the taxes paid or deemed paid by the controlled foreign corporation or foreign subsidiary with respect to which there is a failure to file information but shall apply to the taxes paid or deemed paid by all controlled foreign corporations and foreign subsidiaries.

(3) *Reduction for continued failure.* (i) If the failure, referred to in subparagraph (1)(i) of this paragraph, continues for 90 days or more after date of written notice by the district director to the domestic corporation, then the amount of the reduction referred to in subparagraph (2) of this paragraph shall be 10 percent plus an additional 5 percent for each 3-month period, or fraction thereof, during which such failure continues after the expiration of such 90-day period.

(ii) Taxes paid by a foreign subsidiary when once reduced for a failure shall not be reduced again for the same failure in their status as taxes deemed paid by a controlled foreign corporation. Where a failure continues, each additional periodic 5 percent reduction, referred to in subdivision (i) of this subparagraph, shall be considered as part of the one reduction.

(4) *Reasonable cause.* (i) For purposes of subsection (b) of section 6038 and this section the time prescribed for furnishing information under this paragraph, and the beginning of the 90-day period after notice by the district director, shall be treated as being not earlier than the last day on which (as shown to the satisfaction of the district director) reasonable cause existed for failure to furnish such information.

(ii) A domestic corporation, which wishes to avoid a reduction in foreign tax credit as provided in subparagraphs (2) and (3) of this paragraph for failure to furnish information in accordance with this section, must make an affirmative showing of all facts alleged as a reasonable cause for such failure in the form of a written statement containing a declaration that it is made under the penalties of perjury.

(5) *Penalties.* The information required by section 6038 of the Code must be furnished even though there are no foreign taxes which would be reduced under the provisions of subparagraph (2) of this paragraph. For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207 of the Code.

[T.D. 6506, 25 FR 12241, Nov. 30, 1960, as amended by T.D. 6621, 27 FR 11878, Dec. 1, 1962]

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

(a) *Requirement of return.* Every U.S. person shall make a separate annual information return with respect to each annual accounting period (described in paragraph (e) of this section) beginning after December 31, 1962, of each foreign corporation which that person controls (as defined in paragraph (b) of this section) for an uninterrupted period of 30 days or more during such annual accounting period. Such information shall not be required to be furnished, however, with respect to a corporation defined in section 1504(d) of the Code which makes a consolidated return for the taxable year. The return shall be made, with respect to annual accounting periods ending with or within the United States person's taxable year, on—

(1) Form 2952, ''Information Return with Respect to Controlled Foreign Corporations,'' if such taxable year ends before December 31, 1982;

(2) Form 5471, ''Information Return of U.S. Persons with Respect to Certain Foreign Corporations,'' if such taxable year ends on or after December 31, 1983; or

(3) Either Form 5471 or Form 2952 if such taxable year ends on or after December 31, 1982 and before December 31, 1963.

(b) *Control.* A person shall be deemed to be in control of a foreign corporation if at any time during that person's taxable year it owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent of the total value of shares of all classes of stock of the foreign corporation. A person in control of a corporation which, in turn, owns more than 50 percent of the combined voting power, or of the value, of all classes of stock of another corporation is also treated as being in control of such other corporation. The provisions of this paragraph may be illustrated by the following example:

Example. Corporation A owns 51 percent of the voting stock in Corporation B. Corporation B owns 51 percent of the voting stock in Corporation C. Corporation C in turn owns 51 percent of the voting stock in Corporation D. Corporation D is controlled by Corporation A.

(c) *Attribution rules.* For the purpose of determining control of domestic or foreign corporations the constructive ownership rules of section 318(a) shall apply except that:

(1) Stock owned by or for a partner or a beneficiary of an estate or trust shall not be considered owned by the partnership, estate, or trust when the effect is to consider a United States person as owning stock owned by a person who is not a United States person;

(2) A corporation will not be considered as owning stock owned by or for a 50 percent or more shareholder when the effect is to consider a United States person as owning stock owned by a person who is not a United States person; and

(3) If 10 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, section 318(a)(2)(C) shall apply.

The constructive ownership rules of section 318(a) apply only for purposes of determining control as defined in paragraph (b) of this section.

(d) *U.S. person*—(1) *In general.* For purposes of section 6038 and this section, the term *United States person* has the meaning assigned to it by section 7701(a)(30), except as provided in paragraphs (d)(2) and (3) of this section.

(2) *Special rule for individuals residing in certain possessions.*—(i) With respect to an individual who is a bona fide resident of Puerto Rico, the term *United States person* has the meaning assigned to it by § 1.957–3 except that the rules of § 1.937–2(g)(1) will apply.

(ii) With respect to an individual who is a bona fide resident of any section 931 possession, as defined in § 1.931–1(c)(1), the term *United States person* has the meaning assigned to it by § 1.957–3.

(3) *Special rule for certain nonresident aliens.* An individual for whom an election under section 6013(g) or (h) is in effect will, subject to the exceptions contained in paragraph (d)(2) of this section, be considered a United States person for purposes of section 6038 and this section.

(e) *Period covered by return.* The information required under paragraphs (f) and (g) of this section with respect to a foreign corporation shall be furnished for the annual accounting period of the foreign corporation ending with or within the United States person's taxable year. For purposes of this section, the annual accounting period of a foreign corporation is the annual period on the basis of which that corporation regularly computes its income in keeping its books. In the case of a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period. The term *annual accounting period* may refer to a period of less than one year, where, for example, the foreign income, war profits, and excess profits taxes are determined on the basis of an accounting period of less than one year as described in section 902(c)(5). If more than one annual accounting period ends with or within the United States person's taxable

year, separate annual information returns shall be submitted for each annual accounting period.

(f) *Contents of return.* The return on Form 5471 shall contain so much of the following information, and in such form or manner, as the form shall prescribe with respect to each foreign corporation:

(1) The name, address, and employer identification number, if any, of the corporation;

(2) The principal place of business of the corporation;

(3) The date of incorporation and the country under whose laws incorporated;

(4) The name and address of the foreign corporation's statutory or resident agent in the country of incorporation;

(5) The name, address, and identifying number of any branch office or agent of the foreign corporation located in the United States;

(6) The name and address of the person (or persons) having custody of the books of account and records of the foreign corporation, and the location of such books and records if different from such address;

(7) The nature of the corporation's business and the principal places where conducted;

(8) As regards the outstanding stock of the corporation—

(i) A description of each class of the corporation's stock, and

(ii) The number of shares of each class outstanding at the beginning and end of the annual accounting period;

(9) A list showing the name, address, and identifying number of, and the number of shares of each class of the corporation's stock held by, each United States person who is a shareholder owning at any time during the annual accounting period 5 percent or more in value of any class of the corporation's outstanding stock;

(10) For the annual accounting period, the amount of the corporation's:

(i) Current earnings and profits;

(ii) Foreign income, war profits, and excess profits taxes paid or accrued;

(iii) Distributions out of current earnings and profits for the period;

(iv) Distributions other than those described in paragraph (f)(10)(iii) of this section and the source thereof; and

(v) For Forms 5471 filed for taxable years ending after December 15, 1990, such earnings and profits information as the form shall prescribe, including post-1986 undistributed earnings described in section 902(c)(1), pre-1987 amounts, total earnings and profits, and previously taxed earnings and profits described in section 959(c); and

(11) *Transactions with certain related parties.* (i) A summary showing the total amount of each of the following types of transactions of the corporation, which took place during the annual accounting period, with the person required to file this return, any other corporation or partnership controlled by that person, or any United States person owning at the time of the transaction 10 percent or more in value of any class of stock outstanding of the foreign corporation, or of any corporation controlling that foreign corporation—

(A) Sales and purchases of stock in trade;

(B) Sales and purchases of tangible property other than stock in trade;

(C) Sales and purchases of patents, inventions, models, or designs (whether or not patented), copyrights, trademarks, secret formulas or processes, or any other similar property rights;

(D) Compensation paid and compensation received for the rendition of technical, managerial, engineering, construction, scientific, or like services;

(E) Commissions paid and commissions received;

(F) Rents and royalties paid and rents and royalties received;

(G) Amounts loaned and amounts borrowed (except open accounts resulting from sales and purchases reported under other items listed in this paragraph (f)(11) that arise and are collected in full in the ordinary course of business);

(H) Dividends paid and dividends received;

(I) Interest paid and interest received; and

(J) Premiums paid and premiums received for insurance or reinsurance.

(ii) *Special rule for banks.* For purposes of this paragraph (f)(11), if the United States person is a bank, as defined in section 581, or is controlled within the meaning of section 368(c) by a bank, the term transactions shall not, as to a corporation with respect to which a return is filed, include banking transactions entered into on behalf of customers; in any event, however, deposits in accounts between a foreign corporation, controlled (within the meaning of paragraph (b) of this section) by a United States person, and a person described in this paragraph (f)(11) and withdrawals from such accounts shall be summarized by reporting end-of-month balances.

(12) *Accrued payments and receipts.* For purposes of the required summary under paragraph (f)(11) of this section, a corporation that uses an accrual method of accounting shall use accrued payments and accrued receipts for purposes of computing the total amount of each of the types of transactions listed.

(g) *Financial statements.* The following information with respect to the foreign corporation shall be attached to and filed as part of the return required by this section. Forms 5471 filed after September 30, 1991, shall contain this information in such form or manner as the form shall prescribe with respect to each foreign corporation:

(1) A statement of the corporation's profit and loss for the annual accounting period;

(2) A balance sheet as of the end of the annual accounting period of the corporation showing—

(i) The corporation's asset;

(ii) The corporation's liabilities; and

(iii) The corporation's net worth; and

(3) An analysis of changes in the corporation's surplus accounts during the annual accounting period including both opening and closing balances.

The information listed in this paragraph (g) shall be prepared in conformity with generally accepted accounting principles, and in such detail as is customary for the corporation's accounting records.

(h) *Method of reporting.* Except as provided in this paragraph (h), all amounts furnished under paragraphs (f) and (g) of this section shall be expressed in United States dollars with a statement of the exchange rates used. The following rules shall apply for taxable years ending after December 31, 1994, with respect to returns filed after December 31, 1995. All amounts furnished under paragraph (g) of this section shall be expressed in United States dollars computed and translated in conformity with United States generally accepted accounting principles. Amounts furnished under paragraph (g)(1) of this section shall also be furnished in the foreign corporation's functional currency as required on the form. Earnings and profits amounts furnished under paragraphs (f)(10) (i), (iii), (iv), and (v) of this section shall be expressed in the foreign corporation's functional currency except to the extent the form requires specific items to be translated into United States dollars. Tax amounts furnished under paragraph (f)(10)(ii) of this section shall be furnished in the foreign currency in which the taxes are payable and in United States dollars translated in accordance with section 986(a). All amounts furnished under paragraph (f)(11) of this section shall be expressed in U.S. dollars translated from functional currency at the weighted average exchange rate for the year as defined in §1.989(b)–1. The foreign corporation's functional currency is determined under section 985. All statements submitted on or with the return required under this section shall be rendered in the English language.

(i) *Time and place for filing return.* Returns on Form 5471 required under paragraph (a) of this section shall be filed with the United States person's income tax return on or before the date required by law for the filing of that person's income tax return. Directors of Field Operations and Field Directors are authorized to grant reasonable extensions of time for filing returns on Form 5471 in accordance with the applicable provisions of §1.6081–1 of this chapter. An application for an extension of time for filing a return of income shall also be considered as an application for an extension of time for filing returns on Form 5471.

(j) *Two or more persons required to submit the same information*—(1) *Return jointly made.* If two or more persons are required to furnish information with

respect to the same foreign corporation for the same period, such persons may, in lieu of making separate returns, jointly make one return. Such joint return shall be filed with the income tax return of any one of the persons making such joint return.

(2) *Persons excepted from furnishing information*—(i) *Conditions.* Any person required to furnish information under this section with respect to a foreign corporation need not furnish that information provided all of the following conditions are met:

(A) Such person does not directly own an interest in the foreign corporation;

(B) Such person is required to furnish the information solely by reason of attribution of stock ownership from a United States person under paragraph (c) of this section; and

(C) The person from whom the stock ownership is attributed furnishes all of the information required under this section of the person to whom the stock ownership is attributed. (For a rule regarding attribution from a nonresident alien, see paragraph (l) of this section).

(ii) If an individual who is a United States person required to furnish information with respect to a foreign corporation under section 6038 is entitled under a treaty to be treated as a nonresident of the United States, and if the individual claims this treaty benefit, and if there are no other United States persons that are required to furnish information under section 6038 with respect to the foreign corporation, then the individual may satisfy the requirements of paragraphs (f)(10), (f)(11), (g), and (h) of this section by filing the audited foreign financial statements of the foreign corporation with the individual's return required under section 6038.

(iii) *Illustrations.* The rule of this paragraph (j)(2) is illustrated by the following examples:

Example 1. A, a U.S. person owns 100 percent of the stock of M, a domestic corporation. A also owns 100 percent of the stock of N, a foreign corporation organized under the laws of foreign country Y. A, in filing the information return required by this section with respect to N Corporation, in fact furnishes all of the information required of M Corporation with respect to N Corporation. M Corporation need not file the information.

Example 2. X, a domestic corporation owns 100 percent of the stock of Y, a domestic corporation, Y Corporation owns 100 percent of the stock of Z, a foreign corporation. X Corporation is not excused by this paragraph (j)(2) from filing information with respect to Z Corporation because X Corporation is deemed to control Z Corporation under the provisions of paragraph (b) of this section without recourse to the attribution rules in paragraph (c) of this section.

(3) *Statement required.* Any United States person required to furnish information under this section with his return who does not do so by reason of the provisions of paragraph (j)(1) or (2) of this section shall file a statement with his income tax return indicating that such liability has been (or, in the case of a joint return made under paragraph (j)(1) of this section, will be) satisfied and identifying the return with which the information was or will be filed and the place of filing.

(k) *Failure to furnish information*—(1) *Dollar amount penalty*—(i) *In general.* If any person required to file Form 5471 under section 6038 and this section fails to furnish any information described in paragraphs (f) and (g) of this section within the time prescribed by paragraph (i) of this section, such person shall pay a penalty of $10,000 for each annual accounting period of each foreign corporation with respect to which such failure occurs.

(ii) *Increase in penalty for continued failure after notification.* If a failure described in paragraph (k)(1)(i) of this section continues for more than 90 days after the date on which the Director of Field Operations, Area Director, or Director of Compliance Campus Operations mails notice of such failure to the person required to file Form 5471, such person shall pay a penalty of $10,000, in addition to the penalty imposed by section 6038(b)(1) and paragraph (k)(1)(i) of this section, for each 30-day period (or a fraction of) during which such failure continues after such 90-day period has expired. The additional penalty imposed by section 6038(b)(2) and this paragraph (k)(1)(ii) shall be limited to a maximum of $50,000 for each failure.

(2) *Penalty of reducing foreign tax credit*—(i) *Effect on foreign tax credit.* Failure of a United States person to furnish, in accordance with the provisions of this section, any return or any information in any return, required to be filed for a taxable year under authority of section 6038 on or before the date prescribed in paragraph (i) of this section may affect the application of section 901 as provided in paragraph (k)(2)(ii) of this section and may affect the application of sections 902 and 960 as provided in paragraph (k)(2)(iii) of this section. Such failure may affect the application of sections 902 and 960 to any such United States person which is a corporation or to any person who acquires from any other person any portion (but only to the extent of such portion) of the interest of such other person in any such foreign corporation.

(ii) *Application of section 901.* In the application of section 901 to a United States person referred to in paragraph (k)(2)(i) of this section, the amount of taxes paid or deemed paid by such person for any taxable year, with or within which the annual accounting period of a foreign corporation for which such person failed to furnish information required under this section ended, may be reduced by 10 percent. However, no tax reduced under paragraph (k)(2)(iii) of this section or deemed paid under section 904(c) shall be reduced under the provisions of this paragraph (k)(2)(ii).

(iii) *Application of sections 902 and 960.* In the application of sections 902 and 960 to a United States person referred to in paragraph (k)(2)(i) of this section for any taxable year, the amount of taxes paid or deemed paid by each foreign corporation for the accounting period or periods for which such person was required for the taxable year of the failure to furnish information under this section may be reduced by 10 percent. The 10-percent reduction is not limited to the taxes paid or deemed paid by the foreign corporation with respect to which there is a failure to file information but may apply to the taxes paid or deemed paid by all foreign corporations controlled by that person. In applying subsections (a) and (b) of section 902, and in applying subsection (a) of section 960, the reduction provided by this paragraph (k)(2) shall not apply for purposes of determining the amount of accumulated profits in excess of income, war profits, and excess profits taxes.

(iv) *Reduction for continued failure after notice.* (A) If the failure referred to in paragraph (k)(2)(i) of this section continues for more than 90 days after the date on which the Director of Field Operations mails notice of such failure to such United States person, then the amount of the reduction referred to in paragraphs (k)(2) (ii) and (iii) of this section may be 10 percent plus an additional 5 percent for each 3-month period, or fraction thereof, during which such failure continues after the expiration of such 90-day period.

(B) No taxes shall be reduced under this paragraph (k)(2) more than once for the same failure. Taxes paid by a foreign corporation when once reduced for a failure shall not be reduced again for the same failure in their status as taxes deemed paid by a corporate shareholder. Where a failure continues, each additional periodic 5-percent reduction, referred to in paragraph (k)(2)(iv)(A) of this section, shall be considered as part of the one reduction.

(v) *Limitation on reduction of foreign tax credit.* The amount of the reduction under this paragraph (k)(2) for each failure to furnish information with respect to a foreign corporation as required under this section shall not exceed the greater of:

(A) $10,000, or

(B) The income of the foreign corporation for its annual accounting period with respect to which the failure occurs. For purposes of this section if a person is required to furnish information with respect to more than one foreign corporation, controlled (within the meaning of paragraph (b) of this section) by that person, each failure to submit information for each such corporation constitutes a separate failure.

(vi) *Offset for dollar amount penalty imposed.* The total amount of the reduction or reductions which, but for this paragraph (k)(2)(vi), may be made under this paragraph (k)(2) with respect to any separate failure, shall not exceed the maximum amount of such reductions which may be imposed, reduced (but not below zero) by the

amount of the dollar amount penalty imposed by paragraph (k)(1) of this section with respect to such separate failure.

(3) *Reasonable cause.* (i) For purposes of section 6038 (b) and (c) and this section, the time prescribed for furnishing information under paragraph (i) of this section, and the beginning of the 90-day period after mailing of notice by the Director of Field Operations under paragraphs (k)(1)(ii) and (2)(iv)(A) of this section, shall be treated as being not earlier than the last day on which reasonable cause existed for failure to furnish the information.

(ii) To show that reasonable cause existed for failure to furnish information as required by section 6038 and this section, the person required to report such information must make an affirmative showing of all facts alleged as reasonable cause for such failure in a written statement containing a declaration that it is made under the penalties of prejury. The statement must be filed with the district director for the district or the director of the service center where the return is required to be filed. The district director or the director of the service center shall determine whether the failure to furnish information was due to reasonable cause, and if so, the period of time for which such reasonable cause existed. In the case of a return that has been filed as required by this section except for an omission of, or error with respect to, some of the information required, if the person who filed the return establishes to the satisfaction of the district director or the director of the service center that the person has substantially complied with this section, then the omission or error shall not constitute a failure under this section.

(4) *Other penalties.* The information required by section 6038 and this section must be furnished even though there are no foreign taxes which would be reduced under the provisions of this section, and even though the information required may not affect the amount of any tax due under the Internal Revenue Code. For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207 of the Code.

(5) *Illustrations.* The provisions of this paragraph may be illustrated by the following examples.

Example 1. M, a domestic corporation owns 100 percent of the stock of N, a foreign corporation. Both M and N use the calendar year as a taxable year and annual accounting period, and all of the following events occur in or with respect to the 1980 taxable year. The dividend from N is the only dividend from a foreign corporation received by M during the taxable year, and the foreign taxes listed are the only foreign taxes paid or deemed paid by M and N for the taxable year. On March 15, 1981, M filed its income tax return and paid its income tax, but M did not file Form 2952 with respect to N's 1980 annual accounting period. On June 1, 1961, the district director mailed notice to M of M's failure to file Form 2952 with respect to N. On November 30, 1981, M filed a complete Form 2952 with respect to N's 1980 annual accounting period.

(a) Gains, profits, and income of N	$100,000
(b) Foreign tax paid by N with respect to such gains, profits, and income	40,000
(c) Reduction of foreign tax paid by N (for purposes of M's section 902 deemed paid credit) resulting from M's failure to file information with respect to N as required under section 6038(a) and this section: failure to file within the time prescribed in paragraph (i) of this section, 10-percent reduction; continued failure for one additional 3-month period after 90-day period after notice mailed, 5-percent reduction; total reduction, 15 percent ($40,000 times 15 percent)	6,000
(d) Foreign tax paid by N after section 6038(c)(1)(B) reduction	34,000
(e) Dividend paid by N to M	45,000
(f) Accumulated profits of N as defined in section 902(c)(1) (determined without regard to the section 6038(c)(1)(B) reduction)	100,000
(g) Accumulated profits of N as described in section 902(a) (determined without regard to the section 6038(c)(1)(B) reduction)	60,000
(h) For purposes of the section 902 credit, M is deemed to have paid the same proportion of foreign taxes paid (reduced as provided under section 6038(c)) with respect to the accumulated profits described in section 902(a) (determined without regard to the reduction provided under section 6038(c)) as the amount of the dividend (determined without regard to section 78) bears to such amount of accumulated profits	25,500

$$(45{,}000 \div 60{,}000) \times 34{,}000 = 25{,}500.$$

M must include $25,500 in gross income as a dividend under the provisions of section 78 of the Code. This example illustrates that the

reductions in foreign taxes paid by the foreign corporation provided under section 8038(c) are taken into account in determining the amount included in gross income of the domestic corporation under section 78 of the Code as foreign taxes deemed paid, but such reductions are not taken into account in computing accumulated profits for purposes of determining the portion of foreign taxes deemed paid with respect to a particular dividend. The dollar amount penalty imposed by section 8038 (b) and paragraph (k)(1) of this section does not apply with respect to information for annual accounting periods ending before September 4, 1982, and therefore does not apply to M with respect to M's failure to file Form 2952 in this example.

Example 2. The facts are the same as in example (1) except that all of the events occur in or with respect to the 1982 taxable year. On March 15, 1983. M filed its income tax return and paid its income tax, but M did not file Form 2952 or Form 5471 with respect to N's 1982 annual accounting period. On June 1, 1983, the district director mailed notice to M of M's failure to file Form 2952 or Form 5471 with respect to N. On November 30, 1983, M filed a complete Form 5471 with respect to N's 1982 annual accounting period. Under paragraph (k)(1)(i) of this section, M is subject to a penalty of $1,000. Under paragraph (k)(1)(ii) of this section, that penalty is increased by $4,000 because the failure continued for 92 days (three full 30-day periods and a fraction of a fourth 30-day period) after the end of the 90-day period following mailing of the notice by the district director, bringing M's dollar amount penalty under paragraph (k)(1) of this section to $5,000. For purpose of determining the foreign tax credit available to M, there may be imposed a reduction of foreign tax paid by N of $6,000, which would be the total of reductions under paragraph (k)(2) of this section with respect to M's failure to file under section 6038 for N's 1982 annual accounting period, before application of paragraph (k)(2)(vi) of this section. Under said paragraph (k)(2)(vi), the amount of the foreign tax reduction imposed is reduced by the amount of the dollar amount penalty, leaving a foreign tax reduction penalty of $1,000 which may be imposed in addition to the $5,000 dollar amount penalty. If imposed, the $1,000 tax reduction would then be applied in the calculation of taxes deemed paid by M under section 902 as in example (1), items (c), (d), and (h).

Example 3. A, a U.S. person, owns 100 percent of the stock of FC. On April 15, 2008, A timely filed its 2007 income tax return but did not file Form 5471 with respect to FC's 2007 annual accounting period. On June 1, 2008, the Director of Field Operations mailed a notice to A of A's failure to file Form 5471 for 2007 with respect to FC. On August 1, 2008, A submits a written statement asserting facts for reasonable cause for failure to file the 2007 Form 5471 for FC. Based on A's statement and discussions with A, the Director of Field Operations agrees that A had reasonable cause for failure to file FC's 2007 Form 5471 and determined that it is reasonable for A to file FC's 2007 Form 5471 by September 15, 2008. The time prescribed for furnishing information under paragraph (i) of this section is September 15, 2008, and the 90-day period described under paragraphs (k)(1)(ii) and (k)(2)(iv)(A) of this section begins on that same date. Thus, if A files a completed Form 5471 by September 15, 2008, A is not subject to the penalties under paragraphs (k)(1) and (k)(2) of this section. If A does not file a completed Form 5471 by December 14, 2008, in addition to the penalties under paragraphs (k)(1) and (k)(2) of this section, A will also be subject to the penalties for continued failure under paragraphs (k)(1)(ii) and (k)(2)(iv)(A) of this section.

Example 4. The facts are the same as in *Example 3* except A submits the written statement to the Director before a notice of failure to furnish information is mailed to A. The notice is mailed to A on September 7, 2008. Under these facts, the time prescribed for furnishing information under paragraph (i) of this section is September 15, 2008, and the 90-day period after mailing of notice of failure under paragraphs (k)(1)(ii) and (k)(2)(iv)(A) of this section begins on that same date.

(l) *Other persons excepted from filing.* For tax years of foreign corporations ending on or after December 29, 1999, any person required to furnish information under this section with respect to a foreign corporation does not have to furnish that information if the following conditions are met—

(1) Such person does not own a direct or indirect interest in the foreign corporation; and

(2) Such person is required to furnish information solely by reason of attribution of stock ownership from a nonresident alien(s) under paragraph (c) of this section.

(m) *Effective/applicability dates.* Except as otherwise provided, this section applies with respect to information for annual accounting periods beginning on or after June 21, 2006. Paragraphs (k)(1) and (k)(5) *Examples 3* and *4* of this section apply June 21, 2006. Paragraph

(d) of this section applies to taxable years ending after April 9, 2008.

[T.D. 8040, 50 FR 30163, July 24, 1985, as amended by T.D. 8573, 59 FR 64302, Dec. 14, 1994; T.D. 8733, 62 FR 53385, Oct. 14, 1997; T.D. 8850, 64 FR 72550, Dec. 28, 1999; T.D. 9194, 70 FR 18946, Apr. 11, 2005; T.D. 9268, 71 FR 35525, June 21, 2006; T.D. 9338, 72 FR 38475, July 13, 2007; T.D. 9391, 73 FR 19376, Apr. 9, 2008]

§ 1.6038–3 Information returns required of certain United States persons with respect to controlled foreign partnerships (CFPs).

(a) *Persons required to make return*—(1) *Controlling fifty-percent partners.* The term *controlling fifty-percent partner* means a United States person that controlled (as defined in paragraph (b)(1) of this section) the foreign partnership at any time during the partnership's tax year (as defined in paragraph (b)(8) of this section). Except as provided in paragraph (c), (d), or (e) of this section, for each tax year of a foreign partnership during which the partnership has one or more controlling fifty-percent partners, each controlling fifty-percent partner must complete and file Form 8865, ''Return of U.S. Persons With Respect to Certain Foreign Partnerships,'' containing the information described in paragraph (g) of this section.

(2) *Controlling ten-percent partners.* If at any point during a foreign partnership's tax year (as defined in paragraph (b)(8) of this section) a United States person owned a ten-percent or greater interest in the partnership while the partnership was controlled by United States persons owning ten-percent or greater interests, such United States person is a controlling ten-percent partner. See paragraph (b)(1) of this section for the definition of control. However, a United States person is not a controlling ten-percent partner with respect to a particular foreign partnership for a particular tax year of the foreign partnership if at any point during that year the partnership had a controlling fifty-percent partner, as defined in paragraph (a)(1) of this section. Except as provided in paragraph (c), (d), or (e) of this section, for each tax year of a partnership during which the partnership has controlling ten-percent partners, each controlling ten-percent partner must complete and file Form 8865 containing the information described in paragraph (g)(1) of this section.

(3) *Separate returns for each partnership.* A United States person required to report under this paragraph (a) must file a separate Form 8865 for each foreign partnership with respect to which the person is a controlling fifty-percent partner or a controlling ten-percent partner.

(b) *Ownership determinations and definitions*—(1) *Control.* Control of a foreign partnership is ownership of more than a fifty-percent interest in the partnership.

(2) *Fifty-percent interest.* A fifty-percent interest in a partnership is an interest equal to fifty percent of the capital interest in such partnership, an interest equal to fifty percent of the profits interest in such partnership, or an interest to which fifty percent of the deductions or losses of such partnership are allocated.

(3) *Ten-percent interest.* A ten-percent interest in a partnership is an interest equal to ten percent of the capital interest in such partnership, an interest equal to ten percent of the profits interest in such partnership, or an interest to which ten percent of the deductions or losses of such partnership are allocated.

(4) *Constructive ownership rules.* For purposes of determining an interest in a partnership, the constructive ownership rules of section 267(c) (other than section 267(c)(3)) apply, taking into account that such rules refer to corporations and not to partnerships. However, an interest will be attributed from a nonresident alien under the family attribution rules of section 267(c)(2) and (4) only if the person to whom the interest is attributed owns a direct or indirect (under the rules of 267(c)(1) or (5)) interest in the foreign partnership.

(5) *Determination of amount of interest.* Whether a person owns a fifty-percent interest, or a ten-percent interest, as described in paragraphs (b)(2) and (3) of this section, is determined for each tax year of the foreign partnership by reference to the agreement of the partners relating to such interests during that tax year.

(6) *Definition of United States person.* The term *United States person* is defined in section 7701(a)(30).

(7) *Definition of a foreign partnership.* A foreign partnership is a partnership described in section 7701(a)(5).

(8) *Tax year of a foreign partnership.* The tax year of a foreign partnership is determined under section 706.

(9) *Examples.* The rules of paragraph (a) of this section and this paragraph (b) are illustrated by the following examples:

Example 1. Sole U.S. partner does not own more than a fifty-percent interest. No United States person owns any interest (directly or constructively) in *FPS*, a foreign partnership whose tax year under section 706 is the calendar year. On January 1, 2001, *US*, a United States person with the calendar year as its tax year, contributes property to *FPS* in exchange for a 40% interest in a section 721 transaction. No United States persons acquire directly or constructively any other interests in *FPS* during *FPS*'s 2001 tax year. *US* is not a controlling fifty-percent partner during *FPS*'s 2001 tax year. *US* did not own during that tax year, either directly or constructively, more than a 50% interest in the partnership under paragraphs (b)(2) and (4) of this section. Also, *US* is not a controlling ten-percent partner; although *US* owned a 10% or greater interest, *US* persons owning at least 10% interests did not control *FPS*. Therefore, *US* does not have to file with its 2001 income tax return a Form 8865 with respect to *FPS* under section 6038. (But see section 6038B for the reporting obligations of *US* with respect to its transfer of property to *FPS* and section 6046A for the reporting obligation of *US* with respect to its acquisition of an interest in *FPS*. See also §1.6046A–1(f)(1) regarding the overlap between sections 6038B and 6046A.

Example 2. Controlling ten-percent partners. Assume the same facts as in *Example 1*. In addition, on January 1, 2002, *US1*, a United States person unrelated to *US* and a calendar year taxpayer, purchases a 15% interest in *FPS* from a foreign partner of *FPS*. Neither *US* nor *US1* is a controlling fifty-percent partner during *FPS*'s 2002 tax year because neither one owns more than a 50% percent interest in *FPS* during that year. However, *US* and *US1* are controlling ten-percent partners for that year because each owns at least a 10% interest (*US* owns a 40% interest and *US1* owns a 15% interest) and together they control *FPS* because collectively they own more than a 50% interest in *FPS*. As controlling ten-percent partners, under section 6038, each is required to file a Form 8865 with its 2002 income tax return. (*US1* must also report its acquisition of the 15% interest in *FPS* under section 6046A on its Form 8865 filed with its 2002 income tax return.)

Example 3. Constructive ownership rules. Assume the same facts as in *Example 2*. In addition, on January 1, 2003, *US2*, a United States person and the brother of *US*, purchases 50% of the stock of *FC*, a foreign corporation. *FC* owns a 20% interest in *FPS*. Thus, under sections 6038(e)(3) and 267(c)(1), *US2* indirectly owns a 10% interest in *FPS* (10% is *US2*'s proportionate share of *FC*'s 20% interest in *FPS*), and under sections 6038(e)(3) and 267(c)(2), *US2* is attributed *US*'s 40% interest. Additionally, *US* directly owns a 40% interest in *FPS* and is attributed *US2*'s 10% interest pursuant to section 6038(e)(3) and section 267(c)(2). Therefore, *US2* is considered to own a 50% interest (10% indirectly and 40% from *US*) in *FPS*, and *US* is considered to own a 50% interest in *FPS* (40% directly and 10% from *US2*). *FPS* has no controlling fifty-percent partners, because neither *US*, *US1*, nor *US2*, owns a greater than 50% interest. However, *US*, *US1*, and *US2* are each controlling ten-percent partners and each must file Form 8865 pursuant to section 6038 for *FPS*'s 2003 tax year ending December 31, 2003. Each must attach Form 8865 to its tax return for its 2003 tax year.

Example 4. Controlling fifty-percent partners. Assume the same facts as in *Example 3*. In addition, on June 1, 2004, *US* acquires an additional 1% direct interest in *FPS*. *US* is now a controlling fifty-percent partner of *FPS*, because *US* owns a 41% interest directly and a 10% interest constructively from *US2*. *US2* is also a controlling fifty-percent partner, because *US2* owns 10% indirectly and 41% constructively from *US*. Both *US* and *US2* are required to file Form 8865 containing all the information required to be submitted by controlling fifty-percent partners. (But see paragraph (c)(1) of this section, which contains filing exceptions when there are multiple controlling fifty-percent partners). *US1* is no longer a controlling ten-percent partner because *FPS* now has at least one controlling fifty-percent partner, and *US1* does not qualify as a controlling fifty-percent partner. Therefore, *US1* is not required to file Form 8865 under section 6038.

Example 5. Constructive ownership from a nonresident alien. *US*, a United States person, does not own directly or constructively an interest in *FPS*, a foreign partnership. The tax year of *FPS* is the calendar year. *NRA*, a nonresident alien, is the mother of *US*. In 2002, *NRA* acquires a 55% interest in *FPS*. Because *US* owns neither a direct nor a constructive interest in *FPS* under sections 6038(e)(3) and 267(c)(1) or (5), *NRA*'s interest is not attributed to *US* under sections 6038(e)(3) and 267(c)(2). If in 2003 *NRA* becomes a United States person, *NRA*'s interest will be attributed to *US*. However, *US* is excused from filing Form 8865 if *US* satisfies the requirements of the constructive owners exception in paragraph (c)(2) of this section. In 2003, *NRA* is a controlling fifty-percent partner and must file a Form 8865 under section 6038 for *FPS*'s 2003 tax year.

(c) *Exceptions when more than one United States person is required to file Form 8865 pursuant to section 6038*—(1) *Multiple controlling fifty-percent partners*—(i) *In general.* If, with respect to the same foreign partnership for the same tax year, more than one United States person is a controlling fifty-percent partner, then in lieu of each controlling fifty-percent partner filing a separate Form 8865, only one Form 8865 from one of the controlling fifty-percent partners is required, provided all of the requirements of paragraph (c)(1)(ii) of this section are satisfied. A person that is a controlling fifty-percent partner solely because of an interest to which deductions or losses are allocated may file the single return only if there is no United States person that is a controlling fifty-percent partner by reason of an interest in capital or profits.

(ii) *Requirements*—(A) The person undertaking the filing obligation must file Form 8865 with that person's income tax return in the manner provided by Form 8865 and the accompanying instructions. The return must contain all of the information that would have been required to be reported by this section if each controlling fifty-percent partner had filed its own Form 8865.

(B) Any controlling fifty-percent partner not filing Form 8865 must file with its income tax return a statement titled ''Controlled Foreign Partnership Reporting'' containing the following information—

(*1*) A statement that the person qualified as a controlling fifty-percent partner, but is not submitting Form 8865 pursuant to the multiple controlling fifty-percent partners exception;

(*2*) The name, address, and taxpayer identification number (if any) of the foreign partnership of which the person qualified as a controlling fifty-percent partner;

(*3*) A representation that the filing requirement has been or will be satisfied;

(*4*) The name and address of the person filing the single return;

(*5*) The Internal Revenue Service Center where the single return is required to be filed; and

(*6*) Any additional information that Form 8865 and the accompanying instructions require.

(iii) *Penalties.* If the requirements listed in paragraph (c)(1)(ii) of this section are not satisfied, a United States person that did not file a Form 8865 pursuant to this paragraph will be subject to the penalties in paragraph (k) of this section, unless the reasonable cause provision in paragraph (k)(4) of this section is satisfied.

(2) *Certain constructive owners excepted from furnishing information*—(i) *In general.* A United States person that does not own a direct interest in the foreign partnership and that is required to file Form 8865 under this section solely by reason of constructive ownership from a United States person(s) pursuant to paragraph (b)(4) of this section (an indirect partner) is not required to file Form 8865 if all of the requirements listed in paragraph (c)(2)(ii) of this section are met.

(ii) *Requirements*—(A) The United States person(s) whose interest the indirect partner constructively owns reports all the information such person(s) is required to submit under this section, unless such person also is required to file solely by reason of constructive ownership from a United States person(s) pursuant to paragraph (b)(4) of this section, or another person reports the information pursuant to paragraph (c)(1) of this section.

(B) The indirect partner files with its income tax return a statement titled ''Controlled Foreign Partnership Reporting'' containing the following information—

(*1*) A representation that the indirect partner was required to file Form 8865, but is not doing so pursuant to the constructive owners exception;

(*2*) The names and addresses of the United States persons whose interests the indirect partner constructively owns;

(*3*) The name and address of the foreign partnership with respect to which the indirect partner would have had to have filed Form 8865 but for this exception; and

(*4*) Any additional information that Form 8865 and the accompanying instructions require.

(iii) *Penalties*. A United States person that pursuant to this paragraph (c)(2) does not file a return will be subject to the penalties in paragraph (k) of this section if the requirements listed in paragraph (c)(2)(ii) of this section are not satisfied, unless such failure is due to reasonable cause, as defined in paragraph (k)(4) of this section.

(iv) *Overlap with multiple controlling fifty-percent partners exception*—(A) If a United States person qualifies for both the exception in paragraph (c)(1) of this section and the exception in this paragraph (c)(2), such person may only utilize the multiple controlling fifty-percent partners exception in paragraph (c)(1) of this section to avoid filing Form 8865.

(B) *Example*. The following example illustrates the operation of this paragraph (c)(2)(iv):

Example. US is a U.S. citizen. *US* owns 100% of the stock of *DC*, a domestic corporation. *DC* owns a 60% direct interest in *FPS*, a foreign partnership. *DC* and *US* are the only U.S. persons that own interests directly or constructively in *FPS*. *DC* owns directly a greater than 50% interest in *FPS*. *US* constructively owns *DC*'s interest pursuant to sections 6038(e)(3) and 267(c)(1). Therefore, both *DC* and *US* are controlling fifty-percent partners. *US* qualifies for both the exception in paragraph (c)(1) of this section (multiple controlling fifty-percent partners) and the exception in paragraph (c)(2) of this section (constructive owner exception). *US* may only utilize the paragraph (c)(1) exception to avoid its filing obligation. Accordingly, *DC* may file a single Form 8865 on behalf of *US* and itself. However, that form must contain all the information that would have been submitted had *DC* and *US* each submitted a separate Form 8865.

(3) *Members of an affiliated group of corporations filing a consolidated return*. If one or more members of an affiliated group of corporations filing a consolidated return are required under section 6038 to file a Form 8865 for a particular foreign partnership, the common parent corporation may file one Form 8865 on behalf of all of the members of the group required to report under section 6038. Except with respect to group members who also qualify under the exception in paragraph (c)(2) of this section, the Form 8865 must contain all the information that would have been required to be submitted if each group member were required to file its own Form 8865.

(d) *Exception for certain trusts*. Trusts relating to state and local government employee retirement plans are not required to report under this section, unless the instructions to Form 8865 provide otherwise.

(e) *Reporting under this section not required with respect to partnerships excluded from the application of subchapter K*. The reporting requirements of this section will not apply to any United States person in respect of an eligible partnership as described in §1.761–2(a) if such partnership has validly elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in the manner specified in §1.761–2(b)(2)(i), or such partnership is deemed to have elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in accordance with the provisions of §1.761–2(b)(2)(ii).

(f) *Period covered by return*. The information required under this section must be furnished for the tax year of the foreign partnership ending with or within the United States person's tax year. See section 706 for rules regarding tax years of partnerships.

(g) *Contents of return*—(1) *Information required to be submitted by controlling fifty-percent partners and controlling ten-percent partners*. All controlling fifty-percent partners and all controlling ten-percent partners must submit the following information on Form 8865 in the form and manner and to the extent prescribed by Form 8865 and its instructions—

(i) The name, address, and taxpayer identification number (if any) of the foreign partnership of which the person qualified as a controlling fifty-percent partner or a controlling ten-percent partner;

(ii) A statement of the income, gain, losses, deductions and credits allocated to the direct interest in the partnership of the person reporting under section 6038;

(iii) A list of all partnerships (foreign or domestic) in which the foreign partnership owned a direct interest, or owned a constructive interest of ten

percent of more under the rules of section 267(c)(1) or (5), during the partnership's tax year for which the Form 8865 is being filed;

(iv) Information about all foreign entities that were disregarded as entities separate from their owner under §§301.7701–2 and 301.7701–3 that were owned by the foreign partnership during the partnership's tax year for which the Form 8865 is being filed;

(v) A summary of the transactions that took place during the partnership's tax year between the partnership and the person filing the return, between the partnership and any other partnership of which the person filing the return is a controlling fifty-percent partner, and between the partnership and any corporation controlled (under section 6038(e)(2) and the regulations thereunder) by the person filing the return; and

(vi) Any other information that Form 8865 or its accompanying instructions require to be submitted.

(2) *Additional information required to be submitted by controlling fifty-percent partners.* In addition to the information required pursuant to paragraph (g)(1) of this section, controlling fifty-percent partners must also submit the following information in the form and manner and to the extent required by Form 8865 and its instructions—

(i) A list of the names, addresses and tax identification numbers (if any) of each United States person that owned a direct interest of ten percent or more in the partnership during the partnership's tax year, and of each United States and foreign person whose interests in the partnership the controlling fifty-percent partner constructively owned under paragraph (b)(4) of this section during the partnership's tax year;

(ii) A list of transactions between the partnership and any United States person owning at the time of the transaction at least a 10-percent direct interest (as defined in paragraph (b)(3) of this section) in the foreign partnership;

(iii) A statement of the aggregate of the partners' distributive shares of items of income, gain, losses, deductions and credits;

(iv) A statement of income, gain, losses, deductions and credits allocated to each United States person holding a direct interest in the foreign partnership of ten percent or more; and

(v) Any other information Form 8865 or its accompanying instructions require controlling fifty-percent partners to submit.

(h) *Method of reporting.* Except as otherwise provided on Form 8865 or the accompanying instructions, all amounts required to be furnished on Form 8865 must be expressed in United States dollars. All statements required on or with Form 8865 pursuant to this section must be in English.

(i) *Time and place for filing return*—(1) *In general.* Form 8865 must be filed with the United States person's income tax return on or before the due date (including extensions) of that return. If the United States person is not required to file an income tax return for its tax year with which or within which the foreign partnership's tax year ends, but is required to file an information return for that year (for example, Form 1065, ''U.S. Partnership Return of Income,'' or Form 990, ''Return of Organization Exempt from Income Tax''), the Form 8865 must be filed with the United States person's information return filed on or before the due date (including extensions) of that return.

(2) *Duplicate return.* If required by the instructions to Form 8865, a duplicate Form 8865 (including attachments and schedules) must also be filed.

(j) *Overlap with section 6031.* A partner may be required to file Form 8865 under this section and the foreign partnership in which it is a partner may also be required to file a Form 1065 or Form 1065–B under section 6031(e) for the same partnership tax year. For cases where a United States person is a controlling fifty-percent partner or a controlling ten-percent partner with respect to a foreign partnership, and that foreign partnership completes and files Form 1065 or Form 1065–B, the instructions for Form 8865 will specify the filing requirements that address this overlap in reporting obligations.

(k) *Failure to comply with reporting requirement*—(1) *In general.* Any United States person required to file Form 8865 under Section 6038 and this section

that fails to comply (as defined in paragraph (k)(2) of this section) with the reporting requirements of this section, will be subject to the penalties described in paragraph (k)(3) of this section.

(2) *Failure to comply*. A failure to comply is separately determined for each foreign partnership for which a United States person has a section 6038 reporting obligation. A failure to comply with the requirements of section 6038 includes the following—

(i) The failure to report at the proper time and in the proper manner any information required to be reported under the rules of this section; or

(ii) The provision of false or inaccurate information in purported compliance with the requirements of this section.

(3) *Penalties*. A United States person that fails to comply (as defined in paragraph (k)(2) of this section) with the reporting requirements of this section must pay the following penalties, subject to the reasonable cause exception in paragraph (k)(4) of this section:

(i) *Dollar amount penalty*—(A) *$10,000 penalty*. A penalty of $10,000 shall be imposed for each tax year of each foreign partnership with respect to which a failure to comply occurs.

(B) *Increase in penalty*. If a failure to comply with the applicable reporting requirements of section 6038 and this section continues for more than 90 days after the date on which the Commissioner or the Commissioner's delegate mails notice of the failure to the United States person required to file Form 8865, the person must pay an additional penalty of $10,000 for each 30-day period (or fraction thereof) during which the failure continues after the 90-day period has expired.

(C) *Limitation*. The additional penalty imposed on any United States person by section 6038(b)(2) and paragraph (k)(3)(i)(B) of this section is limited to a maximum of $50,000 for each partnership for each tax year with respect to which the failure occurs.

(ii) *Penalty of reducing foreign tax credit*—(A) *Effect on foreign tax credit*. Failure to comply with the reporting requirements of section 6038 and this section may cause a reduction of foreign tax credits under section 901 (taxes of foreign countries and of possessions of the United States). In applying section 901 to a United States person for any tax year with or within which its foreign partnership's tax year ended, the amount of taxes paid (and deemed paid under sections 902 and 960) by the United States person will be reduced by 10 percent if the person fails to comply. However, no tax deemed paid under section 904(c) will be reduced under the provisions of this paragraph (k)(3)(ii).

(B) *Reduction for continued failure*. If a failure to comply with the reporting requirements of section 6038 and this section continues for more than 90 days after the date on which the Commissioner or the Commissioner's delegate mails notice of the failure to the person required to file Form 8865, then the amount of the reduction in paragraph (k)(3)(ii)(A) of this section will be 10 percent, plus an additional 5 percent for each 3-month period (or fraction thereof) during which the failure continues after the 90-day period has expired.

(C) *Limitation on reduction*. The amount of the reduction under paragraphs (k)(3)(ii)(A) and (B) of this section for each failure to furnish information required under this section will not exceed the greater of $10,000, or the gross income of the foreign partnership for its tax year with respect to which the failure occurred.

(D) *Offset for dollar amount penalty imposed*. The total amount of the reduction which, but for this paragraph (k)(3)(ii)(D), may be made under this paragraph (k)(3)(ii) with respect to any separate failure, may not exceed the maximum amount of the reductions that may be imposed, reduced (but not below zero) by the dollar amount penalty imposed by paragraph (k)(3)(i) of this section with respect to the failure.

(4) *Reasonable cause limitation*. The time prescribed for filing a complete Form 8865, and the beginning of the 90-day period after the Commissioner or the Commissioner's delegate mails notice under paragraphs (k)(3)(i)(B) and (ii)(B) of this section, will be treated as being not earlier than the last day on which reasonable cause existed for failure to furnish the information. The

United States person may show reasonable cause by providing a written statement to the Commissioner's delegate having jurisdiction over the person's return to which the Form 8865 should have been attached, setting forth the reasons for the failure to comply. Whether a failure to comply was due to reasonable cause will be determined by the Commissioner, or the Commissioner's delegate, under all the facts and circumstances.

(5) *Statute of limitations.* For exceptions to the limitations on assessment in the event of a failure to provide information under section 6038, see section 6501(c)(8).

(l) *Effective date.* Except as otherwise provided, this section shall apply for tax years of a foreign partnership ending on or after December 31, 2000. For tax years of a foreign partnership ending before December 23, 2002, *see* § 1.6038–3(j) in effect prior to the amendments made by T.D. 9033 (see 26 CFR part 1 revised April 1, 2002).

[T.D. 8850, 64 FR 72550, Dec. 28, 1999, as amended by T.D. 9033, 67 FR 78175, Dec. 23, 2002; T.D. 9065, 68 FR 39012, July 1, 2003]

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[T.D. 8353, 56 FR 28060, June 19, 1991]

§ 1.6038A–1 General requirements and definitions.

(a) *Purpose and scope.* This section and §§ 1.6038A–2 through 1.6038A–7 provide rules for certain foreign-owned U.S. corporations and foreign corporations engaged in trade or business within the United States (reporting corporations) relating to information that must be furnished, records that must be maintained, and the authorization of the reporting corporation to act as agent for related foreign persons for purposes of sections 7602, 7603, and 7604 that must be executed. Section 6038A(a) and this section require that a reporting corporation furnish certain information annually and maintain certain records relating to transactions between the reporting corporation and certain related parties. This section also provides definitions of terms used in section 6038A. Section 1.6038A–2 provides guidance concerning the information to be submitted and the filing of the required return. Section 1.6038A–3 provides guidance concerning the maintenance of records. Section 1.6038A–4 provides guidance concerning the application of the monetary penalty for the failure either to furnish information or to maintain records. Section 1.6038A–5 provides guidance concerning the authorization of an agent for purposes of sections 7602, 7603, and 7604. Section 1.6038A–6 provides guidance concerning the failure to furnish information requested by a summons. Finally, § 1.6038A–7 provides guidance concerning the application of the noncompliance penalty for failure by the related party to authorize an agent or by the reporting corporation to substantially comply with a summons.

(b) *In general.* A reporting corporation must furnish the information described in § 1.6038A–2 by filing an annual information return (Form 5472 or any successor), and must maintain records as described in § 1.6038A–3.

(c) *Reporting corporation*—(1) *In general.* For purposes of section 6038A, a reporting corporation is either a domestic corporation that is 25-percent foreign-owned as defined in paragraph (c)(2) of this section, or a foreign corporation that is 25-percent foreign-owned and engaged in trade or business within the United States. After November 4, 1990, a foreign corporation engaged in a trade or business within the United States at any time during a taxable year is a reporting corporation. See section 6038C.

(2) *25-percent foreign-owned.* A corporation is 25-percent foreign-owned if it has at least one direct or indirect 25-percent foreign shareholder at any time during the taxable year.

(3) *25-percent foreign shareholder*—(i) *In general.* A foreign person is a 25-percent foreign shareholder of a corporation if the person owns at least 25 percent of—

(A) The total voting power of all classes of stock of the corporation entitled to vote, or

(B) The total value of all classes of stock of the corporation.

(ii) *Total voting power and value.* In determining whether one foreign person owns 25 percent of the total voting power of all classes of stock of a corporation entitled to vote or 25 percent of the total value of all classes of stock of a corporation, consideration will be given to all the facts and circumstances of each case, under principles similar to § 1.957–1(b)(2) (consideration of arrangements to shift formal voting power away from a foreign person).

(iii) *Direct 25-percent foreign shareholder.* A foreign person is a direct 25-percent foreign shareholder if it owns directly at least 25 percent of the stock of the reporting corporation, either by vote or by value.

(iv) *Indirect 25-percent foreign shareholder.* A foreign person is an indirect 25-percent foreign shareholder if it owns indirectly (or under the attribution rules of section 318 is considered to own indirectly) at least 25 percent of the stock of the reporting corporation, either by vote or by value.

(4) *Application to prior open years.* For taxable years beginning before July 11, 1989, the definition of a reporting corporation under this paragraph applies in determining whether a foreign-

owned corporation is a reporting corporation. An examination may be reopened if the statute of limitations period for that taxable year has not expired. A taxable year may not be reopened under section 6038A for examination purposes if the taxable year is open under section 6511 only for purposes of the carryback of net operating losses or net capital losses.

(5) *Exceptions*—(i) *Treaty country residents having no permanent establishment.* A foreign corporation that has no permanent establishment in the United States under an applicable income tax convention is not a reporting corporation for purposes of section 6038A and this section. Accordingly, such a foreign corporation is not subject to §§ 1.6038A–2, 1.6038A–3, and 1.6038A–5. It must timely and fully provide the required notice to the Commissioner under section 6114. See section 6114 and the regulations thereunder for the notice that such a corporation must file and the applicable penalties for failure to file such notice.

(ii) *Qualified exempt shipping income.* A foreign corporation whose gross income is exempt from U.S. taxation under section 883 is not a reporting corporation provided that it timely and fully complies with the reporting requirements required to claim such exemption. In the event that such a corporation does not timely and fully comply with the reporting requirements under sections 887 and 883, it will be a reporting corporation subject to section 6038A, including the application of the monetary penalty for failure to file required information.

(iii) *Status as foreign related party.* Nothing in this paragraph affects the determination of whether a person is a foreign related party as defined in paragraph (g) of this section.

(d) *Related party.* The term ''related party'' means—

(1) Any direct or indirect 25-percent foreign shareholder of the reporting corporation,

(2) Any person who is related within the meaning of sections 267(b) or 707(b)(1) to the reporting corporation or to a 25-percent foreign shareholder of the reporting corporation, or

(3) Any other person who is related to the reporting corporation within the meaning of section 482 and the regulations thereunder. However, the term ''related party'' does not include any corporation filing a consolidated federal income tax return with the reporting corporation.

(e) *Attribution rules*—(1) *Attribution under section 318.* For purposes of determining whether a corporation is 25-percent foreign-owned and whether a person is a related party under section 6038A, the constructive ownership rules of section 318 shall apply, and the attribution rules of section 267(c) also shall apply to the extent they attribute ownership to persons to whom section 318 does not attribute ownership. However, ''10 percent'' shall be substituted for ''50 percent'' in section 318(a)(2)(C), and section 318(a)(3) (A), (B), and (C) shall not be applied so as to consider a U.S. person as owning stock that is owned by a person who is not a U.S. person. Additionally, section 318(a)(3)(C) and § 1.318–1(b) shall not be applied so as to consider a U.S. corporation as being a reporting corporation if, but for the application of such sections, the U.S. corporation would not be 25-percent foreign owned.

(2) *Attribution of transactions with related parties engaged in by a partnership.* The transactions in which a domestic or foreign partnership engages shall be attributed to any reporting corporation whose interest in the capital or profits of the partnership, either directly or indirectly, combined with the interests of all related parties of the reporting corporation partner, equals 25 percent or more of the total partnership interests. Attribution of such transactions shall be made only to the extent of the partnership interest held by that reporting corporation partner. See sections 875 and 702(a) and the regulations thereunder. (Attribution shall not be made however, of transactions directly between the partnership and a reporting corporation.) Accordingly, a reporting corporation partner that is deemed to engage in transactions with related parties under this rule is subject to the information reporting requirements of § 1.6038A–2, to the record maintenance requirements of § 1.6038A–3, to the monetary penalty under § 1.6038A–4, to the requirement of authorization of agent under § 1.6038A–5,

to the rules of § 1.6038A–6 relating to the requirement to produce records, and to the noncompliance penalty adjustment under § 1.6038A–7.

(f) *Foreign person.* For purposes of section 6038A, a foreign person is—

(1) Any individual who is not a citizen or resident of the United States, but not including any individual for whom an election under section 6013 (g) or (h) (relating to an election to file a joint return) is in effect;

(2) Any individual who is a citizen of any possession of the United States and who is not otherwise a citizen or resident of the United States;

(3) Any partnership, association, company, or corporation that is not created or organized in the United States or under the law of the United States or any State thereof;

(4) Any foreign trust or foreign estate, as defined in section 7701(a)(31); or

(5) Any foreign government (or agency or instrumentality thereof). To the extent that a foreign government is engaged in the conduct of commercial activity as defined under section 892 and the regulations thereunder, it will be treated as a foreign person under section 6038A and this section only for purposes of the information reporting requirements of § 1.6038A–2. A foreign government will not be treated as a foreign related party for purposes of §§ 1.6038A–3 and 1.6038A–5.

For purposes of section 6038A, a possession of the United States shall be considered to be a foreign country.

(g) *Foreign related party.* A foreign related party is a foreign person as defined under paragraph (f) of this section that is also a related party as defined under paragraph (d) of this section.

(h) *Small corporation exception.* A reporting corporation that has less than $10,000,000 in U.S. gross receipts for a taxable year is not subject to §§ 1.6038A–3 and 1.6038A–5 for that taxable year. Such a corporation, however, remains subject to the information reporting requirements of § 1.6038A–2 and the general record maintenance requirements of section 6001. For purposes of this paragraph, U.S. gross receipts includes all amounts received or accrued to the extent that such amounts are taken into account for the determination and computation of the gross income of the corporation. For purposes of this test, the U.S. gross receipts of all related reporting corporations shall be aggregated.

(i) *Safe harbor for reporting corporations with related party transactions of de minimis value*—(1) *In general.* A reporting corporation is not subject to §§ 1.6038A–3 and 1.6038A–5 for any taxable year in which the aggregate value of all gross payments it makes to and receives from foreign related parties with respect to related party transactions (including monetary consideration, nonmonetary consideration, and the value of transactions involving less than full consideration), is not more than $5,000,000 and is less than 10 percent of its U.S. gross income. Such a corporation, however, remains subject to the information reporting requirements of § 1.6038A–2 and the general record maintenance requirements of section 6001. For purposes of this paragraph, U.S. gross income means the gross income reportable by the reporting corporation (or the aggregate gross income reportable by all related reporting corporations) for U.S. income tax purposes. Gross payments made to or received from foreign related parties cannot be netted; rather, the gross payments made to and received from foreign related parties are to be aggregated. Thus, for example, if a reporting corporation receives $4,700,000 of gross payments from a related party and makes $500,000 of gross payments to the same related party, it has aggregate gross payments of $5,200,000, and, therefore, does not qualify for the safe harbor under this paragraph.

(2) *Aggregate value of gross payments made or received.* The aggregate value of gross payments made to (or received from) a foreign related party with respect to foreign related party transactions is determined by totaling the dollar amounts of foreign related party transactions as described in § 1.6038A–2(b) (3) and (4) on all Forms 5472 filed by the reporting corporation or related reporting corporations.

(j) *Related reporting corporations.* A reporting corporation is related to another reporting corporation if it is related to that other reporting corporation under the principles described in paragraphs (d) and (e) of this section.

(k) *Consolidated return groups*—(1) *Required information.* If a reporting corporation is a member of an affiliated group for which a U.S. consolidated income tax return is filed, the return requirement of §1.6038A–2 may be satisfied by filing a consolidated Form 5472. The common parent, as identified on Form 851, must attach a schedule to the consolidated Form 5472 stating which members of the U.S. affiliated group are reporting corporations under section 6038A, and which of those are joining in the consolidated Form 5472. The schedule must provide the name, address, and taxpayer identification number of each member whose transactions are included on the consolidated Form 5472. A member is not required to join in filing a consolidated Form 5472 merely because other members of the group choose to file one or more Forms 5472 on a consolidated basis.

(2) *Maintenance of records and authorization of agent.* Either the common parent or the principal operating company of an affiliated group filing a consolidated income tax return may be authorized under §1.6038A–5 to act as the agent for foreign related persons engaged in transactions with members of the group solely for purposes of section 7602, 7603, and 7604 under section 6038A(e)(1) and §1.6038A–5. Each member of the group, however, must maintain the records required under section 6038A (a) and §1.6038A–3 relating to its related party transactions.

(3) *Monetary penalties.* The common parent (or principal operating company) and all reporting corporations that join in the filing of a consolidated Form 5472 are liable jointly and severally for penalties for failure to file Form 5472 and for failure to mantain records under section 6038A(d) and §1.6038A–4(e). See §1.1502–77(a) regarding the scope of agency of the common parent corporation.

(l) *District Director.* For purposes of the regulations under section 6038A, the term ''District Director'' means any District Director, or the Assistant Commissioner (International) when performing duties similar to those of a District Director with respect to any person over which the Assistant Commissioner (International) has appropriate jurisdiction.

(m) *Examples.* The following examples illustrate the rules of this section.

Example 1. P, a U.S. partnership that is engaged in a U.S. trade or business, is 75 percent owned by FC1, a foreign corporation that, in turn, is wholly owned by another foreign corporation, FC2. The remaining 25 percent of P is owned by Corp, a domestic corporation, that is wholly owned by FC3. P engages in transactions solely with FC2 and FC3. These transactions are attributed to FC1 and Corp. Under section 875, FC1 is considered as being engaged in a U.S. trade or business. For purposes of section 6038A and this section, FC1 and Corp are reporting corporations and must report their pro rata shares of the value of the transactions with FC2 and FC3. Thus, Corp must report 25 percent of P's transactions with FC3 and FC1 must report 75 percent of P's transactions with FC2.

Example 2. FC2 and FC3 are both foreign corporations that are wholly owned by FC1, also a foreign corporation. FC2 engages in a trade or business in the United States through a branch. The branch engages in related party transactions with FC1. FC2 is a reporting corporation. FC3 is a foreign related party. FC1 is a direct 25-percent foreign shareholder of both FC2 and FC3. Neither FC1 nor FC3 is a reporting corporation.

Example 3. FC1 owns 25 percent of total voting power in each of FC2 and FC3. FC2 and FC3 each own 20 percent of the total voting power of Corp, a domestic corporation. The remaining stock of Corp is owned by an unrelated domestic corporation. Neither FC2 nor FC3 is engaged in a U.S. trade or business. Under section 318(a)(2)(C) and paragraph (e) of this section, FC1 constructively owns its proportionate share of the stock of Corp owned directly by FC2 and FC3. Thus, FCl is treated as constructively owning five percent of Corp through each of FC2 and FC3 or a total of 10 percent of the Corp stock. Consequently, Corp is not a reporting corporation because no 25 percent shareholder exists.

Example 4. FP owns 100 percent of FCl which, in turn, owns 100 percent of FC2. FC2 owns 100 percent of FC3 which owns 100 percent of RC. FP, FC1, and FC2 are indirect 25-percent foreign shareholders of RC, and FC3 is a direct 25-percent foreign shareholder.

Example 5. FP owns 100 percent of USS, a U.S. corporation, and 25 percent of FS, a foreign corporation. The remaining 75 percent of FS is publicly owned by numerous small

shareholders. Sales transactions occur between USS and FS. Applying the rules of this section, USS is a reporting corporation. It is determined that USS and FS are each controlled by FP under section 482 and the regulations thereunder. Therefore, FS is related to USS within the meaning of section 482 and is a related party to USS. Accordingly, the sales transactions between USS and FS are subject to section 6038A.

Example 6. The facts are the same as in *Example 5,* except that the remaining 75 percent of FS is owned by one shareholder that is unrelated to the FP group and it is determined that FS is not controlled by FP for purposes of section 482. Under these facts, FS is not a related party of either FP or USS. Accordingly, section 6038A does not apply to the sales transactions between FS and USS.

Example 7. P, a U.S. multinational, is a holding company that wholly owns X, a U.S. operating company, which in turn wholly owns FS, a controlled foreign corporation. Applying the rule of section 318(a)(3)(C), FS is deemed to own the stock of X that is actually held by P. However, under the rules of paragraph (e) of this section, X will not be a reporting corporation by reason of section 318.

(n) *Effective dates*—(1) *Section 1.6038A–1.* Paragraphs (c) (relating to the definition of a reporting corporation), (d) (relating to the definition of a related party), (e)(1) (relating to the application of section 318), and (f) (relating to the definition of a foreign person) of this section are effective for taxable Years beginning after July 10, 1989. The remaining paragraphs of this section are effective December 10, 1990, without regard to when the taxable year began.

(2) *Section 1.6038A–2.* Section 1.6038A–2 (relating to the requirement to file Form 5472) generally applies for taxable years beginning after July 10, 1989. However, §1.6038A–2 as it applies to reporting corporations whose sole trade or business in the United States is a banking, financing, or similar business as defined in §1.864–4(c)(5)(i) applies for taxable years beginning after December 10, 1990. The final sentence of §1.6038A–2(d) applies for taxable years ending on or after January 1, 2003. For taxable years ending prior to January 1, 2003, see §1.6038A–2(d) in effect prior to January 1, 2003 (see 26 CFR part 1 revised as of April 1, 2002).

(3) *Section 1.6038A–3.* Section 1.6038A–3 (relating to the record maintenance requirement) is generally effective December 10, 1990. However, records described in §1.6038A–3 in existence on or after March 20, 1990, must be maintained, without regard to when the taxable year to which the records relate began.

(4) *Section 1.6038A–4.* Section 1.6038A–4 (relating to the monetary penalty) is generally effective for taxable years beginning after July 10, 1989, for the failure to file Form 5472. For the failure to maintain records or the failure to produce documents under §1.6038A–4(f)(2), the section is effective December 10, 1990, without regard to when the taxable year to which the records relate began.

(5) *Section 1.6038A–5.* Section 1.6038A–5 (relating to the authorization of agent requirement) is effective December 10, 1990, without regard to when the taxable year to which the records relate began.

(6) *Section 1.6038A–6.* Section 1.6038A–6 (relating to the failure to furnish information under a summons) is effective November 6, 1990, without regard to when the taxable year to which the summons relates began.

(7) *Section 1.6038A–7.* Section 1.6038A–7 (relating to the noncompliance penalty adjustment) is effective December 10, 1990, without regard to when the taxable year began.

[T.D. 8353, 56 FR 28061, June 19, 1991; T.D. 8353, 56 FR 41792, Aug. 23, 1991, as amended by T.D. 9161, 69 FR 55500, Sept. 15, 2004]

§ 1.6038A–2 Requirement of return.

(a) *Form 5472 required*—(1) *In general.* Each reporting corporation as defined in §1.6038A–1(c) (or members of an affiliated group filing together as described in §1.6038A–1(k)) shall make a separate annual information return on Form 5472 with respect to each related party as defined in §1.6038A–1(d) with which the reporting corporation (or any group member joining in a consolidated Form 5472) has had any reportable transaction during the taxable year. The information required by section 6038A and this section must be furnished even though it may not affect the amount of any tax due under the Code.

(2) *Reportable transaction.* A reportable transaction is any transaction of the types listed in paragraphs (b) (3)

and (4) of this section. However, if neither party to the transaction is a United States person as defined in section 7701(a)(30) and the transaction—

(i) Will not generate in any taxable year gross income from sources within the United States or income effectively connected, or treated as effectively connected, with the conduct of a trade or business within the United States, and

(ii) Will not generate in any taxable year any expense, loss, or other deduction that is allocable or apportionable to such income, the transaction is not a reportable transaction.

(b) *Contents of return*—(1) *Reporting corporation*. Form 5472 must provide the following information in the manner the form prescribes with respect to each reporting corporation:

(i) Its name, address (including mailing code), and U.S. taxpayer identification number; each country in which the reporting corporation files an income tax return as a resident under the tax laws of that country; its country or countries of organization, and incorporation; its total assets for U.S. reporting corporation; the places where it conducts its business; and its principal business activity.

(ii) The name, address, and U.S. taxpayer identification number, if applicable, of all its direct and indirect 25-percent foreign shareholders (for an indirect 25-percent foreign shareholder, explain the attribution of ownership); each country in which each 25-percent foreign shareholder files an income tax return as a resident under the tax laws of that country; the places where each 25-percent shareholder conducts its business; and the country or countries of organization, citizenship, and incorporation of each 25-percent foreign shareholder.

(iii) The number of Forms 5472 filed for the taxable year and the aggregate value in U.S. dollars of gross payments as defined in § 1.6038A–1(h)(2) made with respect to all foreign related party transactions reported on all Forms 5472.

(2) *Related party*. The reporting corporation must provide information on Form 5472, set forth in the manner the form prescribes, about each related party, whether foreign or domestic, with which the reporting corporation had a transaction of the types described in paragraphs (b) (3) and (4) of this section during its taxable year, including the following information:

(i) The name, U.S. taxpayer identification number, if applicable, and address of the related party.

(ii) The nature of the reated party's business and the principal place or places where it conducts its business.

(iii) Each country in which the related party files an income tax return as a resident under the tax laws of that country.

(iv) The relationship of the reporting corporation to the related party.

(3) *Foreign related party transactions for which only monetary consideration is paid or received by the reporting corporation*. If the related party is a foreign person, the reporting corporation must set forth on Form 5472 the dollar amounts of all reportable transactions for which monetary consideration (including U.S. and foreign currency) was the sole consideration paid or received during the taxable year of the reporting corporation. The total amount of such transactions, as well as the separate amounts for each type of transaction described below, must be reported on Form 5472, in the manner the form prescribes. Where actual amounts are not determinable, a reasonable estimate (as described in paragraph (b)(6) of this section) is permitted. The types of transactions described in this paragraph are:

(i) Sales and purchases of stock in trade (inventory);

(ii) Sales and purchases of tangible property other than stock in trade;

(iii) Rents and royalties paid and received (other than amounts reported under paragraph (b)(3)(iv) of this section);

(iv) Sales, purchases, and amounts paid and received as consideration for the use of all intangible property, including (but not limited to) copyrights, designs, formulas, inventions, models, patents, processes, trademarks, and other similar intangible property rights;

(v) Consideration paid and received for technical, managerial, engineering, construction, scientific, or other services;

(vi) Commissions paid and received;

(vii) Amounts loaned and borrowed (except open accounts resulting from sales and purchases reported under other items listed in this paragraph (b)(3) that arise and are collected in full in the ordinary course of business);

(viii) Interest paid and received;

(ix) Premiums paid and received for insurance and reinsurance; and

(x) Other amounts paid or received not specifically identified in this paragraph (b)(3) to the extent that such amounts are taken into account for the determination and computation of the taxable income of the reporting corporation.

Amounts required to be reported under paragraph (b)(3)(vii) of this section shall be reported as monthly averages or outstanding balances at the beginning and end of the taxable year, as the form shall prescribe.

(4) *Foreign related party transactions involving nonmonetary consideration or less than full consideration.* If the related party is a foreign person, the reporting corporation must provide on Form 5472 a description of any reportable transaction, or group of reportable transactions, listed in paragraph (b)(3) of this section, for which any part of the consideration paid or received was not monetary consideration, or for which less than full consideration was paid or received. A description required under paragraph (b)(4) of this section shall include sufficient information from which to determine the nature and approximate monetary value of the transaction or group of transactions, and shall include:

(i) A description of all property (including monetary consideration), rights, or obligations transferred from the reporting corporation to the foreign related party and from the foreign related party to the reporting corporation;

(ii) A description of all services performed by the reporting corporation for the foreign related party and by the foreign related party for the reporting corporation; and

(iii) A reasonable estimate of the fair market value of all properties and services exchanged, if possible, or some other reasonable indicator of value.

If, for any transaction, the entire consideration received includes both tangible and intangible property and the consideration paid is solely monetary consideration, the transaction should be reported under paragraph (b)(3) of this section if the intangible property was related and incidental to the transfer of the tangible property (for example, a right to warranty services.)

(5) *Additional information.* In addition to the information required under paragraphs (b) (3) and (4) of this section, a reporting corporation must provide on Form 5472, in the manner the form prescribes, the following information:

(i) If the reporting corporation imports goods from a foreign related party, whether the costs taken into account in computing the basis or inventory cost of such goods are greater than the costs taken into account in computing the valuation of the goods for customs purposes, adjusted pursuant to section 1059A and the regulations thereunder, and if so, the reasons for the difference.

(ii) If the costs taken into account in computing the basis or inventory cost of such goods are greater than the costs taken into account in computing the valuation of the goods for customs purposes, whether the documents supporting the reporting corporation's treatment of the items set forth in paragraph (b)(5)(i) of this section are in existence and available in the United States at the time Form 5472 is filed.

(6) *Reasonable estimate*—(i) *Estimate within 25 percent of actual amount.* Any amount reported under this section is considered to be a reasonable estimate if it is at least 75 percent and not more than 125 percent of the actual amount.

(ii) *Other estimates.* If any amount reported under this paragraph (b) of this section fails to meet the reasonable estimate test of paragraph (b)(6)(i) of this section, the reporting corporation nevertheless may show that such amount is a reasonable estimate by making an affirmative showing of relevant facts and circumstances in a written statement containing a declaration that it is made under the penalties of perjury. The District Director shall determine whether the amount reported was a reasonable estimate.

(7) *Small amounts*. If any actual amount required under this section does not exceed $50,000, the amount may be reported as ''$50,000 or less.''

(8) *Accrued payments and receipts*. For purposes of this section, a reporting corporation that uses an accrual method of accounting shall use accrued payments and accrued receipts for purposes of computing the total amount of each of the types of transactions listed in this section.

(c) *Method of reporting*. All statements required on or with the Form 5472 under this section and §1.6038A–5 shall be in the English language. All amounts required to be reported under paragraph (b) of this section shall be expressed in United States currency, with a statement of the exchange rates used.

(d) *Time and place for filing returns*. A Form 5472 required under this section shall be filed with the reporting corporation's income tax return for the taxable year by the due date (including extensions) of that return. A duplicate Form 5472 (including any attachments and schedules) shall be filed at the same time with the Internal Revenue Service Center, Philadelphia, PA 19255. A Form 5472 that is timely filed electronically satisfies the duplicate filing requirement.

(e) *Untimely filed return*. If the reporting corporation's income tax return is untimely filed, Form 5472 (with a duplicate to Philadelphia) nonetheless shall be timely filed at the service center where the return is due. When the income tax return is ultimately filed, a copy of Form 5472 must be attached.

(f) *Exceptions*—(1) *No reportable transactions*. A reporting corporation is not required to file Form 5472 if it has no transactions of the types listed in paragraphs (b) (3) and (4) of this section during the taxable year with any related party.

(2) *Transactions solely with a domestic reporting corporation*. If all of a foreign reporting corporation's reportable transactions are with one or more related domestic reporting corporations that are not members of the same affiliated group, the foreign reporting corporation shall furnish on Form 5472 only the information required under paragraphs (b) (1) and (2) of this section, if the domestic reporting corporations provide the information required under paragraphs (b) (3) through (5) of this section. Such a foreign reporting corporation nonetheless is subject to the record maintenance requirements of §1.6038A–3 and the requirements of §§1.6038A–5 and 1.6038A–6. The name, address, and taxpayer identification number of each domestic reporting corporation that provided such information must be indicated on Form 5472 in the space provided for the information under paragraphs (b) (1) and (2) of this section.

(3) *Transactions with a corporation subject to reporting under section 6038*. A reporting corporation is not required to make a return of information on Form 5472 with respect to a related foreign corporation for a taxable year for which a U.S. person that controls the foreign related corporation makes a return of information on Form 5471 that is required under section 6038 and this section, if that return contains information required under §1.6038–2(f)(11) with respect to the reportable transactions between the reporting corporation and the related corporation for that taxable year. Such a reporting corporation also is not subject to §§1.6038A–3 and 1.6038A–5. It remains subject to the general record maintenance requirements of section 6001.

(4) *Transactions with a foreign sales corporation*. A reporting corporation is not required to make a return of information on Form 5472 with respect to a related corporation that qualifies as a foreign sales corporation for a taxable year for which the foreign sales corporation files Form 1120–FSC.

(g) *Filing Form 5472 when transactions with related parties engaged in by a partnership are attributed to a reporting corporation*. If transactions engaged in by a partnership are attributed under §1.6038A–1(e)(2) to a reporting corporation, the reporting corporation need report on Form 5472 only the percentage of the value of the transaction or transactions equal to the percentage of its partnership interest. Thus, for example, if a partnership buys $1000 of widgets from the foreign parent of a reporting corporation whose partnership interest in the partnership equals 50 percent of the partnership interests

(and the remaining 50 percent is held by unrelated parties), the reporting corporation must report $500 of purchases from a foreign related party on Form 5472.

(h) *Effective/applicability date.* Except as otherwise provided, for applicability dates for this section for certain reporting corporations, see § 1.6038A–1(n). Paragraph (b)(8) of this section applies with respect to information for annual accounting periods beginning on or after June 21, 2006.

[T.D. 8353, 56 FR 28063, June 19, 1991, as amended by T.D. 9113, 69 FR 5932, Feb. 9, 2004; T.D. 9161, 69 FR 55500, Sept. 15, 2004; T.D. 9268, 71 FR 35526, June 21, 2006; T.D. 9338, 72 FR 38476, July 13, 2007]

EDITORIAL NOTE: By T.D. 9268, 71 FR 35526, June 21, 2006, § 1.6038A–2T was amended. However, § 1.6038A–2T was removed by T.D. 9161, 69 FR 55500, Sept. 15, 2004, so this amendment could not be incorporated.

§ 1.6038A–3 Record maintenance.

(a) *General maintenance requirements*—(1) Section 6001 and section 6038A. A reporting corporation must keep the permanent books of account or records as required by section 6001 that are sufficient to establish the correctness of the federal income tax return of the corporation, including information, documents, or records (''records'') to the extent they may be relevant to determine the correct U.S. tax treatment of transactions with related parties. Under section 6001, the District Director may require any person to make such returns, render such statements, or keep such specific records as will enable the District Director to determine whether or not that person is liable for any of the taxes to which the regulations under part I have application. See section 6001 and the regulations thereunder. Such records must be permanent, accurate, and complete, and must clearly establish income, deductions, and credits. Additionally, in appropriate cases, such records include sufficient relevant cost data from which a profit and loss statement may be prepared for products or services transferred between a reporting corporation and its foreign related parties. This requirement includes records of the reporting corporation itself, as well as to records of any foreign related party that may be relevant to determine the correct U.S. tax treatment of transactions between the reporting corporation and foreign related parties. The relevance of such records with respect to related party transactions shall be determined upon the basis of all the facts and circumstances. Section 6038A and this section provide detailed guidance regarding the required maintenance of records with respect to such transactions and specify penalties for noncompliance. Banks and other financial institutions shall follow the specific record maintenance rules described in paragraph (h) of this section.

(2) *Safe harbor.* A safe harbor for record maintenance is provided under paragraph (c) of this section, which sets forth detailed guidance concerning the types of records to be maintained with respect to related party transactions. The safe harbor consists of an all-inclusive list of record types that could be relevant to different taxpayers under a variety of facts and circumstances. It does not constitute a checklist of records that every reporting corporation must maintain or that generally should be requested by the Service. A specific reporting corporation is required to maintain, and the Service will request, only those records enumerated in the safe harbor (including material profit and loss statements) that may be relevant to its business or industry and to the correct U.S. tax treatment of its transactions with its foreign related parties. Accordingly, not every item listed in the safe harbor must be maintained by every reporting corporation. A corporation that maintains or causes another person to maintain the records listed in paragraph (c)(2) of this section that may be relevant to its foreign related party transactions and to its business or industry will be deemed to have met the record maintenance requirements of section 6038A.

(3) *Examples.* The following examples illustrate the rules of this paragraph.

Example 1. RC, a U.S. reporting corporation, is owned by two shareholders, F and P. F is a foreign corporation that owns 30 percent of the stock of RC. P is a domestic corporation that owns the remaining 70 percent.

RC purchases tangible property from F; however, the only potential audit issue with respect to these transactions is their treatment under section 482. It is determined that F does not in fact control RC and the two corporations do not constitute a group of ''controlled taxpayers'' for purposes of section 482 and the regulations thereunder. There are no other reportable transactions between RC and F. Under § 1.6038A–1(g), F is a foreign related party with respect to RC. Accordingly, RC is required to report its purchases of property from F under the reporting requirements of § 1.6038A–2. Nevertheless, because section 482 is not applicable to the transactions between RC and F, the records created by F with respect to its sales to RC are not relevant for purposes of determining the correct tax treatment of these transactions. RC is required to maintain its own records of these transactions under the requirements of section 6001, but the transactions are not subject to the record maintenance requirements of this section. If, however, on audit it is determined that F does control RC, all records relevant to determining the arm's length consideration for the tangible property under section 482 will be subject to these requirements.

Example 2. FP, a foreign person, owns 30 percent of the stock of RC, a reporting corporation. The remaining 70 percent of RC stock is held by persons that are not 25-percent foreign shareholders. It is determined that FP is related to RC within the meaning of section 482 and the regulations thereunder. The only transactions between FP and RC are FP's capital contributions, dividends paid from RC to FP, and loans from FP to RC. Under section 6001, RC is required to maintain all documentation necessary to establish the U.S. tax treatment of the capital contributions, dividends, and loans. RC is not required to maintain records in other categories listed in paragraph (c)(3) of this section because they are not relevant to the transactions between FP and RC. Records of FP not related to these transactions are not subject to the record maintenance requirements under section 6038A(a) and this section.

Example 3. G, a foreign multinational group, creates Sub, a wholly-owned U.S. subsidiary, in order to purchase tangible property from unrelated parties in the United States and resell such property to G. The property purchased by Sub is either used in G's business or resold to other unrelated parties by G. Sub's sole function is to act as a buyer for G and these purchases are the only transactions that G has with any U.S. affiliates. Under all the facts and circumstances of this case, it is determined that an analysis of the group's worldwide profit attributable to the property it purchases from Sub is not relevant for purposes of determining the tax treatment of the sales from Sub to G. Therefore, the records with respect to the profitability of G are not subject to the record maintenance requirements of this section. However, all records related to the appropriate method under section 482 for determining an arm's-length consideration for the property sold by Sub to G are subject to the record maintenance requirements of this section.

Example 4. [Reserved]. For further guidance, see § 1.6038A–3T, Example 4.

(b) *Other maintenance requirements*—(1) *Indirectly related records.* This section applies to records that are directly or indirectly related to transactions between the reporting corporation and any foreign related parties. An example of records that are indirectly related to such transactions is records possessed by a foreign subsidiary of a foreign related party that document the raw material or component costs of a product that is manufactured or assembled by the subsdiary and sold as a finished product by the foreign related party to the reporting corporation.

(2) *Foreign related party or third-party maintenance.* If records that are required to be maintained under this section are in the control of a foreign related party, the records may be obtained or compiled (if not already in the possession of the foreign related party or already compiled) under the direction of the reporting corporation and then maintained by the reporting corporation, the foreign related party, or a third party. Thus, for example, a foreign related party may either itself maintain such records outside the United States or permit a third party to maintain such records outside the United States, provided that the conditions described in paragraph (f) of this section are met. Upon a request for such records by the Service, a foreign related party or third party may make arrangements with the District Director to furnish the records directly, rather than through the reporting corporation.

(3) *Translation of records.* When records are provided to the Service under a request for production, any portion of such records must be translated into the English language within 30 days of a request for translation of that portion by the District Director. To the extent that any requested documents are identical to documents that

have already been translated, an explanation of how such documents are identical instead may be provided. An extension of this time period may be requested under paragraph (f)(4) of this section. Appropriate extensions will be liberally granted for translation requests where circumstances warrant. If a good faith effort is made to translate accurately the requested documents within the specified time period, the reporting corporation will not be subject to the penalties in §§1.6038A–4 and 1.6038A–7.

(4) *Exception for foreign governments.* A foreign government is not subject to the obligation to maintain records under this section.

(5) *Records relating to conduit financing arrangements.* See §1.881–4 relating to conduit financing arrangements.

(c) *Specific records to be maintained for safe harbor*—(1) *In general.* A reporting corporation that maintains or causes another person to maintain the records specified in this paragraph (c) that are relevant to its business or industry and to the correct U.S. tax treatment of its transactions with its foreign related parties will deemed to have met the record maintenance requirements of this section. This paragraph provides general descriptions of the categories of records to be maintained; the particular title or label applied by a reporting corporation or related party does not control. Functional equivalents of the specified documents are acceptable. Record maintenance in accordance with this safe harbor, however, requires only the maintenance of types of documents described in paragraph (c)(2) of this section that are directly or indirectly related to transactions between the reporting corporation and any foreign related party. Additionally, to the extent the reporting corporation establishes that records in a particular category are not applicable to the industry or business of the reporting corporation and any foreign related party, maintenance of such records is not required under this paragraph. Record maintenance in accordance with this paragraph (c) generally does not require the original creation of records that are ordinarily not created by the reporting corporation or its related parties. (If, however, a document that is actually created is described in this paragraph (c), it is to be maintained even if the document is not of the type ordinarily created by the reporting corporation or its related parties.) There are two exceptions to the rule. First, basic accounting records that are sufficient to document the U.S. tax effects of transactions between related parties must be created and retained, if they do not otherwise exist. Second, records sufficient to produce material profit and loss statements as described in paragraphs (c)(2)(ii) and (3) of this section that are relevant for determining the U.S. tax treatment of transactions between the reporting corporation and foreign related parties must be created if such records are not ordinarily maintained. All internal records storage and retrieval systems used for each taxable year must be retained.

(2) *Descriptions of categories of documents to be maintained.* The following records must be maintained in order to satisfy this paragraph (c) to the extent they may be relevant to determine the correct U.S. tax treatment of transactions between the reporting corporation and any foreign related party.

(i) *Original entry books and transaction records.* This category includes books and records of original entry or their functional equivalents, however designated or labelled, that are relevant to transactions between any foreign related party and the reporting corporation. Examples include, but are not limited to, general ledgers, sales journals, purchase order books, cash receipts books, cash disbursement books, canceled checks and bank statements, workpapers, sales contracts, and purchase invoices. Descriptive material to explicate entries in the foregoing types of records, such as a chart of accounts or an accounting policy manual, is included in this category.

(ii) *Profit and loss statements.* This category includes records from which the reporting corporation can compile and supply, within a reasonable time, material profit and loss statements of the reporting corporation and all related parties as defined in §1.6038A–1 (d) (the ''related party group'') that reflect profit or loss of the related party group attributable to U.S.-connected

products or services as defined in paragraph (c)(7)(i) of this section. The determination of whether a profit and loss statement is material is made under the rules provided in paragraph (c)(3) of this section. The material profit and loss statements described in this paragraph (c)(2)(ii) must reflect the consolidated revenue and expenses of all members of the related party group. Thus, records in this category include the documentation of the cost of raw materials used by a related party to manufacture finished goods that are then sold by another related party to the reporting corporation. The records should be kept under U.S. generally accepted accounting principles if they are ordinarily maintained in such manner; if not, an explanation of the material differences between the accounting principles used and U.S. generally accepted accounting principles must be made available. The statements need not reflect tracing of the actual costs borne by the group with respect to its U.S.-connected products or services; rather, any reasonable method may be used to allocate the group's worldwide costs to the revenues generated by the sales of those products or services. An explanation of the methods used to allocate specific items to a particular profit and loss statement must be made available. The explanation of material differences between accounting principles and the explanation of allocation methods must be sufficient to permit a comparison of the profitability of the group to that of the reporting corporation attributable to the provision of U.S.-connected products or services.

(iii) *Pricing documents*. This category includes all documents relevant to establishing the appropriate price or rate for transactions between the reporting corporation and any foreign related party. Examples include, but are not limited to, documents related to transactions involving the same or similar products or services entered into by the reporting corporation or a foreign related party with related and unrelated parties; shipping and export documents; commission agreements; documents relating to production or assembly facilities; third-party and intercompany purchase invoices; manuals, specifications, and similar documents relating to or describing the performance of functions conducted at particular locations; intercompany correspondence discussing any instructions or assistance relating to such transactions provided to the reporting corporations by the related foreign person (or vice versa); intercompany and intracompany correspondence concerning the price or the negotiation of the price used in such transactions; documents related to the value and ownership of intangibles used or developed by the reporting corporation or the foreign related party; documents related to cost of goods sold and other expenses; and documents related to direct and indirect selling, and general and administrative expenses (for example, relating to advertising, sales promotions, or warranties).

(iv) *Foreign country and third party filings*. This category includes financial and other documents relevant to transactions between a reporting corporation and any foreign related party filed with or prepared for any foreign government entity, any independent commission, or any financial institution.

(v) *Ownership and capital structure records*. This category includes records or charts showing the relationship between the reporting corporation and the foreign related party; the location, ownership, and status (for example, joint venture, partnership, branch, or division) of all entities and offices directly or indirectly involved in the transactions between the reporting corporation and any foreign related party; a worldwide organization chart; records showing the management structure of all foreign affiliates; and loan documents, agreements, and other documents relating to any transfer of the stock of the reporting corporation that results in the change of the status of a foreign person as a foreign related party.

(vi) *Records of loans, services, and other non-sales transactions*. This category includes relevant documents relating to loans (including all deposits by one foreign related party or reporting corporation with an unrelated party and a subsequent loan by that unrelated party to a foreign related party or reporting corporation that is

in substance a direct loan between a reporting corporation and a foreign related party); guarantees of a foreign related party of debts of the reporting corporation, and vice versa; hedging arrangements or other risk shifting or currency risk shifting arrangements involving the reporting corporation and any foreign related party; security agreements between the reporting corporation and any foreign related party; research and development expense allocations between any foreign related party and the reporting corporation; service transactions between any foreign related party and the reporting corporation, including, for example, a description of the allocation of charges for management services, time or travel records, or allocation studies; import and export transactions between a reporting corporation and any foreign related party; the registration of patents and copyrights with respect to transactions between the reporting corporation and any foreign related party: and documents regarding lawsuits in foreign countries that relate to such transactions between a reporting corporation and any foreign related party (for example, product liability suits for U.S. products).

(vii) *Records relating to conduit financing arrangements.* See §1.881–4 relating to conduit financing arrangements.

(3) *Material profit and loss statements.* For purposes of paragraph (c)(2)(ii) of this section, the determination of whether a profit and loss statement is material will be made according to the following rules. An agreement between the reporting corporation and the District Director as described in paragraph (e) of this section may identify material profit and loss statements of the related party group and describe the items to be included in any profit and loss statements for which records are to be maintained to satisfy the requirements of paragraph (c)(2)(ii) of this section. In the absence of such an agreement, a profit and loss statement will be material if it meets any of the following tests: the existing records test described in paragraph (c)(4) of this section, the significant industry segment test described in paragraph (c)(5) of this section, or the high profit test described in paragraph (c)(6) of this section.

(4) *Existing records test.* A profit and loss statement is material under the existing records test described in this paragraph (c)(4) if any member of the related party group creates or compiles such statement in the course of its business operations and the statement reflects the profit or loss of the related party group attributable to the provision of U.S.-connected products or services (regardless of whether the profit and loss attributable to U.S.-connected products or services is shown separately or included within the calculation of aggregate figures on the statement). For example, a profit and loss statement is described in this paragraph if it was produced for internal accounting or management purposes, or for disclosure to shareholders, financial institutions, government agencies, or any other persons. Such existing statements and the records from which they were complied (to the extent such records relate to profit and loss attributable to U.S.-connected products or services) are subject to the record maintenance requirements described in paragraph (c)(2)(ii) of this section.

(5) *Significant industry segment test*—(i) *In general.* A profit and loss statement is material under the significant industry segment test described in this paragraph (c)(5) if—

(A) The statement reflects the profit or loss of the related party group attributable to the group's provision of U.S.-connected products or services within a single industry segment (as defined in paragraph (c)(7)(ii) of this section);

(B) The worldwide gross revenue attributable to such industry segment is 10 percent or more of the worldwide gross revenue attributable to the group's combined industry segments; and

(C) The amount of gross revenue earned by the group from the provision of U.S.-connected products or services within such industry segment is $25 million or more in the taxable year.

(ii) *Form of the statements.* Profit and loss statements compiled for the group's provision of U.S.-connected products or services in each significant

industry segment must reflect revenues and expenses attributable to the operations in such segment by all members of the related party group. Statements may show each related party's revenues and expenses separately, or may be prepared in a consolidated format. Any reasonable method may be used to allocate the group's worldwide costs within the industry segment to the U.S.-connected products or services within that segment. An explanation of the methods used to prepare consolidated statements and to allocate specific items to a particular profit and loss statement must be made available, and the records from which the consolidations and allocations were prepared must be maintained.

(iii) *Special rule for component sales.* Where the U.S.-connected products or services consist of components that are incorporated into other products or services before sale to customers, the portion of the total gross revenue derived from sales of the finished products or services attributable to the components may be determined on the basis of relative costs of production. Thus, where relevant for determining whether the $25 million threshold in paragraph (c)(5)(i)(C) of this section has been met, the amount of gross revenue derived by the related party group from the provision of the finished products or services may be reduced by multiplying it by a fraction, the numerator of which is the costs of production of the related party group attributable to the component products or services that constitute U.S.-connected products or services and the denominator of which is the costs of production of the related party group attributable to the finished products in which such components are incorporated.

(iv) *Level of specificity required.* In applying the significant industry segment test of this paragraph (c)(5), groups of related products and services must be chosen to provide a reasonable level of specificity that results in the greatest number of separate significant industry segments in comparison to other possible classifications. This determination must be made on the basis of the particular facts presented by the operations of the related party group. The following rules, however, provide general guidelines for making such classifications. First, the related party group's operations that involve the provision of U.S.-connected products should be grouped into product lines. The rules of this paragraph (c)(5) should then be applied to determine if any such product line would, standing alone, constitute a significant industry segment when compared to the related party group's operations as a whole. Any significant industry segments determined at the level of product lines should be further segregated, and tested for significant industry segments, at the level of separate products. Finally, any significant industry segments determined at the level of separate products should be segregated, and tested for significant industry segments, at the level of separate models. Similar principles should be applied in classifying and testing types of services. A profit and loss statement reflecting the related party group's provision of any product or service (or group of products or services as classified under these rules) that constitutes a significant industry segment will be considered material for purposes of this paragraph (c)(5). For definitions of the terms ''product'', ''related products or services'', ''model'', and ''product line'', see paragraph (c)(7) of this section.

(v) *Examples.* The rules for determining reasonable levels of specificity for significant industry segments may be illustrated by the following examples.

Example 1. A related party group is engaged in the manufacture and worldwide sales of automobiles and aftermarket parts. The group's operations within the categories of ''automobiles'' and ''aftermarket parts''. are each sufficient to constitute significant industry segments for the group under the rules of this paragraph (c)(5). No narrower classification of aftermarket parts results in any significant industry segments. Automobiles produced by the group are generally classified for marketing purposes by trade names; aggregating groups of automobiles by these trade names results in three significant industry segments, those for trade names A, B, and C. Finally, two car models sold under the trade name A (''A1'' and ''A2'') and one car model sold under the trade name B (''B3''), produce sufficient revenue to constitute significant industry segments. Such

classifications into trade names and car models are generally used in the related party group's industry; moreover, different types of classifications would produce fewer significant industry segments. Accordingly, a reasonable level of specificity for this related party group's industry segments would be eight categories of products consisting of ''automobiles'', ''aftermarket parts'', ''A'', ''B'', ''C'', ''A1'', ''A2'', and ''B3''.

Example 2. A related party group is engaged in manufacturing electronic goods that are distributed at retail in the United States by the reporting corporation. The group sells three types of products in the United States: televisions, radios, and video cassette recorders (VCRs). Each of these three broad product areas constitutes a significant industry segment for the group as a whole. VCRs can be further segregated by price into high-end and low-end models, and the provision of each constitutes a significant industry segment for the group. Revenues from only one VCR model, model number VCRX–10, are sufficiently large to make the provision of that model a significant industry segment. With respect to televisions, the group normally accounts for these products by size. Using this classification, portable televisions, medium-sized televisions, and consoles each constitute significant industry segments. Narrower classifications by television model numbers result in no additional significant industry segments. Finally, a single radio product line, those sold under the trade name R, produces sufficient revenue to constitute a significant industry segment, but no other radio models or product groups are large enough to constitute a significant industry segment. In each case, these classifications conform to normal business practices in the industry and result in the greatest possible number of significant industry segments for this related party group. Accordingly, a reasonable level of specificity for this related party group's industry segments would include the ten categories consisting of ''VCRs'', ''high-end VCRs'', ''low-end VCRs'', ''model number VCRX–10'', ''televisions'', ''portable televisions'', ''medium-sized televisions'', ''console televisions'', ''radios'', and ''radio trade name R''.

(6) *High profit test*—(i) *In general.* A profit and loss statement is material under the high profit test described in this paragraph (c)(6) if—

(A) The statement reflects the profit or loss of the related party group attributable to the group's provision of U.S.-connected products or services within a single industry segment (as defined in paragraph (c)(7)(ii) of this section);

(B) The amount of gross revenue earned by the group from the provision of U.S.-connected products or services within such industry segment is $100 million or more in the taxable year; and

(C) The return on assets test described in paragraph (c)(6)(ii) of this section is satisfied with respect to the products and services attributable to such segment.

Accordingly, a significant industry segment (as determined under paragraph (c)(5) of this section) must be divided into any narrower industry segments that meet the high profit test of this paragraph (c)(6), even if such narrower segments would not, standing alone, meet the significant industry segment test of paragraph (c)(5) of this section.

(ii) *Return on assets test.* An industry segment meets the return on assets test if the rate of return on assets earned by the related party group on its worldwide operations within this industry segment exceeds 15 percent, and is at least 200 percent of the return on assets earned by the group in all industry segments combined. For purposes of this paragraph, the rate of return on assets earned by an industry segment is determined by dividing that segment's operating profit (as defined in paragraph (c)(7)(v) of this section) by its identifiable assets (as defined in paragraph (c)(7)(iv) of this section).

(iii) *Additional rules.* The rules in paragraphs (c)(5)(ii) through (iv) of this section describing the application of the significant industry segment test shall apply in a similar manner for purposes of the high profit test.

(7) *Definitions.* The following definitions apply for purposes of paragraphs (c)(2)(ii), (c)(5), and (c)(6) of this section.

(i) *U.S.-connected products or services.* The term *U.S.-connected products or services* means products or services that are imported to or exported from the United States by transfers between the reporting corporation and any of its foreign related parties.

(ii) *Industry segment.* An industry segment is a segment of the related party group's combined operations that is engaged in providing a product or service or a group of related products or services (as defined in paragraph (c)(7)(vii)

of this section) primarily to customers that are not members of the related party group.

(iii) *Gross revenue of an industry segment.* Gross revenue of an industry segment includes receipts (prior to reduction for cost of goods sold) both from sales to customers outside of the related party group and from sales or transfers to other industry segments within the related party group (but does not include sales or transfers between members of the related party group within the same industry segment). Interest from sources outside the related party group and interest earned on trade receivables between industry segments is included in gross revenue if the asset on which the interest is earned is included among the industry segment's identifiable assets, but interest earned on advances or loans to other industry segments is not included.

(iv) *Identifiable assets of an industry segment.* The identifiable assets of an industry segment are those tangible and intangible assets of the related party group that are used by the industry segment, including assets that are used exclusively by that industry segment and an allocated portion of assets used jointly by two or more industry segments. The value of an identifiable asset may be determined using any reasonable method (such as book value or fair market value) applied consistently. Any allocation of assets among industry segments must be made on a reasonable basis, and a description of such basis must be provided. Assets of an industry segment that transfers products or services to another industry segment shall not be allocated to the receiving segment. Assets that represent part of the related party group's investment in an industry segment, such as goodwill, shall be included in the industry segment's identifiable assets. Assets maintained for general corporate purposes (that is, those not used in the operations of any industry segment) shall not be allocated to industry segments.

(v) *Operating profit of an industry segment.* The operating profit of an industry segment is its gross revenue (as defined in paragraph (c)(7)(iii) of this section) minus all operating expenses. None of the following shall be added or deducted in computing the operating profit of an industry segment: revenue earned at the corporate level and not derived from the operations of any industry segment; general corporate expenses; interest expense; domestic and foreign income taxes; and other extraordinary items not reflecting the ongoing business operations of the industry segment.

(vi) *Product.* The term *product* means an item of property (or combination of component parts) that is the result of a production process, is primarily sold to unrelated parties (or incorporated by the related party group into other products sold to unrelated parties), and performs a specific function.

(vii) *Related products or services.* The term *related products or services* means groupings of products and types of services that reflect reasonable accounting, marketing, or other business practices within the industries in which the related party group operates.

(viii) *Model.* The term *model* means a classification of products that incorporate particular components, options, styles, and any other unique features resulting in product differentiation. Examples of models are electronic products that are sold or accounted for under a single model number and automobiles sold under a single model name.

(ix) *Product line.* The term *product line* means a group of products that are aggregated into a single classification for accounting, marketing, or other business purposes. Examples of product lines are groups of products that perform similar functions; products that are marketed under the same trade names, brand names, or trademarks; and products that are related economically (that is, having similar rates of profitability, similar degrees of risk, and similar opportunities for growth).

(8) *Example.* The application of the rules for determining material profit and loss statements under paragraphs (c)(4) through (7) of this section is illustrated by the following example.

Example. (i) *Facts.* A multinational enterprise manufactures 50 different agricultural and chemical products that are sold through Subl, its wholly owned U.S. subsidiary, and

other subsidiaries located in foreign countries. The parent company of the enterprise, P, is a foreign corporation. The corporations participating in the enterprise form a related party group, and Subl is a reporting corporation for purposes of section 6038A. Under the facts and circumstances of this case, an analysis of the group's worldwide profit attributable to its products sold in the U.S. is relevant for determining an arm's length consideration under section 482 for the transfers of goods between Subl and its foreign affiliates.

(ii) *Existing records test.* For management purposes, the group prepares profit and loss statements that are segmented by sales in different geographic markets. One of these statements shows the combined worldwide profitability of the group. Another statement shows the profitability of the group attributable to its North American sales. Both of these profit and loss statements reflect aggregate figures that include sales to unrelated parties of products that have been transferred from P and other group members to Subl (that is, the group's ''U.S.-connected products''). The two statements meet the existing records test described in paragraph (c)(4) of this section.

(iii) *Significant industry segments.* The group's worldwide gross revenue in all industry segments is $2 billion. An analysis of the group's 50 products demonstrates that they are reasonably grouped into eight industry segments (each of which earns roughly $250 million in worldwide gross revenue). Segments 1 through 6 relate to agricultural products and Segments 7 and 8 relate to other chemical products. More specific categories would result in groupings that generate less than 10 percent of the group's worldwide gross revenue (that is, less than $200 million each); these narrower categories would thus fail the gross revenue percentage test of paragraph (c)(5)(i)(B) of this section. The gross revenue in each of the eight segments from the sale to unrelated parties of U.S.-connected products is as follows: $180 million for Segment 1; $30 million for Segment 2; and less than $25 million for each of Segments 3 through 8. Under the $25 million threshold test of paragraph (c)(5)(i)(C) of this section, the group's significant industry segments are thus limited to Segments 1 and 2. In addition, the combined operations of the group related to agricultural products (encompassing Segments 1 through 6 on an aggregated basis), constitute a single significant industry segment.

(iv) *High profit test.* One highly profitable product line within Segment 1, HPPL, accounts for $120 million gross revenue from Subl's domestic sales of U.S.-connected products (and thus exceeds the $100 million gross revenue threshold in paragraph (c)(6)(i)(B) of this section). The return on the identifiable assets attributable to the HPPL product line is 85 percent, which is more than 15 percent and more than twice the return on assets earned by the group from its worldwide operations in its combined industry segments. The group's industry segment for HPPL thus meets the high profit test described in paragraph (c)(6) of this section.

(v) *Material Profit and Loss Statements.* The group's material profit and loss statements consist of statements for combined worldwide sales and North American sales (under the existing records test); Segment 1, Segment 2, and aggregated Segments 1–6 (under the significant industry segment test); and HPPL (under the high profit test). Under paragraph (c) of this section, Subl is required to retain the combined worldwide sales and North American sales profit and loss statements and to maintain sufficient records so that it can compile and supply upon request statements of the group's profitability from sales of its U.S.-connected products within Segment 1, Segment 2, aggregated Segments 1–6, and HPPL. These records need not be in the possession of Subl and may be kept under the control of and produced by P or any third party. The statements for Segment 1, Segment 2, aggregated Segments 1–6, and HPPL do not require tracing of actual costs to the U.S.-connected products; rather, these statements may be prepared by using any reasonable method to allocate a portion of the industry segment's overall operating costs to the sales of U.S.-connected products within that segment.

(d) *Liability for certain partnership record maintenance.* A reporting corporation to which transactions engaged in by a partnership are attributed under § 1.6038A–1 (e)(2) is subject to the record maintenance requirements of this section to the extent of the transactions so attributed.

(e) *Agreements with the District Director*—(1) *In general.* The District Director who has audit jurisdiction over the reporting corporation may negotiate and enter into an agreement with a reporting corporation that establishes the records the reporting corporation must maintain or cause another to maintain, how the records must be maintained, the period of retention for the records, and by whom the records must be maintained in order to satisfy the reporting corporation's obligations under this section.

(2) *Content of agreement*—(i) *In general.* The agreement may include provisions relating to the authorization of agent requirement, the record maintenance requirement, and the production and translation time periods that vary

the rules contained in these regulations under section 6038A. The District Director will generally require a reporting corporation to maintain only those records specified under the safe harbor provisions of paragraph (c) of this section that permit an adequate audit of the income tax return of the reporting corporation and to provide such authorizations of agent that permit adequate access to such records. In most instances, required record maintenance for a particular reporting corporation under a negotiated agreement will be less than the broad range of records described under the safe harbor provisions. Additionally, a provision specifying the effective date and the expiration date of the agreement that may vary the effective date of the regulations may be included.

(ii) *Significant industry segment test.* A District Director may determine which industry segment profit and loss statements are material for purposes of requiring the maintenance of records (under either paragraph (a)(1) of this section or the safe harbor described in paragraph (a)(2) of this section). The industry segments that the District Director determines are material need not be the industry segments that meet the significant industry segment test under paragraph (c)(5) of this section or the high profit test under paragraph (c)(6) of this section. For this purpose, a reporting corporation will be required to maintain only those records from which profit and loss statements for the related party group may be constructed with respect to industry segments identified by the District Director. To the extent that existing profit and loss statements are similar in scope and level of detail to statements for industry segments that would otherwise be described under the tests of paragraphs (c)(5) and (6) of this section, the District Director shall accept the existing statements instead of the statements that would otherwise be required under paragraphs (c)(5) and (6) of this section.

(iii) *Example.* The following example illustrates the rules of paragraph (e)(2)(ii) of this section.

Example. The District Director determines that RC, a reporting corporation that is a manufacturer of related chemical products, has two industry segments, Segment 1 and Segment 2. While both industry segments meet the significant industry segment test of paragraph (c)(5) of this section, Segment 1 has a relatively low volume of sales to foreign related parties. Additionally, Segment 1 consists of products that produce only a small profit margin because the product is generic and other companies also sell the product. The District Director enters into an agreement with RC that requires only records from which a profit and loss statement for the related party group can be constructed for Segment 2. Therefore, RC is not required to maintain records for Segment 1 from which a profit and loss statement for the related party group can be constructed. The other record maintenance requirements under this section apply, however.

(3) *Circumstances of agreement.* The District Director generally will enter into an agreement under this paragraph (e) upon request by the reporting corporation when the District Director believes that the District has or can obtain sufficient knowledge of the business or industry of the reporting corporation to limit the record maintenance requirement to particular documents.

(4) *Agreement as part of APA process.* An agreement with a reporting corporation under this paragraph (e) may be entered into as a part of the Advance Pricing Agreement (APA) process at any time during the APA process, insofar as the agreement relates to the subject matter of the APA.

(f) *U.S. maintenance*—(1) *General rule.* Records that must be maintained under this section must be maintained within the United States, unless the conditions described in paragraph (f)(2) of this section are met.

(2) *Non-U.S. maintenance requirements.* A reporting corporation may maintain outside the United States records not ordinarily maintained in the United States but required to be maintained in the United States under this section. However, the reporting corporation must either:

(i) Deliver to the Service the original documents (or duplicates) requested within 60 days of the request by the Service for such records and provide translations of such documents within 30 days of a request for translations of specific documents; or

(ii) Move the original documents (or duplicates) requested to the United

States within 60 days of the request of the Service for such records; provide the Service with an index to the requested records, the name and address of a custodian located within the United States having control over the records, and the address where the records are located within 60 days of the Service's request for the records; and continue to maintain the records within the United States throughout the period of retention described in paragraph (g) of this section. For summons procedures with respect to records that have been moved to the United States, see sections 6038A(e), 7602, 7603, and 7604.

With respect to any material profit and loss statements required to be created (either under paragraph (c) of this section or under an agreement with the District Director), unless otherwise specified, ''120 days'' shall be substituted for ''60 days'' in this paragraph (f)(2), and labels and text with respect to such statements must be in the English language.

(3) *Prior taxable years*. The non-U.S. maintenance requirements described in paragraph (f)(2) of this section apply to records located outside the United States that were in existence on or after March 20, 1990, without regard to the taxable year to which such records relate.

(4) *Scheduled production for high volume or other reasons*. Upon a written request, for good cause shown, the District Director may grant an extension of the time for the production or translation of the requested documents. Such requests should be made within 30 days of the request for records by the Service. If an extension is needed because of the volume of records requested or the amount of translation requested, the District Director may allow production or translation to be scheduled over a period of time so that not all records need be produced or translated at the same time.

(5) *Required U.S. maintenance*. The District Director (with the concurrence of the Assistant Commissioner (International)), may require, for cause, the maintenance within the United States of any records specified in paragraph (f)(1) of this section. Such a requirement will be imposed only if there exists a clear pattern of failure to maintain or timely produce the required records. The assessment of a monetary penalty under section 6038A(d) and §1.6038A–4 for failure to maintain records is not necessarily sufficient to require the maintenance of records within the United States.

(g) *Period of retention*. Records required to be maintained by section 6038A(a) and this section shall be kept as long as they may be relevant or material to determining the correct tax treatment of any transaction between the reporting corporation and a related party, but in no case less than the applicable statute of limitations on assessment and collection with respect to the taxable year in which the transaction or item to which the records relate affects the U.S. tax liability of the reporting corporation. *See* section 6001 and the regulations thereunder.

(h) *Application of record maintenance rules to banks and other financial institutions*. [Reserved]

(i) *Effective dates*. For effective dates for this section, see §1.6038A–1(n).

[T.D. 8353, 56 FR 28065, June 19, 1991; T.D. 8353, 56 FR 41792, Aug. 23, 1991, as amended by T.D. 8611, 60 FR 41015, Aug. 11, 1995; T.D. 9278, 71 FR 44518, Aug. 4, 2006]

§1.6038A–3T Record maintenance (temporary).

(a)(1) through (3) *Examples 1* through *3* [Reserved]. For further guidance, see §1.6038A–3(a)(1) through (3) *Examples 1* through *3*.

Example 4. S, a U.S. reporting corporation, provides computer consulting services for its foreign parent, X. Based on the application of section 482 and the regulations, it is determined that the cost of services plus method, as described in §1.482–9T(e), will provide the most reliable measure of an arm's length result, based on the facts and circumstances of the controlled transaction between S and X. S is required to maintain records to permit verification upon audit of the comparable transactional costs (as described in §1.482–9T(e)(2)(iii)) used to calculate the arm's length price. Based on the facts and circumstances, if it is determined that X's records are relevant to determine the correct U.S. tax treatment of the controlled transaction between S and X, the record maintenance requirements under section 6038A(a) and this section will be applicable to the records of X.

(b)(1) through (h) [Reserved]. For further guidance, see §1.6038A–3T(b)(1) through (h).

(i) *Effective date*—(1) *In general*. This provision is generally applicable for taxable years beginning after December 31, 2006.

(2) *Election to apply regulation to earlier taxable years*. A person may elect to apply the provisions of this section to earlier taxable years in accordance with the rules set forth in §1.482–9T(n)(2).

(3) *Expiration date*. The applicability of this section expires on or before July 31, 2009.

[T.D. 9278, 71 FR 44518, Aug. 4, 2006]

§ 1.6038A–4 Monetary penalty.

(a) *Imposition of monetary penalty*—(1) *In general*. If a reporting corporation fails to furnish the information described in §1.6038A–2 within the time and manner prescribed in §1.6038A–2 (d) and (e), fails to maintain or cause another to maintain records as required by §1.6038A–3, or (in the case of records maintained outside the United States) fails to meet the non-U.S. record maintenance requirements within the applicable time prescribed in §1.6038A–3(f), a penalty of $10,000 shall be assessed for each taxable year with respect to which such failure occurs. Such a penalty may be imposed by the District Director or the Director of the Internal Revenue Service Center where the Form 5472 is filed. The filing of a substantially incomplete Form 5472 constitutes a failure to file Form 5472. Where, however, the information described in §1.6038A–2 (b)(3) through (5) is not required to be reported, a Form 5472 filed without such information is not a substantially incomplete Form 5472.

(2) *Liability for certain partnership transactions*. A reporting corporation to which transactions engaged in by a partnership are attributed under §1.6038A–1(e)(2) is subject to the rules of this section to the extent failures occur with respect to the partnership transactions so attributed.

(3) *Calculation of monetary penalty*. If a reporting corporation fails to maintain records as required by §1.6038A–3 of transactions with multiple related parties, the monetary penalty may be assessed for each failure to maintain records with respect to each related party. The monetary penalty, however, shall be imposed on a reporting corporation only once for a taxable year with respect to each related party for a failure to furnish the information required on Form 5472, for a failure to maintain or cause another to maintain records, or for a failure to comply with the non-U.S. maintenance requirements described in §1.6038A–3(f). An additional penalty for another failure may be imposed, however, under the rules of paragraph (d)(2) of this section. Thus, unless such failures continue after notification as described in paragraph (d) of this section, the maximum penalty under this paragraph with respect to each related party for all such failures in a taxable year is $10,000. The members of a group of corporations filing a consolidated return are jointly and severally liable for any monetary penalty that may be imposed under this section.

(b) *Reasonable cause*—(1) *In general*. Certain failures may be excused for reasonable cause, including not timely filing Form 5472, not maintaining or causing another to maintain records as required by §1.6038A–3, and not complying with the non-U.S. maintenance requirements described in §1.6038A–3(f). If an affirmative showing is made that the taxpayer acted in good faith and there is reasonable cause for a failure that results in the assessment of the monetary penalty, the period during which reasonable cause exists shall be treated as beginning on the day reasonable cause is established and ending not earlier than the last day on which reasonable cause existed for any such failure. Additionally, the beginning of the 90-day period after mailing of a notice by the District Director or the Director of an Internal Revenue Service Center of a failure described in paragraph (d) of this section shall be treated as not earlier than the last day on which reasonable cause existed.

(2) *Affirmative showing required*—(i) *In general*. To show that reasonable cause exists for purposes of paragraph (b)(1) of this section, the reporting corporation must make an affirmative showing of all the facts alleged as reasonable

cause for the failure in a written statement containing a declaration that it is made under penalties of perjury. The statement must be filed with the District Director (in the case of failure to maintain or furnish requested information permitted to be maintained outside the United States within the time required under §1.6038A–3(f) or a failure to file Form 5472) or the Director of the Internal Revenue Service Center where the Form 5472 is required to be filed (in the case of failure to file Form 5472). The District Director or the Director of the Internal Revenue Service Center where the Form 5472 is required to be filed, as appropriate, shall determine whether the failure was due to reasonable cause, and if so, the period of time for which reasonable cause existed. If a return has been filed as required by §1.6038A–2 or records have been maintained as required by §1.6038A–3, except for an omission of, or error with respect to, some of the information required or a record to be maintained, the omission or error shall not constitute a failure for purposes of section 6038A(d) if the reporting corporation that filed the return establishes to the satisfaction of the District Director or the Director of the Internal Revenue Service Center that it has substantially complied with the filing of Form 5472 or the requirement to maintain records.

(ii) *Small corporations*. The District Director shall apply the reasonable cause exception liberally in the case of a small corporation that had no knowledge of the requirements imposed by section 6038A; has limited presence in and contact with the United States; and promptly and fully complies with all requests by the District Director to file Form 5472, and to furnish books, records, or other materials relevant to the reportable transaction. A small corporation is a corporation whose gross receipts for a taxable year are $20,000,000 or less.

(iii) *Facts and circumstances taken into account*. The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances. Circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of the experience and knowledge of the taxpayer. Isolated computational or transcriptional errors generally are not inconsistent with reasonable cause and good faith. Reliance upon an information return or on the advice of a professional (such as an attorney or accountant) does not necessarily demonstrate reasonable cause and good faith. Similarly, reasonable cause and good faith is not necessarily indicated by reliance on facts that, unknown to the taxpayer, are incorrect. Reliance on an information return, professional advice or other facts, however, constitutes reasonable cause and good faith if, under all the circumstances, the reliance was reasonable. A taxpayer, for example, may have reasonable cause for not filing a Form 5472 or for not maintaining records under section 6038A if the taxpayer has a reasonable belief that it is not owned by a 25-percent foreign shareholder. A reasonable belief means that the taxpayer does not know or has no reason to know that it is owned by a 25-percent foreign shareholder. For example, a reporting corporation would not know or have reason to know that it is owned by a 25-percent foreign shareholder if its belief that it is not so owned is consistent with other information reported or otherwise furnished to or known by the reporting corporation. A taxpayer may have reasonable cause for not treating a foreign corporation as a related party for purposes of section 6038A where the foreign corporation is a related party solely by reason of §1.6038A–1(d)(3) (under the principles of section 482), and the taxpayer had a reasonable belief that its relationship with the foreign corporation did not meet the standards for related parties under section 482.

(c) *Failure to maintain records or to cause another to maintain records*. A failure to maintain records or to cause another to maintain records is determined by the District Director upon the basis of the reporting corporation's overall compliance (including compliance with the non-U.S. maintenance requirements under §1.6038A–3(f)(2))

with the record maintenance requirements. It is not an item-by-item determination. Thus, for example, a failure to maintain a single or small number of items may not constitute a failure for purposes of section 6038A(d), unless the item or items are essential to the correct determination of transactions between the reporting corporation and any foreign related parties. The District Director shall notify the reporting corporation in writing of any determination that it has failed to comply with the record maintenance requirement.

(d) *Increase in penalty where failure continues after notification*—(1) *In general*. If any failure described in this section continues for more than 90 days after the day on which the District Director or the Director of the Internal Revenue Service Center where the Form 5472 is required to be filed mails notice of the failure to the reporting corporation, the reporting corporation shall pay a penalty (in addition to the penalty described in paragraph (a) of this section) of $10,000 with respect to each related party for which a failure occurs for each 30-day period during which the failure continues after the expiration of the 90-day period. Any uncompleted fraction of a 30-day period shall count as a 30-day period for purposes of this paragraph (d).

(2) *Additional penalty for another failure*. An additional penalty for a taxable year may be imposed, however, if at a time subsequent to the time of the imposition of the monetary penalty described in paragraph (a) of this section, a second failure is determined and the second failure continues after notification under paragraph (d)(1) of this section. Thus, if a taxpayer fails to file Form 5472 and is assessed a monetary penalty and later, upon audit, is determined to have failed to maintain records, an additional penalty for the failure to maintain records may be assessed under the rules of this paragraph if the failure to maintain records continues after notification under this paragraph.

(3) *Cessation of accrual*. The monetary penalty will cease to accrue if the reporting corporation either files Form 5472 (in the case of a failure to file Form 5472), furnishes information to substantially complete Form 5472, or demonstrates compliance with respect to the maintenance of records (in the case of a failure to maintain records) for the taxable year in which the examination occurs and subsequent years to the satisfaction of the District Director. The monetary penalty also will cease to accrue if requested information, documents, or records, kept outside the United States under the requirements of § 1.6038A–3(f) and not produced within the time specified are produced or moved to the United States under the rules of paragraph (f)(2)(ii) of this section.

(4) *Continued failures*. If a failure under this section relating to a taxable year beginning before July 11, 1989 occurs, and if the failure continues following 90 days after the notice of failure under this paragraph is sent, the amount of the additional penalty to be assessed under this paragraph is $10,000 for each 30-day period beginning after November 5, 1990, during which the failure continues. There is no limitation on the amount of the monetary penalty that may be assessed after November 5, 1990.

(e) *Other penalties*. For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203 and 7206 of the Code. For the penalty relating to an underpayment of tax, see section 6662.

(f) *Examples*. The following examples illustrate the rules of this section.

Example 1. Failure to file Form 5472. Corp X, a U.S. reporting corporation, engages in related party transactions with FC. Corp X does not timely file a Form 5472 or maintain records relating to the transactions with FC for Year 1 or subsequent years. The Service Center with which Corp X files its income tax return imposes a $10,000 penalty for each of Years 1, 2, and 3 under section 6038A (d) and this section for failure to provide information as required on Form 5472 and mails a notice of failure to provide inrormation. Corp X does not file Form 5472. Ninety days following the mailing of the notice of failure to Corp X an additional penaly of $10,000 is imposed. On the 135th day following the mailing of the notice of failure, Corp X files Form 5472 for Years 1, 2, and 3. The total penalty owed by Corp X for Year 1 is $30,000. ($10,000 for not timely filing Form 5472, $10,000 for the first 30-day period following the expiration of the 90-day period, and $10,000 for the fraction of the second 30-day

period). The penalty for Years 2 and 3 for the failure to file Form 5472 is also $30,000 for each year, calculated in the same manner as for Year 1. The total penalty for failure to file Form 5472 for Years 1, 2, and 3 is $90,000.

Example 2. Failure to maintain records. Assume the same facts as in *Example 1.* In Year 5, Corp X is audited for Years 1 through 3. Corp X has not been maintaining records relating to the transactions with FC. The District Director issues a notice of failure to maintain records. Corp X has already been subject to the monetary penalty of $10,000 for each of Years 1, 2, and 3 for failure to file Form 5472 and, therefore, a monetary penalty under paragraph (a) of this section for failure to maintain records is not assessed. However, an additional penalty is assessed after the 90th day following the mailing of the notice of failure to maintain records. Corp X develops a record maintenance system as required by section 6038A and § 1.6038A–3. On the 180th day following the mailing of the notice of failure to maintain records, Corp X demonstrates to the satisfaction of the District Director that the newly developed record maintenance system will comply with the requirements of § 1.6038A–3 and the increase in the monetary penalty after notification ceases to accrue. The additional penalty for failure to maintain records is $30,000. An additional penalty of $30,000 per year is assessed for each of years 2 and 3 for the failure to maintain records for a total of $90,000.

(g) *Effective dates.* For effective dates for this section, see § 1.6038A–1(n).

[T.D. 8353, 56 FR 28072, June 19, 1991]

§ 1.6038A–5 Authorization of agent.

(a) *Failure to authorize.* The rules of § 1.6038A–7 shall apply to any transaction between a foreign related party and a reporting corporation (including any transaction engaged in by a partnership that is attributed to the reporting corporation under § 1.6038A–1(e)(2)), unless the foreign related party authorizes (in the manner described in paragraph (b) of this section) the reporting corporation to act as its limited agent solely for purposes of sections 7602, 7603, and 7604 with respect to any request by the Service to examine records or produce testimony that may be relevant to the tax treatment of such a transaction or with respect to any summons by the Service for such records or testimony. The fact that a reporting corporation is authorized to act as an agent for a foreign related party is to be disregarded for purposes of determining whether the foreign related party either has a trade or business in the United States for purposes of the Code or a permanent establishment or fixed base in the United States for purposes of an income tax treaty.

(b) *Authorization by related party*—(1) *In general.* Upon request by the Service, a foreign related party shall authorize as its agent (solely for purposes of sections 7602, 7603, and 7604) the reporting corporation with which it engages in transactions. The authorization must be signed by the foreign related party or an officer of the foreign related party possessing the authority to authorize an agent for purposes of Rule 4 of the Federal Rules of Civil Procedure. The reporting corporation will accept this appointment by providing a statement to that effect, signed by an officer of the reporting corporation possessing the authority to accept such an appointment. The agency shall be effective at all times. For taxable years beginning after July 10, 1989, the authorization and acceptance must be provided to the Service within 30 days of a request by the Service to the reporting corporation for such an authorization. The authorization must contain a heading and statement as set forth below. A foreign government is not subject to the authorization of agent requirement.

AUTHORIZATION OF AGENT

''[Name of foreign related party] hereby expressly authorizes [name of reporting corporation] to act as its agent solely for purposes of sections 7602, 7603, and 7604 of the Internal Revenue Code with respect to any request to examine records or produce testimony that may be relevant to the U.S. income tax treatment of any transaction between [name of the above-named foreign related party] and [name of reporting corporation] or with respect to any summons for such records or testimony.

Signature of or for [name of foreign related party]

(Title)

(Date)

(If signed by a corporate officer, partner, or fiduciary on behalf of a foreign related party: I certify that I have the authority to execute this authorization of agent to act on behalf of [name of foreign related party]).

Type or print your name below if signing for a foreign related party that is not an individual.

[Name of reporting corporation] accepts this appointment to act as agent for [name of foreign related party] for the above purpose.

Signature for (Name of Reporting Corporation]

(Title)

(Date)

I certify that I have the authority to accept this appointment to act as agent on behalf of (name of foreign related party] and agree to accept service of process for the above purposes.

Type or print your name below.

(2) *Authorization for prior years.* A foreign related party shall authorize a reporting corporation to act as its agent with respect to taxable years for which a Form 5472 is required to be filed prior to the date on which the final regulations under section 6038A are published by providing the above executed authorization of agent within 30 days of a request by the Service for such an authorization.

(c) *Foreign affiliated groups*—(1) *In general.* A foreign corporation that has effective legal authority to make the authorization of agent under paragraph (b) of this section on behalf of any group of foreign related parties may execute such an authorization for any members of the group. A single authorization may be made on a consolidated basis. In such a case, the common parent must attach a schedule to the authorization of agent stating which members of the group would otherwise be required to separately authorize the reporting corporation as agent. The schedule must provide the name, address, relationship to the reporting corporation, and U.S. taxpayer identification number, if applicable, of each member.

(2) *Application of noncompliance penalty adjustment.* In circumstances where a consolidated authorization of agent has been executed, if the agency authorization for any member of the group is not legally effective for purposes of sections 7602, 7603, and 7604, the noncompliance penalty adjustment under section 6038A(e) and §1.6038A–7 shall apply.

(d) *Legal effect of authorization of agent.* The legal consequences of a foreign related party authorizing a reporting corporation to act as its agent for purposes of sections 7602, 7603, and 7604 of the Code are as follows.

(1) *Agent for purposes of commencing judicial proceedings.* A reporting corporation that is authorized by a foreign related party to act as its agent for purposes of sections 7602, 7603, and 7604 (including service of process) is also the agent of the foreign related party for purposes of—

(i) The filing of a petition to quash under section 6038A(e)(4)(A) or a petition to review an Internal Revenue Service determination of noncompliance under section 6038A(e)(4)(B), and

(ii) The commencement of a judicial proceeding to enforce a summons under section 7604, whether commenced in conjunction with a petition to quash under section 6038A(e)(4)(A) or commenced as a separate proceeding in the federal district court for the district in which the person to whom the summons is issued resides or is found.

(2) *Foreign related party found where reporting corporation found.* For any purposes relating to sections 7602, 7603, or 7604 (including service of process), a foreign related party that authorizes a reporting corporation to act on its behalf under section 6038A(e)(1) and this section may be found anywhere where the reporting corporation has residence or is found.

(e) *Successors in interest.* A successor in interest to a related party must execute the authorization of agent as described in paragraph (b) of this section.

(f) *Deemed compliance*—(1) *In general.* In exceptional circumstances, the District Director may treat a reporting corporation as authorized to act as agent for a related party for purposes of sections 7602, 7603, and 7604 in the absence of an actual agency appointment by the foreign related party, in circumstances where the actual absence of an appointment is reasonable. Factors to be considered include—

(i) If neither the reporting corporation nor the other party to the transaction knew or had reason to know

that the two parties were related at the time of the transaction, and

(ii) The extent to which the taxpayer establishes to the satisfaction of the District Director that all transactions between the reporting corporation and the related party were on arm's length terms and did not involve the participation of any known related party.

(2) *Reason to know.* Whether the reporting corporation or other party had reason to know that the two parties were related at the time of the transaction will be determined by all the facts and circumstances.

(3) *Effect of deemed compliance.* If a reporting corporation is deemed under this paragraph (f) to have been authorized to act as an agent for a foreign related party for purposes of sections 7602, 7603, and 7604, such deemed compliance is applicable only for that particular transaction and other reportable transactions entered into prior to the time when the reporting corporation knew or had reason to know that the related party, in fact, was related. The noncompliance rule of §1.6038A–7 shall apply to any transaction subsequent to that time with the same related party, unless the related party actually authorizes the reporting corporation to act as its agent under paragraph (a) of this section. In addition, the record maintenance requirements of §1.6038A–3 will apply to all subsequent transactions and, with respect to prior transactions, will apply to relevant records in existence at the time the relationship was discovered.

(g) *Effective dates.* For effective dates for this section, see §1.6038A–1(n).

[T.D. 8353, 56 FR 28073, June 19, 1991; T.D. 8353, 56 FR 41792, Aug. 23, 1991]

§1.6038A–6 Failure to furnish information.

(a) *In general.* The rules of §1.6038A–7 may be applied with respect to a transaction between a foreign related party and the reporting corporation (including any transaction engaged in by a partnership that is attributed to the reporting corporation under §1.6038A–1(e)(2)) if a summons is issued to the reporting corporation to produce any records or testimony, either directly or as agent for such related party, to determine the correct treatment under title 1 of the Code of such a transaction between the reporting corporation and the related party; and if—

(1)(i) The summons is not quashed in a proceeding, if any, begun under section 6038A(e)(4) and is not determined to be invalid in a proceeding, if any, begun under section 7604 to enforce such summons; and

(ii) The reporting corporation does not substantially and timely comply with the summons, and the District Director has sent by certified or registered mail a notice under section 6038A(e)(2)(C) to the reporting corporation that it has not so complied; or

(2) The reporting corporation fails to maintain or to cause another to maintain records as required by §1.6038A–3, and by reason of that failure, the summons is quashed in a proceeding under section 6038A(e)(4) or in a proceeding begun under section 7604 to enforce the summons, or the reporting corporation is not able to provide the records requested in the summons.

(b) *Coordination with treaties.* Where records of a related party are obtainable on a timely and efficient basis under information exchange procedures provided under a tax treaty or tax information exchange agreement (TIEA), the Service generally will make use of such procedures before issuing a summons. The absence or pendency of a treaty or TIEA request may not be asserted as grounds for refusing to comply with a summons or as a defense against the assertion of the noncompliance penalty adjustment under §1.6038A–7. For purposes of this paragraph, information is available on a timely and efficient basis if it can be obtained within 180 days of the request.

(c) *Enforcement proceeding not required.* The District Director is not required to begin an enforcement proceeding to enforce the summons in order to apply the rules of §1.6038A–7.

(d) *De minimis failure.* Where a reporting corporation's failure to comply with the requirement to furnish information under this section is *de minimis*, the District Director, in the exercise of discretion, may choose not to apply the noncompliance penalty. Thus, for example, in cases where a particular document or group of documents is not furnished upon request or summons,

the District Director (in the District Director's sole discretion), may choose not to apply the noncompliance penalty if the District Director deems the document or documents not to have significant or sufficient value in the determination of the correctness of the tax treatment of the related party transaction.

(e) *Suspension of statute of limitations.* If the reporting corporation brings an action under section 6038A(e)(4)(A) (proceeding to quash) or (e)(4)(B) (review of secretarial determination of noncompliance), the running of any period of limitation under section 6501 (relating to assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) for the taxable year or years to which the summons that is the subject of such proceeding relates shall be suspended for the period during which such proceeding, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such proceeding.

(f) *Effective dates.* For effective dates for this section, see § 1.6038A–1(n).

[T.D. 8353, 56 FR 28075, June 19, 1991]

§ 1.6038A–7 Noncompliance.

(a) *In general.* In the case of any failure described in § 1.6038A–5 or § 1.6038A–6, the rules of this § 1.6038A–7 apply to the reporting corporation. In such a case—

(1) The amount of the deduction allowed under subtitle A for any amount paid or incurred by the reporting corporation to the related party in connection with such transaction, and

(2) The cost to the reporting corporation of any property acquired in such transaction from the related party or transferred by such corporation in such transaction to the related party, may be determined by the District Director.

(b) *Determination of the amount.* The amount of the deduction or the cost to the reporting corporation shall be the amount determined by the District Director (in the District Director's sole discretion) from the District Director's own knowledge or from such information as the District Director may choose to obtain through testimony or otherwise. The District Director shall consider any information or materials that have been submitted by the reporting corporation or a foreign related party. The District Director, however, may disregard any information, documents, or records submitted by the reporting corporation or the related party if (in the District Director's sole discretion) the District Director deems that they are insufficiently probative of the relevant facts.

(c) *Separate application.* If the noncompliance penalty of this section applies with respect to transactions with a related party of the reporting corporation, it will not be applied with respect to any other related parties of the reporting corporation solely upon the basis of that failure. Thus, for example, if a reporting corporation engages in transactions with related party A and related party B, and the reporting corporation does not respond to a summons for records related to the transactions between the reporting corporation and related party A, the noncompliance penalty imposed as a result of such failure will not apply to the transactions between the reporting corporation and related party B. If a separate summons is issued for records relating to the transactions between the reporting corporation and related party B and the reporting corporation does not produce such records, the noncompliance penalty may be applied to those transactions.

(d) *Effective dates.* For effective dates for this section, see § 1.6038A–1(n).

[T.D. 8353, 56 FR 28075, June 19, 1991]

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

(a) *Purpose and scope.* This section sets forth information reporting requirements under section 6038B concerning certain transfers of property to foreign corporations. Paragraph (b) of this section provides general rules explaining when and how to carry out the reporting required under section 6038B with respect to the transfers to foreign corporations. Paragraph (c) of this section and § 1.6038B–1T(d) specify the information that is required to be reported with respect to certain transfers of property that are described in section 6038B(a)(1)(A) and 367(d), respectively. Section 1.6038B–1(e) describes

the filing requirements for property transfers described in section 367(e). Paragraph (f) of this section sets forth the consequences of a failure to comply with the requirements of section 6038B and this section. For effective dates, see paragraph (g) of this section. For rules regarding transfers to foreign partnerships, see section 6038B(a)(1)(B) and any regulations thereunder.

(b) *Time and manner of reporting*—(1) *In general*—(i) *Reporting procedure*. Except for stock or securities qualifying under the special reporting rule of §1.6038B–1(b)(2), and certain exchanges described in section 354 or 356 (listed below), any U.S. person that makes a transfer described in section 6038B(a)(1)(A), 367(d) or (e), is required to report pursuant to section 6038B and the rules of §1.6038B–1 and must attach the required information to Form 926, ''Return by a U.S. Transferor of Property to a Foreign Corporation.'' For special rules regarding cash transfers made in tax years beginning after February 5, 1999, see paragraphs (b)(3) and (g) of this section. For purposes of determining a U.S. transferor that is subject to section 6038B, the rules of §§1.367(a)–1T(c) and 1.367(a)–3(d) shall apply with respect to a transfer described in section 367(a), and the rules of §1.367(a)–1T(c) shall apply with respect to a transfer described in section 367(d). Additionally, if in an exchange described in section 354 or 356, a U.S. person exchanges stock or securities of a foreign corporation in a reorganization described in section 368(a)(1)(E), or a U.S. person exchanges stock or securities of a domestic or foreign corporation pursuant to an asset reorganization described in section 368(a)(1) (involving a transfer of assets under section 361) that is not treated as an indirect stock transfer under §1.367(a)–3(d), then the U.S. person exchanging stock or securities is not required to report under section 6038B. Notwithstanding any statement to the contrary on Form 926, the form and attachments must be attached to, and filed by the due date (including extensions) of the transferor's income tax return for the taxable year that includes the date of the transfer (as defined in §1.6038B–1T(b)(4)). For taxable years beginning before January 1, 2003, any attachment to Form 926 required under the rules of this section is filed subject to the transferor's declaration under penalties of perjury on Form 926 that the information submitted is true, correct and complete to the best of the transferor's knowledge and belief. For taxable years beginning after December 31, 2002, Form 926 and any attachments shall be verified by signing the income tax return with which the form and attachments are filed.

(ii) *Reporting by corporate transferor*. For transfers by corporations in taxable years beginning before January 1, 2003, Form 926 must be signed by an authorized officer of the corporation if the transferor is not a member of an affiliated group under section 1504(a)(1) that files a consolidated Federal income tax return and by an authorized officer of the common parent corporation if the transferor is a member of such an affiliated group. For transfers by corporations in taxable years beginning after December 31, 2002, Form 926 shall be verified by signing the income tax return to which the form is attached.

(iii) *Transfers of jointly-owned property*. If two or more persons transfer jointly-owned property to a foreign corporation in a transfer with respect to which a notice is required under this section, then each person must report with respect to the particular interest transferred, specifying the nature and extent of the interest. However, a husband and wife who jointly file a single Federal income tax return may file a single Form 926 with their tax return.

(2) *Exceptions and special rules for transfers of stock or securities under section 367(a)*—(i) *Transfers on or after July 20, 1998*. A U.S. person that transfers stock or securities on or after July 20, 1998 in a transaction described in section 6038B(a)(1)(A) will be considered to have satisfied the reporting requirement under section 6038B and paragraph (b)(1) of this section if either—

(A) The U.S. transferor owned less than 5 percent of both the total voting power and the total value of the transferee foreign corporation immediately after the transfer (taking into account the attribution rules of section 318 as modified by section 958(b)), and either:

(*1*) The U.S. transferor qualified for nonrecognition treatment with respect to the transfer (i.e., the transfer was not taxable under §§ 1.367(a)–3(b) or (c)); or

(*2*) The U.S. transferor is a tax-exempt entity and the income was not unrelated business income; or

(*3*) The transfer was taxable to the U.S. transferor under § 1.367(a)–3(c), and such person properly reported the income from the transfer on its timely-filed (including extensions) Federal income tax return for the taxable year that includes the date of the transfer; or

(*4*) The transfer is considered to be to a foreign corporation solely by reason of § 1.83–6(d)(1) and the fair market value of the property transferred did not exceed $100,000; or

(B) The U.S. transferor owned 5 percent or more of the total voting power or the total value of the transferee foreign corporation immediately after the transfer (taking into account the attribution rules of section 318 as modified by section 958(b)) and either:

(*1*) The transferor (or one or more successors) properly entered into a gain recognition agreement under § 1.367(a)–8; or

(*2*) The transferor is a tax-exempt entity and the income was not unrelated business income; or

(*3*) The transferor properly reported the income from the transfer on its timely-filed (including extensions) Federal income tax return for the taxable year that includes the date of the transfer; or

(*4*) The transfer is considered to be to a foreign corporation solely by reason of § 1.83–6(d)(1) and the fair market value of the property transferred did not exceed $100,000.

(ii) *Transfers before July 20, 1998.* With respect to transfers occurring after December 16, 1987, and prior to July 20, 1998, a U.S. transferor that transferred U.S. or foreign stock or securities in a transfer described in section 367(a) is not subject to section 6038B if such person is described in paragraph (b)(2)(i)(A) of this section.

(3) *Special rule for transfers of cash.* A U.S. person that transfers cash to a foreign corporation in a transfer described in section 6038B(a)(1)(A) must report the transfer if—

(i) Immediately after the transfer such person holds directly, indirectly, or by attribution (determined under the rules of section 318(a), as modified by section 6038(e)(2)) at least 10 percent of the total voting power or the total value of the foreign corporation; or

(ii) The amount of cash transferred by such person or any related person (determined under section 267(b)(1) through (3) and (10) through (12)) to such foreign corporation during the 12-month period ending on the date of the transfer exceeds $100,000.

(4) [Reserved]. For further guidance, see § 1.6038B–1T(b)(4).

(c) *Information required with respect to transfers described in section 6038B(a)(1)(A).* A United States person that transfers property to a foreign corporation in an exchange described in section 6038B(a)(1)(A) (including cash transferred in taxable years beginning after February 5, 1999, and other unappreciated property) must provide the following information, in paragraphs labeled to correspond with the number or letter set forth in this paragraph (c) and § 1.6038B–1T(c)(1) through (5). If a particular item is not applicable to the subject transfer, the taxpayer must list its heading and state that it is not applicable. For special rules applicable to transfers of stock or securities, see paragraph (b)(2)(ii) of this section.

(1) through (5) [Reserved]. For further guidance, see § 1.6038B–1T(c)(1) through (5).

(6) *Application of section 367(a)(5).* If the asset is transferred in an exchange described in section 361(a) or (b), a statement that the conditions set forth in the second sentence of section 367(a)(5) and any regulations under that section have been satisfied, and an explanation of any basis or other adjustments made pursuant to section 367(a)(5) and any regulations thereunder.

(d) [Reserved]. For further guidance, see § 1.6038B–1T(d).

(e) *Transfers subject to section 367(e)*—(1) *In general.* If a domestic corporation (distributing corporation) makes a distribution described in section 367(e)(1) or section 367(e)(2), the distributing

corporation must comply with the reporting requirements of this paragraph (e). Unless otherwise provided in this section, a distributing corporation making a distribution described in sections 367(e)(1) or 367(e)(2) must file a Form 926, ''Return by a U.S. Transferor of Property to a Foreign Corporation (under section 367),'' as amended and modified by this section.

(2) *Reporting requirements for section 367(e)(1) distributions of domestic controlled corporations.* A domestic distributing corporation making a distribution of the stock or securities of a domestic corporation under section 355 is not required to file a Form 926, as described in paragraph (e)(1) of this section, and shall have no other reporting requirements under section 6038B.

(3) *Reporting requirements for section 367(e)(1) distributions of foreign controlled corporations.* If the distributing corporation makes a section 355 distribution of the stock or securities of a foreign controlled corporation to distributee shareholders who are not qualified U.S. persons, as defined in §1.367(e)–1(b)(1), then the distributing corporation shall complete Part 1 of the Form 926 and attach a signed copy of such form to its U.S. income tax return for the year of the distribution. The distributing corporation shall also attach to its U.S. income tax return for the year of distribution a statement signed under the penalties of perjury entitled, ''Addendum to Form 926.'' The addendum shall contain a brief description of the transaction, state the number of shares distributed to distributees who are not qualified U.S. persons (applying the rules contained in §1.367(e)–1(d)), and state the basis and fair market value of the distributed stock or securities (including a list stating the amounts that were distributed to distributees who were not qualified U.S. persons and distributees who were qualified U.S. persons).

(4) *Reporting rules for section 367(e)(2) distributions by domestic liquidating corporations.* If the distributing corporation makes a distribution of property in complete liquidation under section 332 to a foreign distributee corporation that meets the stock ownership requirements of section 332(b) with respect to the stock of the distributing corporation, then the distributing corporation shall complete a Form 926 and attach a signed copy of such form to its U.S. income tax return for the year of the distribution. The property description contained in Part III of the Form 926 shall contain a description of all property distributed by the liquidating corporation (regardless of whether the property qualifies for nonrecognition). The description shall also identify the property excepted from gain recognition under §1.367(e)–2(b)(2)(ii) and (iii). If the distributing corporation distributes property that will be used by the foreign distributee corporation in a U.S. trade or business and the distributing corporation does not recognize gain on such distribution under §1.367(e)–2(b)(2)(i), then the distributing corporation may satisfy the requirements of this section by completing Part 1 of the Form 926, noting thereon that the information required by the Form 926 is contained in the statement required by §1.367(e)–2(b)(2)(i)(C)(*2*), and attaching a signed copy of the Form 926 to its U.S. income tax return for the year of the distribution.

(f) *Failure to comply with reporting requirements*—(1) *Consequences of failure.* If a U.S. person is required to file a notice (or otherwise comply) under paragraph (b) of this section and fails to comply with the applicable requirements of section 6038B and this section, then with respect to the particular property as to which there was a failure to comply—

(i) That property shall not be considered to have been transferred for use in the active conduct of a trade or business outside of the United States for purposes of section 367(a) and the regulations thereunder;

(ii) The U.S. person shall pay a penalty under section 6038B(b)(1) equal to 10 percent of the fair market value of the transferred property at the time of the exchange, but in no event shall the penalty exceed $100,000 unless the failure with respect to such exchange was due to intentional disregard (described under paragraph (g)(4) of this section); and

(iii) The period of limitations on assessment of tax upon the transfer of that property does not expire before the date which is 3 years after the date

on which the Secretary is furnished the information required to be reported under this section. See section 6501(c)(8) and any regulations thereunder.

(2) *Failure to comply*. A failure to comply with the requirements of section 6038B is—

(i) The failure to report at the proper time and in the proper manner any material information required to be reported under the rules of this section; or

(ii) The provision of false or inaccurate information in purported compliance with the requirements of this section. Thus, a transferor that timely files Form 926 with the attachments required under the rules of this section shall, nevertheless, have failed to comply if, for example, the transferor reports therein that property will be used in the active conduct of a trade or business outside of the United States, but in fact the property continues to be used in a trade or business within the United States.

(3) *Reasonable cause exception*. The provisions of paragraph (f)(1) of this section shall not apply if the transferor shows that a failure to comply was due to reasonable cause and not willful neglect. The transferor may do so by providing a written statement to the district director having jurisdiction of the taxpayer's return for the year of the transfer, setting forth the reasons for the failure to comply. Whether a failure to comply was due to reasonable cause shall be determined by the district director under all the facts and circumstances.

(4) *Definition of intentional disregard*. If the transferor fails to qualify for the exception under paragraph (f)(3) of this section and if the taxpayer knew of the rule or regulation that was disregarded, the failure will be considered an intentional disregard of section 6038B, and the monetary penalty under paragraph (f)(1)(ii) of this section will not be limited to $100,000. See §1.6662–3(b)(2).

(g) *Effective dates*. (1) This section applies to transfers occurring on or after July 20, 1998, except for transfers of cash made in tax years beginning on or before February 5, 1999 (which are not required to be reported under section 6038B), except for transfers described in paragraphs (g)(2) through (4) of this section, and except for transfers described in paragraph (e) of this section, which applies to transfers that are subject to §§1.367(e)–1(f) and 1.367(e)–2(e). See §1.6038B–1T for transfers occurring prior to July 20, 1998. See also §1.6038B–1T(e) in effect prior to August 9, 1999 (as contained in 26 CFR part 1 revised April 1, 1999), for transfers described in section 367(e) that are not subject to §§1.367(e)–1(f) and 1.367(e)–2(e).

(2) The rules of paragraph (b)(1)(i) of this section as they apply to section 368(a)(1)(A) reorganizations (including reorganizations described in section 368(a)(2)(D) or (E)) apply to transfers occurring on or after January 23, 2006.

(3) The rules of paragraph (b)(1)(i) of this section that provide an exception from reporting under section 6038B for transfers of stock or securities in a section 354 or 356 exchange, pursuant to a section 368(a)(1)(G) reorganization that is not treated as an indirect stock transfer under §1.367(a)–3(d), apply to transfers occurring on or after January 23, 2006.

(4) The rules of paragraph (b)(1)(i) of this section that provide an exception from reporting under section 6038B for transfers of stock in a section 354 or 356 exchange, pursuant to a section 368(a)(1)(E) reorganization or an asset reorganization under section 368(a)(1) that is not treated as an indirect stock transfer under §1.367(a)–3(d), apply to transfers occurring on or after January 23, 2006. The rules of paragraph (b)(1)(i) of this section that provide an exception from reporting under section 6038B for transfers of securities in a section 354 or 356 exchange, pursuant to a section 368(a)(1)(E) reorganization or an asset reorganization under section 368(a)(1) that is not treated as an indirect stock transfer under §1.367(a)–3(d), apply only to transfers occurring after January 5, 2005 (although taxpayers may apply such provision to transfers of securities occurring on or after July 20, 1998 and on or before January 5, 2005 if done consistently to all transactions). See §1.6038–1T(b)(i), as contained in 26 CFR part 1 revised as of April 1, 2005, for transfers occurring prior to the effective dates described in

paragraphs (g)(2) through (4) of this section.

[T.D. 8770, 63 FR 33568, June 19, 1998, as amended by T.D. 8817, 64 FR 5715, Feb. 5, 1999; 64 FR 15686, 15687, Apr. 1, 1999; T.D. 8834, 64 FR 43082, Aug. 9, 1999; T.D. 8850, 64 FR 72553, Dec. 28, 1999; T.D. 9100, 68 FR 70708, Dec. 19, 2003; T.D. 9243, 71 FR 4293, Jan. 26, 2006; T.D. 9300, 71 FR 71045, Dec. 8, 2006]

§ 1.6038B–1T Reporting of certain transactions to foreign corporations (temporary).

(a) through (b)(3) [Reserved]. For further guidance, see § 1.6038B–1(a) through (b)(3).

(4) *Date of transfer*—(i) *In general*. For purposes of this section, the date of a transfer described in section 367 is the first date on which title to, possession of, or rights to the use of stock, securities, or other property passes pursuant to the plan for purposes of subtitle A of the Internal Revenue Code. A transfer will not be considered to begin with a decision of a board of directors or similar action unless the transaction otherwise takes effect for purposes of subtitle A of the Internal Revenue Code on that date.

(ii) *Termination of section 1504(d) election*. A transfer deemed to occur as a result of the termination of an election under section 1504(d) will be considered to occur on the date the contiguous country corporation first fails to continue to qualify for the election under section 1504(d). The rule of this paragraph (b)(3)(ii) is illustrated by the following example.

Example. Domestic corporation W previously made a valid election under section 1504(d) to have its Mexican subsidiary S treated as a domestic corporation. On August 1, 1986, W disposes of its right, title, and interest in 10 percent of the stock of S by selling such stock to an unrelated United States person who is not a director of S. S first fails to continue to qualify for the election under section 1504(d) on August 1, 1986, since on such date it ceases to be directly or indirectly wholly owned or controlled by W. The constructive transfer of assets from ''domestic'' corporation S to Mexican corporation S is considered to occur on that date.

(iii) *Change in classification*. A transfer deemed to occur as a result of a change in classification of an entity caused by a change in the governing documents, articles, or agreements of the entity (as described in § 1.367(a)–1T(c)(6)) will be considered to occur on the date that such changes take effect for purposes of subtitle A of the Internal Revenue Code.

(iv) *U.S. resident under section 6013 (g) or (h)*. A transfer made by an alien individual who is considered to be a U.S. resident by reason of a timely election under section 6013 (g) or (h) will be considered to occur, for purposes of this section (but not for purposes of section 367), on the later of—

(A) The date on which the election under section 6013 (g) or (h) is made; or

(B) The date on which the transfer would otherwise be considered to occur under the rules of this paragraph (b)(3).

The rule of this paragraph (b)(3)(iv) is illustrated by the following example.

Example. D is a nonresident alien individual who is married to a United States citizen. On March 1, 1986, D transfers property to a foreign corporation in an exchange described in section 351. On April 15, 1987, D and the spouse timely file with their tax return for the taxable year ended December 31, 1986, an election under section 6013(g) for D to be treated as a United States resident. The election is effective on January 1, 1986. For purposes of section 6038 B, the transfer described in section 367(a) made by D in connection with the section 351 exchange is considered to occur on April 15, 1987, the date on which the timely election was made under section 6013(g).

(c) Introductory text [Reserved]. For further guidance, see § 1.6038B–1(c).

(1) *Transferor*. Provide the name, U.S. taxpayer identification number, and address of the U.S. person making the transfer.

(2) *Transfer*. Provide the following information concerning the transfer:

(i) Name, U.S. taxpayer identification number (if any), address, and country of incorporation of transferee foreign corporation;

(ii) A general description of the transfer, and any wider transaction of which it forms a part, including a chronology of the transfers involved and an identification of the other parties to the transaction to the extent known.

(3) *Consideration received*. Provide a description of the consideration received by the U.S. person making the transfer, including its estimated fair market value and, in the case of stock

or securities, the class or type, amount, and characteristics of the interest received.

(4) *Property transferred*. Provide a description of the property transferred. The description must be divided into the following categories, and must include the estimated fair market value and adjusted basis of the property, as well as any additional information specified below.

(i) *Active business property*. Describe any transferred property (other than stock or securities) to be used in the active conduct of a trade or business outside of the United States. Provide here a general description of the business conducted (or to be conducted) by the transferee, including the location of the business, the number of its employees, the nature of the business, and copies of the most recently prepared balance sheet and profit and loss statement. Property listed within this category may be identified by general type. For example, upon the transfer of the assets of a manufacturing operation, a reasonable description of the property to be used in the business might include the categories of office equipment and supplies, computers and related equipment, motor vehicles, and several major categories of manufacturing equipment. However, any property that is includible both in this subdivision (i) and in subdivision (iii) of this paragraph (c)(4) (property subject to depreciation recapture under §1.367(a)–4T (b)) must be identified in the manner required in subdivision (iii). If property is considered to be transferred for use in the active conduct of a trade or business under a special rule in §1.367(a)–4T, specify the applicable rule and provide information supporting the application of the rule. If property is subject to section 367(a)(1) regardless of its use in a trade or business under the rules of §1.367(a)–4T or §1.367(a)–5T, list the property only in response to subdivision (vii) of this paragraph (c)(4).

(ii) *Stock or securities*. Describe any transferred stock or securities, including the class or type, amount, and characteristics of the transferred stock or securities, as well as the name, address, place of incorporation, and general description of the corporation issuing the stock. In addition, provide the following information if applicable:

(A) *Active trade or business stock*. If the stock or securities are considered to be transferred for use in the active conduct of a trade or business outside of the United States under the rules of §1.367(a)–3T(d)(2), provide information supporting the application of the rule.

(B) *Application of special rules*. If any provision of §1.367(a)–3T applies to except the transfer of stock or securities from the rule of section 367(a)(1), provide information supporting the claimed application of such provision (including information supporting the nonapplicability of either anti-abuse rule under §1.367(a)–3T(h)). If the transferor is entering into an agreement to recognize gain upon a later disposition of the transferred stock by the transferee foreign corporation under §1.367(a)–3T(g), attach the agreement and waiver as required by the rules of that paragraph.

(iii) *Depreciated property*. Describe any property that is subject to depreciation recapture under the rules of §1.367(a)–4T(b). Property within this category must be separately identified to the same extent as was required for purposes of the previously claimed depreciation deduction. Specify with respect to each such asset the relevant recapture provision, the number of months in which such property was in use within the United States, the total number of months the property was in use, the fair market value of the property, a schedule of the depreciation deduction taken with respect to the property, and a calculation of the amount of depreciation required to be recaptured.

(iv) *Property to be leased*. Describe any property to be leased to other persons by the transferee foreign corporation (unless such property is considered to be transferred for use in the active conduct of a trade or business and was thus listed under subdivision (i) of this paragraph (c)(4)). If the rules of §1.367(a)–4T(c)(2) apply to except the transfer from the rule of section 367(a)(1), provide information supporting the claimed application of such provision.

(v) *Property to be sold*. Describe any transferred property that is to be sold

or otherwise disposed of by the transferee foreign corporation, as described in § 1.367(a)–4T(d).

(vi) *Transfers to FSCs.* Describe any property that is subject to the special rule of § 1.367(a)–4T(g) for transfers to FSCs. Provide information supporting the claimed application of that rule.

(vii) *Tainted property.* Describe any property that is subject to § 1.367(a)–5T (concerning property that is subject to the rule of section 367(a)(1) regardless of whether it is transferred for use in the active conduct of a trade or business outside of the United States). Such description must be divided into the relevant categories, as follows:

(A) *Inventory, etc.* Property described in § 1.367(a)–5T(b);

(B) *Installment obligations, etc.* Property described in § 1.367(a)–5T(c);

(C) *Foreign currency, etc.* Property described in § 1.367(a)–5T(d);

(D) *Intangible property.* Property described in § 1.367(a)–5T(e); and

(E) *Leased property.* Property described in § 1.367(a)–4T(f).

If any exception provided in § 1.367(a)–5T applies to the transferred property (making section 367(a)(1) not applicable to the transfer), provide information supporting the claimed application of such exception.

(viii) *Foreign loss branch.* Provide the information specified in paragraph (c)(5) of this section.

(ix) *Other intangibles.* Describe an intangible property sold or licensed by the transferor to the transferee foreign corporation, and set forth the general terms of each sale or license.

(5) *Transfer of foreign branch with previously deducted losses.* If the property transferred is property of a foreign branch with previously deducted losses subject to the rules of § 1.367(a)–6T, provide the following information:

(i) *Branch operation.* Describe the foreign branch the property of which is transferred, in accordance with the definition of § 1.367(a)–6T(g).

(ii) *Branch property.* Describe the property of the foreign branch, including its adjusted basis and fair market value. For this purpose property must be identified with reasonable particularity, but may be identified by category rather than listing every asset separately. Substantially similar property may be listed together for this purpose, and property of minor value may be grouped into functional categories. For example, a reasonable description of the property of a business office might include the following categories: Word processing or data processing equipment, other office equipment and furniture, and office supplies.

(iii) *Previously deducted losses.* Set forth a detailed calculation of the sum of the losses incurred by the foreign branch before the transfer, and a detailed calculation of any reduction of such losses, in accordance with § 1.367(a)–6T (d) and (e).

(iv) *Character of gain.* Set forth a statement of the character of the gain required to be recognized, in accordance with § 1.367(a)–6T(c)(1).

(6) [Reserved]. For further guidance, see § 1.6038B–1(c)(6).

(d) *Transfers subject to section 367(d)*—(1) *Initial transfer.* A U.S. person that transfers inntangible property to a foreign corporation in an exchange described in section 351 or 361 must provide the following information in paragraphs labelled to correspond with the number or letter set forth below. If a particular item is not applicable to the subject transfer, list its heading and state that it is not applicable. The information required by subdivisions (i) through (iii) need only be provided if such information was not otherwise provided under paragraph (c) of this section. (Note that the U.S. transferor may subsequently be required to file another return under paragraph (d)(2) of this section.)

(i) *Transferor.* Provide the name, U.S. taxpayer identification number, and address of the U.S. person making the transfer.

(ii) *Transfer.* Provide information concerning the transfer, including:

(A) Name, U.S. taxpayer identification number (if any), address, and country of incorporation of the transferee foreign corporation;

(B) A general description of the transfer, and any wider transaction of which it forms a part, including a chronology of the transfers involved and an identification of the other parties to the transaction to the extent known.

(iii) *Consideration received*. Provide a description of the consideration received by the U.S. person making the transfer, including its estimated fair market value and, in the case of stock or securities, the class or type, amount, and characteristics of the interest received.

(iv) *Intangible property transferred*. Provide a description of the intangible property transferred, including its adjusted basis. Generally, each intangible asset must be separately identified. Operating intangibles and foreign goodwill or going concern value, as defined in § 1.367(a)–1T(d)(5) (ii) and (iii), should be so identified and classified.

(v) *Annual payment*. Provide and explain the calculation of the annual deemed payment for the use of the intangible property required to be recognized by the transferor under the rules of section 367(d).

(vi) *Election to treat as sale*. List any intangible with respect to which an election is being made under § 1.367(d)–1T(g)(2) to treat the transfer as a sale. Include the fair market value of the intangible on the date of the transfer and a calculation of the gain required to be recognized in the year of the transfer by reason of the election.

(vii) *Coordination with loss rules*. List any intangible property subject to section 367(d) the transfer of which also gives rise to the recognition of gain under section 904(f)(3) or § 1.367(a)–6T. Provide a calculation of the gain required to be recognized with respect to such property, in accordance with the provisions of § 1.367(d)–1T(g)(4).

(viii) *Other intangibles*. Describe any intangible property sold or licensed by the transferor to the transferee foreign corporation, and set forth the general terms of each sale or license.

(2) *Subsequent transfers*. If a U.S. person transfers intangible property to a foreign corporation in an exchange described in section 351 or 361, and at any time thereafter (within the useful life of the intangible property) either that U.S. person disposes of the stock of the transferee foreign corporation or the transferee foreign corporation disposes of the transferred intangible, then the U.S. person must provide the following information in paragraphs labelled to correspond with the number or letter set forth below. The information required by subdivisions (i) and (ii) need only be provided if such information was not otherwise provided in the same return, pursuant to paragraph (c) or (d)(1) of this section. For purposes of determining the date on which a return under this subparagraph (2) is required to be filed, the date of transfer is the date of the subsequent transfer of stock or intangible property.

(i) *Transferor*. Provide the name, U.S. taxpayer identification number, and address of the U.S. person making the transfer.

(ii) *Initial transfer*. Provide the following information concerning the initial transfer:

(A) The date of the transfer;

(B) The name, U.S. taxpayer identification number (if any), address, and country of incorporation of the transferee foreign corporation; and

(C) A general description of the transfer and any wider transaction of which it formed a part.

(iii) *Subsequent transfer*. Provide the following information concerning the subsequent transfer:

(A) A general description of the subsequent transfer and any wider transaction of which it forms a part;

(B) A calculation of any gain required to be recognized by the U.S. person under the rules of § 1.367(d)–1T (d) through (f); and

(C) The name, address, and identifying number of each person that under the rules of § 1.367(d)–1T (e) or (f) will be considered to receive contingent annual payments for the use of the intangible property.

(e) [Reserved]. For further guidance, see § 1.6038B–1(e).

(f) [Reserved]. For further guidance, see § 1.6038B–1(f).

(g) *Effective date*. This section applies to transfers occurring after December 31, 1984. See § 1.6038B–1T(a) through (b)(2), (c) introductory text, and (f) (26 CFR part 1, revised April 1, 1998) for transfers occurring prior to July 20,

1998. See § 1.6038B–1 for transfers occurring on or after July 20, 1998.

[T.D. 8087, 51 FR 17957, May 16, 1986, as amended by T.D. 8682, 61 FR 42177, Aug. 14, 1996; T.D. 8770, 63 FR 33570, June 19, 1998; T.D. 8834, 64 FR 43083, Aug. 9, 1999; T.D. 9100, 68 FR 70708, Dec. 19, 2003; 69 FR 5017, Feb. 3, 2004; T.D. 9243, 71 FR 4294, Jan. 26, 2006; T.D. 9300, 71 FR 71045, Dec. 8, 2006]

§ 1.6038B–2 Reporting of certain transfers to foreign partnerships.

(a) *Reporting requirements*—(1) *Requirement to report transfers*. A United States person that transfers property to a foreign partnership in a contribution described in section 721 (including section 721(b)) must report that transfer on Form 8865 ''Information Return of U.S. Persons With Respect to Certain Foreign Partnerships'' pursuant to section 6038B and the rules of this section, if—

(i) Immediately after the transfer, the United States person owns, directly, indirectly, or by attribution, at least a 10-percent interest in the partnership, as defined in section 6038(e)(3)(C) and the regulations thereunder; or

(ii) The value of the property transferred, when added to the value of any other property transferred in a section 721 contribution by such person (or any related person) to such partnership during the 12-month period ending on the date of the transfer, exceeds $100,000.

(2) *Indirect transfer through a domestic partnership*—For purposes of this section, if a domestic partnership transfers property to a foreign partnership in a section 721 transaction, the domestic partnership's partners shall be considered to have transferred a proportionate share of the property to the foreign partnership. However, if the domestic partnership properly reports all of the information required under this section with respect to the contribution, no partner of the transferor partnership, whether direct or indirect (through tiers of partnerships), is also required to report under this section. For illustrations of this rule, see *Examples 4* and *5* of paragraph (a)(7) of this section.

(3) *Indirect transfer through a foreign partnership*. [Reserved]

(4) *Requirement to report dispositions*—(i) *In general*. If a United States person was required to report a transfer to a foreign partnership of appreciated property under paragraph (a)(1) or (2) of this section, and the foreign partnership disposes of the property while such United States person remains a direct or indirect partner, that United States person must report the disposition by filing Form 8865. The form must be attached to, and filed by the due date (including extensions) of, the United States person's income tax return for the year in which the disposition occurred.

(ii) *Disposition of contributed property in nonrecognition transaction*. If a foreign partnership disposes of contributed appreciated property in a nonrecognition transaction and substituted basis property is received in exchange, and the substituted basis property has built-in gain under § 1.704-3(a)(8), the original transferor is not required to report the disposition. However, the transferor must report the disposition of the substituted basis property in the same manner as provided for the contributed property.

(5) *Time for filing Form 8865*. The Form 8865 on which a transfer is reported must be attached to the transferor's timely filed (including extensions) income tax return for the tax year that includes the date of the transfer. If the person required to report under this section is not required to file an income tax return for its tax year during which the transfer occurred, but is required to file an information return for that year (for example, Form 1065, ''U.S. Partnership Return of Income,'' or Form 990, ''Return of Organization Exempt from Income Tax''), the person should attach the Form 8865 to its information return.

(6) *Returns to be made*—(i) *Separate returns for each partnership*. If a United States person transfers property reportable under this section to more than one foreign partnership in a taxable year, the United States person must submit a separate Form 8865 for each partnership.

(ii) *Duplicate form to be filed*. If required by the instructions accompanying Form 8865, a duplicate Form

8865 (including attachments and schedules) must also be filed by the due date for submitting the original Form 8865 under paragraph (a)(5)(i) or (ii) of this section, as applicable.

(7) *Examples*. The application of this paragraph (a) may be illustrated by the following examples:

Example 1. On November 1, 2001, *US*, a United States person that uses the calendar year as its taxable year, contributes $200,000 to *FP*, a foreign partnership, in a transaction subject to section 721. After the contribution, *US* owns a 5% interest in *FP*. *US* must report the contribution by filing Form 8865 for its taxable year ending December 31, 2001. On March 1, 2002, *US* makes a $40,000 section 721 contribution to *FP*, after which *US* owns a 6% interest in *FP*. *US* must report the $40,000 contribution by filing Form 8865 for its taxable year ending December 31, 2002, because the contribution, when added to the value of the other property contributed by *US* to *FP* during the 12-month period ending on the date of the transfer, exceeds $100,000.

Example 2. F, a nonresident alien, is the brother of *US*, a United States person. *F* owns a 15% interest in *FP*, a foreign partnership. *US* contributes $99,000 to *FP*, in exchange for a 1-percent partnership interest. Under sections 6038(e)(3)(C) and 267(c)(2), *US* is considered to own at least a 10-percent interest in *FP* and, therefore, *US* must report the $99,000 contribution under this section.

Example 3. *US*, a United States person, owns 40 percent of *FC*, a foreign corporation. *FC* owns a 20-percent interest in *FP*, a foreign partnership. Under section 267(c)(1), *US* is considered to own 8 percent of *FP* due to its ownership of *FC*. *US* contributes $50,000 to *FP* in exchange for a 5-percent partnership interest. Immediately after the contribution, *US* is considered to own at least a 10-percent interest in *FP* and, therefore, must report the $50,000 contribution under this section.

Example 4. *US*, a United States person, owns a 60-percent interest in *USP*, a domestic partnership. On March 1, 2001, *USP* contributes $200,000 to *FP*, a foreign partnership, in exchange for a 5-percent partnership interest. Under paragraph (a)(2) of this section, *US* is considered as having contributed $120,000 to *FP* ($200,000 × 60%). However, under paragraph (a)(2), if *USP* properly reports the contribution to *FP*, *US* is not required to report its $120,000 contribution. If *US* directly contributes $5,000 to *FP* on June 10, 2001, *US* must report the $5,000 contribution because *US* is considered to have contributed more than $100,000 to *FP* in the 12-month period ending on the date of the $5,000 contribution.

Example 5. *US*, a United States person, owns an 80-percent interest in *USP*, a domestic partnership. *USP* owns an 80-percent interest in *USP1*, a domestic partnership. On March 1, 2001, *USP1* contributes $200,000 to *FP*, a foreign partnership, in exchange for a 3-percent partnership interest. Under paragraph (a)(2) of this section, *USP* is considered to have contributed $160,000 ($200,000 × 80%) to *FP*. *US* is considered to have contributed $128,000 to *FP* ($200,000 × 80% × 80%). However, if *USP1* reports the transfer of the $200,000 to *FP*, neither *US* nor *USP* are required to report under this section the amounts they are considered to have contributed. Additionally, regardless of whether *USP1* reports the $200,000 contribution, if *USP* reports the $160,000 contribution it is considered to have made, *US* does not have to report under this section the $128,000 contribution *US* is considered to have made.

(b) *Transfers by trusts relating to state and local government employee retirement plans*. Trusts relating to state and local government employee retirement plans are not required to report transfers under this section, unless otherwise specified in the instructions to Form 8865.

(c) *Information required with respect to transfers of property*. With respect to transfers required to be reported under paragraph (a)(1) or (2) of this section, the return must contain information in such form or manner as Form 8865 (and its accompanying instructions) prescribes with respect to reportable events, including—

(1) The name, address, and U.S. taxpayer identification number of the United States person making the transfer;

(2) The name, U.S. taxpayer identification number (if any), and address of the transferee foreign partnership, and the type of entity and country under whose laws the partnership was created or organized;

(3) A general description of the transfer, and of any wider transaction of which it forms a part, including the date of transfer;

(4) The names and addresses of the other partners in the foreign partnership, unless the transfer is solely of cash and the transferor holds less than a ten-percent interest in the transferee foreign partnership immediately after the transfer. However, for tax years of U.S. persons beginning on or after January 1, 2000, the person reporting pursuant to section 6038B (the transferor) must provide the names and addresses of each United States person that

owned a ten-percent or greater direct interest in the foreign partnership during the transferor's tax year in which the transfer occurred, and the names and addresses of any other United States or foreign persons that were direct partners in the foreign partnership during that tax year and that were related to the transferor during that tax year. See paragraph (i)(4) of this section for the definition of a related person;

(5) A description of the partnership interest received by the United States person, including a change in partnership interest;

(6) A separate description of each item of contributed property that is appreciated property subject to the allocation rules of section 704(c)(except to the extent that the property is permitted to be aggregated in making allocations under section 704(c)), or is intangible property, including its estimated fair market value and adjusted basis; and

(7) A description of other contributed property, not specified in paragraph (c)(6) of this section, aggregated by the following categories (with, in each case, a brief description of the property)—

(i) Stock in trade of the transferor (inventory);

(ii) Tangible property (other than stock in trade) used in a trade or business of the transferor;

(iii) Cash;

(iv) Stock, notes receivable and payable, and other securities; and

(v) Other property.

(d) *Information required with respect to dispositions of property*. In respect of dispositions required to be reported under paragraph (a)(4) of this section, the return must contain information in such form or manner as Form 8865 (and its accompanying instructions) prescribes with respect to reportable events, including—

(1) The date and manner of disposition;

(2) The gain and depreciation recapture amounts, if any, realized by the partnership; and

(3) Any such amounts allocated to the United States person.

(e) *Method of reporting*. Except as otherwise provided on Form 8865, or the accompanying instructions, all amounts reported as required under this section must be expressed in United States currency, with a statement of the exchange rates used. All statements required on or with Form 8865 pursuant to this section must be in the English language.

(f) *Reporting under this section not required of partnerships excluded from the application of subchapter K*—(1) *Election to be wholly excluded*. The reporting requirements of this section will not apply to any United States person in respect of an eligible partnership as described in §1.761–2(a), if such partnership has validly elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in the manner specified in §1.761–2(b)(2)(i).

(2) *Deemed excluded*. The reporting requirements of this section will not apply to any United States person in respect of an eligible partnership as described in §1.761–2(a), if such partnership is validly deemed to have elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in accordance with the provisions of §1.761–2(b)(2)(ii).

(g) *Deemed contributions*. Deemed contributions resulting from IRS-initiated section 482 adjustments are not required to be reported under section 6038B. However, taxpayers must report deemed contributions resulting from taxpayer-initiated adjustments. Such information will be furnished timely if filed by the due date, including extensions, for filing the taxpayer's income tax return for the year in which the adjustment is made.

(h) *Failure to comply with reporting requirements*—(1) *Consequences of failure*. If a United States person is required to file a return under paragraph (a) of this section and fails to comply with the reporting requirements of section 6038B and this section, then such person is subject to the following penalties:

(i) The United States person is subject to a penalty equal to 10 percent of the fair market value of the property at the time of the contribution. Such penalty with respect to a particular transfer is limited to $100,000, unless the failure to comply with respect to

such transfer was due to intentional disregard.

(ii) The United States person must recognize gain (reduced by the amount of any gain recognized, with respect to that property, by the transferor after the transfer) as if the contributed property had been sold for fair market value at the time of the contribution. Adjustments to the basis of the partnership's assets and any relevant partner's interest as a result of gain being recognized under this provision will be made as though the gain was recognized in the year in which the failure to report was finally determined.

(2) *Failure to comply*. A failure to comply with the requirements of section 6038B includes—

(i) The failure to report at the proper time and in the proper manner any information required to be reported under the rules of this section; and

(ii) The provision of false or inaccurate information in purported compliance with the requirements of this section.

(3) *Reasonable cause exception*. Under section 6038B(c)(2) and this section, the provisions of paragraph (h)(1) of this section will not apply if the transferor shows that a failure to comply was due to reasonable cause and not willful neglect. The transferor may attempt to do so by providing a written statement to the district director having jurisdiction of the taxpayer's return for the year of the transfer, setting forth the reasons for the failure to comply. Whether a failure to comply was due to reasonable cause will be determined by the district director under all the facts and circumstances.

(4) *Statute of limitations*. For exceptions to the limitations on assessment in the event of a failure to provide information under section 6038B, see section 6501(c)(8).

(i) *Definitions*—(1) *Appreciated property*. Appreciated property is property that has a fair market value in excess of basis.

(2) *Domestic partnership*. A domestic partnership is a partnership described in section 7701(a)(4).

(3) *Foreign partnership*. A foreign partnership is a partnership described in section 7701(a)(5).

(4) *Related person*. Persons are related persons if they bear a relationship described in section 267(b)(1) through (3) or (10) through (12), after application of section 267(c) (except for (c)(3)), or in section 707(b)(1)(B).

(5) *Substituted basis property*. Substituted basis property is property described in section 7701(a)(42).

(6) *Taxpayer-initiated adjustment*. A taxpayer-initiated adjustment is a section 482 adjustment that is made by the taxpayer pursuant to §1.482–1(a)(3).

(7) *United States person*. A United States person is a person described in section 7701(a)(30).

(j) *Effective dates*—(1) *In general*. Except as otherwise provided in this section, this section applies to transfers made on or after January 1, 1998. However, for a transfer made on or after January 1, 1998, but before January 1, 1999, the filing requirements of this section may be satisfied by—

(i) Filing a Form 8865 with the taxpayer's income tax return (including a partnership return of income) for the first taxable year beginning on or after January 1, 1999; or

(ii) Filing a Form 926 (modified to reflect that the transferee is a partnership, not a corporation) with the taxpayer's income tax return (including a partnership return of income) for the taxable year in which the transfer occurred.

(2) *Transfers made between August 5, 1997 and January 1, 1998*. A United States person that made a transfer of property between August 5, 1997, and January 1, 1998, that is required to be reported under section 6038B may satisfy its reporting requirement by reporting in accordance with the provisions of this section or in accordance with the provisions of Notice 98–17 (1998–11 IRB 6)(see §601.601(d)(2) of this chapter).

(3) *Special rule for transfers made before January 1, 2000*. Even if not reported in accordance with the rules provided in paragraph (a)(5) of this section, or paragraph (j) (1) or (2) of this section, a transfer that occurred before January 1, 2000 will nevertheless be considered timely reported if the transferor reports it on a Form 8865 attached to an amended tax return for the transferor's tax year in which the

transfer occurred, provided such amended return is filed no later than September 15, 2000.

[T.D. 8817, 64 FR 5715, Feb. 5, 1999; 64 FR 15686, Apr. 1, 1999; T.D. 8850, 64 FR 72554, Dec. 28, 1999]

§ 1.6039–1 Statements to persons with respect to whom information is furnished.

(a) *Requirement of statement with respect to incentive stock options under section 6039(a)(1).* Every corporation which transfers stock to any person pursuant to such person's exercise of an incentive stock option described in section 422(b) must furnish to such transferee, for each calendar year in which such a transfer occurs, a written statement with respect to the transfer or transfers made during such year. This statement must include the following information—

(1) The name, address, and employer identification number of the corporation transferring the stock;

(2) The name, address, and identifying number of the person to whom the share or shares of stock were transferred;

(3) The name and address of the corporation the stock of which is the subject of the option (if other than the corporation transferring the stock);

(4) The date the option was granted;

(5) The date the shares were transferred to the person exercising the option;

(6) The fair market value of the stock at the time the option was exercised;

(7) The number of shares of stock transferred pursuant to the option;

(8) The type of option under which the transferred shares were acquired; and

(9) The total cost of all the shares.

(b) *Requirement of statement with respect to stock purchased under an employee stock purchase plan under section 6039(a)(2).* (1) Every corporation which records, or has by its agent recorded, a transfer of the title to stock acquired by the transferor pursuant to the transferor's exercise on or after January 1, 1964, of an option granted under an employee stock purchase plan which meets the requirements of section 423(b), and with respect to which the special rule of section 423(c) applied, must furnish to such transferor, for each calendar year in which such a recorded transfer of title to such stock occurs, a written statement with respect to the transfer or transfers containing the information required by paragraph (b)(2) of this section.

(2) The statement required by paragraph (b)(1) of this section must contain the following information—

(i) The name and address of the corporation whose stock is being transferred;

(ii) The name, address, and identifying number of the transferor;

(iii) The date such stock was transferred to the transferor;

(iv) The number of shares to which title is being transferred; and

(v) The type of option under which the transferred shares were acquired.

(3) If the statement required by this paragraph is made by the authorized transfer agent of the corporation, it is deemed to have been made by the corporation. The term *transfer agent*, as used in this section, means any designee authorized to keep the stock ownership records of a corporation and to record a transfer of title of the stock of such corporation on behalf of such corporation.

(4) A statement is required by reason of a transfer described in section 6039(a)(2) of a share only with respect to the first transfer of such share by the person who exercised the option. Thus, for example, if the owner has record title to a share or shares of stock transferred to a recognized broker or financial institution and the stock is subsequently sold by such broker or institution (on behalf of the owner), the corporation is only required to furnish a written statement to the owner relating to the transfer of record title to the broker or financial institution. Similarly, a written statement is required when a share of stock is transferred by the optionee to himself and another person (or persons) as joint tenants, tenants by the entirety or tenants in common. However, when stock is originally issued to the optionee and another person (or persons) as joint tenants, or as tenants by

the entirety, the written statement required by this paragraph shall be furnished (at such time and in such manner as is provided by this section) with respect to the first transfer of the title to such stock by the optionee.

(5) Every corporation which transfers any share of stock pursuant to the exercise of an option described in this paragraph shall identify such stock in a manner sufficient to enable the accurate reporting of the transfer of record title to such shares. Such identification may be accomplished by assigning to the certificates of stock issued pursuant to the exercise of such options a special serial number or color.

(c) *Time for furnishing statements*—(1) *In general*. Each statement required by this section to be furnished to any person for a calendar year must be furnished to such person on or before January 31 of the year following the year for which the statement is required.

(2) *Extension of time*. For good cause shown upon written application of the corporation required to furnish statements under this section, the Director, Martinsburg Computing Center, may grant an extension of time not exceeding 30 days in which to furnish such statements. The application must contain a full recital of the reasons for requesting an extension to aid the Director in determining the period of the extension, if any, which will be granted and must be sent to the Martinsburg Computing Center (Attn: Extension of Time Coordinator). Such a request in the form of a letter to the Martinsburg Computing Center, 250 Murall Drive, Kearneysville, West Virginia 25430, signed by the applicant (or its agent) will suffice as an application. The application must be filed on or before the date prescribed in paragraph (c)(1) of this section for furnishing the statements required by this section, and must contain the employer identification number of the corporation required to furnish statements under this section.

(3) *Last day for furnishing statement*. For provisions relating to the time for performance of an act when the last day prescribed for performance falls on Saturday, Sunday, or a legal holiday, *see* § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

(d) *Statements furnished by mail*. For purposes of this section, a statement is considered to be furnished to a person if it is mailed to such person's last known address.

(e) *Penalty*. For provisions relating to the penalty provided for failure to furnish a statement under this section, see section 6722.

(f) *Electronic furnishing of statements*. The statements required to be furnished pursuant to this section may be provided in an electronic format in lieu of a paper format, with the consent of the recipient. *See* § 31.6051–1(j) of the Regulations on Employment Taxes and Collection of Income Tax at the Source for further guidance regarding the manner in which such electronic statements must be furnished.

(g) *Effective date*—(1) *In general*. These regulations are effective on August 3, 2004.

(2) *Reliance and transition period*. For statutory options transferred on or before June 9, 2003, taxpayers may rely on the 1984 proposed regulations LR–279–81 (49 FR 4504), the 2003 proposed regulations REG–122917–02 (68 FR 34344), or this section until the earlier of January 1, 2006, or the first regularly scheduled stockholders meeting of the granting corporation occurring 6 months after August 3, 2004. For statutory options transferred after June 9, 2003, and before the earlier of January 1, 2006, or the first regularly scheduled stockholders meeting of the granting corporation occurring at least 6 months after August 3, 2004, taxpayers may rely on either REG–122917–02 or this section. Taxpayers may not rely on LR–279–81 or REG–122917–02 after December 31, 2005. Reliance on LR–279–81, REG–122917–02, or this section must be in its entirety, and all statutory options granted during the reliance period must be treated consistently.

[T.D. 9144, 69 FR 46425, Aug. 3, 2004; 69 FR 61311, Oct. 18, 2004]

§ 1. 6039I–1 Reporting of certain employer-owned life insurance contracts.

(a) *Requirement to report*. Section 6039I requires every taxpayer that is an applicable policyholder owning one or

more employer-owned life insurance contracts issued after August 17, 2006, to file a return showing the following information for each year the contracts are owned—

(1) The number of employees of the applicable policyholder at the end of the year;

(2) The number of such employees insured under such contracts at the end of the year;

(3) The total amount of insurance in force at the end of the year under such contracts;

(4) The name, address, and taxpayer identification number of the applicable policyholder and the type of business in which the policyholder is engaged; and

(5) That the applicable policyholder has a valid consent for each insured employee (or, if all such consents are not obtained, the number of insured employees for whom such consent was not obtained).

(b) *Time and manner of reporting*. Applicable policyholders owning one or more employer-owned life insurance contracts issued after August 17, 2006, must provide the information required under § 6039I by attaching Form 8925, ''Report of Employer-Owned Life Insurance Contracts'', to the policyholder's income tax return by the due date of that return, or by filing such other form at such time and in such manner as the Commissioner may in the future prescribe.

(c) *Effective/applicability date*. These regulations are applicable for tax years ending after November 6, 2008.

[T.D. 9431, 73 FR 65982, Nov. 6, 2008]

§ 1.6041–1 Return of information as to payments of $600 or more.

(a) *General rule*—(1) *Information returns required*—(i) *Payments required to be reported*. Except as otherwise provided in §§ 1.6041–3 and 1.6041–4, every person engaged in a trade or business shall make an information return for each calendar year with respect to payments it makes during the calendar year in the course of its trade or business to another person of fixed or determinable income described in paragraph (a)(1)(i) (A) or (B) of this section. For purposes of the regulations under this section, the person described in this paragraph (a)(1)(i) is a payor.

(A) Salaries, wages, commissions, fees, and other forms of compensation for services rendered aggregating $600 or more.

(B) Interest (including original issue discount), rents, royalties, annuities, pensions, and other gains, profits, and income aggregating $600 or more.

(ii) *Information returns required under other provisions of the Internal Revenue Code*. The payments described in paragraphs (a)(1)(i)(A) and (B) of this section shall not include any payments of amounts with respect to which an information return is required by, or may be required under authority of, section 6042(a) (relating to dividends), section 6043(a)(2) (relating to distributions in liquidation), section 6044(a) (relating to patronage dividends), section 6045 (relating to brokers' transactions with customers and certain other transactions), sections 6049(a)(1) and (2) (relating to interest), section 6050N(a) (relating to royalties), or section 6050P(a) or (b) (relating to cancellation of indebtedness). For information returns required under section 6045(f) (relating to payments to attorneys), see special rules in §§ 1.6041–1(a)(1)(iii) and 1.6045–5(c)(4).

(iii) Information returns required under section 6045(f) on or after January 1, 2007. For payments made on or after January 1, 2007 to which section 6045(f) (relating to payments to attorneys) applies, the following rules apply. Not withstanding the provisions of paragraph (a)(1)(ii) of this section, payments to an attorney that are described in paragraph (a)(1)(i) of this section but which otherwise would be reportable under section 6045(f) are reported under section 6041 and this section and not section 6045(f). This exception applies only if the payments are reportable with respect to the same payee under both sections. Thus, a person who, in the course of a trade or business, pays $600 of taxable damages to a claimant by paying that amount to the claimant's attorney is required to file an information return under section 6041 with respect to the claimant, as well as another information return under section 6045(f) with respect to the claimant's attorney. For provisions

relating to information reporting for payments to attorneys, see § 1.6045–5.

(2) *Prescribed form.* The return required by subparagraph (1) of this paragraph shall be made on Forms 1096 and 1099 except that (i) the return with respect to distributions to beneficiaries of a trust or of an estate shall be made on Form 1041, and (ii) the return with respect to certain payments of compensation to an employee by his employer shall be made on Forms W-3 and W-2 under the provisions of § 1.6041–2 (relating to return of information as to payments to employees). Where Form 1099 is required to be filed under this section, a separate Form 1099 shall be furnished for each person to whom payments described in subdivision (i), (ii), or (iii) of subparagraph (1) of this paragraph are made. For time and place for filing Forms 1096 and 1099, see § 1.6041–6. For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011–2 of this chapter (Procedure and Administration Regulations).

(b) *Persons engaged in trade or business*—(1) *In general.* The term ''all persons engaged in a trade or business'', as used in section 6041(a), includes not only those so engaged for gain or profit, but also organizations the activities of which are not for the purpose of gain or profit. Thus, the term includes the organizations referred to in section 401(a), 501(c), 501(d) and 521 and in paragraph (i) of this section. On the other hand, section 6041(a) applies only to payments in the course of trade or business; hence it does not apply to an amount paid by the proprietor of a business to a physician for medical services rendered by the physician to the proprietor's child.

(2) *Special rule for REMICs.* For purposes of chapter 1 subtitle F, chapter 61A, part IIIB, the terms ''all persons engaged in a trade or business'' and ''any service-recipient engaged in a trade or business'' includes a real estate mortgage investment conduit or REMIC (as defined in section 860D).

(c) *Fixed or determinable income.* Income is fixed when it is to be paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained. The income need not be paid annually or at regular intervals. The fact that the payments may be increased or decreased in accordance with the happening of an event does not for purposes of this section make the payments any the less determinable. A payment made jointly to two or more payees may be fixed and determinable income to one payee even though the payment is not fixed and determinable income to another payee. For example, property insurance proceeds paid jointly to the owner of damaged property and to a contractor that repairs the property may be fixed and determinable income to the contractor but not fixed and determinable income to the owner, and should be reported to the contractor. A salesman working by the month for a commission on sales which is paid or credited monthly receives determinable income.

(d) *Payments specifically included*—(1) *In general.* Amounts paid in respect of life insurance, endowment, or annuity contracts are required to be reported in returns of information under this section—

(i) Unless the payment is made in respect of a life insurance or endowment contract by reason of the death of the insured and is not required to be reported by paragraph (b) of § 1.6041–2,

(ii) Unless the payment is made by reason of the surrender prior to maturity or lapse of a policy, other than a policy which was purchased (*a*) by a trust described in section 401(a) which is exempt from tax under section 501(a), (*b*) as part of a plan described in section 403(a), or (*c*) by an employer described in section 403(b)(1)(A),

(iii) Unless the payment is interest as defined in § 1.6049–2 and is made after December 31, 1962,

(iv) Unless the payment is a payment with respect to which a return is required by § 1.6047–1, relating to employee retirement plans covering owner-employees,

(v) Unless the payment is payment with respect to which a return is required by § 1.6052–1, relating to payment of wages in the form of group-term life insurance.

(2) *Professional fees.* Fees for professional services paid to attorneys, physicians, and members of other professions are required to be reported in returns of information if paid by persons engaged in a trade or business and paid in the course of such trade or business.

(3) *Prizes and awards.* Amounts paid as prizes and awards that are required to be included in gross income under section 74 and §1.74–1 when paid in the course of a trade or business are required to be reported in returns of information under this section.

(4) *Disability payments.* Amounts paid as disability payments under section 105(d) are required to be reported in returns of information under this section.

(5) *Notional principal contracts.* Except as provided in paragraphs (b)(5)(i) and (ii) of this section, amounts paid after December 31, 2000, with respect to notional principal contracts referred to in §1.863–7 or 1.988–2(e) to persons who are not described in §1.6049–4(c)(1)(ii) are required to be reported in returns of information under this section. The amount required to be reported under this paragraph (d)(5) is limited to the amount of cash paid from the notional principal contract as described in §1.446–3(d). A non-periodic payment is reportable for the year in which an actual payment is made. Any amount of interest determined under the provisions of §1.446–3(g)(4) (dealing with interest in the case of a significant nonperiodic payment) is reportable under this paragraph (d)(5) and not under section 6049 (see §1.6049–5(b)(15)). See §1.6041–4(a)(4) for reporting exceptions regarding payments to foreign persons. See, however, §1.1461–1(c)(1) for reporting amounts described under this paragraph (d)(5) that are paid to foreign persons. The provisions of §1.6049–5(d) shall apply for determining whether a payment with respect to a notional principal contract is made to a foreign person. See §1.6049–4(a) for a definition of payor. For purposes of this paragraph (d)(5), a payor includes a middleman defined in §1.6049–4(f)(4).

(i) An amount paid with respect to a notional principal contract is not required to be reported if the payment is made outside the United States (as defined in §1.6049–5(e)) by a non-U.S. payor or a non-U.S. middleman.

(ii) An amount paid with respect to a notional principal contract is not required to be reported if the payment is made outside the United States (as defined in §1.6049–5(e)) by a payor that has no actual knowledge that the payee is a U.S. person, and the payor is—

(A) A U.S. payor or U.S. middleman that is not a U.S. person (such as a controlled foreign corporation defined in section 957(a) or certain foreign corporations or foreign partnerships engaged in a U.S. trade or business); or

(B) A foreign branch of a U.S. bank. See §1.6049–5(c)(5) for a definition of a U.S. payor, a U.S. middleman, a non-U.S. payor, and a non-U.S. middleman.

(e) *Payment made on behalf of another person*—(1) *In general.* A person that makes a payment in the course of its trade or business on behalf of another person is the payor that must make a return of information under this section with respect to that payment if the payment is described in paragraph (a) of this section and, under all the facts and circumstances, that person—

(i) Performs management or oversight functions in connection with the payment (this would exclude, for example, a person who performs mere administrative or ministerial functions such as writing checks at another's direction); or

(ii) Has a significant economic interest in the payment (i.e., an economic interest that would be compromised if the payment were not made, such as by creation of a mechanic's lien on property to which the payment relates, or a loss of collateral).

(2) *Determination of payor obligated to report.* If two or more persons meet the requirements for making a return of information with respect to a payment, as set forth in paragraph (e)(1) of this section, the person obligated to report the payment is the person closest in the chain to the payee, unless the parties agree in writing that one of the other parties meeting the requirements set forth in paragraph (e)(1) of this section will report the payment.

(3) *Special rule for payment by employee to employer.* Notwithstanding the provisions of paragraph (e)(1) of this

section, an employee acting in the course of his employment who makes a payment to his employer on behalf of another person is not required to make a return of information with respect to that payment.

(4) *Optional method to report.* A person that makes a payment on behalf of another person but is not required to make an information return under paragraph (e)(1) of this section may elect to do so pursuant to the procedures established by the Commissioner. See, e.g., Rev. Proc. 84–33 (1984–1 C.B. 502) (optional method for a paying agent to report and deposit amounts withheld for payors under the statutory provisions of backup withholding) (see § 601.601(d)(2) of this chapter).

(5) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

Example 1. Bank B provides financing to C, a real estate developer, for a construction project. B makes disbursements from the account for labor, materials, services, and other expenses related to the construction project. In connection with the payments, B performs the following functions: approves payments to the general contractor or subcontractors; ensures that loan proceeds are properly applied and that all approved bills are properly paid to avoid mechanics' or materialmen's liens; conducts site inspections to determine whether work has been completed (but does not check the quality of the work). B is performing management or oversight functions in connection with the payments and is subject to the information reporting requirements of section 6041 with respect to payments.

Example 2. Mortgage company D holds a mortgage on business property owned by E. When the property is damaged by a storm, E's insurance company issues a check payable to both D and E in settlement of E's claim. Pursuant to the contract between D and E, D holds the insurance proceeds in an escrow account and makes disbursements, according to E's instructions, to contractors and subcontractors performing repairs on the property. D is not performing management or oversight functions, but D has a significant economic interest in the payments because the purpose of the arrangement is to ensure that property on which D holds a mortgage is repaired or replaced. D is subject to the information reporting requirements of section 6041 with respect to the payments to contractors.

Example 3. Settlement agent F provides real estate closing services to real estate brokers and agents. F deposits money received from the buyer or lender in an escrow account and makes payments from the account to real estate agents or brokers, appraisers, land surveyors, building inspectors, or similar service providers according to the provisions of the real estate contract and written instructions from the lender. F may also make disbursements pursuant to oral instructions of the seller or purchaser at closing. F is not performing management or oversight functions and does not have a significant economic interest in the payments, and is not subject to the information reporting requirements of section 6041. For the rules relating to F's obligation to report the gross proceeds of the sale, see section 6045(e) and § 1.6045–4.

Example 4. Assume the same facts as in *Example 3.* In addition, the seller instructs F to hire a contractor to perform repairs on the property. F selects the contractor, negotiates the cost, monitors the progress of the project, and inspects the work to ensure it complies with the contract. With respect to the payments to the contractor, F is performing management or oversight functions and is subject to the information reporting requirements of section 6041.

Example 5. G is a rental agent who manages certain rental property on behalf of property owner H. G finds tenants, arranges leases, collects rent, responds to tenant inquiries regarding maintenance, and hires and makes payments to repairmen. G subtracts her commission and any maintenance payments from rental payments and remits the remainder to H. With respect to payments to repairmen, G is performing management or oversight functions and is subject to the information reporting requirements of section 6041. With respect to the payment of rent to H, G is subject to the information reporting requirements of section 6041 regardless of whether she performs management or oversight functions or has a significant economic interest in the payment. See § 1.6041–3(d) for rules relating to rental agents. See § 1.6041–1(f) to determine the amount that G should report to H as rent.

Example 6. Literary agent J receives a payment from publisher L of fees earned by J's client, author K. J deposits the payment into a bank account in J's name. From time to time and as directed by K, J makes payments from these funds to attorneys, managers, and other third parties for services rendered to K. After subtracting J's commission, J pays K the net amount. J does not order or direct the provision of services by the third parties to K, and J exercises no discretion in making the payments to the third parties or to K. J is not performing management or oversight functions and does not have a significant economic interest in the payments and is not subject to the information reporting requirements of section 6041 in connection with the payments to K or to

the third parties. For the rules relating to L's obligation to report the payment of the fees to K, see paragraphs (a)(1)(i) and (f) of this section. For the rules relating to K's obligation to report the payment of the commission to J and the payments to the third parties for services, see paragraphs (a)(1)(i) and (d)(2) of this section.

Example 7. Attorney P deposits into a client trust fund a settlement payment from R, the defendant in a breach of contract action for lost profits in which P represented plaintiff Q. P makes payments from the client trust fund to service providers such as expert witnesses and private investigators for expenses incurred in the litigation. P decides whom to hire, negotiates the amount of payment, and determines that the services have been satisfactorily performed. In the event of a dispute with a service provider, P withholds payment until the dispute is settled. With respect to payments to the service providers, P is performing management or oversight functions and is subject to the information reporting requirements of section 6041.

Example 8. Assume the same facts as in *Example 7.* In addition, assume that after paying the service providers and deducting his legal fee, P pays Q the remaining funds that P had received from the settlement with R. With respect to the payment to Q, P is not performing management or oversight functions, does not have a significant economic interest in the payment, and is not subject to the information reporting requirements of section 6041. For the rules relating to R's obligation to report the payment of the settlement proceeds to P, see section 6045(f) and the regulations thereunder. For the rules relating to R's obligation to report the payment of the settlement proceeds to Q, see paragraphs (a)(1)(i) and (f) of this section. For the rules relating to Q's obligation to report the payment of attorney fees to P, see paragraphs (a)(1)(i) and (d)(2) of this section.

Example 9. Medical insurer S operates as the administrator of a health care program under a contract with a state. S makes payments of government funds to health care providers who provide care to eligible patients. S receives and reviews claims submitted by patients or health care providers, determines if the claims meet all the requirements of the program (e.g., that the care is authorized and that the patients are eligible beneficiaries), and determines the amount of payment. S is performing management or oversight functions and is subject to the information reporting requirements of section 6041 with respect to the payments.

Example 10. Race track employee T holds deposits made by horse owner U in a special escrow account in U's name. U enters into a contract with jockey V to ride U's horse in a race at the track. As directed by U, T pays V the fee for riding U's horse from U's escrow account. T is not performing management or oversight functions, does not have a significant economic interest in the payment, and is not subject to the information reporting requirements of section 6041. For the rules relating to U's obligation to report the payment of the fee to V, see paragraph (a)(1)(i) of this section.

Example 11. X is a certified public accountant employed by Firm Y, and is not a partner. Client Z pays X directly for accounting services. X remits the amount received to Y, as required by the terms of his employment. X does not have any reporting obligation with respect to the payment to Y. For the rules relating to Z's obligation to report the payment to Y for services, see paragraphs (a)(1)(i) and (d)(2) of this section.

Example 12. Bank contracts with Title Company with respect to the disbursement of funds on a construction loan. Pursuant to their arrangement, the contractor sends draw requests to Title Company, which inspects the work, verifies the amount requested, and then sends the draw request to Bank with supporting documents. Bank pays Title Company the amount of the draw request, and Title Company insures Bank against any loss if it cannot obtain the necessary lien waivers. Bank has a significant economic interest in the payment as a mortgagee, and Title Company exercises management or oversight over the payment. Since Title Company is closest in the chain to the contractor, Title Company should report the payment, unless the parties agree in writing that Bank will report the payment.

(f) *Amount to be reported when fees, expenses or commissions are deducted*—(1) *In general.* The amount to be reported as paid to a payee is the amount includible in the gross income of the payee (which in many cases will be the gross amount of the payment or payments before fees, commissions, expenses, or other amounts owed by the payee to another person have been deducted), whether the payment is made jointly or separately to the payee and another person. The Commissioner may, by guidance published in the Internal Revenue Bulletin, illustrate the circumstances under which the gross amount or less than the gross amount may be reported.

(2) Examples. The provisions of this paragraph (f) are illustrated by the following examples:

Example 1. Attorney P represents client Q in a breach of contract action for lost profits against defendant R. R settles the case for $100,000 damages and $40,000 for attorney fees. Under applicable law, the full $140,000 is includible in Q's gross taxable income. R

issues a check payable to P and Q in the amount of $140,000. R is required to make an information return reporting a payment to Q in the amount of $140,000. For the rules with respect to R's obligation to report the payment to P, see section 6045(f) and the regulations thereunder.

Example 2. Assume the same facts as in *Example 1*, except that R issues a check to Q for $100,000 and a separate check to P for $40,000. R is required to make an information return reporting a payment to Q in the amount of $140,000. For the rules with respect to R's obligation to report the payment to P, see section 6045(f) and the regulations thereunder.

(g) *Payment made in medium other than cash*. If any payment required to be reported on Form 1099 is made in property other than money, the fair market value of the property at the time of payment is the amount to be included on such form.

(h) *When payment deemed made*. For purposes of a return of information, an amount is deemed to have been paid when it is credited or set apart to a person without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and is made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition.

(i) *Payments made by the United States or a State*. Information returns on:

(1) Forms 1096 and 1099 and

(2) Forms W-3 and W-2 (when made under the provisions of § 1.6041–2)

of payments made by the United States or a State, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, shall be made by the officer or employee of the United States, or of such State, or political subdivision, or of the District of Columbia, or of such agency or instrumentality, as the case may be, having control of such payments or by the officer or employee appropriately designated to make such returns.

(j) *Effective date*. The provisions of paragraphs (b), (c), (e), and (f) apply to payments made after December 31, 2002.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.6041–1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 1.6041–2 Return of information as to payments to employees.

(a)(1) *In general*. Wages, as defined in section 3401, paid to an employee are required to be reported on Form W-2. See section 6011 and the Employment Tax Regulations thereunder. All other payments of compensation, including the cash value of payments made in any medium other than cash, to an employee by his employer in the course of the trade or business of the employer must also be reported on Form W-2 if the total of such payments and the amount of the employee's wages (as defined in section 3401), if any, required to be reported on Form W-2 aggregates $600 or more in a calendar year. For example, if a payment of $700 was made to an employee and $400 thereof represents wages subject to withholding under section 3402 and the remaining $300 represents compensation not subject to withholding, such wages and compensation must both be reported on Form W-2. A separate Form W-2 shall be furnished for each employee for whom a return must be made. At the election of the employer, components of amounts required to be reported on Form W-2 pursuant to the provisions of this subparagraph may be reported on more than one Form W-2.

(2) *Transmittal form*. The transmittal form for a return on Form W-2 made pursuant to the provisions of subparagraph (1) of this paragraph shall be Form W-3. In a case where an employer must file a Form W-3 under this paragraph and also under § 31.6011(a)–4 or § 31.6011(a)–5 of this chapter (Employment Tax Regulations), the Form W-3 filed under such § 31.6011(a)–4 or § 31.6011(a)–5 shall also be used as the transmittal form for a return on Form W-2 made pursuant to the provisions of this paragraph.

(3) *Time for filing*—(i) *General rule*. In a case where an employer must file Forms W-3 and W-2 under this paragraph and also under § 31.6011(a)–4 or § 31.6011(a)–5 of this chapter (Employment Tax Regulations), the time for filing such forms under this paragraph shall be the same as the time (including extensions thereof) for filing such

forms under § 31.6011(a)–4 or § 31.6011(a)–5.

(ii) *Exception*. In a case where an employer is not required to file Forms W-3 and W-2 under § 31.6011(a)–4 or § 31.6011(a)–5 of this chapter, returns on Forms W-3 and W-2 required under this paragraph (a) for any calendar year shall be filed on or before February 28 (March 31 if filed electronically) of the following year.

(iii) *Cross reference*. For extensions of time for filing returns, see section 6081 and the regulations thereunder.

(4) *Place for filing*. The returns on Forms W-3 and W-2 required under this paragraph shall be filed pursuant to the rules contained in § 31.6091–1 of this chapter (Employment Tax Regulations), relating to the place for filing certain returns.

(5) *Statement for employees*. An employer required under this paragraph (a) to file Form W-2 with respect to an employee is also required under sections 6041(d) and 6051 to furnish a written statement to the employee. This written statement must be furnished on Form W-2 in accordance with section 6051 and the regulations.

(b) *Distributions under employees' trust or plan*. (1) Amounts which are:

(i) Distributed or made available to a beneficiary, and to which section 402 (relating to employees' trusts) or section 403 (relating to employee annuity plans) applies, or

(ii) Described in section 72(m)(3)(B), shall be reported on Forms 1096 and 1099 to the extent such amounts are includible in the gross income of such beneficiary if the amounts so includible aggregate $600 or more in any calendar year. In addition, every trust described in section 501(c)(17) which makes one or more payments (including separation and sick and accident benefits) totaling $600 or more in 1 year to an individual must file an annual information return on Form 1096, accompanied by a statement on Form 1099, for each such individual. Payments made by an employer or a person other than the trustee of the trust should not be considered in determining whether the $600 minimum has been paid by the trustee. The provisions of this subparagraph shall not be applicable to payments of supplemental unemployment compensation benefits made after December 31, 1970, which are treated as if they were wages for purposes of section 3401(a). Such amounts are required to be reported on Forms W-3 and W-2. See paragraph (b)(14) of § 31.3401(a)–1 of this chapter (Employment Tax Regulations).

(2) Any amount with respect to which a statement is required by § 1.6047–1, relating to employee retirement plans covering owner-employees, shall not be included in amounts required to be reported under section 6041.

(c) *Payments to foreign persons*. See § 1.6041–4 for reporting exemptions regarding payments to foreign persons. See § 1.6049–5(d) for determining whether a payment is made to a foreign person.

[T.D. 7284, 38 FR 20827, Aug. 3, 1973, as amended by T.D. 7580, 43 FR 60159, Dec. 26, 1978; T.D. 8734, 62 FR 53472, Oct. 14, 1997; T.D. 8895, 65 FR 50406, Aug. 18, 2000; T.D. 9114, 69 FR 7570, Feb. 18, 2004]

§ 1.6041–3 Payments for which no return of information is required under section 6041.

Returns of information are not required under section 6041 and §§ 1.6041–1 and 1.6041–2 for payments described in paragraphs (a) through (q) of this section. See § 1.6041–4 for reporting exemptions regarding payments to foreign persons.

(a) Payments of income required to be reported on Forms 1120–S, 941, W-2, and W-3 (however, see § 1.6041–2(a) with respect to Forms W-2 and W-3).

(b) Payments by a broker to his customer (but for reporting requirements as to certain of such payments, see sections 6042, 6045, and 6049 and the regulations thereunder in this part).

(c) Payments of bills for merchandise, telegrams, telephone, freight, storage, and similar charges.

(d) Payments of rent made to rental agents (but the agent is required to report payments of rent to the landlord in accordance with § 1.6041–1(a)(1)(i)(B) and (2)).

(e) Payments representing earned income for services rendered without the United States made to a citizen of the United States, if it is reasonable to believe that such amounts will be excluded from gross income under the

provisions of section 911 and the regulations thereunder.

(f) Compensation and profits paid or distributed by a partnership to the individual partners (but for reporting requirements, see § 1.6031–1).

(g) Payments of commissions to general agents by fire insurance companies or other companies insuring property, except when specifically directed by the Commissioner to be filed.

(h)(1) *In general.* Payments made under reimbursement or other expense allowance arrangements that meet the requirements of section 62(c) of the Code and § 1.62–2, that do not exceed the amount of the expenses substantiated (i.e., amounts which are treated as paid under an accountable plan), and that are received by an employee on or after January 1, 1989, with respect to expenses paid or incurred on or after January 1, 1989.

(2) *Transition rule.* Payments made under reimbursement or other expense allowance arrangements that are received by an employee on or after January 1, 1989, but prior to July 1, 1990, to the extent that the employee is required to account (within the meaning of the term ''account'' as set forth in § 1.162–17(b)(4) or 1.274–5T(f)(4), whichever is applicable) and does so account to the payor for such expenses, provided the payor has made a reasonable, good faith effort to comply with the requirements of section 62(c). In general, compliance with the provisions of this section, as in effect for payments made under reimbursement or other expense allowance arrangements that were received by an employee before January 1, 1989, with respect to expenses paid or incurred before January 1, 1989, will constitute such reasonable good faith compliance. In no event, however, will reasonable good faith compliance exist if a payor fails to report payments made under an arrangement (other than a per diem or mileage allowance type arrangement) under which an employee is not required to substantiate expenses paid or incurred or is not required to return amounts in excess of the substantiated expenses.

(i) Payments of interest on obligations of the United States, or a State, Territory, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing (but for requirements for reporting certain such payments by the United States or any agency or instrumentality thereof, see §§ 1.1461–1 to 1.1461–3, inclusive).

(j) Payments of interest on corporate bonds (but for reporting requirements as to payments on certain corporate bonds, see § 1.6049–5.

(k) Amounts paid as an allowance or reimbursement for traveling or other bona fide ordinary and necessary expenses, including an allowance for meals and lodging or a per diem allowance in lieu of subsistence, to persons in the service of an international organization (without regard to whether there is a requirement to account for such amounts) if-

(1) The organization is designated as an international organization by the President of the United States in Executive Orders issued pursuant to 22 U.S.C. 288, and

(2) The organization has immunity with respect to the invoilability of its archives pursuant to an international agreement having full force and effect in the United States.

(l) A payment to an informer as an award, fee, or reward for information relating to criminal activity, but only if such payment is made by the United States, a State, Territory, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, or, with respect to payments made after December 31, 1987, by an organization that is described in section 501(c)(3) and that makes such payments in furtherance of a charitable purpose to lessen the burdens of government within the meaning of § 1.501(c)(3)–1(d)(2).

(m) On and after September 9, 1968, payments by a person carrying on the banking business of interest on a deposit evidenced by a negotiable time certificate of deposit (but for reporting requirements as to payments made after December 31, 1962, of interest on certain deposits, see sec. 6049 and the regulations thereunder in this part).

(n) Payments to individuals as scholarships or fellowship grants within the meaning of section 117(b)(1), whether or

not ''qualified scholarships'' as described in section 117(b). This exception does not apply to any amount of a scholarship or fellowship grant that represents payment for services within the meaning of section 117(c). Instead, these amounts are required to be reported as wages on Form W-2. See §1.1461–1(c) for applicable reporting requirements for amounts paid to foreign persons.

(o) Per diem of certain alien trainees described under section 1441(c)(6).

(p) Payments made to the following persons:

(1) A corporation described in §1.6049–4(c)(1)(ii)(A), except with respect to payments made to a corporation after December 31, 1997 for attorneys' fees, and except a corporation engaged in providing medical and health care services or engaged in the billing and collecting of payments in respect to the providing of medical and health care services. However, no reporting is required where payment is made to a hospital or extended care facility described in section 501(c)(3) which is exempt from taxation under section 501(a) or to a hospital or extended care facility owned and operated by the United States, a State, the District of Columbia, a possession of the United States, or a political subdivision, agency or instrumentality of any of the foregoing. For reporting requirements as to payments by cooperatives, and to certain other payments, see sections 6042, 6044, and 6049 and the regulations thereunder in this part.

(2) An organization exempt from taxation under section 501(a), as described in §1.6049–4(c)(1)(ii)(B)(*1*), or an individual retirement plan, as described in §1.6049–4(c)(1)(ii)(C).

(3) The United States, as described in §1.6049–4(c)(1)(ii)(D).

(4) A State, the District of Columbia, a possession of the United States, or any political subdivision of any of the foregoing, as described in §1.6049–4(c)(1)(ii)(E).

(5) A foreign government or political subdivision of a foreign government, as described in §1.6049–4(c)(1)(ii)(F).

(6) An international organization, as described in §1.6049–4(c)(1)(ii)(G).

(7) A foreign central bank of issue, as described in §1.6049–4(c)(1)(ii)(H) and the Bank for International Settlements.

(8) Any wholly owned agency or instrumentality of any person described in paragraph (p) (2), (3), (4), (5), (6), or (7) of this section.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1.6041–3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§1.6041–4 Foreign-related items and other exceptions.

(a) *Exempted foreign-related items*—(1) Returns of information are not required for payments that a payor can, prior to payment, associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with §1.6049–5(d)(1) or presumed to be made to a foreign payee under §1.6049–5(d)(2), (3), (4), or (5). However, such payments may be reportable under §1.1461–1(b) and (c). For purposes of this paragraph (a)(1), the provisions in §1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. See §1.1441–1(b)(3)(iii)(B) and (C) for special payee rules regarding scholarships, grants, pensions, annuities, etc. The provisions of §1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code and the regulations under that chapter.

(2) Returns of information are not required for payments of amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code and the regulations under those provisions) made by a non-U.S. payor or non-U.S. middleman outside the United States. For a definition of non-U.S. payor and non-U.S. middleman, see §1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see §1.6049–5(e).

(3) Returns of information are not required for amounts paid by a foreign intermediary described in §1.1441–1(c)(13) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in §1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in §1.1441–1(b)(2)(iv) (other than a U.S. branch that is treated as a U.S. person) that are associated with a valid withholding certificate described in §1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under §1.6041–1 and were not so reported. For example, if a foreign intermediary or U.S. branch described in §1.1441–1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under §1.6041–3(q) to the person from whom the intermediary or U.S. branch receives the payment, the foreign intermediary or U.S. branch must report the payment on an information return. The exception of this paragraph (a)(3) shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Internal Revenue Code.

(4) Returns of information are not required for amounts paid with respect to notional principal contracts referred to in §1.863–7 or 1.988–2(e) which the payor may treat as effectively connected income of a foreign payee under the provisions of §1.1441–4(a)(3) or if the payee provides a representation in a master agreement that governs the transactions in notional principal contracts between the parties (for example, an International Swap and Derivatives Association (ISDA) Agreement, including the Schedule thereto) or in the confirmation on the particular notional principal contract transaction that the counterparty is a foreign person. See, however, §1.1461–1(c)(2)(i) for applicable reporting requirements.

(5) Returns of information are not required for the period that the amounts paid represent assets blocked as described in §1.1441–2(e)(3). The exemption in this paragraph (a)(5) shall terminate when payment is deemed to occur in accordance with the provisions of §1.1441–2(e)(3).

(6) For rules concerning direct sellers, see §1.6041A–1(d)(3)(i)(C).

(b) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (a) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (a)(1) of this section furnished by each joint owner upon which the payor or middleman can rely to treat each joint owner as a foreign payee or foreign beneficial owner.

(c) *Conversion into United States dollars of amounts paid in foreign currency.* For rules concerning foreign currency conversion, see §1.6049–4(d)(3)(i).

(d) *Effective date.* The provisions of this section apply to payments made after December 31, 2000.

[T.D. 8734, 62 FR 53473, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72188, Dec. 31, 1998; T.D. 8856, 64 FR 73412, Dec. 30, 1999; T.D. 8881, 65 FR 32205, May 22, 2000]

§1.6041–5 Information as to actual owner.

When a person receiving a payment described in section 6041 is not the actual owner of the income received, the name and address of the actual owner shall be furnished upon demand of the person paying the income, and in default of compliance with such demand the payee becomes liable for the penalties provided. See section 7203.

§1.6041–6 Returns made on Forms 1096 and 1099 under section 6041; contents and time and place for filing.

Returns made under section 6041 on Forms 1096 and 1099 for any calendar year shall be filed on or before February 28 (March 31 if filed electronically) of the following year with any of the Internal Revenue Service Centers,

the addresses of which are listed in the instructions for such forms. The name and address of the person making the payment and the name and address of the recipient of the payment shall be stated on Form 1099. If the present address of the recipient is not available, the last known post office address must be given. See section 6109 and the regulations thereunder for rules requiring the inclusion of identifying numbers in Form 1099.

[T.D. 7284, 38 FR 20828, Aug. 3, 1973, as amended by T.D. 8895, 65 FR 50406, Aug. 18, 2000]

§ 1.6041–7 Magnetic media requirement.

(a) *General.* For rules relating to permission to submit the information required by Form 1099 or W-2 on magnetic tape or other media, see § 1.9101–1. See also paragraph (b)(2) of § 31.6011(a)–7 of this chapter (Employment Tax Regulations) for additional rules relating to Form W-2. High-volume filers of information returns must file their returns on magnetic media. See section 6011(e) and § 301.6011–2 of this chapter (Procedure and Administration Regulations) for the requirements for filing on magnetic media.

(b) *Returns on magnetic tape by departments of health care carriers.* (1) For calendar years beginning on or after January 1, 1971, a health care carrier, or an agent thereof, making payment of fees or other compensation to providers of medical and health care services, may make a separate return on magnetic tape for each separate department within a specific line of such carrier's business, so long as all of such returns taken together contain all of the information required by section 6041 with respect to each provider of medical and health care services to whom such health care carrier makes payments aggregating $600 or more during the calendar year. Examples of separate departments within a specific line of such carrier's business (such as health and accident insurance) include, but are not limited to, separate departments to process claims of individual and group policyholders; and separate departments established along geographic lines.

(2) For purposes of this paragraph, the term ''health care carrier'' means any person making health care payments: (i) In exchange for the payment of a premium, (ii) in accordance with an employee benefit program, or (iii) in connection with a government-sponsored health care program.

[T.D. 7106, 36 FR 6422, Apr. 3, 1971, as amended by T.D. 8734, 62 FR 53473, Oct. 14, 1997]

§ 1.6041–8 Cross-reference to penalties.

For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6041(a) or (b), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6041(d), see § 301.6722–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

[T.D. 8734, 62 FR 53474, Oct. 14, 1997]

§ 1.6041–9 Coordination with reporting rules for widely held fixed investment trusts under § 1.671–5.

See § 1.671–5 for the reporting rules for widely held fixed investment trusts (WHFIT) (as defined under that section). For purposes of section 6041, middlemen and trustees of WHFITs are deemed to have management and oversight functions in connection with payments made by the WHFIT.

[T.D. 9241, 71 FR 4024, Jan. 24, 2006]

§ 1.6041A–1 Returns regarding payments of remuneration for services and certain direct sales.

(a) through (c) [Reserved]

(d) *Exceptions to return requirement.* [Reserved]

(1) and (2) [Reserved]

(3) *Foreign transactions*—(i) *In general.* No return shall be required under section 6041A with respect to payments described in this paragraph (d)(3).

(A) Returns of information are not required for payments that a payor can, prior to payment, associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or

presumed to be made to a foreign payee under §1.6049–5(d)(2), (3), (4), or (5). However, such payments may be reportable under §1.1461–1(b) and (c). For purposes of this paragraph (d)(3)(i)(A), the provisions in §1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of §1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent*.

(B) Returns of information are not required for payments of remuneration for services from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code and the regulations under those provisions) if payments are made outside the United States by a non-U.S. payor or non U.S. middleman. For a definition of non U.S. payor or non-U.S. middleman, see §1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see §1.6049–5(e).

(C) Returns of information are not required under sections 6041 or 6041A for amounts paid outside of the United States (within the meaning of §1.6049–5(e)) as remuneration for services as a direct seller (within the meaning of section 3508) performed outside of the United States or for sales described in section 6041A(b) made outside of the United States of consumer products for resale outside of the United States.

(ii) *Payor*. The term *payor* has the same meaning as described in §1.6049–4(a)(2).

(iii) *Joint owners*. Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (d)(3)(i) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (d)(3)(i)(A) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner.

(iv) *Conversion into United States dollars of amounts paid in foreign currency*. For rules concerning foreign currency conversion, see §1.6049–4(d)(3)(i).

(v) *Effective date*. The provisions of this paragraph (d)(3) apply to payments made after December 31, 2000.

(e) [Reserved]

(f) *Statements to be furnished to persons with respect to whom information is required to be furnished*—(1) [Reserved]

(2) *Time for furnishing statement*. [Reserved]

(3) *Contents of statement*. [Reserved]

(g) [Reserved]

(h) *Cross-reference to penalties*. For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6041A(a) or (b), see §301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6041A(e), see §301.6722–1 of this chapter. See §301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

[T.D. 8734, 62 FR 53474, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72188, Dec. 31, 1998; T.D. 8856, 64 FR 73412, Dec. 30, 1999; T.D. 8881, 65 FR 32205, May 22, 2000]

§1.6042–1 Return of information as to dividends paid in calendar years before 1963.

(a) *Requirement of return*—(1) *In general*. Except as provided in subparagraphs (2) and (3) of this paragraph, every domestic corporation, or foreign corporation engaged in business within the United States or having an office or place of business or a fiscal or paying agent in the United States, making payments during any calendar year before 1963 of $10 or more of dividends and distributions (other than distributions in liquidation) to any shareholder who is an individual (citizen or resident of the United States), a resident fiduciary, or a resident partnership any member of which is a citizen or resident shall file for the calendar year a return setting forth the amount of such payments for such calendar year. A separate return on Form 1099, showing the name and address of the payer and

the shareholder, and the amount paid, shall be prepared with respect to each shareholder. These returns shall be accompanied by transmittal Form 1096.

(2) *Federal land bank associations and certain other corporations.* A corporation described in section 501(c) (12), (15), or (16), or section 521(b)(1), or a Federal land bank association or a production credit association, making a payment of a dividend, or a distribution, to any shareholder in any calendar year before 1963 shall file an information return with respect to such payments when they total $100 or more during the calendar year.

(3) *Savings and loan associations, etc.* A savings and loan association, a cooperative bank, a homestead association, a credit union, or a building and loan association is required to file an information return with respect to distributions made to a shareholder during any calendar year before 1963 only if the amount thereof paid to the shareholder during the calendar year, or such amount when aggregated with other payments made to the shareholder during such year of interest, rents, royalties, annuities, pensions, and other gains, profits, and income, as described in paragraph (a)(2)(ii) of §1.6041–1, totals $600 or more. For this purpose, the term ''distributions to a shareholder'' includes periodical distributions of earnings on running installment shares of stock paid or credited by a building and loan association to its holders of that class of stock, and the sum received upon withdrawal from a building and loan association in excess of the amounts paid in on account of membership fees and stock subscriptions, consisting of accumulated profits.

(b) *Nontaxable or partly nontaxable distributions.* In the case of a distribution which is made from a depletion or depreciation reserve, or which for any other reason is deemed by the corporation to be nontaxable or partly nontaxable to its shareholders, the corporation shall fill in the information on both sides of Form 1096.

(c) *Information as to actual owner*—(1) *In general.* When the person receiving a payment with respect to which an information return is required under authority of the Code is not the actual owner of the income received, the name and address of the actual owner or payee shall be furnished upon demand of the person paying the income, and in default of a compliance with such demand the payee becomes liable for the penalties provided. See section 7203. Dividends on stock are prima facie the income of the record owner of the stock. If a record owner of stock who is not the actual owner thereof receives dividends on such stock in any calendar year before 1963, he shall file a Form 1087 disclosing the name and address of the actual owner or payee, the name of the issuing corporation, the number of shares of such stock, and the amount of dividends received with respect to such stock during the calendar year. (For the reporting by a nominee of dividends received by him on behalf of another person in any calendar year after 1962, see §1.6042–2.) Unless such a disclosure is made the record owner will be held liable for any tax based upon such dividends. A separate Form 1087 shall be filed by the record owner for each of the stockholdings of each actual owner for whom he acts as nominee. However, where the record owner is a banking institution, trust company, or brokerage firm, it may, provided it maintains such records as will permit a prompt substantiation of each payment of dividends made to the actual owner, file one Form 1087 for each actual owner for whom it acts as nominee and report thereon the total amount of the dividends paid to such actual owner (without itemization as to the issuing company, class of stock, etc.).

(2) *Exceptions.* The filing of Form 1087 is not required if:

(i) The record owner is required to file a fiduciary return on Form 1041, or a withholding return on Form 1042, disclosing the name and address of the actual owner or payee;

(ii) The actual owner or payee is a nonresident alien individual, foreign partnership, or foreign corporation and the tax has been withheld at the source before receipt of the dividends by the record owner;

(iii) The record owner is a banking institution, a trust company, or a brokerage firm which prepares the individual income tax return of the actual owner, provided the verification on the

return with respect to the preparation thereof is executed by such record owner;

(iv) The record owner is a nominee of a banking institution or trust company exercising trust powers, and such banking institution or trust company is required to file a fiduciary return on Form 1041 which reflects the name and address of the actual owner or payee;

(v) The actual owner is an organization exempt from taxation under section 501(a) and is exempt from the requirement of filing a return under section 6033 and paragraph (g) of § 1.6033–1; or

(vi) The record owner is a banking institution or trust company exercising trust powers, or a nominee thereof, and the actual owner is an organization exempt from taxation under section 501(a) for which such banking institution or trust company files an annual return.

See § 1.1441–1, relating to withholding of tax on nonresident alien individuals, and § 1.1442–1, relating to withholding of tax on nonresident foreign corporations.

(d) *Time and place for filing*. Returns made under this section on Forms 1096 and 1099 and Form 1087 for any calendar year shall be filed on or before February 28 of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for such forms.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6628, 27 FR 12795, Dec. 28, 1962]

§ 1.6042–2 Returns of information as to dividends paid.

(a) *Requirement of reporting*—(1) *In general*. An information return on Form 1099 shall be made under section 6042(a) by—

(i) Every person who makes a payment of dividends (as defined in § 1.6042–3) to any other person during a calendar year. The information return shall show the aggregate amount of the dividends, the name, address, and taxpayer identifying number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the dividends, if any, and such other information as required by the forms. An information return is generally not required if the amount of dividends paid to the other person during the calendar year aggregates less than $10 or if the payment is made to a person who is an exempt recipient described in § 1.6049–4(c)(1)(ii) unless the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W–9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to § 31.6413(a)–3 of this chapter.

(ii) Every person, except to the extent that he acts as a nominee described in paragraph (a)(1)(iii) of this section, who receives payments of dividends as a nominee on behalf of another person shall make a return of information under this section for the calendar year of the payment . The information return shall show the aggregate amount of the dividends, the name, address, and taxpayer identification number of the person on whose behalf the dividends are received, the amount of tax deducted and withheld under section 3406 from the dividends, if any, and such other information as required by the forms. An information return is generally not required if the amount of the dividends received on behalf of the other person during the calendar year aggregates less than $10. However, a return of information is not required under this section if—

(A) The record owner is, pursuant to section 6012(a) (3) or (4) and § 1.6012–3, required to file a fiduciary return on Form 1041 that is filed for the estate or trust disclosing the name, address, and identifying number of both the record owner and actual owner and furnishes Form K–1 to each actual owner containing the information required to be shown on the form, including amounts withheld under section 3406;

(B) The record owner is a nominee of a banking institution or trust company exercising trust powers, and such banking institution or trust company is, pursuant to section 6012(a) (3) or (4) and § 1.6012–3, required to file a fiduciary return on Form 1041 that is filed for the estate or trust disclosing the name, address, and identifying number of both the record owner and the actual owner and furnishes Form K–1 to each actual

owner containing the information required to be shown on the form, including amounts withheld under section 3406; or

(C) The record owner is a banking institution or trust company exercising trust powers, or a nominee thereof, and the actual owner is an organization exempt from taxation under section 501(a) for which such banking institution or trust company files an annual return but only if the name, address, and identifying number of the record owner are included on or with the annual return filed for the tax exempt organization).

(iii) Every person who is a nominee acting as a custodian of a unit investment trust described in section 851(f)(1) and paragraph (d) of §1.851–7 who, during a calendar year after 1968, receives payments of dividends in such capacity, shall make an information return on Forms 1096 and 1099, for such calendar year showing the information required by such forms and instructions thereto and the name, address, and identifying number of the nominee identified as such. This subdivision shall not apply if the regulated investment company agrees with the nominee to satisfy the requirements of section 6042 and the regulations thereunder with respect to each holder of an interest in the unit investment trust whose shares are being held by the nominee as custodian and within the time limit for furnishing statements prescribed by §1.6042–4, files with the Internal Revenue Service office where such company's return is to be filed for the taxable year, a statement that the holders of the unit investment trust with whom the agreement was made have been directly notified by the regulated investment company. Such statement shall include the name, sponsor, and custodian of each unit investment trust whose holders have been directly notified. The nominee's requirements under this subdivision shall be deemed met if the regulated investment company transmits a copy of such statement to the nominee within such period; provided, however, if the regulated investment company fails or is unable to satisfy the requirements of section 6042 with respect to the holders of interest in the unit investment trust, it shall so notify the Internal Revenue Service within 45 days following the close of its taxable year. The custodian shall, upon notice by the Internal Revenue Service that the regulated investment company has failed to comply with the agreement, satisfy the requirements of this subdivision within 30 days of such notice.

(2) *Definitions.* The term ''person'' when used in this section does not include the United States, a State, the District of Columbia, a foreign government, a political subdivision of a State or of a foreign government, or an international organization. Therefore, dividends paid by or to one of these entities need not be reported. For purposes of this section, a person who receives a dividend shall be considered to have received it as a nominee if he is not the actual owner of such dividend and if he was required under §1.6109–1 to furnish his identifying number to the payer of the dividend (or would have been so required if the total of such dividends for the year had been $10 or more), and such number was (or would have been) required to be included on an information return filed by the payer with respect to the dividend. However, a person shall not be considered to be a nominee as to any portion of a dividend which is actually owned by another person whose name is also shown on the information return filed by the payer or nominee with respect to such dividend. Thus, in the case of stock jointly owned by a husband and wife, the husband will not be considered as receiving any portion of a dividend on that stock as a nominee for his wife if his wife's name is included on the information return filed by the payer with respect to the dividend.

(3) *Determination of person to whom a dividend is paid or for whom it is received.* For purposes of applying the provisions of this section, the person whose identifying number is required to be included by the payer of a dividend on an information return with respect to such dividend shall be considered the person to whom the dividend is paid. In the case of a dividend received by a nominee on behalf of another person, the person whose identifying number is required to be included on an information return made by the nominee with

respect to such dividend shall be considered the person on whose behalf such dividend is received by the nominee. Thus, in the case of a dividend made payable to a person other than the record owner of the stock with respect to which the dividend is paid, the record owner of the stock shall be considered the person to whom the dividend is paid for purposes of applying the reporting requirements in this section, since his identifying number is required to be included on the information return filed under this section by the payer of the dividend. Similarly, if a stockbroker receives a dividend on stock held in street name for the joint account of a husband and wife, the dividend is considered as received on behalf of the husband since his identifying number should be shown on the information return filed by the nominee under this section. Thus, if the wife has a separate account with the same stockbroker, any dividends received by the stockbroker for her separate account should not be aggregated with the dividends received for the joint account for purposes of information reporting. For regulations relating to the use of identifying numbers, see § 1.6109–1.

(4) *Inclusion of other payments.* The Form 1099 filed by any person with respect to payments of dividends to another person during a calendar year may, at the election of the maker, include other payments made by him to such other person during such year which are required to be reported on Form 1099. Similarly, the Form 1099 filed by a nominee with respect to payments of dividends received by him on behalf of any other person during a calendar year may include payments of interest received by him on behalf of such person during such year which are required to be reported on Form 1099.

(b) *When payment deemed made.* For purposes of a return of information, an amount is deemed to have been paid when it is credited or set apart to a person without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and is made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition.

(c) *Time and place for filing.* The returns required under this section for any calendar year shall be filed after September 30 of such year, but not before the payer's final payment for the year, and on or before February 28 (March 31 if filed electronically) of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096. For extensions of time for filing returns under this section, see § 1.6081–1.

(d) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6042(a), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(e) *Magnetic media requirement.* For rules relating to permission to submit the information required by Form 1087 or 1099 on magnetic tape or other media, see § 1.9101–1. For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011–2 of this chapter (Procedure and Administration Regulations).

[T.D. 6628, 27 FR 12796, Dec. 29, 1962, as amended by T.D. 6677, 28 FR 10147, Sept. 17, 1963; T.D. 6879, 31 FR 3493, Mar. 8, 1966; T.D. 6883, 31 FR 6589, May 3, 1966; T.D. 7000, 34 FR 996, Jan. 23, 1969; T.D. 7187, 37 FR 13258, July 6, 1972; T.D. 8734, 62 FR 53474, Oct. 14, 1997; T.D. 8804, 64 FR 11378, Mar. 9, 1999; T.D. 8895, 65 FR 50406, Aug. 18, 2000]

§ 1.6042–3 Dividends subject to reporting.

(a) *In general.* Except as provided in paragraph (b) of this section, the term *dividend* for purposes of this section and §§ 1.6042–2 and 1.6042–4 means the amounts described in the following paragraphs (a) (1) through (3) of this section—

(1) Any distribution made by a corporation to its shareholders which is a dividend as defined in section 316; and

(2) Any payment made by a stockbroker to any person as a substitute for a dividend. Such a payment includes

any payment made in lieu of a dividend to a person whose stock has been borrowed. See §1.6045–2(h) for coordination of the reporting requirements under sections 6042 and 6045(d) with respect to such payments; and

(3) A distribution from a regulated investment company (irrespective of the fact that any part of the distribution may not represent ordinary income (i.e., may, for example, represent a capital gain dividend as defined in section 852(b)(3)(C)).

(b) *Exceptions*—(1) *In general.* For purposes of §§1.6042–2 and 1.6042–4, the amounts described in paragraphs (b)(1)(i) through (vii) of this section are not dividends.

(i) Amounts paid by an insurance company to a policyholder, other than a dividend upon its capital stock.

(ii) Payments (however denominated) by a mutual savings bank, savings and loan association, or similar organization, in respect of deposits, investment certificates, or withdrawable or repurchasable shares. See, however, section 6049 and the regulations under that section for provisions requiring reporting of these payments.

(iii) Distributions or payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with §1.6049–5(d)(1) or presumed to be made to a foreign payee under §1.6049–5(d) (2), (3), (4), or (5). However, such payments may be reportable under §1.1461–1(b) and (c). For purposes of this paragraph (b)(1)(iii), the provisions in §1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of §1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code (Code).

(iv) Distributions or payments from sources outside the United States (as determined under the provisions of part I, subchapter N, chapter 1 of the Code and the regulations under those provisions) paid outside the United States by a non-U.S. payor or a non-U.S. middleman. For a definition of non-U.S. payor and non-U.S. middleman, see §1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see §1.6049–5(e).

(v) Distributions or payments for the period that the amounts represent assets blocked as described in §1.1441–2(e)(3). The exemption in this paragraph (b)(1)(v) shall terminate when payment is deemed to occur in accordance with the rules of §1.1441–2(e)(3).

(vi) Payments made by a foreign intermediary described in §1.1441–1(c)(13) of amounts that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in §1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in §1.1441–1(b)(2)(iv) (other than a U.S. branch that is treated as a U.S. person) that are associated with a valid withholding certificate described in §1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under §1.6042–2 and were not so reported. For example, if a foreign intermediary or U.S. branch described in §1.1441–1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under §1.6049–4(c)(1)(ii) to the person from whom the intermediary or U.S. branch receives the payment, the amount paid by the foreign intermediary or U.S. branch to such person is a dividend. The exception of this paragraph (b)(1)(vi) shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Internal Revenue Code.

(vii) With respect to amounts paid or credited after December 31, 1982, any amount paid or credited to any person described in §1.6049–4(c)(1)(ii), unless a tax is withheld under section 3406 and is not refunded by the payor in accordance with §31.6413(a)–3 of this chapter (Employment Tax Regulations).

(2) *Payor*. The term *payor* has the same meaning as described in §1.6049–4(a)(2).

(3) *Joint owners*. Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (b) are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (b)(1)(iii) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (b)(3), the grace period described in §1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(4) *Conversion into United States dollars of amounts paid in foreign currency*. For rules concerning foreign currency conversion, see §1.6049–4(d)(3)(i).

(5) *Effective date*—(i) *General rule*. The provisions of this paragraph (b) apply to payments made after December 31, 2000.

(ii) *Transition rules*. The validity of a withholding certificate (namely, Form W–8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such withholding certificate remain valid after December 31, 2000. The rule in this paragraph (b)(5)(ii), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (b)(5)(ii), a payor may choose not to take advantage of the transition rule in this paragraph (b)(5)(ii) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in §1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

(c) *Special rule*. If a person makes a payment which may be a dividend, or if a nominee receives a payment which may be a dividend, but such person or nominee is unable to determine the portion of the payment which is a dividend (as defined in paragraphs (a) and (b) of this section) at the time he files his return under §1.6042–2, he shall, for purposes of such section, treat the entire amount of such payment as a dividend.

[T.D. 6628, 27 FR 12797, Dec. 28, 1962, as amended by T.D. 6908, 31 FR 16774, Dec. 31, 1966; T.D. 7987, 49 FR 42719, Oct. 24, 1984; T.D. 8029, 50 FR 23680, June 5, 1985; T.D. 8734, 62 FR 53475, Oct. 14, 1997; T.D. 8804, 63 FR 72186, Dec. 31, 1998; 64 FR 73411, Dec. 30, 1999; T.D. 8881, 65 FR 32205, May 22, 2000]

§1.6042–4 Statements to recipients of dividend payments.

(a) *Requirement*. A person required to make an information return under section 6042(a)(1) and §1.6042–2 must furnish a statement to each recipient whose identifying number is required to be shown on the related information return for dividend payments.

(b) *Form of the statement*. The statement required by paragraph (a) of this section must be either the official Form 1099 prescribed by the Internal Revenue Service for the respective calendar year or an acceptable substitute statement that contains provisions that are substantially similar to those

of the official Form 1099 for the respective calendar year. For further guidance on how to prepare an acceptable substitute statement, see Rev. Proc. 95–30 (1995–27 I.R.B. 9) (or its successor), republished as ''Rules and Specifications for Private Printing of Substitute Forms 1096, 1098, 1099 Series, 5498, and W-2G.'' See §601.601(d)(2) of this chapter.

(c) *Aggregation of payments.* A payor may aggregate on one Form 1099 all payments made to a recipient with respect to each separate account during a calendar year.

(d) *Manner of providing statements to recipients*—(1) *In general.* The Form 1099, or acceptable substitute statement, must be provided to the recipient either in person or by first-class mail to the recipient's last known address in a statement mailing.

(2) *Statement mailing requirement.* The mailing required under section 6042(c) of a Form 1099 to a payee-recipient must qualify as a statement mailing. A statement mailing must contain the required Form 1099 or acceptable substitute statement (written statement) and must comply with enclosure and envelope restrictions.

(i) *Enclosure restrictions.* To qualify as a statement mailing, the mailing cannot contain any enclosures except those listed in this paragraph (d)(2)(i). Moreover, no promotional or advertising material is permitted in the mailing of the written statement. Even a *de minimis* amount of promotional or advertising material violates the statement mailing requirement. However, a logo on the envelope containing the written statement and on nontax enclosures described in paragraph (d)(2)(i)(A) through (D) of this section does not violate the written statement requirement. The written statement required under section 6042(c) and paragraph (a) of this section may be perforated to a check or to a statement of the recipient-payee's specific account with the payor described in paragraph (d)(2)(i)(A) or (C) of this section. The enclosure to which the written statement is perforated must contain, in a bold and conspicuous type, the legend: ''Important Tax Return Document Attached.'' The enclosures permitted in a mailing are limited to—

(A) A check with respect to the account reported on the written statement;

(B) A letter explaining why a check with respect to such account is not enclosed with the written statement (for example, because a dividend has not been declared payable);

(C) A statement of the taxpayer-recipient's specific account with the payor if payments on such account are reflected on the written statement;

(D) A letter limited to an explanation of the tax consequences of the information set forth on the enclosed written statement;

(E) Payee statements related to other Forms 1099, Form 1098, and Form 5498 (or the account balance on a Form 5498), Forms W-2 and W-2G; and

(F) Any document concerning the solicitation of the Form W–9, as described in §31.3406(h)–3(a) of this chapter, or of the Form W–8 as described in §1.1441–1(e)(1).

(ii) *Envelope and delivery restrictions*—(A) *Envelope restrictions.* The outside of the envelope in which the written statement is mailed and each nontax enclosure enclosed in the envelope must contain, in a bold and conspicuous type, the legend: ''Important Tax Return Document Enclosed.'' For purposes of this paragraph (d)(2)(ii), a nontax enclosure is any item listed in paragraphs (d)(2)(i)(A) through (C) of this section. However, a payor is not required to include the legend on the outside of an envelope containing only the enclosures in paragraph (d)(2)(i)(D) through (F) of this section.

(B) *Delivery restrictions.* The requirement to provide the written statement in person or by first-class mail may be satisfied by sending the written statement and any enclosures described in paragraph (d)(2)(i) of this section by intra-office mail, provided that intra-office mail is used by the payor in sending account activity, balance information, and other correspondence to the payee. If a payor does not personally deliver the written statement (i.e., the Form 1099 or its acceptable substitute) to the recipient or mail it to the recipient in a statement mailing as described in this paragraph (d), the payor is considered to have failed to

mail the statement required under section 6042(c) and will be subject to the penalty under section 6722.

(e) *Time for furnishing statements*—(1) *In general*. Each statement required by section 6042(c) and this section to be furnished to any person for a calendar year must be furnished to such person after November 30 of the year and on or before January 31 (February 10 in the case of a nominee filing under § 1.6042–2(a)(1)(iii)) of the following year, but no statement may be furnished before the final dividend for the calendar year has been paid. However, the statement may be furnished at any time after April 30 if it is furnished with the final dividend for the calendar year.

(2) *Extensions of time*. For good cause upon written application of the person required to furnish statements under this section, the Director, Martinsburg Computing Center, may grant an extension of time not exceeding 30 days in which to furnish such statements. The application must be addressed to the Director, Martinsburg Computing Center, and must contain a full recital of the reasons for requesting the extension to aid the Director in determining the period of the extension, if any, that will be granted. Such a request in the form of a letter to the Director, Martinsburg Computing Center, signed by the applicant will suffice as an application. The application must be filed on or before the date prescribed in paragraph (e)(1) of this section.

(3) *Last day for furnishing statement*. For provisions relating to the time for performance of an act when the last day prescribed for performance falls on Saturday, Sunday, or a legal holiday, see section 7503 and § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

(f) *Cross-reference to penalty*. For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6042(c), see § 301.6722–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(g) *Effective date*. This section is effective for payee statements due after December 31, 1995, without regard to extensions. For the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996, see Rev. Proc. 84–70 (1984–2 C.B. 716) (or successor revenue procedures). See § 601.601(d)(2) of this chapter.

[T.D. 8637, 60 FR 66110, Dec. 21, 1995, as amended by T.D. 8734, 62 FR 53476, Oct. 14, 1997]

§ 1.6042–5 Coordination with reporting rules for widely held fixed investment trusts under § 1.671–5.

See § 1.671–5 for the reporting rules for widely held fixed investment trusts (as defined under that section).

[T.D. 9241, 71 FR 4025, Jan. 24, 2006]

§ 1.6043–1 Return regarding corporate dissolution or liquidation.

(a) *Requirement of returns*. Within 30 days after the adoption of any resolution or plan for or in respect of the dissolution of a corporation or the liquidation of the whole or any part of its capital stock, the corporation shall file a return on Form 966, containing the information required by paragraph (b) of this section and by such form. Such return shall be filed with the district director for the district in which the income tax return of the corporation is filed. Further, if after the filing of a Form 966 there is an amendment of or supplement to the resolution or plan, an additional Form 966, based on the resolution or plan as amended or supplemented, must be filed within 30 days after the adoption of such amendment or supplement. A return must be filed under section 6043 and this section in respect of a liquidation whether or not any part of the gain or loss to the shareholders upon the liquidation is recognized under the provisions of section 1002.

(b) *Contents of return*—(1) *In general*. There shall be attached to and made a part of the return required by section 6043 and paragraph (a) of this section a certified copy of the resolution or plan, together with any amendments thereof or supplements thereto, and such return shall in addition contain the following information:

(i) The name and address of the corporation;

(ii) The place and date of incorporation;

(iii) The date of the adoption of the resolution or plan and the dates of any amendments thereof or supplements thereto; and

(iv) The internal revenue district in which the last income tax return of the corporation was filed and the taxable year covered thereby.

(2) *Returns in respect of amendments or supplements.* If a return has been filed pursuant to section 6043 and this section, any additional return made necessary by an amendment of or a supplement to the resolution or plan will be deemed sufficient if it gives the date the prior return was filed and contains a duly certified copy of the amendment or supplement and all other information required by this section and by Form 966 which was not given in the prior return.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6949, 33 FR 5531, Apr. 9, 1968; T.D. 7926, 48 FR 55847, Dec. 16, 1983]

§ 1.6043–2 Return of information respecting distributions in liquidation.

(a) Unless the distribution is one in respect of which information is required to be filed pursuant to § 1.332–6(b), § 1.368–3(a), or § 1.1081–11, every corporation making any distribution of $600 or more during a calendar year to any shareholder in liquidation of the whole or any part of its capital stock shall file a return of information on Forms 1096 and 1099, giving all the information required by such form and by the regulations in this part. A separate Form 1099 must be prepared for each shareholder to whom such distribution was made, showing the name and address of such shareholder, the number and class of shares owned by him in liquidation of which such distribution was made, and the total amount distributed to him on each class of stock. If the amount distributed to such shareholder on any class of stock consisted in whole or in part of property other than money, the return on such form shall in addition show the amount of money distributed, if any, and shall list separately each class of property other than money distributed, giving a description of the property in each such class and a statement of its fair market value at the time of the distribution. Such forms, accompanied by transmittal Form 1096 showing the number of Forms 1099 filed therewith, shall be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which such distribution was made with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096.

(b) If the distribution is in complete liquidation of a domestic corporation pursuant to a plan of liquidation in accordance with which all the capital stock of the corporation is cancelled or redeemed, and the transfer of all property under the liquidation occurs within some one calendar month pursuant to section 333, and any shareholder claims the benefit of such section, the return on Form 1096 shall show:

(1) The amount of earnings and profits of the corporation accumulated after February 28, 1913, determined as of the close of such calendar month, without diminution by reason of distributions made during such calendar month, but including in such computation all items of income and expense accrued up to the date on which the transfer of all the property under the liquidation is completed;

(2) The ratable share of such earnings and profits of each share of stock canceled or redeemed in the liquidation;

(3) The date and circumstances of the acquisition by the corporation of any or securities distributed to shareholders in the liquidation;

(4) If the liquidation is pursuant to section 333(g), a schedule showing the amount of earnings and profits to which the corporation has succeeded after December 31, 1963, pursuant to any corporate reorganization or pursuant to a liquidation to which section 332 applies, except earnings and profits which on December 31, 1963, constituted earnings and profits of a corporation referred to in section 333(g)(3), and except earnings and profits which were earned after such date by a corporation referred to in section 333(g)(3); and

(5) If the liquidation occurs after December 31, 1966, and is pursuant to section 333(g)(2), the amount of earnings and profits of the corporation accumulated after February 28, 1913, and before January 1, 1967, and the ratable share of such earnings and profits of each share of stock canceled or redeemed in the liquidation.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6949, 33 FR 5531, Apr. 9, 1968; T.D. 8734, 62 FR 53476, Oct. 14, 1997; T.D. 8804, 63 FR 72188, Dec. 31, 1998; T.D. 8895, 65 FR 50406, Aug. 18, 2000; T.D. 9264, 71 FR 30608, May 30, 2006; T.D. 9329, 72 FR 32807, June 14, 2007]

§ 1.6043–3 Return regarding liquidation, dissolution, termination, or substantial contraction of organizations exempt from taxation under section 501(a).

(a) *In general*—(1) *Requirement to provide information*. Except as provided in paragraph (b) of this section, for taxable years beginning after December 31, 1969, every organization which for any of its last 5 taxable years preceding any liquidation, dissolution, termination, or substantial contraction of the organization was exempt from taxation under section 501(a) shall provide the information will respect to such liquidation, dissolution, termination, or substantial contraction required by the instructions accompanying the organization's annual return of information. The information required by this section shall be provided with, and at the time prescribed for filing, the organization's annual return of information for the period during which any liquidation, dissolution (or the adopting of a resolution or plan for the dissolution or liquidation in whole or part), termination or substantial contraction occurred with respect to the organization. An organization which is no longer exempt from taxation under section 501(a) shall use the annual return of information it would have been required to file when the organization was exempt.

(2) *Transitional rule*. In the case of an annual return of information of an organization which was filed before September 11, 1978, if the organization had failed to provide the information with such return in accordance with paragraph (a)(1) of this section, the organization may comply with this section by providing the information with the organization's first annual return of information filed after such date.

(b) *Exceptions*. The following organizations are not required to provide the information under paragraph (a) of this section:

(1) Churches, their integrated auxiliaries, or conventions or associations of churches;

(2) Any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than $5,000;

(3) Any organization which has terminated its private foundation status under section 507(b)(1)(B) with respect to a liquidation, dissolution, termination, or substantial contraction which is in connection with the termination under section 507(b)(1)(B);

(4) Any organization described in section 401(a) if the employer who established such organization files a return which provides the information under paragraph (a) of this section;

(5) Any organization described in section 501(c)(1) and any corporation described in section 501(c)(2) which holds title to property for such 501(c)(1) organizations;

(6) Any organization described in section 501(c)(14)(A) subject to a group exemption letter issued to a state regulatory body; and

(7) Any subordinate unit of a central organization (other than a private foundation) which established its exempt status under the group ruling procedure of regulations § 601.201 (n)(7), if the central or parent organization files an annual information return for the group in accordance with § 1.6033–2(d); and

(8) Any organization no longer exempt from taxation under section 501(a) and which during the period of its exemption under such section was neither described in section 501(c)(3) nor a corporation described in section 501(c)(2) which held title to property for an organization described in section 501(c)(3).

(9) The Commissioner may relieve any organization or class or organizations from filing the return required by section 6043(b) of this section, where it

is determined that such information is not necessary for the efficient administration of the internal revenue laws.

(c) *Penalties.* For provisions relating to the penalty provided for failure to furnish any information required by this section, see section 6652(d) and the regulations thereunder.

(d) *Definitions.* (1)(i) The term ''substantial contraction'', as used in this section, shall include any partial liquidation or any other significant disposition of assets, other than transfers for full and adequate consideration or distributions out of current income. For purposes of this subparagraph, the term ''significant disposition of assets'' shall not include any disposition for a taxable year where the aggregate of—

(A) The dispositions for the taxable year and

(B) Where any disposition for the taxable year is part of a series of related dispositions made during such prior taxable years, the total of the related dispositions made during prior taxable years, is less than 25 percent of the fair market value of the net assets of the organization at the beginning of the taxable year (in the case of (A) of this subdivision) or at the beginning of the first taxable year in which any of the series of related dispositions was made (in the case of (B) of this subdivision). A ''significant disposition of assets'' may result from the transfer of assets to a single organization or to several organizations, and it may occur in a single taxable year (as in (A) of this subdivision) or over the course of two or more taxable years (as in (B) of this subdivision). The determination whether a significant disposition has occurred through a series of related dispositions (within the meaning of (B) of this subdivision) will be determined from all the facts and circumstances of the particular case. Ordinarily, a distribution described in section 170(b)(1)(D)(ii) shall not be taken into account as a significant disposition of assets within the meaning of this subparagraph.

(ii) The provisions of this subparagraph may be illustrated by the following examples:

Example 1. M, an organization described is section 501(c)(4), is on the calendar year basis. It has net assets worth $100,000 as of January 1, 1971. In 1971, in addition to distributions out of current income, M transfers $10,000 to N, $10,000 to O, and $10,000 to P. Such dispositions to N, O, and P are not distributions described in section 170(b)(1)(E)(ii). N, O, and P are all organizations described in section 501(c)(4). Under subdivision (i)(*a*) of this subparagraph, M has made a significant disposition of its assets in 1971 since M has disposed of more than 25 percent of its net assets (with respect to the fair market value of such assets as of January 1, 1971). Thus. M is subject to the provisions of section 6043(b) and this section for the year 1971.

Example 2. U, a tax-exempt private foundation on the calendar year basis, has net assets worth $100,000 as of January 1, 1971. As part of a series of related dispositions in 1971 and 1972. U transfers in 1971, in addition to distributions out of current income, $10,000 to private foundation X and $10,000 to private foundation Y, and in 1972, in addition to distributions out of current income, U transfers $10,000 to private foundation Z. Such dispositions to X, Y, and Z are not distributions described in section 170(b)(1)(E)(ii). Under subdivision (i) of this subparagraph, U is treated as having made a series of related dispositions in 1971 and 1972. The aggregate of the 1972 disposition (under subdivision (i)(*a*)of this subparagraph) and the series of related dispositions (under subdivision (i)(*b*) of this subparagraph) is $30,000, which is more than 25 percent of the fair market value of U's net assets as of the beginning of 1971 ($100,000), the first year in which any such disposition was made. Thus, U has made a significant disposition of its assets and is subject to the provisions of section 6043(b) and this section for the year 1972.

Example 3. Assume in Example (1) that in 1973 M makes a $5,000 disposition related to the 1971 disposition. Under subdivision (i)(B) of this subparagraph M is treated as having made a series of related dispositions in 1971 and 1973. The aggregate of the 1971 disposition under subdivision (i)(A) of this subparagraph and the 1973 related disposition under subdivision (i)(B) of this subparagraph is $35,000, which is more than 25 percent of the fair market value of M's net assets as of the beginning of 1971, the first year in which any disposition was made. Thus M has made a significant disposition of its assets and is subject to the provisions of section 6043(b) and this section for the year 1973.

(2) For the definition of the term ''normally'' as used in paragraph (b)(2) of this section, see § 1.6033–2(g)(3).

(3) For the definition of the term ''integrated auxiliaries'' as used in paragraph (b)(1) of this section, see § 1.6033–2(h).

(e) *Effective/applicability date.* The provisions of this section shall apply with respect to returns filed for taxable years beginning after December 31, 1969. The applicability of paragraphs (b)(8) and (d) of this section shall be limited to returns filed for taxable years beginning before January 1, 2008.

[T.D. 7563, 43 FR 40221, Sept. 11, 1978, as amended by T.D. 9423, 73 FR 52555, Sept. 9, 2008]

§ 1.6043–3T Returns regarding liquidation, dissolution, termination, or substantial contraction of organizations exempt from taxation under section 501(a) (temporary).

(a) through (b)(7) [Reserved] For further guidance, see § 1.6043–3(a) through (b)(7).

(b)(8) Any organization no longer exempt from taxation under section 501(a) and that during the period of its exemption under such section was not an organization described in section 501(c)(3), a corporation described in section 501(c)(2) that held title to property for an organization described in section 501(c)(3), or an organization described in such other section as prescribed by publication, form or instructions.

(b)(9) and (c) [Reserved] For further guidance, see § 1.6043–3(b)(9) and (c).

(d) *Definitions.* (1) For the definition of the term ''normally'' as used in paragraph (b)(2) of this section, see § 1.6033–2(g)(3).

(2) For the definition of the term ''integrated auxiliaries'' as used in paragraph (b)(1) of this section, see § 1.6033–2(h).

(e) *Effective/applicability date*—(1) *Effective date.* The regulations in this section are effective on September 9, 2008.

(2) *Applicability date.* Paragraphs (b)(8) and (d) of this section shall apply to returns filed for taxable years beginning on or after January 1, 2008.

(3) *Expiration* date. The applicability of this section expires on September 8, 2011.

[T.D. 9423, 73 FR 52555, Sept. 9, 2008]

§ 1.6043–4 Information returns relating to certain acquisitions of control and changes in capital structure.

(a) *Information returns for an acquisition of control or a substantial change in capital structure*—(1) *General rule.* If there is an acquisition of control (as defined in paragraph (c) of this section) or a substantial change in the capital structure (as defined in paragraph (d) of this section) of a domestic corporation (reporting corporation), the reporting corporation must file a completed Form 8806, ''Information Return for Acquisition of Control or Substantial Change in Capital Structure,'' in accordance with the instructions to that form. The Form 8806 will request information with respect to the following and such other information specified in the instructions:

(i) *Reporting corporation.* The name, address, and taxpayer identification number (TIN) of the reporting corporation.

(ii) *Common parent, if any, of the reporting corporation.* If the reporting corporation was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, the name, address, and TIN of the common parent of that affiliated group.

(iii) *Acquiring corporation.* The name, address and TIN of any corporation that acquired control of the reporting corporation within the meaning of paragraph (c) of this section or combined with or received assets from the reporting corporation pursuant to a substantial change in capital structure within the meaning of paragraph (d) of this section (acquiring corporation) and whether the acquiring corporation was newly formed prior to its involvement in the transaction.

(iv) *Information about acquisition of control or substantial change in capital structure.* (A) A description of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure of the corporation;

(B) The date or dates of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure; and

(C) A description of and a statement of the fair market value of any stock and other property, if any, provided to the reporting corporation's shareholders in exchange for their stock.

(2) *Consent election.* Form 8806 will provide the reporting corporation with the ability to elect to permit the Internal Revenue Service (IRS) to publish information that will inform brokers of the transaction and enable brokers to satisfy their reporting obligations under §1.6045–3. The information to be published, whether on the IRS Web site or in an IRS publication, would be limited to the name and address of the corporation, the date of the transaction, a description of the shares affected by the transaction, and the amount of cash and the fair market value of stock or other property provided to each class of shareholders in exchange for a share.

(3) *Time for making return.* Form 8806 must be filed on or before the 45th day following the acquisition of control or substantial change in capital structure of the corporation, or, if earlier, on or before January 5th of the year following the calendar year in which the acquisition of control or substantial change in capital structure occurs.

(4) *Exception where transaction is reported under section 6043(a).* No reporting is required under this paragraph (a) with respect to a transaction for which information is required to be reported pursuant to section 6043(a), provided the transaction is properly reported in accordance with that section.

(5) *Exception where shareholders are exempt recipients.* No reporting is required under this paragraph (a) if the reporting corporation reasonably determines that all of its shareholders who receive cash, stock, or other property pursuant to the acquisition of control or substantial change in capital structure are exempt recipients under paragraph (b)(5) of this section.

(b) *Information returns regarding shareholders*—(1) *General rule.* A corporation that is required to file Form 8806 pursuant to paragraph (a)(1) of this section shall file a return of information on Forms 1096, ''Annual Summary and Transmittal of U.S. Information Returns,'' and 1099–CAP, ''Changes in Corporate Control and Capital Structure,'' with respect to each shareholder of record in the corporation (before or after the acquisition of control or the substantial change in capital structure) who receives cash, stock, or other property pursuant to the acquisition of control or the substantial change in capital structure and who is not an exempt recipient as defined in paragraph (b)(5) of this section. A corporation is not required to file a Form 1096 or 1099–CAP with respect to a clearing organization if the corporation makes the election described in paragraph (a)(2) of this section.

(2) *Time for making information returns.* Forms 1096 and 1099–CAP must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(3) *Contents of return.* A separate Form 1099–CAP must be filed with respect to amounts received by each shareholder (who is not an exempt recipient as defined in paragraph (b)(5) of this section). The Form 1099–CAP will request information with respect to the following and such other information as may be specified in the instructions:

(i) The name, address, telephone number and TIN of the reporting corporation;

(ii) The name, address and TIN of the shareholder;

(iii) The number and class of shares in the reporting corporation exchanged by the shareholder; and

(iv) The aggregate amount of cash and the fair market value of any stock or other property provided to the shareholder in exchange for its stock.

(4) *Furnishing of forms to shareholders.* The Form 1099–CAP filed with respect to each shareholder must be furnished to such shareholder on or before January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property as part of the acquisition of control or the substantial change in capital structure. The Form 1099–CAP filed with respect to a clearing organization must be furnished to the clearing organization on or before January 5th of the year following the calendar year in which the acquisition of control or substantial change in capital structure occurred. A Form 1099–CAP is not required to be furnished to a clearing organization if the reporting corporation makes the election described in paragraph (a)(2) of this section.

(5) *Exempt recipients.* A corporation is not required to file a Form 1099–CAP pursuant to this paragraph (b) with respect to any of the following shareholders that is not a clearing organization:

(i) Any shareholder who receives stock in an exchange that is not subject to gain recognition under section 367(a) and the regulations.

(ii) Any shareholder if the corporation reasonably determines that the total amount of cash and the fair market value of stock and other property received by the shareholder does not exceed $1,000.

(iii) Any shareholder described in paragraphs (b)(5)(iii)(A) through (M) of this section if the corporation has actual knowledge that the shareholder is described in one of paragraphs (b)(5)(iii)(A) through (M) of this section or if the corporation has a properly completed exemption certificate from the shareholder (as provided in §31.3406(h)–3 of this chapter). The corporation also may treat a shareholder as described in paragraphs (b)(5)(iii)(A) through (M) of this section based on the applicable indicators described in §1.6049–4(c)(1)(ii).

(A) A corporation, as described in §1.6049–4(c)(1)(ii)(A) (except for corporations for which an election under section 1362(a) is in effect).

(B) A tax-exempt organization, as described in §1.6049–4(c)(1)(ii)(B)(*1*).

(C) An individual retirement plan, as described in §1.6049–4(c)(1)(ii)(C).

(D) The United States, as described in §1.6049–4(c)(1)(ii)(D).

(E) A state, as described in §1.6049–4(c)(1)(ii)(E).

(F) A foreign government, as described in §1.6049–4(c)(1)(ii)(F).

(G) An international organization, as described in §1.6049–4(c)(1)(ii)(G).

(H) A foreign central bank of issue, as described in §1.6049–4(c)(1)(ii)(H).

(I) A securities or commodities dealer, as described in §1.6049–4(c)(1)(ii)(I).

(J) A real estate investment trust, as described in §1.6049–4(c)(1)(ii)(J).

(K) An entity registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), as described in §1.6049–4(c)(1)(ii)(K).

(L) A common trust fund, as described in §1.6049–4(c)(1)(ii)(L).

(M) A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization.

(iv) Any shareholder that the corporation, prior to the transaction, associates with documentation upon which the corporation may rely in order to treat payments to the shareholder as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with §1.6049–5(d)(1) or presumed to be made to a foreign payee under §1.6049–5(d)(2) or (3). For purposes of this paragraph (b)(5)(iv), the provisions in §1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of §1.1441–1 shall apply by using the terms ''corporation'' and ''shareholder'' in place of the terms ''withholding agent'' and ''payee'' and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code. The provisions of §1.6049–5(d) shall apply by using the terms ''corporation'' and ''shareholder'' in place of the terms ''payor'' and ''payee''. Nothing in this paragraph (b)(5)(iv) shall be construed to relieve a corporation of its withholding obligations under section 1441.

(v) Any shareholder if, on January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property, the corporation did not know and did not have reason to know that the shareholder received such cash, stock, or other property in a transaction or series of related transactions that would result in an acquisition of control or a substantial change in capital structure within the meaning of this section.

(6) *Coordination with other sections.* In general, no reporting is required under this paragraph (b) with respect to amounts that are required to be reported under sections 6042 or 6045, unless the corporation knows or has reason to know that such amounts are not properly reported in accordance with

those sections. A corporation must satisfy the requirements under this paragraph (b) with respect to any shareholder of record that is a clearing organization.

(c) *Acquisition of control of a corporation*—(1) *In general.* For purposes of this section, an acquisition of control of a corporation (first corporation) occurs if, in a transaction or series of related transactions—

(i) Before an acquisition of stock of the first corporation (directly or indirectly) by a second corporation, the second corporation does not have control of the first corporation;

(ii) After the acquisition, the second corporation has control of the first corporation;

(iii) The fair market value of the stock acquired in the transaction and in any related transactions as of the date or dates on which such stock was acquired is $100 million or more;

(iv) The shareholders of the first corporation receive stock or other property pursuant to the acquisition; and

(v) The first corporation or any shareholder of the first corporation is required to recognize gain (if any) under section 367(a) and the regulations, as a result of the transaction.

(2) *Control.* For purposes of this section, control is determined in accordance with the first sentence of section 304(c)(1). For these purposes the rules of section 318 as modified by the rules of section 958(b) shall apply in determining the ownership of stock.

(d) *Substantial change in capital structure of a corporation*—(1) *In general.* A corporation has a substantial change in capital structure if it has a change in capital structure (as defined in paragraph (d)(2) of this section) and the amount of any cash and the fair market value of any property (including stock) provided to the shareholders of such corporation pursuant to the change in capital structure, as of the date or dates on which the cash or other property is provided, is $100 million or more.

(2) *Change in capital structure.* For purposes of this section, a corporation has a change in capital structure if—

(i) The corporation in a transaction or series of transactions—

(A) Merges, consolidates or otherwise combines with another corporation or transfers all or substantially all of its assets to one or more corporations;

(B) Transfers all or part of its assets to another corporation in a title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation; or

(C) Changes its identity, form or place of organization; and

(ii) The corporation or any shareholder is required to recognize gain (if any) under section 367(a) and the regulations, as a result of the transaction.

(e) *Reporting by successor entity.* If a corporation (transferor) transfers all or substantially all of its assets to another entity (transferee) in a transaction that constitutes a substantial change in the capital structure of transferor, transferor must satisfy the reporting obligations in paragraph (a) and (b) of this section. If transferor does not satisfy one or both of those reporting obligations, then transferee must do so. If neither transferor nor transferee satisfies the reporting obligations in paragraphs (a) and (b) of this section, then transferor and transferee shall be jointly and severally liable for any applicable penalties (see paragraph (g) of this section).

(f) *Receipt of property.* For purposes of this section, a shareholder is treated as receiving property (or as having property provided to it) pursuant to an acquisition of control or a substantial change in capital structure if a liability of the shareholder is assumed in the transaction and, as a result of the transaction, an amount is realized by the shareholder from the sale or exchange of stock.

(g) *Penalties for failure to file.* For penalties for failure to file as required under this section, see section 6652(l). The information returns required to be filed under paragraphs (a) and (b) of this section shall be treated as one return for purposes of section 6652(l) and, accordingly, the penalty shall not exceed $500 for each day the failure continues (up to a maximum of $100,000) with respect to any acquisition of control or any substantial change in capital structure. Failure to file as required under this section also includes the failure to satisfy the requirement

to file on magnetic media as required by section 6011(e) and § 1.6011–2. In addition, criminal penalties under sections 7203, 7206 and 7207 may apply in appropriate cases.

(h) *Examples*. The following examples illustrate the application of the rules of this section. For purposes of these examples, assume the transaction is not reported under sections 6042, 6043(a), or 6045, unless otherwise specified, and assume that the fair market value of the consideration provided to the shareholders exceeds $100 million. The examples are as follows:

Example 1. The shareholders of X, a domestic corporation and parent of an affiliated group, exchange their X stock for stock in Y, a foreign corporation, pursuant to sections 351 and 354. After the transaction, Y owns all the outstanding X stock. Assume that, under section 367(a) and the regulations, the X shareholders must recognize gain (if any) on the exchange of their stock. Because the transaction results in an acquisition of control of X, X must comply with the rules in paragraphs (a) and (b) of this section. X must file Form 8806 reporting the transaction. X must also file a Form 1099–CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the Y stock received by that shareholder, and X must furnish a copy of the Form 1099–CAP to that shareholder. If X elects on the Form 8806 to permit the IRS to publish information regarding the transaction, X is not required to file or furnish Forms 1099–CAP with respect to shareholders that are clearing organizations.

Example 2. The facts are the same as in *Example 1*, except X hires a transfer agent to effectuate the exchange. The transfer agent is treated as a broker under section 6045 and is required to report the fair market value of the Y stock received by X's shareholders under § 1.6045–3. Under paragraph (b)(6) of this section, X is not required to file information returns under paragraph (b) of this section with respect to a shareholder of record, unless X knows or has reason to know that the transfer agent does not satisfy its information reporting obligation under § 1.6045–3 with respect to that shareholder. Thus, if the transfer agent satisfies its information reporting requirements under § 1.6045–3 with respect to shareholder I, an individual who receives X stock, X is not required to file a Form 1099–CAP with respect to I. Conversely, if the transfer agent does not have an information reporting obligation under § 1.6045–3 with respect to one of X's shareholders of record (for example, a clearing organization that is an exempt recipient under § 1.6045–3(b)(2)), or if X knows or has reason to know that the transfer agent has not satisfied its information reporting requirement with respect to a shareholder, then X must provide a Form 1099–CAP to that shareholder.

(i) *Effective date*. This section applies to transactions occurring after December 5, 2005.

[T.D. 9230, 70 FR 72378, Dec. 5, 2005]

§ 1.6044–1 Returns of information as to patronage dividends with respect to patronage occurring in taxable years beginning before 1963.

(a) *Requirement*—(1) *In general*. Except as provided in subparagraph (2) of this paragraph, any corporation allocating to any patron in respect of patronage occurring in any taxable year of the corporation beginning before January 1, 1963, amounts aggregating $100 or more during a calendar year as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, letters of advice, or in some other manner that discloses to each patron the amount of such dividend, rebate, or refund) shall for each such calendar year file a return of information with respect to such allocation on Forms 1096 and 1099. A separate Form 1099 shall be prepared for each patron showing the name and address of the patron to whom such allocation is made, and the amount of the allocation. The allocation shall be reported for the calendar year during which the allocation is made, regardless of whether the allocation is deemed for the purpose of section 522 to be made at the close of a preceding taxable year of the corporation.

(2) *Exception*. A return is not required under this section in the case of any corporation (including any cooperative or nonprofit corporation engaged in rural electrification) described in section 501(c) (12) or (15) which is exempt from tax under section 501(a), or in the case of any corporation subject to a tax imposed by subchapter L, chapter 1, of the Code.

(b) *Time and place for filing*. Returns made under this section on Forms 1096 and 1099 for any calendar year shall be filed on or before February 28 of the following year with any of the Internal Revenue Service Centers, the addresses

of which are listed in the instructions for such forms.

(c) *Definitions*. The terms ''cooperative association'', ''patron'', ''patronage dividends, rebates, and refunds'', and ''allocation'' are defined, for the purpose of this section, in paragraph (b) of § 1.522–1.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6628, 27 FR 12798, Dec. 28, 1962]

§ 1.6044–2 Returns of information as to payments of patronage dividends.

(a) *Requirement of reporting*—(1) *In general*. Except as provided in § 1.6044–4, every organization described in paragraph (b) of this section which makes payments with respect to patronage occurring on or after the first day of the first taxable year of the organization beginning after December 31, 1962, of amounts described in § 1.6044–3 aggregating $10 or more to any person during any calendar year shall make an information return on Forms 1096 and 1099 for the calendar year showing the aggregate amount of such payments, the name and address of the person to whom paid, the total of such payments for all persons, and such other information as is required by the forms. The organization is required to make an information return regardless of the amount of the payment if the tax imposed by section 3406 is required to be withheld. Thus, in the case of any amount subject to backup withholding under section 3406 and not refunded by the payor before the due date of the information return in accordance with the regulations under section 3406, an information return shall be made even if the payment is not generally reportable because it is made to an exempt recipient described in § 1.6049–4(c)(1)(ii) or the amount paid during the calendar year to the recipient aggregates less than $10.

(2) *Definitions*. The term ''person'' when used in this section does not include the United States, a State, the District of Columbia, a foreign government, a political subdivision of a State or of a foreign government, or an international organization. Therefore, payment of amounts described in § 1.6044–3 to one of these entities need not be reported.

(3) *Determination of person to whom a patronage dividend is paid*. For purposes of applying the provisions of this section, the person whose identifying number is required to be included by the cooperative on an information return with respect to a patronage dividend shall be considered the person to whom such dividend is paid. For regulations relating to the use of identifying numbers, see § 1.6109–1.

(4) *Inclusion of other payments*. The Form 1099 filed by an organization with respect to payments of patronage dividends made to any person during a calendar year may, at the election of the organization, include other payments made by it to such person during such year which are required to be reported on Form 1099.

(b) *Organizations subject to reporting requirement*. The organizations subject to the reporting requirements of paragraph (a) of this section are:

(1) Any organization exempt from tax under section 521 (relating to exemption of farmers' cooperatives from tax), and

(2) Any corporation operating on a cooperative basis other than an organization:

(i) Which is exempt from tax under chapter 1 (other than section 521), or

(ii) Which is subject to the provisions of part II of subchapter H of chapter 1 (relating to mutual savings banks, etc.), or subchapter L of chapter 1 (relating to insurance companies), or

(iii) Which is engaged in furnishing electric energy, or providing telephone service, to persons in rural areas.

(c) *When payment deemed made*. For purposes of this section, money or other property (except written notices of allocation) is deemed to have been paid when it is credited or set apart to a person without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and is made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition. A written notice of allocation is considered to have been paid when it is issued by the organization to the distributee. Similarly, a qualified check

(as defined in section 1388(d)(4)) is considered to have been paid when it is issued to the distributee.

(d) *Time and place for filing*. The return required under this section on Forms 1096 and 1099 for any calendar year shall be filed after September 30 of such year, but not before the payer's final payment for the year, and on or before February 28 (March 31 if filed electronically) of the following year, with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for such forms. For extensions of time for filing returns under this section, see § 1.6081–1.

(e) *Cross-reference to penalty*. For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6044(a), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(f) *Magnetic media requirement*. For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011–2 of this chapter (Procedure and Administration Regulations). For rules relating to permission to submit the information required by Form 1099 on magnetic tape or other media, see § 1.9101–1.

[T.D. 6628, 27 FR 12798, Dec. 28, 1962, as amended by T.D. 6677, 28 FR 10147, Sept. 17, 1963; T.D. 6879, 31 FR 3493, Mar. 8, 1966; T.D. 6883, 31 FR 6589, May 3, 1966; T.D. 8734, 62 FR 53476, Oct. 14, 1997; T.D. 8895, 65 FR 50407, Aug. 18, 2000]

§ 1.6044–3 Amounts subject to reporting.

(a) *In general*. Except as provided in paragraph (c) of this section, the amounts subject to reporting under § 1.6044–2 are:

(1) Payments by all organizations subject to such reporting requirements of:

(i) Patronage dividends (as defined in section 1388(a)) paid in money, qualified written notices of allocation (as defined in section 1388(c)), or other property (except nonqualified written notices of allocation as defined in section 1388(d)); and

(ii) Amounts described in section 1382(b)(2) (relating to redemption of nonqualified written notices of allocation previously paid as patronage dividends) paid in money or property (except written notices of allocation); and

(2) Payments by farmers' cooperatives exempt from tax under section 521 of:

(i) Amounts described in section 1382(c)(2)(A) (relating to distributions with respect to earnings derived from sources other than patronage) paid in money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation); and

(ii) Amounts described in section 1382(c)(2)(B) (relating to redemption of nonqualified written notices of allocation previously paid as distributions with respect to earnings derived from sources other than patronage) paid in money or other property (except written notices of allocation).

(b) *Special rules*. (1) If an organization makes a distribution consisting in whole or in part of a written notice of allocation and a qualified check and, at the time it files its return under § 1.6044–2, is unable to determine whether such written notice of allocation and such check constitute nonqualified written notices of allocation, such organization shall for purposes of such return treat such written notice of allocation as a qualified written notice of allocation and such qualified check as a payment in money.

(2) An amount described in paragraph (a) of this section is subject to reporting even though the organization paying such amount is allowed no deduction for it because it was not paid within the time prescribed in section 1382. Thus, a patronage dividend of $25 paid by a marketing cooperative must be reported even though it is paid after the end of the payment period (see section 1382(d)) for the organization's taxable year in which the patronage occurred.

(c) *Exceptions*. An amount described in paragraph (a) of this section does not include—

(1) Any amount described in § 1.6042–3(b); or

(2) With respect to amounts paid or credited after December 31, 1982, any amount paid or credited to any person described in § 1.6049–4(c)(1)(ii).

(d) *Determination of amount paid.* For purposes of § 1.6044–2 and this section, in determining the amount of any payment subject to reporting under paragraph (a) of this section:

(1) Property (other than a qualified written notice of allocation) shall be taken into account at its fair market value, and

(2) A qualified written notice of allocation shall be taken into account at its stated dollar amount.

[T.D. 6628, 27 FR 12798, Dec. 28, 1962, as amended by T.D. 8734, 62 FR 53476, Oct. 14, 1997]

§ 1.6044–4 Exemption for certain consumer cooperatives.

(a) *In general*—(1) *Determination of exemption.* Exemption from the reporting requirements of § 1.6044–2 shall, upon application therefor, be granted by the district director to any cooperative which he determines is primarily engaged in selling at retail goods or services of a type which is generally for personal, living, or family use. A cooperative is not exempt from the reporting requirements merely because it is an organization of a type to which section 6044(c) and this section relate. In order for the exemption from reporting to apply, it is necessary that the cooperative file an application in accordance with this section and obtain a determination of exemption.

(2) *Basis for exemption.* For a cooperative to qualify for the exemption from reporting provided by section 6044(c) and this section 85 percent of its gross receipts for the preceding taxable year, or 85 percent of its aggregate gross receipts for the preceding three taxable years, must have been derived from the sale at retail of goods or services of a type which is generally for personal, living, or family use. In determining whether an item is of a type that is generally for personal, living, or family use, an item which may be purchased either for such use or for business use and which when acquired for business purposes is generally purchased at wholesale will, when sold by a cooperative at retail, be treated as goods or services of a type generally for personal, living, or family use.

(3) *Period of exemption.* A determination of exemption from reporting shall apply beginning with the payments made during the calendar year in which the determination is made and shall automatically cease to be effective beginning with payments made after the close of the first taxable year of the cooperative in which less than 70 percent of its gross receipts is derived from the sale at retail of goods or services of a type which is generally for personal, living, or family use.

(b) *Application for exemption.* Application for exemption from the reporting requirements of section 6044 shall be made on Form 3491, and shall be filed with the district director for the internal revenue district in which the cooperative has its principal place of business.

[T.D. 6628, 27 FR 12799, Dec. 28, 1962]

§ 1.6044–5 Statements to recipients of patronage dividends.

(a) *Requirement.* A person required to make an information return under section 6044(a)(1) and § 1.6044–2 must furnish a statement to each recipient whose identifying number is required to be shown on the related information return for patronage dividends paid.

(b) *Form, manner, and time for providing statements to recipients.* The statement required by paragraph (a) of this section must be either the official Form 1099 prescribed by the Internal Revenue Service for the respective calendar year or an acceptable substitute statement. The rules under § 1.6042–4 (relating to statements with respect to dividends) apply comparably in determining the form of an acceptable substitute statement permitted by this section. Those rules also apply for purposes of determining the manner of and time for providing the Form 1099 or its acceptable substitute to a recipient under this section. However, each Form 1099 or acceptable substitute statement required by this section must be furnished on or before January 31 of the following year, but no statement may be furnished before the final payment has been made for the calendar year.

(c) *Cross-reference to penalty*. For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6044(e), see § 301.6722–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(d) *Effective date*. This section is effective for payee statements due after December 31, 1995, without regard to extensions. For the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996, see Rev. Proc. 84–70 (1984–2 C.B. 716) (or successor revenue procedures). See § 601.601(d)(2) of this chapter.

[T.D. 8637, 60 FR 66111, Dec. 21, 1995, as amended by T.D. 8734, 62 FR 53476, Oct. 14, 1997]

§ 1.6045–1 Returns of information of brokers and barter exchanges.

(a) *Definitions*. The following definitions apply for purposes of this section and § 1.6045–2:

(1) The term *broker* means any person (other than a person who is required to report a transaction under section 6043), U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. A broker includes an obligor that regularly issues and retires its own debt obligations or a corporation that regularly redeems its own stock. However, with respect to a sale (including a redemption or retirement) effected at an office outside the United States, a broker includes only a person described as a U.S. payor or U.S. middleman in § 1.6049–5(c)(5). In addition, a broker does not include an international organization described in § 1.6049–4(c)(1)(ii)(G) that redeems or retires an obligation of which it is the issuer.

(2) The term *customer* means, with respect to a sale effected by a broker, the person (other than such broker) that makes the sale, if the broker acts as:

(i) An agent for such person in the sale;

(ii) A principal in the sale; or

(iii) The participant in the sale responsible for paying to such person or crediting to such person's account the gross proceeds on the sale.

(3) The term *security* means:

(i) A share of stock in a corporation (foreign or domestic);

(ii) An interest in a trust;

(iii) An interest in a partnership;

(iv) A debt obligation;

(v) An interest in or right to purchase any of the foregoing in connection with the issuance thereof from the issuer or an agent of the issuer or from an underwriter that purchases any of the foregoing from the issuer, or

(vi) An interest in a security described in paragraph (a)(3) (i) or (iv) (but not including options or executory contracts that require delivery of such type of security).

(4) The term *barter exchange* means any person with members or clients that contract either with each other or with such person to trade or barter property or services either directly or through such person. The term does not include arrangements that provide solely for the informal exchange of similar services on a noncommercial basis.

(5) The term *commodity* means:

(i) Any type of personal property or an interest therein (other than securities as defined in paragraph (a)(3)) the trading of regulated futures contracts in which has been approved by the Commodity Futures Trading Commission;

(ii) Lead, palm oil, rapeseed, tea, tin, or an interest in any of the foregoing; or

(iii) Any other personal property or an interest therein that is of a type the Secretary determines is to be treated as a ''commodity'' under this section, from and after the date specified in a notice of such determination published in the FEDERAL REGISTER.

(6) The term *regulated futures contract* means a regulated futures contract within the meaning of section 1256(b).

(7) The term *forward contract* means:

(i) An executory contract that requires delivery of a commodity in exchange for cash and which contract is not a regulated futures contract; or

(ii) An executory contract that requires delivery of personal property or

an interest therein in exchange for cash, or a cash settlement contract, if such executory contract or cash settlement contract is of a type the Secretary determines is to be treated as a ''forward contract'' under this section, from and after the date specified in a notice of such determination published in the FEDERAL REGISTER.

(8) The term *closing transaction* means any termination of an obligation under a forward contract or a regulated futures contract.

(9) The term *sale* means any disposition of securities, commodities, regulated futures contracts, or forward contracts for cash, and includes redemptions of stock, retirements of indebtedness, and enterings into short sales. In the case of a regulated futures contract or a forward contract, the term ''sale'' means any closing transaction. When a closing transaction in a regulated futures contract involves making or taking delivery, the profit or loss on the contract is a sale, and, if delivery is made, such delivery is a separate sale. When a closing transaction in a forward contract involves making or taking delivery, the delivery is a sale without separation of the profit or loss on the contract from the profit or loss on the delivery, except that taking delivery for United States dollars is not a sale. The term ''sale'' does not include grants or purchases of options, exercises of call options, or enterings into contracts that require delivery of personal property or an interest therein.

(10) The term *effect* means, with respect to a sale, to act as:

(i) An agent for a party in the sale wherein the nature of the agency is such that the agent ordinarily would know the gross proceeds from the sale; or

(ii) A principal in such sale.

Acting as an agent or principal with respect to grants or purchases of options, exercises of call options, or enterings into contracts that require delivery of personal property or an interest therein is not of itself effecting a sale. A broker that has on its books a forward contract under which delivery is made effects such delivery.

(11) The term *foreign currency* means currency of a foreign country.

(12) The term *cash* means United States dollars or any convertible foreign currency.

(13) The term *person* includes any governmental unit and any agency or instrumentality thereof.

(b) *Examples.* The following examples illustrate the definitions in paragraph (a):

Example 1. The following persons generally are brokers within the meaning of paragraph (a)(1):

(i) A mutual fund, an underwriter of the mutual fund, or an agent for the mutual fund, any of which stands ready to redeem or repurchase shares in such mutual fund.

(ii) A professional custodian (such as a bank) that regularly arranges sales for custodial accounts pursuant to instructions from the owner of the property.

(iii) A depositary trust or other person who regularly acts as an escrow agent in corporate acquisitions, if the nature of the activities of the agent is such that the agent ordinarily would know the gross proceeds from sales.

(iv) A stock transfer agent for a corporation, which agent records transfers of stock in such corporation, if the nature of the activities of the agent is such that the agent ordinarily would know the gross proceeds from sales.

(v) A dividend reinvestment agent for a corporation that stands ready to purchase or redeem shares.

Example 2. The following persons are not brokers within the meaning of paragraph (1)(a) in the absence of additional facts that indicate the person is a broker:

(i) A stock transfer agent for a corporation, which agent daily records transfers of stock in such corporation, if the nature of the activities of the agent is such that the agent ordinarily would not know the gross proceeds from sales.

(ii) A person (such as a stock exchange) that merely provides facilities in which others effect sales.

(iii) An escrow agent or nominee if such agency is not in the ordinary course of a trade or business.

(iv) An escrow agent, otherwise a broker, which agent effects no sales other than such transactions as are incidental to the purpose of the escrow (such as sales to collect on collateral).

(v) A floor broker on a commodities exchange, which broker maintains no records with respect to the terms of sales.

(vi) A corporation that issues and retires long-term debt on an irregular basis.

(vii) A clearing organization.

Example 3. A, B, and C belong to a carpool in which they commute to and from work. Every third day, each member of the carpool

provides transportation for the other two members. Because the carpool arrangement provides solely for the informal exchange of similar services on a noncommercial basis, the carpool is not a barter exchange within the meaning of paragraph (a)(4).

Example 4. X is an organization whose members include retail merchants, wholesale merchants, and persons in the trade or business of performing services. X's members exchange property and services among themselves using credits on the books of X as a medium of exchange. Each exchange through X is reflected on the books of X by crediting the account of the member providing property or services and debiting the account of the member receiving such property or services. X also provides information to its members concerning property and services available for exchange through X. X charges its members a commission on each transaction in which credits on its books are used as a medium of exchange. X is a barter exchange within the meaning of paragraph (a)(4) of this section.

Example 5. A warehouse receipt is an interest in personal property for purposes of paragraph (a). Consequently, a warehouse receipt for a quantity of lead is a commodity under paragraph (a)(5)(ii). Similarly an executory contract that requires delivery of a warehouse receipt for a quantity of lead is a forward contract under paragraph (a)(7)(ii).

Example 6. The only customers of a depository trust acting as an escrow agent in corporate acquisitions which trust is a broker, are shareholders to whom the trust makes payments or shareholders for whom the trust is acting as an agent.

Example 7. The only customers of a stock transfer agent, which agent is a broker are shareholders to whom the agent makes payments or shareholders for whom the agent is acting as an agent,

Example 8. D, an individual not otherwise exempt from reporting, is the holder of an obligation issued by P, a corporation. R, a broker, acting as an agent for P, retires such obligation held by D. Such obligor payments from R represent obligor payments by P. (See paragraph (c)(3)(v)). D, the person to whom the gross proceeds are paid or credited by R, is the customer of R.

(c) *Reporting by brokers*—(1) *Requirement of reporting.* Any broker shall, except as otherwise provided, report in the manner prescribed in this section.

(2) *Sales required to be reported.* Except as provided in paragraphs (c)(3), (c)(5), (g), and (p)(1), a broker shall make a return of information with respect to each sale by a customer of the broker effected by the broker in the ordinary course of a trade or business in which the broker stands ready to effect sales to be made by others.

(3) *Exceptions*—(i) *Sales effected for exempt recipients*—

(A) *In general.* No return of information is required with respect to a sale effected for a customer that is an exempt recipient under paragraph (c)(3)(i)(B) of this section.

(B) *Exempt recipient defined.* The term *exempt recipient* means—

(*1*) A corporation as defined in section 7701(a)(3), whether domestic or foreign;

(*2*) An organization exempt from taxation under section 501(a) or an individual retirement plan;

(*3*) The United States or a State, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, a wholly owned agency or instrumentality of any one or more of the foregoing, or a pool or partnership composed exclusively of any of the foregoing;

(*4*) A foreign government, a political subdivision thereof, an international organization, or any wholly owned agency or instrumentality of the foregoing;

(*5*) A foreign central bank of issue as defined in §1.895–1(b)(1) (i.e., a bank that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency);

(*6*) A dealer in securities or commodities registered as such under the laws of the United States or a State;

(*7*) A futures commission merchant registered as such with the Commodity Futures Trading Commission;

(*8*) A real estate investment trust (as defined in section 856);

(*9*) An entity registered at all times during the taxable year under the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*);

(*10*) A common trust fund (as defined in section 584(a)); or

(*11*) A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization.

(C) *Exemption certificate.* A broker may treat a person described in paragraph (c)(3)(i)(B) of this section as an exempt recipient based on a properly completed exemption certificate (as provided in §31.3406(h)–3) of this chapter, on the broker's actual knowledge that the payee is a person described in paragraph (c)(3)(i)(B), or on the applicable indicators described in §1.6049–4(c)(1)(ii)(A) through (M). A broker may require an exempt recipient to file a properly completed exemption certificate and may treat an exempt recipient that fails to do so as a recipient that is not exempt.

(ii) *Excepted sales.* No return of information is required with respect to a sale effected by a broker for a customer if the sale is an excepted sale. For this purpose, a sale is an excepted sale if it is so designated by the Internal Revenue Service in a revenue ruling or revenue procedure (*see* §601.601(d)(2) of this chapter).

(iii) *Multiple brokers.* If a broker is instructed to initiate a sale by a person that is an exempt recipient described in paragraph (c)(3)(i)(B)(*6*), (*7*), or (*11*) of this section, no return of information is required with respect to the sale by that broker. In a redemption of stock or retirement of securities, only the broker responsible for paying the holder redeemed or retired, or crediting the gross proceeds on the sale to that holder's account, is required to report the sale.

(iv) *Cash on delivery transactions.* In the case of a sale of securities through a cash on delivery account, a delivery versus payment account, or other similar account or transaction, only the broker that receives the gross proceeds from the sale against delivery of the securities sold is required to report the sale. If, however, the broker's customer is another broker (second-party broker) that is an exempt recipient, then only the second-party broker is required to report the sale.

(v) *Fiduciaries and partnerships.* No return of information is required with respect to a sale effected by a custodian or trustee in its capacity as such or a redemption of a partnership interest by a partnership, provided the sale is otherwise reported by the custodian or trustee on a properly filed Form 1041, or the redemption is otherwise reported by the partnership on a properly filed Form 1065, and all Schedule K–1 reporting requirements are satisfied.

(vi) *Sales at issue price.* No return of information is required with respect to a sale of an interest in a regulated investment company that can hold itself out as a money market fund under Rule 2a–7 under the Investment Company Act of 1940 that computes its current price per share for purposes of distributions, redemptions, and purchases so as to stabilize the price per share at a constant amount that approximates its issue price or the price at which it was originally sold to the public.

(vii) *Obligor payments on certain obligations.* No return of information is required with respect to payments representing obligor payments on—

(A) Nontransferable obligations (including savings bonds, savings accounts, checking accounts, and NOW accounts);

(B) Obligations as to which the entire gross proceeds are reported by the broker on Form 1099 under provisions of the Internal Revenue Code other than section 6045 (including stripped coupons issued prior to July 1, 1982); or

(C) Retirement of short-term obligations (i.e., obligations with a fixed maturity date not exceeding 1 year from the date of issue) that have original issue discount, as defined in section 1273(a)(1), with or without application of the de minimis rule.

(D) Demand obligations that also are callable by the obligor and that have no premium or discount.

(viii) *Foreign currency.* No return of information is required with respect to a sale of foreign currency other than a sale pursuant to a forward contract or regulated futures contract that requires delivery of foreign currency.

(ix) *Fractional share.* No return of information is required with respect to a sale of a fractional share of stock if the gross proceeds on the sale of the fractional share are less than $20.

(x) *Certain retirements.* No return of information is required from an issuer or its agent with respect to the retirement of book entry or registered form obligations as to which the relevant books and records indicate that no interim transfers have occurred.

(xi) *Cross reference*. For an exception for certain sales of agricultural commodities and certificates issued by the Commodity Credit Corporation after January 1, 1993, see paragraph (c)(7) of this section.

(xii) *Effective date*. The provisions of this paragraph (c)(3) apply for sales effected after December 31, 2002.

(4) *Examples*. The following examples illustrate the application of the rules in paragraph (c)(3) of this section:

Example 1. P, an individual who is not an exempt recipient, places an order with B, a person generally known in the investment community to be a federally registered broker/dealer, to effect a sale of P's stock in a publicly traded corporation. B, in turn, places an order to sell the stock with C, a second broker, who will execute the sale. B discloses to C the identity of the customer placing the order. C is not required to make a return of information with respect to the sale because C was instructed by B, an exempt recipient as defined in paragraph (c)(3)(i)(B)(*6*) of this section, to initiate the sale. B is required to make a return of information with respect to the sale because P is B's customer and is not an exempt recipient.

Example 2. Assume the same facts as in *Example 1* except that B has an omnibus account with C so that B does not disclose to C whether the transaction is for a customer of B or for B's own account. C is not required to make a return of information with respect to the sale because C was instructed by B, an exempt recipient as defined in paragraph (c)(3)(i)(B)(*6*) of this section, to initiate the sale. B is required to make a return of information with respect to the sale because P is B's customer and is not an exempt recipient.

Example 3. D, an individual who is not an exempt recipient, enters into a cash on delivery stock transaction by instructing K, a federally registered broker/dealer, to sell stock owned by D, and to deliver the proceeds to L, a custodian bank. Concurrently with the above instructions, D instructs L to deliver D's stock to K (or K's designee) against delivery of the proceeds from K. The records of both K and L with respect to this transaction show an account in the name of D. Pursuant to paragraph (h)(1) of this section, D is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because D is L's customer and is not an exempt recipient.

Example 4. Assume the same facts as in *Example 3* except that E, a federally registered investment advisor, instructs K to sell stock owned by D and to deliver the proceeds to L. Concurrently with the above instructions, E instructs L to deliver D's stock to K (or K's designee) against delivery of the proceeds from K. The records of both K and L with respect to the transaction show an account in the name of D. Pursuant to paragraph (h)(1) of this section, D is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because D is L's customer and is not an exempt recipient.

Example 5. Assume the same facts as in *Example 4* except that the records of both K and L with respect to the transaction show an account in the name of E. Pursuant to paragraph (h)(1) of this section, E is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because E is L's customer and is not an exempt recipient. E is required to make a return of information with respect to the sale because D is E's customer and is not an exempt recipient.

Example 6. F, an individual who is not an exempt recipient, owns bonds that are held by G, a federally registered broker/dealer, in an account for F with G designated as nominee for F. Upon the retirement of the bonds, the gross proceeds are automatically credited to the account of F. G is required to make a return of information with respect to the retirement because G is the broker responsible for making payments of the gross proceeds to F.

(5) *Form of reporting for regulated futures contracts*—(i) *In general*. A broker effecting closing transactions in regulated futures contracts shall report information with respect to regulated futures contracts solely in the manner prescribed in this paragraph (c)(5). In the case of a sale that involves making delivery pursuant to a regulated futures contract, only the profit or loss on the contract is reported as a transaction with respect to regulated futures contracts under this paragraph (c)(5); such sales are, however, subject to reporting under paragraph (d)(2). The information required under this paragraph (c)(5) must be reported on a calendar year basis, unless the broker is advised in writing by an account's owner that the owner's taxable year is other than a calendar year and the

broker elects to report with respect to regulated futures contracts in such account on the basis of the owner's taxable year. The following information must be reported as required by Form 1099 with respect to regulated futures contracts held in a customer's account:

(A) The name, address, and taxpayer identification number of the customer.

(B) The net realized profit or loss from all regulated futures contracts closed during the calendar year.

(C) The net unrealized profit or loss in all open regulated futures contracts at the end of the preceding calendar year.

(D) The net unrealized profit or loss in all open regulated futures contracts at the end of the calendar year.

(E) The aggregate profit or loss from regulated futures contracts $((b)+(d)-(c))$.

(F) Any other information required by Form 1099. See 17 CFR 1.33. For this purpose, the end of a year is the close of business of the last business day of such year. In reporting under this paragraph (c)(5), the broker shall make such adjustments for commissions that have actually been paid and for option premiums as are consistent with the books of the broker. No additional returns of information with respect to regulated futures contracts so reported are required.

(ii) *Determination of profit or loss from foreign currency contracts.* A broker effecting a closing transaction in foreign currency contracts (as defined in section 1256(g)) shall report information with respect to such contracts in the manner prescribed in paragraph (c)(5)(i) of this section. If a foreign currency contract is closed by making or taking delivery, the net realized profit or loss for purposes of paragraph (c)(5)(i)(B) of this section is determined by comparing the contract price to the spot price for the contract currency at the time and place specified in the contract. If a foreign currency contract is closed by entry into an offsetting contract, the net realized profit or loss for purposes of paragraph (c)(5)(i)(B) of this section is determined by comparing the contract price to the price of the offsetting contract. The net unrealized profit or loss in a foreign currency contract for purposes of paragraphs (c)(5)(i) (C) and (D) of this section is determined by comparing the contract price to the broker's price for similar contracts at the close of business of the relevant year.

(iii) *Examples.* The following examples illustrate the application of the rules in this paragraph (c)(5):

Example 1. On October 30, 1984, A, an individual who is a calendar year taxpayer not otherwise exempt from reporting, buys one March 1985 put on Treasury Bond futures (i.e. A purchases an option to enter into a short regulated futures contract of $100,000 face value U.S. Treasury bonds). A pays $500 for the option. On December 19, 1984, A, through B, exercises the option and enters into the futures contract. On February 15, 1985, A, through B, enters into a closing transaction with respect to the futures contract. These are A's only transactions in the account. Since B's books list A's regulated futures contract on December 31, 1984, B must report for A, for 1984, the unrealized profit or loss in the contract as of December 31, 1984. For 1985, B will report the same amount for A as the unrealized profit or loss at the beginning of 1985. The return of information for 1985 will also include the gain or loss from the contract in the net realized profit or loss from all regulated futures contracts sales during 1985.

Example 2. The facts are the same as in Example (1) except that A does not enter into the closing transaction, but instead, on March 20, 1985, B informs A that A will make delivery under the contract. On March 22, 1985, A does so; consequently, A becomes entitled to the gross proceeds. B enters the closing transaction on its books on March 20, 1985. In addition to the returns of information required by paragraph (c)(5), as described in Example (1), B must report the March 22, 1985 delivery as a separate transaction. B may use as the sale date for the delivery either March 20, 1985, the date the transaction is entered on the books of B, or March 22, 1985, the date A becomes entitled to the gross proceeds. B may not deduct the $500 premium from the gross proceeds with respect to the March 22, 1985 delivery.

Example 3. The facts are the same as in Example (2) except that A buys a call on Treasury bond futures and takes delivery. B will supply the returns of information required by paragraph (c)(5), as described in Example (1). B is not required to make a return of information with respect to A's taking delivery.

Example 4. C, an individual who is a calendar year taxpayer not otherwise exempt from reporting, has an account with D, a broker. C trades both regulated futures contracts and forward contracts through C's account with D. D must report C's regulated

futures contracts on an annual basis as required by paragraph (c)(5). With respect to C's forward contracts, D may elect to use the calendar month, quarter, or year as D's reporting period as provided in paragraph (c)(6).

(6) *Reporting periods and filing groups*—(i) *Reporting period*—(A) *In general*. A broker may elect to use the calendar month, quarter, or year as the broker's reporting period. A broker may separately elect a reporting period for each filing group.

(B) *Election*. For each calendar year, a broker shall elect a reporting period by filing Forms 1096 and 1099 in the manner elected. A different reporting period may be subsequently elected by filing in the manner subsequently elected, provided no duplication of reported transactions results.

(ii) *Filing group*—(A) *In general*. A broker may elect to group customers or customer accounts by office, branch, department or other method of operational classification and separately file Forms 1096 and 1099 for each filing group.

(B) *Election*. For each calendar year, a broker shall elect filing groups by filing Forms 1096 and 1099 in the manner elected. Different filing groups may be subsequently elected by filing in the manner subsequently elected, provided no duplication of reported transactions results.

(iii) *Example*. The following example illustrates the rules of this paragraph (c)(6):

Example. The A department of C, a broker, files a separate report for each month of 1984, whereas the B department of C files one report for all of 1984. C makes no other reports or returns of information under section 6045 for 1984. C had thereby elected two filing groups for 1984, the A department and the B department. The A department has the calendar month as its 1984 reporting period, whereas the B department has the calendar year as its 1984 reporting period. The same result would occur if A and B were offices or branches of C.

(7) *Exception for certain sales of agricultural commodities and commodity certificates*—(i) *Agricultural commodities*. No return of information is required under section 6045 for a spot or forward sale of an agricultural commodity. This paragraph (c)(7)(i) does not except from reporting sales of agricultural commodities pursuant to regulated futures contracts, sales of derivative interests in agricultural commodities, or sales described in paragraph (c)(7)(iii) of this section.

(ii) *Commodity Credit Corporation certificates*. Except as otherwise provided in a revenue ruling or revenue procedure, no return of information is required under section 6045 with respect to a sale of a commodity certificate issued by the Commodity Credit Corporation under 7 CFR 1470.4 (1990).

(iii) *Sales involving designated warehouses*. Paragraph (c)(7)(i) of this section does not apply to any sale involving a warehouse receipt for an agricultural commodity issued by a designated warehouse for an agricultural commodity of the type for which the warehouse is a designated warehouse.

(iv) *Definitions*. For purposes of this paragraph (c)(7):

(A) *Agricultural commodity*. An ''agricultural commodity'' includes, but is not limited to, a commodity within the meaning of paragraph (a)(5) of this section that is a grain, feed, livestock, meat, oil seed, timber, or fiber.

(B) *Spot sale*. A spot sale is a sale that results in the substantially contemporaneous delivery of a commodity.

(C) *Forward sale*. A forward sale is a sale pursuant to a forward contract within the meaning of paragraph (a)(7) of this section.

(D) *Designated warehouse*. A designated warehouse is a warehouse, depository, or other similar entity, designated by a commodity exchange under 7 CFR 1.43 (1992), in which or out of which a particular type of agricultural commodity is deliverable in satisfaction of a regulated futures contract.

(v) *Effective dates*. Paragraph (c)(7) of this section applies to sales effected on or after January 1, 1993. For sales effected before January 1, 1993, the following transactions are excepted from the information reporting requirements of section 6045:

(A) Spot or forward sales of agricultural products or commodities (but not sales of interests in agricultural products or commodities, such as sales of regulated futures contracts or forward contracts), effected by any person regardless of whether that person takes

title to the agricultural products or commodities; and

(B) Sales of negotiable commodity certificates issued by the Commodity Credit Corporation.

(d) *Information required*—(1) *In general.* A broker that is required to make a return of information under paragraph (c) during a reporting period shall report on a separate Form 1096 for each filing group, showing such information as may be required by Form 1096, in the form, manner, and number of copies required by Form 1096.

(2) *Transactional reporting.* As to each sale with respect to which a broker is required to make a return of information under this section, the broker, except as provided in paragraphs (c)(5) and (p)(1), shall show on Form 1099 the name, address, and taxpayer identification number of the customer, the property sold, Committee on Uniform Security Identification Procedures (CUSIP) number of the security sold (if known), the gross proceeds, sale date, and such other information as may be required by Form 1099, in the form, manner, and number of copies required by Form 1099.

(3) *Bond sales between interest payment dates.* As to each sale of a debt obligation prior to maturity with respect to which a broker is required to make a return of information under this section, a broker shall show separately on Form 1099 the amount of accrued and unpaid interest as of the sale date that must be reported by the customer as interest income under §1.61–7(d) (but not the amount of any original issue or market discount). Such interest information shall be shown in the manner and at the time required by Form 1099 and section 6049.

(4) *Sale date.* With respect to sales of property that are reportable under this section, a broker must report a sale as occurring on the date the sale is entered on the books of the broker.

(5) *Gross proceeds.* The gross proceeds on a sale are the total amount paid to the customer or credited to the customer's account as a result of such sale reduced by the amount of any interest reported under paragraph (d)(3) and increased by any amount not so paid or credited by reason of repayment of margin loans. In the case of a closing transaction which results in a loss, gross proceeds are the amount debited from the customer's account. The broker may, but is not required to, take commissions and option premiums into account in determining gross proceeds, provided the treatment chosen is consistent with the books of the broker.

(6) *Conversion into United States dollars of proceeds paid in foreign currency*—(i) *Conversion rules.* When a payment is made in a foreign currency, the U.S. dollar amount shall be determined by converting such foreign currency into U.S. dollars on the date of payment at the spot rate (as defined in §1.988–1(d)(1)) or pursuant to a reasonable spot rate convention. For example, a withholding agent may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner or his or her delegate.

(ii) *Effect of identification under §1.988–5(a), (b), or (c) where the taxpayer effects a sale and a hedge through the same broker*—(A) *In general.* In lieu of the amount reportable under paragraph (d)(6)(i) of this section, the amount subject to reporting shall be the integrated amount computed under §1.988–5(a), (b) or (c) if—

(*1*) A taxpayer effects through a broker a sale or exchange of nonfunctional currency (as defined in §1.988–1(c)) and hedges all or a part of such sale as provided in §1.988–5(a), (b) or (c) with the same broker; and

(*2*) The taxpayer complies with the requirements of §1.988–5(a), (b) or (c) and so notifies the broker prior to the end of the calendar year in which the sale occurs.

(B) *Effective date.* The provisions of this paragraph (d)(6)(ii) apply to transactions entered into after December 31, 2000.

(7) *Coordination with reporting rules for widely held fixed investment trusts under §1.671–5 of this chapter.* See §1.671–5 for the reporting rules for widely held fixed investment trusts (as defined under that section).

(e) *Reporting of barter exchanges*—(1) *Requirement of reporting.* A barter exchange shall, except as otherwise provided, report in the manner prescribed in this section.

(2) *Exchanges required to be reported*—(i) *In general.* Except as provided in paragraphs (e)(2)(ii), (g), and (p)(2), a barter exchange shall make a return of information with respect to exchanges of personal property or services through the barter exchange during the calendar year among its members or clients or between such persons and the barter exchange. For this purpose, property or services are exchanged through a barter exchange if payment for property or services is made by means of a credit on the books of the barter exchange or scrip issued by the barter exchange or if the barter exchange arranges a direct exchange of property or services among its members or clients or exchanges property or services with a member or client.

(ii) *Exemption.* A barter exchange through which there are fewer than 100 exchanges during the calendar year is not required to report for, or make a return of information with respect to exchanges during, such calendar year. The Commissioner may require multiple barter exchanges to be combined for purposes of the proceeding sentence upon a determination that a material purpose for the formation or continuation of one or more of the barter exchanges to be combined was to receive one or more exemptions pursuant to this subparagraph.

(f) *Information required*—(1) *In general.* A person that is a barter exchange during a calendar year shall report on Form 1096 showing the information required thereon for such year.

(2) *Transactional reporting*—(i) *In general.* As to each exchange with respect to which a barter exchange is required to make a return of information under this section, the barter exchange, except as provided in paragraph (p)(2), shall show on Form 1099 the name, address, and taxpayer identification number of each member or client providing property or services in the exchange, the property or services provided, the amount received by the member or client for such property or services, the date on which the exchange occurred, and such other information as may be required by Form 1099, in the form, manner, and number of copies required by Form 1099.

(ii) *Exception for corporate member or client.* As to each corporate member or client providing property or services in an exchange for which a return of information is required under this section, the barter exchange may report the name, address, and taxpayer identification number of the corporate member or client, the aggregate amount received by the corporate member or client during the reporting period for property or services provided by such corporate member or client in exchange for which a return of information is required, and such other information as may be required by Form 1099, in the form, manner, and number of copies required by Form 1099.

(iii) *Definition.* For purposes of paragraph (f)(2)(ii) of this section, the term ''corporate member or client'' means a member or client of a barter exchange which is a corporation as defined in section 7701(a)(3) (including an insurance company). The term corporation includes a pool, syndicate, partnership, or unincorporated association composed exclusively of corporations. A barter exchange may treat a member or client as a corporation (and therefore as a corporate member or client) if such member or client provides an exemption certificate as described in § 31.3406(h)–3(a) of this chapter or provided that—

(A) The name of the member or client contains the term ''insurance company,'' ''indemnity company,'' ''reinsurance company,'' or ''assurance company'';

(B) The name of the member or client contains one of the following unambiguous expressions of corporate status: Incorporated, Inc., Corporation, Corp., or P.C., but not Company or Co.; or

(C) The member or client is known to the barter exchange to be a corporation through a corporate resolution or similar document on file with the barter exchange clearly indicating corporate status.

(3) *Exchange date.* For purposes of this section an exchange is considered to occur with respect to a member or client of a barter exchange on the date

cash, property, a credit, or scrip is actually or constructively received by the member or client as a result of the exchange. (See §1.451–2 for rules pertaining to constructive receipt.)

(4) *Amount received.* The amount received by a member or client in an exchange includes cash received, the fair market value of any property or services received, and the fair market value of any credits to the account of the member or client on the books of the barter exchange or scrip issued to the member or client by the barter exchange, but does not include any amount received by the member or client in a subsequent exchange of credits or scrip. For purposes of this section, the fair market value of a credit or scrip is the value assigned to such credit or scrip by the issuing barter exchange for the purpose of exchanges unless the Commissioner requires the use of a different value that the Commissioner determines more accurately reflects fair market value.

(5) *Meaning of terms.* For purposes of this paragraph (f)—(i) A credit is an amount on the books of the barter exchange that is transferable from one member or client of the barter exchange to another such member or client, or to the barter exchange in payment for property or services;

(ii) Scrip is a token issued by the barter exchange that is transferable from one member or client, of the barter exchange to another such member or client, or to the barter exchange, in payment for property or services; and

(iii) Property does not include a credit or scrip.

(6) *Reporting period.* A barter exchange shall use the calendar year as the reporting period.

(g) *Exempt foreign persons*—(1) *Brokers.* No return of information is required to be made by a broker with respect to a customer who is considered to be an exempt foreign person under this paragraph (g)(1). A broker may treat a customer as an exempt foreign person under the circumstances described in paragraphs (g)(1)(i) through (iii) of this section.

(i) With respect to a sale effected at an office of a broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person if the broker can, prior to the payment, associate the payment with documentation upon which it can rely in order to treat the customer as a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii), or as made to a foreign payee in accordance with §1.6049–5(d)(1) or presumed to be made to a foreign payee under §1.6049–5(d)(2) or (3). For purposes of this paragraph (g)(1)(i), the provisions in §1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman) shall apply. The provisions of §1.1441–1 shall apply by substituting the terms *broker* and *customer* for the terms *withholding agent* and *payee* and without regard for the fact that the provisions apply to amounts subject to withholding under chapter 3 of the Internal Revenue Code (Code). The provisions of §1.6049–5(d) shall apply by substituting the terms *broker* and *customer* for the terms *payor* and *payee.* For purposes of this paragraph (g)(1)(i), a broker that is required to obtain, or chooses to obtain, a beneficial owner withholding certificate described in §1.1441–1(e)(2)(i) from an individual may rely on the withholding certificate only to the extent the certificate includes a certification that the beneficial owner has not been, and at the time the certificate is furnished, reasonably expects not to be present in the United States for a period aggregating 183 days or more during each calendar year to which the certificate pertains. The certification is not required if a broker receives documentary evidence under §1.6049–5(c)(1) or (4).

(ii) With respect to a redemption or retirement of stock or an obligation (the interest or original issue discount on, which is described in §1.6049–5(b)(6), (7), (10), or (11) or the dividends on, which are described in §1.6042–3(b)(1)(iv)) that is effected at an office of a broker outside the United States by the issuer (or its paying or transfer agent), the broker may treat the customer as an exempt foreign person if the broker is not also acting in its capacity as a custodian, nominee, or other agent of the payee.

(iii) With respect to a sale effected by a broker at an office of the broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person for the period that those proceeds are assets blocked, as described in §1.1441–2(e)(3). For purposes of this paragraph (g)(1)(iii) and section 3406, a sale is deemed to occur in accordance with paragraph (d)(4) of this section. The exemption in this paragraph (g)(1)(iii) shall terminate when payment of the proceeds is deemed to occur in accordance with the provisions of §1.1441–2(e)(3).

(2) *Barter exchange*. No return of information is required by a barter exchange with respect to a client or a member that the barter exchange may treat as a foreign person pursuant to the procedures described in paragraph (g)(1) of this section.

(3) *Applicable rules*—(i) *Joint owners*. Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (g) (1)(i) or (2) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the broker or barter exchange cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (g)(1)(i) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (g)(3)(i), the grace period described in §1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(ii) *Special rules for determining who the customer is*. For purposes of this paragraph (g), the determination of who the customer is shall be made on the basis of the provisions in §1.6049–5(d) by substituting in that section the terms *payor* and *payee* with the terms *broker* and *customer*.

(iii) *Place of effecting sale*—(A) *Sale outside the United States*. For purposes of this paragraph (g), a sale is considered to be effected by a broker at an office outside the United States if, in accordance with instructions directly transmitted to such office from outside the United States by the broker's customer, the office completes the acts necessary to effect the sale outside the United States. The acts necessary to effect the sale may be considered to have been completed outside the United States without regard to whether—

(*1*) Pursuant to instructions from an office of the broker outside the United States, an office of the same broker within the United States undertakes one or more steps of the sale in the United States; or

(*2*) The gross proceeds of the sale are paid by a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account.

(B) *Sale inside the United States*. For purposes of this paragraph (g), a sale that is considered to be effected by a broker at an office outside the United States under paragraph (g)(3)(iii)(A) of this section shall nevertheless be considered to be effected by a broker at an office inside the United States if either—

(*1*) The customer has opened an account with a United States office of that broker;

(*2*) The customer has transmitted instructions concerning this and other sales to the foreign office of the broker from within the United States by mail, telephone, electronic transmission or otherwise (unless the transmissions from the United States have taken place in isolated and infrequent circumstances);

(*3*) The gross proceeds of the sale are paid to the customer by a transfer of funds into an account (other than an international account as defined in §1.6049–5(e)(4)) maintained by the customer in the United States or mailed to the customer at an address in the United States;

(*4*) The confirmation of the sale is mailed to a customer at an address in the United States; or

(*5*) An office of the same broker within the United States negotiates the sale with the customer or receives instructions with respect to the sale from the customer.

(iv) *Special rules where the customer is a foreign intermediary or certain U.S. branches.* A foreign intermediary, as defined in §1.1441–1(c)(13), is an exempt foreign person, except when the broker has actual knowledge (within the meaning of §1.6049–5(c)(3)) that the person for whom the intermediary acts is a U.S. person that is not exempt from reporting under paragraph (c)(3) of this section or the broker is required to presume under §1.6049–5(d)(3) that the payee is a U.S. person that is not an exempt recipient. If an intermediary, as defined in §1.1441–1(c)(13), or a U.S. branch described in §1.1441–1(b)(2)(iv) (other than a U.S. branch that is treated as a U.S. person) receives a payment from a payor or middleman, which payment the payor or middleman can associate with a valid withholding certificate described in §1.1441–1(e)(3)(ii), (iii), or (v) furnished by such intermediary or U.S. branch, then the intermediary or U.S. branch is not required to report such payment when it, in turn, pays the amount to the person whose name is on the certificate furnished by the intermediary or U.S. branch to the payor or middleman, unless, and to the extent, the intermediary or U.S. branch knows that the payment is required to be reported under this section and was not so reported. For example, if a foreign intermediary or U.S. branch fails to provide information regarding U.S. persons that are not exempt from reporting under paragraph (c)(3) of this section to the person from whom the intermediary or U.S. branch receives the payment, the foreign intermediary or U.S. branch must report the payment on an information return. The exception of this paragraph (g)(3)(iv) shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Internal Revenue Code.

(4) *Examples.* The application of the provisions of this paragraph (g) may be illustrated by the following examples:

Example 1. FC is a foreign corporation that is not a U.S. payor or U.S. middleman described in §1.6049–5(c)(5) that regularly issues and retires its own debt obligations. A is an individual whose residence address is inside the United States, who holds a bond issued by FC that is in registered form (within the meaning of section 163(f) and the regulations under that section). The bond is retired by FP, a foreign corporation that is a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of FC. FP mails the proceeds to A at A's U.S. address. The sale would be considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section except that the proceeds of the sale are mailed to a U.S. address. For that reason, the sale is considered to be effected at an office of the broker inside the United States under paragraph (g)(3)(iii)(B) of this section. Therefore, FC is a broker under paragraph (a)(1) of this section with respect to this transaction because, although it is not a U.S. payor or U.S. middleman, as described in §1.6049–5(c)(5), it is deemed to effect the sale in the United States. FP is a broker for the same reasons. However, under the multiple broker exception under paragraph (c)(3)(iii) of this section, FP, rather than FC, is required to report the payment because FP is responsible for paying the holder the proceeds from the retired obligations. Under paragraph (g)(1)(i) of this section, FP may not treat A as an exempt foreign person and must make an information return under section 6045 with respect to the retirement of the FC bond, unless FP obtains the certificate or documentation described in paragraph (g)(1)(i) of this section.

Example 2. The facts are the same as in *Example 1* except that FP mails the proceeds to A at an address outside the United States. Under paragraph (g)(3)(iii)(A) of this section, the sale is considered to be effected at an office of the broker outside the United States. Therefore, under paragraph (a)(1) of this section, neither FC nor FP is a broker with respect to the retirement of the FC bond. Accordingly, neither is required to make an information return under section 6045.

Example 3. The facts are the same as in *Example 2* except that FP is also the agent of A. The result is the same as in *Example 2.* Neither FP nor FC are brokers under paragraph (a)(1) of this section with respect to the sale since the sale is effected outside the United States and neither of them are U.S. payors (within the meaning of §1.6049–5(c)(5)).

Example 4. The facts are the same as in *Example 1* except that the registered bond held by A was issued by DC, a domestic corporation that regularly issues and retires its own debt obligations. Also, FP mails the proceeds to A at an address outside the United States. Interest on the bond is not described in paragraph (g)(1)(ii) of this section. The sale is considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section. DC is a broker under paragraph (a)(1)(i)(B) of this section. DC is not required to report the payment under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S.

payor described in §1.6049–5(c)(5) and the sale is effected outside the United States. Accordingly, FP is not a broker under paragraph (a)(1) of this section.

Example 5. The facts are the same as in *Example 4* except that FP is also the agent of A. DC is a broker under paragraph (a)(1) of this section. DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in §1.6049–5(c)(5) and the sale is effected outside the United States and therefore FP is not a broker under paragraph (a)(1) of this section.

Example 6. The facts are the same as in *Example 4* except that the bond is retired by DP, a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of DC. DP is a U.S. payor under §1.6049–5(c)(5). DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. DP is required to make an information return under section 6045 because it is the person responsible for paying the proceeds from the retired obligations unless DP obtains the certificate or documentary evidence described in paragraph (g)(1)(i) of this section.

Example 7. Customer A, an individual, owns U.S. corporate bonds issued in registered form after July 18, 1984 and carrying a stated rate of interest. The bonds are held through an account with foreign bank, X, and are held in street name. X is a wholly-owned subsidiary of a U.S. company and is not a qualified intermediary within the meaning of §1.1441–1(e)(5)(ii). X has no documentation regarding A. A instructs X to sell the bonds. In order to effect the sale, X acts through its agent in the United States, Y. Y sells the bonds and remits the sales proceeds to X. X credits A's account in the foreign country. X does not provide documentation to Y.

(i) *Y's obligations to withhold and report.* Y treats X as the customer, and not A, because Y cannot treat X as an intermediary because it has received no documentation from X. Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is an exempt recipient. Further, Y is not required to report the amount of accrued interest paid to X on Form 1042–S under §1.1461–1(c)(2)(ii) because accrued interest is not an amount subject to reporting unless the withholding agent knows that the obligation is being sold with a primary purpose of avoiding tax.

(ii) *X's obligations to withhold and report.* Although X has effected, within the meaning of paragraph (a)(1) of this section, the sale of a security at an office outside the United States under paragraph (g)(3)(iii) of this section, X is treated as a broker, under paragraph (a)(1) of this section, because as a wholly-owned subsidiary of a U.S. corporation, X is a U.S. payor. See §1.6049–5(c)(5). Under the presumptions described in §1.6049–5(d)(2), X must presume that, with respect to the sales proceeds, A is a U.S. person who is not an exempt recipient. Therefore the payment of sales proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no obligation to backup withhold on the payment based on the exemption under §31.3406(g)–1(e) of this chapter, unless X has actual knowledge that A is a U.S. person that is not an exempt recipient. X is also required to separately report the accrued interest (see paragraph (d)(3) of this section) on Form 1099 under section 6049 because A is also presumed to be a U.S. person who is not an exempt recipient under the presumption rule in §1.6049–5(d)(2) and §1.1441–1(b)(3)(iii) since accrued interest is not an amount subject to reporting and therefore the presumption of foreign status for offshore accounts under §1.1441–1(b)(3)(iii)(D) does not apply.

Example 8. The facts are the same as in *Example 7*, except that instead of U.S. corporate bonds that carry stated interest, A owns original issue discount instruments described in section 871(g)(1)(B)(i) (i.e., obligations payable 183 days or less from the date of original issue). In addition, the sale is in a transaction other than a redemption.

(i) *Y's obligations to withhold and report.* Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is an exempt recipient.

(ii) *X's obligations to withhold and report.* Although X has effected, within the meaning of paragraph (a)(1) of this section, the sale of a security at an office outside the United States under paragraph (g)(3)(iii) of this section, X is treated as a broker, under paragraph (a)(1) of this section, because as a wholly-owned subsidiary of a U.S. corporation, X is a U.S. payor. See §1.6049–5(c)(5). Under the presumptions described in §1.6049–5(d)(2), X must presume that, with respect to the sales proceeds, A is a U.S. person who is not an exempt recipient. Therefore the payment of sales proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no obligation to backup withhold on the payment based on the exemption under §31.3406(g)–1(e) of this chapter, unless X has actual knowledge that A is a U.S. person that is not an exempt recipient. X is not required to separately report the amount of accrued original issue discount. See paragraph (d)(3) of this section.

Example 9. The facts are the same as in *Example 8,* except that X is a foreign corporation that is not a U.S. payor under §1.6049–5(c).

(i) *Y's obligations to withhold and report.* Y is not required to report the sales proceeds

under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is the person responsible for paying the proceeds from the sale to A.

(ii) *X's obligations to withhold and report.* Although A is presumed to be a U.S. payee under the presumptions of §1.6049–5(d)(2), X is not considered to be a broker under paragraph (a)(1) of this section because it is a not a U.S. payor under §1.6049–5(c)(5). Therefore X is not required to report the sale under paragraph (c)(2) of this section.

(5) *Effective date*—(i) *General rule.* The provisions of this paragraph (g) apply to payments made after December 31, 2000.

(ii) *Transition rules.* The validity of a withholding certificate (namely, Form W–8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such a withholding certificate remain valid after December 31, 2000. The rule in this paragraph (g)(5)(ii), however, does not apply to extend the validity period of a form that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(5)(ii), a payor may choose not to take advantage of the transition rule in this paragraph (g)(5)(ii) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in §1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

(h) *Identity of customer*—(1) *In general.* For purposes of this section, a broker or barter exchange shall treat the person who appears on the books and records of the broker or barter exchange with respect to property or services as the principals with respect thereto.

(2) *Examples.* The following examples illustrate the rule of this paragraph (h):

Example 1. The records of A, a broker, show an account in the name of ''B''. B is a nominee for C. All reporting with respect to such account shall treat B as the customer.

Example 2. J, an individual, places an order with H, a broker, to sell J's stock that is held by P, a broker/dealer, in an account for J with P designated as nominee for J, and to credit the gross proceeds from the sale to J's account with P. The account is in the name of P, so that H's customer is P.

(i) [Reserved]

(j) *Time and place for filing; cross-reference to penalty.* Forms 1096 and 1099 required under this section shall be filed after the last calendar day of the reporting period elected by the broker or barter exchange and on or before February 28 of the following calendar year with the appropriate Internal Revenue Service Center, the address of which is listed in the instructions for Form 1096. See paragraph (l) of this section for the requirement to file certain returns on magnetic media. For provisions relating to the penalty provided for the failure to file timely a correct information return under section 6045(a), see §301.6721–1 of this chapter. See §301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(k) *Requirement and time for furnishing statement; cross-reference to penalty*—(1) *General requirements.* A broker or barter exchange making a return of information under this section with respect to a transaction shall furnish to the person whose identifying number is (or is required to be) shown on such return a written statement showing the information required by paragraph (c)(5),

(d), (f), or (p) of this section and containing a legend stating that such information is being reported to the Internal Revenue Service. If the return of information is not made on magnetic media, this requirement may be satisfied by furnishing to such person a copy of all Forms 1099 with respect to such person filed with the Internal Revenue Service Center. A statement shall be considered to be furnished to a person to whom a statement is required to be made under this paragraph (k) if it is mailed to such person at the last address of such person known to the broker or barter exchange.

(2) *Time for furnishing statements.* A broker or barter exchange may furnish the statements required by this paragraph (k) yearly, quarterly, monthly, or on any other basis, without regard to the reporting period elected by the broker or barter exchange, provided that all statements required to be furnished under this paragraph (k) for a calendar year shall be furnished on or before January 31 of the following calendar year.

(3) *Cross-reference to penalty.* For provisions for failure to furnish timely a correct payee statement, see § 301.6724–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(l) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011–2 of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 on magnetic media, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (j) of this section.

(m) *Reporting on options transactions.* [Reserved]

(n) *Reporting on bond discounts.* [Reserved]

(o) *Additional reporting by stock transfer agents.* [Reserved]

(p) *Transitional rules*—(1) *Information required from brokers.* In the case of reporting periods ending before January 1, 1984, a broker may show the information required by this paragraph (p)(1) on Form 1099 in lieu of the information required under paragraph (d)(2). As to each customer account for which a return of information is required under this section with respect to sales, the broker must report the name, address, and taxpayer identification number of the customer, the aggregate gross proceeds of all sales of the account during the reporting period for which a return of information is required under this section, and such other information as may be required by Form 1099, in the form, manner, and number of copies required by Form 1099.

(2) *Information required from barter exchanges.* In the case of reporting periods ending before January 1, 1984, a barter exchange may show the information required by this paragraph (p)(2) on Form 1099 in lieu of the information required under paragraph (f)(2). As to each member or client providing property or services in an exchange for which a return of information is required under this section, the barter exchange must report the name, address, and taxpayer identification number of the member or client, the aggregate amount received by the member or client during the reporting period for property or services provided by such member or client in exchanges for which a return of information is required, and such other information as may be required by Form 1099, in the form, manner, and number of copies required by Form 1099.

(q) *Effective date.* This section applies to calendar year 1983 and all succeeding calendar years, and, as to 1983, only to transactions occurring on or after July 1, 1983. With regard to paragraph (l) of this section, see section 6011(e) of the Internal Revenue Code for information returns required to be filed after December 31, 1989, and before January 1, 1997; and see paragraph (l) of this section for information returns required to be filed after December 31, 1996.

(r) *Electronic filing.* Notwithstanding the time prescribed for filing in paragraph (j) of this section, Forms 1096 and 1099 required under this section for reporting periods ending during a calendar year shall, if filed electronically, be filed after the last calendar day of the reporting period elected by the

broker or barter exchange and on or before March 31 of the following calendar year.

[T.D. 7873, 48 FR 10304, Mar. 11, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1.6045–1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 1.6045–1T Returns of information of brokers and barter exchanges (temporary).

(a)–(k) [Reserved]

For further guidance, see §1.6045–1 (a) through (k).

(l) *Use of magnetic media.* For information returns filed after December 31, 1996, see §301.6011–2T of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. For information returns filed prior to January 1, 1997, see §1.6045–1(l)

[T.D. 8683, 61 FR 53060, Oct. 10, 1996]

§ 1.6045–2 Furnishing statement required with respect to certain substitute payments.

(a) *Requirement of furnishing statements*—(1) *In general.* Any broker (as defined in paragraph (a)(4)(ii) of this section) that transfers securities (as defined in §1.6045–1(a)(3)) of a customer (as defined in paragraph (a)(4)(iii) of this section) for use in a short sale and receives on behalf of the customer a substitute payment (as defined in paragraph (a)(4)(i)) shall, except as otherwise provided, furnish a statement to the customer identifying such payment as being a substitute payment.

(2) *Special rule for transfers for broker's own use.* Any broker that borrows securities of a customer for use in a short sale entered into for the broker's own account shall be deemed to have transferred the stock to itself and received on behalf of the customer any substitute payment made with respect to the transferred securities, and shall be required to furnish a statement with respect to such payments in accordance with paragraph (a)(1) of this section.

(3) *Special rule for furnishing statements to individual customers with respect to payments in lieu of dividends*—(i) *In general.* Except as otherwise provided in paragraph (a)(3)(ii) of this section, for taxable years beginning before January 1, 2003, a broker that receives a substitute payment in lieu of a dividend on behalf of a customer who is an individual (''individual customer'') need not furnish a statement to the customer.

(ii) *Reporting for certain dividends.* Any broker that receives on behalf of an individual customer a substitute payment in lieu of—

(A) An exempt-interest dividend (as defined in paragraph (a)(4)(vii) of this section);

(B) A capital gain dividend (as defined in paragraph (a)(4)(vi) of this section);

(C) A distribution treated as a return of capital under section 301(c)(2) or (c)(3); or

(D) An FTC dividend (as defined in paragraph (a)(4)(viii) of this section) shall furnish a statement to the individual customer identifying the payment as being a substitute payment as prescribed by this section, provided that the broker has reason to know not later than the record date of the dividend payment that the payment is a substitute payment in lieu of an exempt-interest dividend, a capital gain dividend, a distribution treated as a return of capital, or an FTC dividend.

(4) *Meaning of terms.* The following definitions apply for purposes of this section.

(i) The term *substitute payment* means a payment in lieu of—

(A) Tax-exempt interest, to the extent that interest has accrued on the obligation for the period during which the short sale is open;

(B) A dividend, the ex-dividend date for which occurs during the period after the transfer of stock for use in a short sale, and prior to the closing of the short sale; or

(C) Any other item specified in a rule-related notice published in the FEDERAL REGISTER (provided that such items shall be subject to the rules of this section only subsequent to the time of such publication).

For purposes of this section original issue discount accruing on an obligation (the interest upon which is exempt from tax under section 103) for the period during which the short sale is open

shall be deemed a payment in lieu of tax-exempt interest.

(ii) The term *broker* means both a person described in § 1.6045–1(a)(1) and a person that, in the ordinary course of a trade or business during the calendar year, loans securities owned by others.

(iii) The term *customer* means, with respect to a transfer of securities for use in a short sale, the person that is the record owner of the securities so transferred.

(iv) The term *dividend* means a dividend (as defined in section 316) or a distribution that is treated as a return of capital under section 301(c)(2) or (c)(3).

(v) The term *tax-exempt interest* means interest to which the exception in section 6049 (b)(2)(B) applies.

(vi) The term *capital gain dividend* means a capital gain dividend as defined in section 852(b)(3)(C) or section 857(b)(3)(C).

(vii) The term *exempt-interest dividend* means an exempt-interest dividend as defined in section 852(b)(5)(A).

(viii) The term *FTC dividend* means a dividend with respect to which the recipient is entitled to claim a foreign tax credit under section 901 (but not by virtue of taxes deemed paid under section 902 or 960).

(5) *Examples*. The following examples illustrate the definition of a substitute payment in lieu of tax-exempt interest found in paragraph (a)(4)(i)(A) of this section.

Example 1. On September 1, 1984, L, a broker, borrows 200 State Q Bonds (the interest upon which is exempt from tax under section 103) held in street name for customer R and transfers the bonds to W for use in a short sale. The bonds each have a face value of $100 and bear 12% stated annual interest paid semiannually on January 1 and July 1 of each year. The bonds were not issued with original issue discount. On November 1, 1984, W closes the short sale and returns State Q Bonds to L. On January 1, 1985, L receives a $1200 interest payment (6%×$100×200 bonds =$1200) from State Q with respect to R's bonds. Four hundred dollars (2 months the bonds were on loan/6 months in the interest period =⅓×$1200=$400) of the interest payment represents accrued interest on the obligations for the period during which the short sale was open and is a substitute payment in lieu of tax-exempt interest within the meaning of paragraph (a)(4)(i)(A) of this section. L must furnish a statement under paragraph (a) of this section to R for calendar year 1985 with respect to the $400 substitute payment.

Example 2. Assume the same facts as in Example (1), except that W closes the short sale on February 1, 1985. On January 1, 1985, L receives a $1200 payment from W with respect to R's bonds. Eight hundred dollars (4 months the bonds were on loan prior to January 1, 1985/6 months in the interest period =⅔×$1200=$800) of the payment represents accrued interest on the obligation for the period during which the short sale was open and is a substitute payment in lieu of tax-exempt interest. On July 1, 1985, L receives a $1200 payment from State Q. Two hundred dollars (1 month the bonds were on loan after December 31, 1984/6 months in the interest period =⅙×$1200=$200) of the payment represents accrued interest on the obligation for the period during which the short sale was open and is a substitute payment in lieu of the tax-exempt interest. Because both payments are received by L in 1985, L must furnish a statement under paragraph (a) of this section to R for that year with respect to both payments.

(b) *Exceptions*—(1) *Minimal payments*. No statement is required to be furnished under section 6045(d) or this section to any customer if the aggregate amount of the substitute payments received by a broker on behalf of the customer during a calendar year for which a statement must be furnished is less than $10.

(2) *Exempt recipients*—(i) *In general*. A statement shall not be required to be furnished with respect to substitute payments made to a broker on behalf of—

(A) An organization exempt from taxation under section 501(a);

(B) An individual retirement plan;

(C) The United States, a possession of the United States, or an instrumentality or a political subdivision or a wholly-owned agency of the foregoing;

(D) A State, the District of Columbia, or a political subdivision or a wholly-owned agency or instrumentality of either of the foregoing;

(E) A foreign government or a political subdivision thereof;

(F) An international organization; or

(G) A foreign central bank of issue, as defined in § 1.6049–4(c)(1)(ii)(H), or the Bank for International Settlements.

(ii) *Determination of whether a person is described in paragraph (b)(2)(i) of this section*. The determination of whether a person is described in paragraph (b)(2)(i) of this section shall be made in

the manner provided in § 1.6045–1(c)(3)(i)(B).

(3) *Exempt foreign persons.* A statement shall not be required to be furnished with respect to substitute payments made to a broker on behalf of a person that is an exempt foreign person as described in § 1.6045–1(g)

(c) *Form of statement.* A broker shall furnish the statement required by paragraph (a) of this section on Form 1099. The statement must show the aggregate dollar amount of all substitute payments received by the broker on behalf of a customer (for which the broker is required to furnish a statement) during a calendar year, and such other information as may be required by Form 1099. A statement shall be considered to be furnished to a customer if it is mailed to the customer at the last address of the customer known to the broker.

(d) *Time for furnishing statements.* A broker must furnish the statements required by paragraph (a) of this section for each calendar year. Such statements shall be furnished after April 30th of such calendar year but in no case before the final substitute payment for the calendar year is made, and on or before January 31 of the following calendar year.

(e) *When substitute payment deemed received.* A Broker is deemed to have received a substitute payment on behalf of a customer when the amount is paid or deemed paid to the broker (or as it accrues in the case of original issue discount deemed a payment in lieu of tax-exempt interest).

(f) *Identification of customer and recordkeeping with respect to substitute payments*—(1) *Payments in lieu of tax-exempt interest and exempt-interest dividends.* A broker that receives substitute payments in lieu of tax-exempt interest, exempt-interest dividends, or other items (to the extent specified in a rule-related notice published pursuant to paragraph (a)(4)(i)(C) of this section) on behalf of a customer and is required to furnish a statement under paragraph (a) of this section must determine the identity of the customer whose security was transferred and on whose behalf the broker received such substitute payments by specific identification of the record owner of the security so transferred. A broker must keep adequate records of the determination so made.

(2) *Payments in lieu of dividends other than exempt-interest dividends*—(i) *Requirements and methods.* A broker that receives substitute payments in lieu of dividends, other than exempt-interest dividends, on behalf of a customer and is required to furnish a statement under paragraph (a) of this section must make a determination of the identity of the customer whose stock was transferred and on whose behalf such broker receives substitute payments. Such determination must be made as of the record date with respect to the dividend distribution, and must be made in a consistent manner by the broker in accordance with any of the following methods:

(A) Specific identification of the record owner of the transferred stock;

(B) The method of allocation and selection specified in paragraph (f)(2)(ii) of this section; or

(C) Any other method, with the prior approval of the Commissioner.

A broker must keep adequate records of the determination so made.

(ii) *Method of allocation and selection*—(A) *Allocation to borrowed shares and individual and nonindividual pools.* With respect to each substitute payment in lieu of a dividend received by a broker, the broker must allocate the transferred shares (*i.e.,* the shares giving rise to the substitute payment) among all shares of stock of the same class and issue as the transferred shares which were (*1*) borrowed by the broker, and (*2*) which the broker holds (or has transferred in a transaction described in paragraph (a)(1) of this section) and is authorized by its customers to transfer (including shares of stock of the same class and issue held for the broker's own account) (''loanable shares''). The broker may first allocate the transferred shares to any borrowed shares. Then to the extent that the number of transferred shares exceeds the number of borrowed shares (or if the broker does not allocate to the borrowed shares first), the broker must allocate the transferred shares between two pools, one consisting of the loanable shares of all individual customers (the ''individual pool'') and the other

consisting of the loanable shares of all nonindividual customers (the ''nonindividual pool''). The transferred shares must be allocated to the individual pool in the same proportion that the number of loanable shares held by individual customers bears to the total number of loanable shares available to the broker. Similarly, the transferred shares must be allocated to the nonindividual pool in the same proportion that the number of loanable shares held by nonindividual customers bears to the total number of loanable shares available to the broker.

(B) *Selection of deemed transferred shares within the nonindividual pool.* The broker must select which shares within the nonindividual pool are deemed transferred for use in a short sale (the ''deemed transferred shares''). Selection of deemed transferred shares may be made either by purely random lottery or on a first-in-first-out (''FIFO'') basis.

(C) *Selection of deemed transferred shares within the individual pool.* The broker must select which shares within the individual pool are deemed transferred shares (in the manner described in the preceding paragraph) only with respect to substitute payments as to which a statement is required to be furnished under paragraph (a)(2)(ii) of this section.

(3) *Examples.* The following examples illustrate the identification of customer rules of paragraph (f)(2):

Example 1. A, a broker, holds X corporation common stock (of which there is only a single class) in street name for five customers: C, a corporation; D, a partnership; E, a corporation; F, an individual; and G, a corporation. C owns 100 shares of X stock, D owns 50 shares of X stock, E owns 100 shares of X stock, F owns 50 shares of X stock, and G owns 100 shares of X stock. A is authorized to loan all of the X stock of C, D, E, and F. G, however, has not authorized A to loan its X stocks. A does not hold any X stock in its trading account nor has A borrowed any X stock from another broker. A transfers 150 shares of X stock to H for use in a short sale on July 1, 1985. A dividend of $2 per share is declared with respect to X stock on August 1, 1985, payable to the owners of record as of August 15, 1985 (the ''record'' date). A receives $2 per transferred share as a payment in lieu of a dividend with respect to X stock or a total of $300 on September 15, 1985. H closes the short sale and returns X stock to A on January 2, 1986. A's records specifically identify the owner of each loanable share of stock held in street name. From A's records it is determined that the shares transferred to H consisted of 100 shares owned by C, 25 shares owned by D, and 25 shares owned by F. The substitute payment in lieu of dividends with respect to X stock is therefore attributed to C, D and F based on the actual number of their shares that were transferred to H. Accordingly, C receives $200 (100 shares × $2 per share), and D and F each receive $50 (25 shares each × $2 per share). A must furnish statements identifying the payments as being in lieu of dividends to both C and D, unless they are exempt recipients as defined in paragraph (b)(2) of this section or exempt foreign persons as defined in paragraph (b)(3) of this section. Assuming that A had no reason to know on the record date of the payment that the dividend paid by X is of a type described in paragraphs (a)(3)(ii)(A) through (D) of this section, A need not furnish F with a statement under section 6045(d) because F is an individual. (However, A may be required to furnish F with a statement in accordance with section 6042 and the regulations thereunder. See paragraph (h) of this section.) By recording the ownership of each share transferred to H, A has complied with the identification requirement of paragraph (f)(2) of this section.

Example 2. Assume the same facts as in example (1), except that A's records do not specifically identify the record owner of each share of stock. Rather, all shares of X stock held in street name are pooled together. When A receives the $2 per share payment in lieu of a dividend, A determines the identity of the customers to which the payment relates by the method of allocation and selection prescribed in paragraph (f)(2)(ii) of this section. First, the transferred shares are allocated proportionately between the individual pool and the nonindividual pool. One-sixth of the transferred shares or 25 shares are allocated to the individual pool (50 loanable shares owned by individuals/300 total loanable shares-⅙; ⅙×150 transferred shares=25 shares). Assuming A has no reason to know by the record date of the payment that the payment is in lieu of a dividend of a type described in paragraphs (a)(3)(ii)(A) through (D) of this section, no selection of deemed transferred shares within the individual customer pool is required. (However, A may be required to furnish F with a statement under section 6042 and the regulations thereunder. See paragraph (h) of this section.) Five-sixths of the transferred shares or 125 shares are allocated to the nonindividual pool (250 loanable shares owned by nonindividuals/300 total loanable shares=⅚; ⅚×150 transferred shares=125 shares). A must

select which 125 shares within the nonindividual pool are deemed to have been transferred. Using a purely random lottery, A selects 100 shares identified as being owned by C, and 25 shares identified as being owned by D. Accordingly, A is deemed to have transferred 100 shares and 25 shares owned by C and D respectively, and received substitute payments in lieu of dividends of $200 (100 shares × $2 per share) and $50 (25 shares × $2 per share) on behalf of C and D respectively. A must furnish statements to both C and D identifying such payments as being in lieu of dividends unless they are exempt recipients as defined in paragraph (b)(2) of this section or exempt foreign persons as defined in paragraph (b)(3) of this section. A has complied with the identification requirement of paragraph (f)(2) of this section.

(g) *Reporting by brokers*—(1) *Requirement of reporting.* Any broker required to furnish a statement under paragraph (a) of this section shall report on Form 1096 showing such information as may be required by Form 1096, in the form, manner, and number of copies required by Form 1096. With respect to each customer for which a broker is required to furnish a statement, the broker shall make a return of information on Form 1099, in the form, manner and number of copies required by Form 1099.

(2) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011–2 of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 on magnetic media, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (g)(4) of this section.

(3) *Time and place of filing.* The returns required under this paragraph (g) for any calendar year shall be filed after September 30 of such year, but not before the final substitute payment for the year is received by the broker, and on or before February 28 (March 31 if filed electronically) of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096.

(4) *Cross-reference to penalties.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6045(d) and § 1.6045–2(g)(1), including a failure to file on magnetic media, see § 301.6721–1 of this chapter. For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6045(d) and § 1.6045–2(a), see § 301.6722–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(h) *Coordination with section 6042.* In cases in which reporting is required by both sections 6042 and 6045(d) with respect to the same substitute payment in lieu of a dividend, the provisions of section 6045(d) control, and no report or statement under section 6042 need be made. If reporting is not required under section 6045(d) with respect to a substitute payment in lieu of a dividend, a report under section 6042 must be made if required in accordance with the rules of section 6042 and the regulations thereunder. Thus, if a broker receives a substitute payment in lieu of a dividend on behalf of an individual customer and the broker does not have reason to know by the record date of the payment that the payment is in lieu of a dividend of a type described in paragraphs (a)(3)(ii)(A) through (D) of this section, the broker must report with respect to the substitute payment if required in accordance with section 6042 and the regulations thereunder.

(i) *Effective date.* These regulations apply to substitute payments received by a broker after December 31, 1984. With regard to paragraph (g)(2) of this section, see section 6011(e) of the Internal Revenue Code for information returns required to be filed after December 31, 1989, and before January 1, 1997; and see paragraph (g)(2) of this section for information returns required to be filed after December 31, 1996.

[T.D. 8029, 50 FR 23677, June 5, 1985, as amended by T.D. 8683, 61 FR 53060, Oct. 10, 1996; T.D. 8734, 62 FR 53480, Oct. 14, 1997; T.D. 8770, 63 FR 35519, June 30, 1998; T.D. 8895, 65 FR 50407, Aug. 18, 2000; T.D. 9010, 67 FR 48758, July 26, 2002; T.D. 9103, 68 FR 74848, Dec. 29, 2003]

§ 1.6045–2T Furnishing statement required with respect to certain substitute payments (temporary).

(a)–(g)(1) [Reserved]

For further guidance, see § 1.6045–2 (a) through (g)(1).

(g)(2) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011–2T of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. For information returns filed prior to January 1, 1997, see § 1.6045–2(g)(2).

[T.D. 8683, 62 FR 53060, Oct. 10, 1996]

§ 1.6045–3 Information reporting for an acquisition of control or a substantial change in capital structure.

(a) *In general.* Any broker (as defined in § 1.6045–1(a)(1)) that holds shares on behalf of a customer in a corporation that the broker knows or has reason to know based on readily available information (including, for example, information from a clearing organization or from information published by the Internal Revenue Service (IRS)) has engaged in a transaction described in § 1.6043–4(c) (acquisition of control) or § 1.6043–4(d) (substantial change in capital structure) shall file a return of information with respect to the customer, unless the customer is an exempt recipient as defined in paragraph (b) of this section.

(b) *Exempt recipients.* A broker is not required to file a return of information under this section with respect to the following customers:

(1) Any customer who receives only cash in exchange for its stock in the corporation, which must be reported by the broker pursuant to § 1.6045–1.

(2) Any customer who is an exempt recipient as defined in § 1.6043–4(b)(5) or § 1.6045–1(c)(3)(i).

(c) *Form, manner and time for making information returns.* The return required by paragraph (a) of this section must be on Forms 1096, ''Annual Summary and Transmittal of U.S. Information Returns,'' and 1099–B, ''Proceeds from Broker and Barter Exchange Transactions,'' or on an acceptable substitute statement. Such forms must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(d) *Contents of return.* A separate Form 1099–B must be prepared for each customer. The Form 1099–B will request information with respect to the following and such other information as may be specified in the instructions:

(1) The name, address and taxpayer identification number (TIN) of the customer;

(2) The name of the corporation which engaged in the transaction described in § 1.6043–4(c) or (d);

(3) The number and class of shares in the corporation exchanged by the customer; and

(4) The aggregate amount of cash and the fair market value of any stock or other property provided to the customer in exchange for its stock.

(e) *Furnishing of forms to customers.* The Form 1099–B prepared for each customer must be furnished to the customer on or before January 31 of the year following the calendar year in which the customer receives stock, cash or other property.

(f) *Single Form 1099.* If a broker is required to file a Form 1099-B with respect to a customer under §§ 1.6045–3 and 1.6045–1(c) with respect to the same transaction, the broker may satisfy the requirements of both sections by filing and furnishing one Form 1099–B that contains all the relevant information, as provided in the instructions to Form 1099–B.

(g) *Effective date.* This section applies with respect to any acquisition of control and any substantial change in capital structure occurring after December 5, 2005.

[T.D. 9230, 70 FR 72380, Dec. 5, 2005]

§ 1.6045–4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.

(a) *Requirement of reporting.* Except as otherwise provided in paragraphs (c) and (d) of this section, a real estate reporting person (''reporting person'') must make an information return with respect to a real estate transaction and, under paragraph (m) of this section, must furnish a statement to the transferor. A reporting person may also report with respect to transactions otherwise excepted in paragraphs (c) and (d) of this section. However, if the reporting person so elects, the return must be filed and the statement furnished in accordance with the

provisions of this section. For the definition of a real estate transaction for purposes of these reporting requirements, see paragraph (b) of this section. For rules for determining the reporting person with respect to a real estate transaction, see paragraph (e) of this section.

(b) *Definition of real estate transaction*—(1) *In general.* A transaction is a ''real estate transaction'' under this section if the transaction consists in whole or in part of the sale or exchange of ''reportable real estate'' (as defined in paragraph (b)(2) of this section) for money, indebtedness, property other than money, or services. The term ''sale or exchange'' shall include any transaction properly treated as a sale or exchange for Federal income tax purposes, whether or not the transaction is currently taxable. Thus, for example, a sale or exchange of a principal residence is a real estate transaction under this section even though the transferor is entitled to defer recognition under section 1034 (relating to rollover of gain on sale of principal residence), or the transferor is entitled to the special one-time exclusion of gain from the sale of a principal residence provided by section 121 to certain persons who have attained age 55.

(2) *Definition of reportable real estate.* Except as otherwise provided in paragraph (c)(2) of this section, the term ''reportable real estate'' means any present or future ownership interest in—

(i) Land (whether improved or unimproved), including air space;

(ii) Any inherently permanent structure, including any residential, commercial or industrial building;

(iii) Any condominium unit, including appurtenant fixtures and common elements (including land); or

(iv) Any stock in a cooperative housing corporation (as defined in section 216).

For purposes of this section, the term ''ownership interest'' includes fee simple interests, life estates, reversions, remainders, and perpetual easements. In addition, the term ''ownership interest'' includes any previously created rights to possession or use for all or a portion of any particular year (*i.e.*, a leasehold, easement, or ''timeshare''), with a remaining term of at least 30 years, including any period for which such rights may be renewed at the option of the holder of the rights, as determined on the date of closing (as defined in paragraph (h)(2)(ii) of this section). Thus, for example, a pre-existing leasehold on a building with an original term of 99 years is an ownership interest in real estate for purposes of this section if it has a remaining term of 35 years as of the date of closing, but not if it has a remaining term of only 10 years as of the date of closing. However, the term ''ownership interest'' does not include an option to acquire otherwise reportable real estate.

(c) *Exception for certain exempt transactions*—(1) *Certain transfers.* No return of information is required with respect to—

(i) A transaction that is not a sale or exchange (such as a gift (including a transaction treated as a gift under section 1041) or bequest, or a financing or refinancing that is not related to the acquisition of reportable real estate), even if the transaction involves reportable real estate, as defined in paragraph (b)(2) of this section;

(ii) A transfer in full or partial satisfaction of any indebtedness secured by the property so transferred including a foreclosure, a transfer in lieu of foreclosure or an abandonment; or

(iii) A transaction (a ''de minimis transfer'') in which it can be determined with certainty that the total consideration (in money, services and property), received or to be received in connection with the transaction is less than $600 in value (determined without regard to any allocation of gross proceeds among multiple transferors under paragraph (i)(5) of this section) as of the date of the closing (as defined in paragraph (h)(2)(ii) of this section), even if the transaction involves reportable real estate. Thus, for example, if a contract for sale of reportable real estate recites total consideration of ''$1.00 plus other valuable consideration,'' the transfer is not a de minimis transfer unless the reporting person can determine that the ''other valuable consideration'' received or to be received is less than $599 in value as measured on the date of closing.

(2) *Certain property*. Notwithstanding the provisions of paragraph (b)(2) of this section, no return of information is required with respect to a sale or exchange of an interest in any of the following property—provided the sale or exchange of such property is not related to the sale or exchange of reportable real estate—

(i) An interest in surface or subsurface natural resources (*i.e.*, timber, water, ores and other natural deposits) or crops, whether or not such natural resources or crops are severed from the land;

(ii) A burial plot or vault; or

(iii) A manufactured structure used as a dwelling that is manufactured and assembled at a location different from that where it is used, but only if such structure is not affixed, at the date of closing (as defined in paragraph (h)(2)(ii) of this section), to a foundation. Thus, a transfer of an unaffixed mobile home that is unrelated to the sale or exchange of reportable real estate is excepted from the reporting requirements of this section.

(d) *Exception for certain exempt transferors*—(1) *General rule*. No return of information is required with respect to a transferor that is a corporation under section 7701(a)(3) or section 7704(a) or is considered under paragraph (d)(2) of this section to be—

(i) A corporation;

(ii) A governmental unit; or

(iii) An exempt volume transferor.

In the case of a real estate transaction with respect to which there is one or more exempt transferor(s) and one or more non-exempt transferor(s), the reporting person is required to report with respect to any non-exempt transferor. The special rule for allocation of gross proceeds, as provided in paragraph (i)(5) of this section, applies to such a transaction.

(2) *Treatment as exempt transferor*. Absent actual knowledge to the contrary, a reporting person may treat a transferor as—

(i) A corporation if—

(A) The name of the transferor contains an unambiguous expression of corporate status, such as Incorporated, Inc., Corporation, Corp., or P.C. (but not Company or Co.);

(B) The name of the transferor contains the term ''insurance company,'' ''reinsurance company,'' or ''assurance company''; or

(C) The transfer or loan documents clearly indicate the corporate status of the transferor;

(ii) A governmental unit if the transferor is—

(A) The United States or a state, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; or

(B) A foreign government, a political subdivision thereof, an international organization, as defined in section 7701(a)(18), or any wholly-owned agency or instrumentality of the foregoing; or

(iii) An exempt volume transferor if, and only if, the reporting person receives a certification of exempt status under paragraph (d)(3) of this section.

(3) *Certification of exempt status*—(i) *In general*. A certification of exempt status must contain—

(A) The name, address, and taxpayer identification number of the transferor (the address must be that of the permanent residence (in the case of an individual), that of the principal office (in the case of a corporation or partnership), or that of the permanent residence or principal office of any fiduciary (in the case of a trust or estate));

(B) Sufficient information to identify any otherwise reportable real estate not reported by virtue of the exempt status of the transferor; and

(C) A declaration that the transferor has sold or exchanged during either of the prior two calendar years, or previously sold or exchanged during the current calendar year, or, as of the date of closing (as defined in paragraph (h)(2)(ii) of this section), reasonably expects to sell or exchange during the current calendar year at least 25 separate items of reportable real estate (as defined in paragraph (b)(2) of this section) to at least 25 separate transferees, and that each such item, at the date of closing of the sale of such item was or will be held primarily for sale or resale to customers in the ordinary

course of a trade or business. For example, the declaration may be worded as follows:

[Insert name of transferor]

[check one or more]:

(1) ____ has sold or exchanged during either of the prior two calendar years,

(2) ____ previously sold or exchanged during the current calendar year,

(3) ____ on the date of closing expects to sell or exchange during the current calendar year,

at least 25 separate items of reportable real estate to at least 25 separate transferees and each such item, at the date of closing of such item was or will be held primarily for sale or resale to customers in the ordinary course of a trade or business.

(ii) *Additional requirements*. A certification of exempt status must be—

(A) Signed under penalties of perjury by the transferor or any person who is authorized to sign a declaration under penalties of perjury in behalf of the transferor as described in section 6061 and the regulations thereunder;

(B) Received by the reporting person no later than the time of closing; and

(C) Retained by the reporting person for four years following the close of the calendar year in which the date of closing (as determined under paragraph (h)(2)(ii) of this section) occurs.

(iii) *Reporting person may accept or disregard certification*. A reporting person may solicit or merely accept a certification of exempt status. Moreover, notwithstanding a transferor's furnishing of such certification, a reporting person may disregard the certification and, instead, report with respect to the transaction. See paragraph (a) of this section for the requirement that such elective reporting must be in compliance with the provisions of this section.

(e) *Person required to report*—(1) *In general*. Although there may be other persons involved in a real estate transaction, only the reporting person is required to report with respect to any real estate transaction. Except as provided in a designation agreement under paragraph (e)(5) of this section, the reporting person with respect to a real estate transaction is—

(i) The person responsible for closing the transaction, as defined in paragraph (e)(3) of this section; or

(ii) If there is no person responsible for closing the transaction, the person determined to be the reporting person under paragraph (e)(4) of this section.

A person may be the reporting person with respect to a transaction whether or not such person performs or is licensed to perform real estate brokerage services for a commission or fee.

(2) *Employees, agents, and partners*. For purposes of this paragraph (e), if an employee, agent, or partner (other than an employee, agent, or partner of the transferor or the transferee) acting within the scope of such person's employment, agency, or partnership participates in a real estate transaction—

(i) Such participation shall be attributed to such person's employer, principal, or partnership; and

(ii) Only the employer, principal, or partnership (and not such person) may be the reporting person with respect to such transaction as a result of such participation.

However, the participation of a person described in paragraph (e)(3)(i) of this section (*i.e.*, a person listed on the Uniform Settlement Statement as the settlement agent) acting as an agent of another is not attributed to the principal.

(3) *Person responsible for closing the transaction*—(i) *Uniform Settlement Statement used*. If a Uniform Settlement Statement prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. 2601 *et seq*. (a ''Uniform Settlement Statement''), is used with respect to the real estate transaction and a person is listed as settlement agent on the statement, such person is the person responsible for closing the transaction. For purposes of this section, a Uniform Settlement Statement shall include any amendments or variations thereto, or substitutions therefore that may hereafter be prescribed under RESPA, provided that any such amended, varied, or substituted form requires disclosure of the parties to the transaction, the application of the proceeds of the transaction, and the identity of the settlement agent or other person responsible for preparing the form.

(ii) *Other closing statement used*. If a Uniform Settlement Statement is not

used, or if a Uniform Settlement Statement is used, but no person is listed as settlement agent, the person responsible for closing the transaction is the person who prepares a closing statement presented to the transferor and transferee at, or in connection with, the closing of the real estate transaction. For purposes of this section, a closing statement is any closing statement, settlement statement (including a Uniform Settlement Statement), or other written document that identifies the transferor and transferee, reasonably identifies the transferred real estate, and describes the manner in which the proceeds payable to the transferor are to be (or were) disbursed at, or in connection with, the closing.

(iii) *No closing statement used or multiple closing statements used.* If no closing statement is used or multiple closing statements are used, the person responsible for closing the transaction is the first-listed of the persons that participate in the transaction as—

(A) The attorney for the transferee who is present at the occasion of the delivery of either the transferee's note or a significant portion of the cash proceeds to the transferor, or who prepares or reviews the preparation of the document(s) transferring legal or equitable ownership of the real estate;

(B) The attorney for the transferor who is present at the occasion of the delivery of either the transferee's note or a significant portion of the cash proceeds to the transferor, or who prepares or reviews the preparation of the document(s) transferring legal or equitable ownership of the real estate; or

(C) The disbursing title or escrow company that is most significant in terms of gross proceeds disbursed.

If more than one attorney would be the person responsible for closing the transaction under the preceding sentence, the person among such attorneys who is considered responsible for closing the transaction under this paragraph (e)(3)(iii) is the person whose involvement in the transaction is most significant.

(4) *Determination of the real estate reporting person in the absence of a person responsible for closing the transaction.* If no person is responsible for closing the transaction (within the meaning of paragraph (e)(3) of this section), the reporting person with respect to the real estate transaction is the person first-listed below of the persons that participate in the transaction as—

(i) The mortgage lender (as defined in paragraph (e)(6)(i) of this section);

(ii) The transferor's broker (as defined in paragraph (e)(6)(ii) of this section);

(iii) The transferee's broker (as defined in paragraph (e)(6)(iii) of this section); or

(iv) The transferee (as defined in paragraph (e)(6)(iv) of this section).

(5) *Designation agreement*—(i) *In general.* If a written designation agreement executed at or prior to the time of closing designates one of the persons described in paragraph (e)(5)(ii) of this section as the reporting person with respect to the transaction and the designated person is a party to the agreement, the designated person is the reporting person with respect to the transaction. It is not necessary that all parties to the transaction (or that more than one party) be parties to the agreement.

(ii) *Persons eligible.* A person may be designated as the reporting person under this paragraph (e)(5) only if the person is—

(A) The person responsible for closing the transaction (as defined in paragraph (e)(3) of this section);

(B) A person described in paragraph (e)(3)(iii) (A), (B) or (C) of this section (whether or not such person is responsible for closing the transaction); or

(C) The mortgage lender (as defined in paragraph (e)(6)(i) of this section).

(iii) *Form of designation agreement.* A designation agreement may be in any form that is consistent with the requirements of this paragraph (e)(5), and may be included on a closing statement with respect to the transaction. The designation agreement must, however, include the name and address of the transferor and transferee and the address and any additional information necessary to identify the real estate transferred. The agreement must identify, by name and address, the person designated as the reporting person with respect to the transaction, and all other parties (if any) to the agreement. All parties to the agreement must date

and sign the agreement and must retain the agreement for four years following the close of the calendar year in which the date of closing (as determined under paragraph (h)(2)(ii) of this section) occurs. Upon request by the Internal Revenue Service, or any person involved in the transaction who did not participate in the designation agreement, the agreement must be made available for inspection.

(6) *Meaning of terms*—(i) *Mortgage lender*. For purposes of this paragraph (e), the term ''mortgage lender'' means the person who lends new funds in connection with the transaction, but only if the repayment of such funds is secured in whole or in part by the real estate transferred. If new funds are advanced by more than one person, the mortgage lender is the person who advances the largest amount of new funds. If two or more persons advance equal amounts of new funds and no other person advances a greater amount of new funds, the mortgage lender among the persons advancing such equal amounts is the person with the security interest that is most senior in terms of priority. For purposes of this paragraph (e)(6)(i), any amounts advanced by the transferor are not treated as new funds.

(ii) *Transferor's broker*. For purposes of this paragraph (e), the term ''transferor's broker'' means only the broker that contracts with the transferor and is compensated in connection with the transaction.

(iii) *Transferee's broker*. For purposes of this paragraph (e), the term ''transferee's broker'' means only the broker that participates to a significant extent in the preparation of the transferee's offer to acquire the real estate or that presents such offer to the transferor. If more than one person is so described, the transferee's broker is the person whose participation in the preparation of the transferee's offer to acquire the real estate is most significant or, in the event there is no such person, the person whose participation in the presentation of the offer is most significant.

(iv) *Transferee*. For purposes of this paragraph (e), the term ''transferee'' means the person who acquires the greatest interest in the real estate. If there is no such person, the transferee is the person listed first on the document(s) transferring legal or equitable ownership of the real estate.

(f) *Multiple transferors*—(1) *General rule*. In the case of multiple transferors, each of which transfers an interest in the same reportable real estate, the reporting person shall make a separate information return with respect to each transferor. Paragraph (i)(5) of this section provides rules for the determination of gross proceeds to be reported in the case of multiple transferors.

(2) *Rules for spouses*. Transferors who are husband and wife at the time of closing and hold the reportable real estate as tenants in common, joint tenants, tenants by the entirety, or community property are treated as a single transferor for purposes of paragraphs (f)(1), (h)(1)(i), (i)(5) and (l)(1)(i) of this section, unless the reporting person receives, at or prior to the time of closing, an uncontested allocation of gross proceeds between them. In the case of a husband and wife treated as a single transferor, the reporting person may treat either as the transferor for purposes of paragraphs (h)(1)(i) and (l)(1) of this section, relating to reporting and soliciting taxpayer identification numbers.

(g) *Prescribed form*. Except as otherwise provided in paragraph (k) of this section, the information return required by paragraph (a) of this section shall be made on Form 1099.

(h) *Information required*—(1) *In general*. The following information must be set forth on the Form 1099 required by this section:

(i) The name, address, and taxpayer identification number (TIN) of the transferor (see also paragraph (f)(2) of this section);

(ii) A general description of the real estate transferred (in accordance with paragraph (h)(2)(i) of this section);

(iii) The date of closing (as defined in paragraph (h)(2)(ii) of this section);

(iv) To the extent required by the Form 1099 and its instructions, the entire gross proceeds with respect to the transaction (as determined under the rules of paragraph (i) of this section), and, in the case of multiple transferors, the gross proceeds allocated to the

transferor (as determined under paragraph (i)(5) of this section);

(v) To the extent required by the Form 1099 and its instructions, an indication that the transferor—

(A) Received (or will, or may, receive) property (other than cash and consideration treated as cash in computing gross proceeds) or services as part of the consideration for the transaction,

(B) May receive property (other than cash) or services in satisfaction of an obligation having a stated principal amount, or

(C) May receive, in connection with a contingent payment transaction, an amount of gross proceeds that cannot be determined with certainty using the method described in paragraph (i)(3)(iii) of this section and is therefore not included in gross proceeds under paragraphs (i)(3)(i) and (i)(3)(iii) of this section;

(vi) The real estate reporting person's name, address, and TIN;

(vii) [Reserved]; and

(viii) Any other information required by the Form 1099 or its instructions.

(2) *Meaning of terms*—(i) *General description of the real estate transferred.* A general description of the real estate transferred includes the complete address of the property. If the address would not sufficiently identify the property, a general description of the real estate also includes a legal description (e.g., section, lot, and block) of the property.

(ii) *Date of closing.* In the case of a real estate transaction with respect to which a Uniform Settlement Statement is used, the date of closing shall be the date (if any) properly described as the ''Settlement Date'' on such statement. In all other cases, the date of closing shall be the earlier of the date on which title is transferred or the date on which the economic burdens and benefits of ownership of the real estate shift from the transferor to the transferee.

(i) *Gross proceeds*—(1) *In general.* Except as otherwise provided in this paragraph (i), the term ''gross proceeds'' means the total cash received or to be received by or on behalf of the transferor in connection with the real estate transaction. For purposes of this paragraph (i), the following amounts are treated as cash received or to be received by or on behalf of the transferor in connection with the real estate transaction:

(i) The stated principal amount of any obligation to pay cash to or for the benefit of the transferor in the future (including any obligation having a stated principal amount that may be satisfied by the delivery of property (other than cash) or services);

(ii) The amount of any liability of the transferor assumed by the transferee as part of the consideration for the transfer or of any liability to which the real estate acquired is subject (whether or not the transferor is personally liable for the debt); and

(iii) In the case of a contingent payment transaction, as defined in paragraph (i)(3)(ii) of this section, the maximum determinable proceeds, as defined in paragraph (i)(3)(iii) of this section.

Gross proceeds does not include the value of any property (other than cash and consideration treated as cash) or services received by, or on behalf of, the transferor in connection with the real estate transaction. See paragraph (h)(1)(v) of this section for the information that must be included on the Form 1099 required by this section in cases in which the transferor receives (or will, or may, receive) property (other than cash and consideration treated as cash) or services as part of the consideration for the transfer.

(2) *Treatment of sales commissions and similar expenses.* In computing gross proceeds, the total cash received or to be received by or on behalf of the transferor shall not be reduced by expenses borne by the transferor (such as sales commissions, expenses of advertising the real estate, expenses of preparing the deed, and the cost of legal services in connection with the transfer).

(3) *Special rules for contingent payments*—(i) *In general.* If a real estate transaction is a contingent payment transaction, gross proceeds consist of the maximum determinable proceeds, if any.

(ii) *Contingent payment transaction.* For purposes of this section, the term ''contingent payment transaction''

means a real estate transaction with respect to which the receipt, by or on behalf of the transferor, of cash or consideration treated as cash under paragraph (i)(1)(i) of this section is subject to a contingency.

(iii) *Maximum determinable proceeds.* For purposes of this section, the term ''maximum determinable proceeds'' means the gross proceeds determined by assuming that all of the contingencies contemplated by the documents available at closing are met or otherwise resolved in a manner that will maximize the gross proceeds. If the maximum amount of gross proceeds cannot be determined with certainty using this method, the maximum determinable proceeds are the greatest amount that can be determined with certainty using this method. See paragraph (h)(1)(v)(C) of this section for the information that must be included on the Form 1099 required by this section in cases in which the maximum amount of gross proceeds cannot, by using the method described in this paragraph (i)(3)(iii), be determined with certainty.

(4) *Uniform Settlement Statement used.* If a Uniform Settlement Statement is used with respect to a real estate transaction involving a transfer of reportable real estate solely for cash and consideration treated as cash in computing gross proceeds, the gross proceeds generally will be the same amount as the contract sales price properly shown on that statement.

(5) *Special rules for multiple transferors*—(i) *General rules.* In the case of multiple transferors (within the meaning of paragraph (f) of this section) each of which transfers an interest in the same reportable real estate, the reporting person must request the transferors to provide an allocation of the gross proceeds among the transferors. The request must be made at or before the time of closing. Neither the request nor the response is required to be in writing. The reporting person must make a reasonable effort to contact all transferors of whom the reporting person has actual knowledge. The reporting person may, however, rely on the unchallenged response of any transferor and need not make additional efforts to contact other transferors after at least one complete allocation (whether or not contained in a single response) is received. Except as otherwise provided in this paragraph (i)(5), the reporting person shall report the gross proceeds in accordance with any allocation received at or before the time of closing. The reporting person may (but is not required to) report the gross proceeds in accordance with any allocation received after the time of closing and before the date (determined without regard to extensions) the Forms 1099 are required to be filed. The reporting person may not report the gross proceeds in accordance with any allocation received on or after the date (determined without regard to extensions) the Forms 1099 are required to be filed. If no gross proceeds are allocated to a transferor because no allocation or an incomplete allocation is received by the reporting person, the reporting person shall report the entire unallocated gross proceeds (if any) on the return of information made with respect to such transferor. If the reporting person receives conflicting allocations from the transferors, the reporting person shall report the entire gross proceeds on each return of information made with respect to the transaction.

(ii) *Rules for spouses.* The reporting person need not request an allocation of gross proceeds if the only transferors are husband and wife at the time of closing. If there are other transferors, the reporting person need only make a reasonable effort to contact either the husband or wife in connection with the request for an allocation. See paragraph (f)(2) of this section for rules that treat a husband and wife as multiple transferors if an uncontested allocation of gross proceeds is received by the reporting person at or prior to the time of closing.

(6) *Multiple asset transactions.* In the case of a real estate transaction reportable under this section that involves the transfer of reportable real estate and other assets, the amount attributable to both the real estate and other assets is treated as the gross proceeds with respect to that real estate transaction. No allocation of gross proceeds is made among the assets.

(j) *Time and place for filing.* A reporting person shall file the information

returns required by this section with respect to a real estate transaction after December 31 of the calendar year that includes the date of closing (as determined under paragraph (h)(2)(ii) of this section) and on or before February 28 (March 31 if filed electronically) of the following calendar year. The returns shall be filed with the appropriate Internal Revenue Service Center at the address listed in the Instructions to Form 1099.

(k) *Use of magnetic media and substitute forms*—(1) *Magnetic media*—(i) *General rule*. A reporting person that is required to make a return of information under this section shall, except as otherwise provided in paragraph (k)(1)(ii) or (iii) of this section, submit the information required by this section on magnetic media (within the meaning of 26 CFR 301.6011–2). Returns on magnetic media shall be made in accordance with 26 CFR 301.6011–2) and applicable revenue procedures.

(ii) *Exception for low-volume filers*. For rules allowing a reporting person to make the information returns required by this section on the prescribed paper Form 1099 if the reporting person is required by this section to file fewer than 250 returns during the calendar year, see section 6011(e) and guidance issued by the Internal Revenue Service thereunder.

(iii) *Undue hardship*. The Commissioner may authorize a reporting person to file information returns on the prescribed paper Form 1099 instead of on magnetic media if undue hardship is shown either on Form 8508, Request for Waiver From Filing Information Returns on Magnetic Media, or on a written statement requesting a waiver for undue hardship filed with the Martinsburg Computing Center, Martinsburg, West Virginia in accordance with applicable revenue procedures.

(2) *Substitute forms*. A reporting person that is described in paragraph (k)(1)(ii) of this section or that receives permission to file returns on the prescribed paper Form 1099 under paragraph (k)(1)(iii) of this section may prepare and use a form that contains provisions identical with those of Form 1099 if the reporting person complies with all applicable revenue procedures relating to substitute Form 1099, including any requirement relating to the use of machine-readable paper forms.

(l) *Requesting taxpayer identification numbers (TINS)*—(1) *Solicitation*—(i) *General requirements*. A reporting person who is required to make an information return with respect to a real estate transaction under this section must solicit a TIN from the transferor at or before the time of closing. The solicitation may be made in person or in a mailing that includes other items. Any person whose TIN is solicited under this paragraph (l) must furnish such TIN to the reporting person and certify that the TIN is correct. See paragraph (f)(2) of this section for rules that treat a husband and wife as a single transferor (and provide for the TIN solicitation of either) in the absence of an allocation of gross proceeds under paragraph (i)(5) of this section.

(ii) *Content of solicitation*. The solicitation shall be made by providing to the person from whom the TIN is solicited a written statement that the person is required by law to furnish a correct TIN to the reporting person, and that the person may be subject to civil or criminal penalties for failing to furnish a correct TIN. For example, the solicitation may be worded as follows:

> You are required by law to provide [insert name of reporting person] with your correct taxpayer identification number. If you do not provide [insert name of reporting person] with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.

The solicitation shall contain space for the name, address, and TIN of the person from whom the TIN is solicited and for the person to certify under penalties of perjury that the TIN furnished is that person's correct TIN. The wording of the certification must be substantially similar to the following: ''Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.'' The requirements of this paragraph (l)(1)(ii) may be met by providing to the transferor a copy of Form W–9. In the case of a real estate transaction for which a Uniform Settlement Statement is used, the requirements of this paragraph (l)(1)(ii) may be met by providing to the transferor a copy of

such statement that is modified to conform to the requirements of this paragraph (l)(1)(ii).

(iii) *Retention requirement.* The solicitation shall be retained by the reporting person for four years following the close of the calendar year that includes the date of closing (as determined under paragraph (h)(2)(ii) of this section). Such solicitation must be made available for inspection upon request by the Internal Revenue Service.

(2) *No TIN provided.* A reporting person that does not receive the transferor's TIN will not be subject to any penalty cross-referenced in paragraph (n) of this section by reason of failure to report such TIN if the reporting person has complied with the requirements of paragraph (l)(1) of this section in good faith (determined with proper regard for a course of conduct and the overall results achieved for the year).

(m) *Furnishing statements to transferors*—(1) *Requirement of furnishing statements.* A reporting person who is required to make a return of information under paragraph (a) of this section shall furnish to the transferor whose TIN is required to be shown on the return a written statement of the information required to be shown on such return. The written statement must bear either the legend shown on the recipient copy of Form 1099 or the following:

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

This requirement may be satisfied by furnishing to the transferor a copy of a completed Form 1099 (or substitute Form 1099 that complies with current revenue procedures). In the case of a real estate transaction for which a Uniform Settlement Statement is used, this requirement also may be satisfied by furnishing to the transferor a copy of a completed statement that is modified to comply with the requirements of this paragraph (m), and by designating on the Uniform Settlement Statement the items of information (such as gross proceeds or allocated gross proceeds) required to be set forth on the Form 1099. For purposes of this paragraph (m), a statement shall be considered furnished to a transferor if it is given to the transferor in person, either at the closing or thereafter, or is mailed to the transferor at the transferor's last known address.

(2) *Time for furnishing statement.* The statement required under this paragraph (m) shall be furnished to the transferor on or after the date of closing and before February 1 of the following calendar year.

(n) *Cross-reference to penalties.* See the following sections regarding penalties for failure to comply with the requirements of section 6045(e) and this section:

(1) Section 6721 for failure to file a correct information return;

(2) Section 6722 for failure to furnish a correct statement to the transferor;

(3) Section 6723 for failure to comply with other information reporting requirements (including the requirement to furnish a TIN);

(4) Section 6724 for definitions and rules relating to waiver and payment; and

(5) Section 7203 for willful failure to supply information (including a taxpayer identification number).

(o) *No separate charge.* A reporting person may not separately charge any person involved in a real estate transaction for complying with any requirements of this section.

(p) *Backup withholding requirements.* [Reserved]

(q) *Federally-subsidized indebtedness.* [Reserved]

(r) *Examples.* The following examples illustrate the application of this section:

Example 1 Sale or exchange. (i) On June 1, 1991, A, an individual, buys a house from B, an individual, for $200,000. The entire $200,000 is financed by B under an ''installment land contract,'' whereby A takes possession and assumes all significant economic benefits and burdens of ownership of the house, and B retains legal title to the property until A fully performs under the contract. On June 1, 1994, A refinances his purchase of the house with Z, a financial institution. The balance owed to B is repaid and B relinquishes title to the house. A retains possession and the benefits and burdens of ownership of the house.

(ii) For federal income tax purposes, the transaction occurring on June 1, 1991 is considered a sale of the house by B, notwithstanding his retention of legal title to the property. B's sale is subject to information reporting under this section. However, the transaction occurring on June 1, 1994 is not a sale or exchange for federal income tax purposes, and notwithstanding the change in legal title upon the deeding over of the property, that transaction is not subject to information reporting under this section.

Example 2 Sale or exchange. On August 10, 1991, C, an individual, accepts an offer from Y, a corporation that acts on behalf of T (C's employer) to facilitate moves of T's transferred employees from one part of the country to another. Under the offer, C transfers his residence to Y for $250,000 by executing a deed to the property in blank and giving Y a power of attorney to dispose of the residence. C also immediately vacates the residence, whereupon Y begins paying all costs associated with the residence and is entitled to all income from the residence, including sales proceeds. On October 1, 1991, Y sells the residence to D and inserts C's name in the deed previously executed by C. Thus, neither Y nor T ever become record owners of the residence. C's transfer of the residence to Y on August 10, 1991 is a sale of reportable real estate and is subject to information reporting under this section; however, the sale on October 1, 1991 is not required to be reported because Y (the transferor in that sale) is a corporation. See paragraph (d) of this section.

Example 3 Definition of ownership interest. E, an individual, owns a perpetual timeshare interest in a residential unit of real property at an oceanfront resort. For consideration, on November 15, 1991, E sells her rights in the property for the period January 1, 1992 through December 31, 1992 to F. The transfer of E's property interest is not the transfer of an ownership interest, as defined in paragraph (b)(2) of this section and therefore is not reportable real estate under paragraph (b)(2) of this section. Accordingly, the transfer is not a real estate transaction under section (b)(1) of this section, and no return of information is required with respect to E's property transfer.

Example 4 Gross proceeds (exchange). (i) G, an individual, agrees to transfer Blackacre, which has a fair market value of $100,000, plus $10,000 cash to H, an individual, in exchange for Whiteacre, which as a fair market value of $120,000 and is encumbered by a $10,000 liability (which is assumed by G). No other liabilities are involved in the transaction. P is the reporting person with respect to both sides of the transaction.

(ii) With respect to the transfer of Blackacre by G to H, P must report gross proceeds of $–0– (even though the exchange agreement may recite total exchange value of $120,000). See paragraph (i)(1) of this section. In addition, (to the extent required by the Form 1099 and its instructions) P must indicate that G will receive property as part of the consideration for the transaction. See paragraph (h)(v)(A) of this section.

(iii) With respect to the transfer of Whiteacre by H to G, P must report gross proceeds of $20,000 (the amount received by H consisting of cash ($10,000) and consideration treated as cash ($10,000) under paragraph (i) of this section). No other amount is reported under paragraph (i)(1) of this section even though the exchange agreement may recite total exchange value of $120,000. In addition, (to the extent required by the Form 1099 and its instructions) P must indicate that H will receive property as part of the consideration for the transaction. See paragraph (h)(v)(A) of this section.

Example 5 Gross proceeds (deferred exchange). [Reserved]

Example 6 Gross proceeds (contingencies). K, an individual, sells an unencumbered apartment building to L for $500,000, payable at closing, plus an amount equal to 2% of gross rents from the apartment building for each of the next 5 years, the contingent payments to be made annually with adequate stated interest. The agreement provides that the maximum amount K may receive (including the downpayment but excluding the interest) is $600,000. Under paragraph (i)(3)(ii) of this section the real estate transaction is a ''contingent payment transaction.'' Under paragraph (i)(3)(iii) of this section, the maximum amount of gross proceeds determined by assuming all contingencies are satisfied is $600,000. Thus, $600,000 is the ''maximum determinable proceeds'' and is the amount reported.

Example 7 Gross proceeds (contingencies). The facts are the same as in example (6), except that the agreement does not provide for adequate stated interest. The result is the same as in example (6).

Example 8 Gross proceeds (contingencies). The facts are same as in example (6), except that no maximum amount is stated in the agreement (or any other document available at closing). Under paragraph (i)(3)(iii) of this section, assuming all contingencies are satisfied, the maximum amount of gross proceeds cannot be determined with certainty. The greatest amount that can be determined with certainty at the time of the closing, assuming all contingencies are satisfied, is $500,000, the cash downpayment. Therefore, $500,000 is the ''maximum determinable proceeds'' under paragraph (i)(3)(iii) of this section and is the amount reported. In addition, (to the extent required by the Form 1099 and its instructions) the reporting person must indicate that the gross proceeds cannot be determined with certainty. See paragraph (h)(1)(iv)(C) of this section.

Example 9 Gross proceeds (contingencies). The facts are the same as in example (8), except that the agreement provides that the minimum amount K will receive (including the downpayment) is $570,000. Thus, under paragraph (i)(3)(iii) of this section, assuming all contingencies are satisfied, the maximum amount of gross proceeds cannot be determined with certainty. The greatest amount that can be determined with certainty at the time of the closing, assuming all contingencies are satisfied, is $570,000, the minimum amount stated in the agreement. Therefore, $570,000 is the ''maximum determinable proceeds'' under paragraph (i)(3)(iii) of this section and is the amount reported. In addition, (to the extent required by the Form 1099 and its instructions) the reporting person must indicate that the gross proceeds cannot be determined with certainty. See paragraph (h)(1)(iv)(C) of this section.

(s) *Effective date.* This section is effective for real estate transactions with dates of closing (as determined under paragraph (h)(2)(ii) of this section) that occur on or after January 1, 1991.

[T.D. 8323, 55 FR 51284, Dec. 13, 1990; 56 FR 559, Jan. 7, 1991; 56 FR 3419, Jan. 30, 1991; T.D. 8895, 65 FR 50407, Aug. 18, 2000]

§ 1.6045–5 Information reporting on payments to attorneys.

(a) *Requirement of reporting*—(1) *In general.* Except as provided in paragraph (c) of this section, every payor engaged in a trade or business who, in the course of that trade or business, makes payments aggregating $600 or more during a calendar year to an attorney in connection with legal services (whether or not the services are performed for the payor) must file an information return for such payments. The information return must be filed on the form and in the manner required by the Commissioner. For the time and place for filing the form, see § 1.6041–6. For definitions of the terms under this section, see paragraph (d) of this section. The requirements of this paragraph (a)(1) apply whether or not—

(i) A portion of a payment is kept by the attorney as compensation for legal services rendered; or

(ii) Other information returns are required with respect to some or all of a payment under other provisions of the Internal Revenue Code and the regulations thereunder.

(2) *Information required.* The information return required under paragraph (a)(1) of this section must include the following information:

(i) The name, address, and taxpayer identifying number (TIN) (as defined in section 7701(a)) of the payor;

(ii) The name, address, and TIN of the payee attorney;

(iii) The amount of the payment or payments (as defined in paragraph (d)(5) of this section); and

(iv) Any other information required by the Commissioner in forms, instructions or publications.

(3) *Requirement to furnish statement.* A person required to file an information return under paragraph (a)(1) of this section must furnish to the attorney a written statement of the information required to be shown on the return. This requirement may be met by furnishing a copy of the return to the attorney. The written statement must be furnished to the attorney on or before January 31 of the year following the calendar year in which the payment was made.

(b) *Special rules*—(1) *Joint or multiple payees*—(i) *Check delivered to one payee attorney.* If more than one attorney is listed as a payee on a check, an information return must be filed under paragraph (a)(1) of this section with respect to the payee attorney to whom the check is delivered.

(ii) *Check delivered to payee nonattorney.* If an attorney is listed as a payee on a check but the check is delivered to a nonattorney who is a payee on the check, an information return must be filed under paragraph (a)(1) of this section with respect to the payee attorney listed on the check. If more than one attorney is listed as a payee on a check but the check is delivered to a nonattorney who is a payee on the check, the information return must be filed with respect to the first-listed payee attorney on the check.

(iii) *Check delivered to nonpayee.* If two or more attorneys are listed as payees on a check, but the check is delivered to a person who is not a payee on the check, an information return must be filed under paragraph (a)(1) of this section with respect to the first-listed payee attorney on the check.

(2) *Attorney required to report payments made to other attorneys.* If an information return is required to be filed with

respect to a payee attorney under paragraph (b)(1) of this section, the attorney with respect to whom the information return is required to be filed (tier-one attorney) must file an information return under this section for any payment that the tier-one attorney makes to other payee attorneys with respect to that check, regardless of whether the tier-one attorney is a payor under paragraph (d)(3) of this section.

(c) *Exceptions.* Notwithstanding paragraphs (a) and (b) of this section, a return of information is not required under section 6045(f) with respect to the following payments:

(1) Payments of wages or other compensation paid to an attorney by the attorney's employer.

(2) Payments of compensation or profits paid or distributed to its partners by a partnership engaged in providing legal services.

(3) Payments of dividends or corporate earnings and profits paid to its shareholders by a corporation engaged in providing legal services.

(4) Payments made by a person to the extent that the person is required to report with respect to the same payee the payments or portions thereof under section 6041(a) and §1.6041–1(a) (or would be required to so report the payments or portions thereof but for the dollar amount limitation contained in section 6041(a) and §1.6041–1(a)).

(5) Payments made to a nonresident alien individual, foreign partnership, or foreign corporation that is not engaged in trade or business within the United States, and does not perform any labor or personal services in the United States, in the taxable year to which the payment relates. For how a payor determines whether a payment is subject to this exception, see §1.6041–4(a)(1).

(6) Payments made to an attorney in the attorney's capacity as the person responsible for closing a transaction within the meaning of §1.6045–4(e)(3) for the sale or exchange or financing of any present or future ownership interest in real estate described in §1.6045–4(b)(2)(i) through (iv).

(7) Payments made to an attorney in the attorney's capacity as a trustee in bankruptcy under Title 11, United States Code.

(d) *Definitions.* The following definitions apply for purposes of this section:

(1) *Attorney* means a person engaged in the practice of law, whether as a sole proprietorship, partnership, corporation, or joint venture.

(2) *Legal services* means all services related to, or in support of, the practice of law performed by, or under the supervision of, an attorney.

(3) *Payor* means a person who makes a payment if that person is an obligor on the payment, or the obligor's insurer or guarantor. For example, a payor includes—

(i) A person who pays a settlement amount to an attorney of a client who has asserted a tort, contract, violation of law, or workers' compensation claim against that person; and

(ii) The person's insurer if the insurer pays the settlement amount to the attorney.

(4) *Payments to an attorney* include payments by check or other method such as cash, wire or electronic transfer. Payment by check to an attorney means a check on which the attorney is named as a sole, joint, or alternative payee. The attorney is the payee on a check written to the attorney's client trust fund. However, the attorney is not a payee when the attorney's name is included on the payee line as ''in care of,'' such as a check written to ''client c/o attorney,'' or if the attorney's name is included on the check in any other manner that does not give the attorney the right to negotiate the check.

(5) *Amount of the payment* means the amount tendered (e.g., the amount of a check) plus the amount required to be withheld from the payment under section 3406(a)(1), because a condition for withholding exists with respect to the attorney for whom an information return is required to be filed under paragraph (a)(1) of this section.

(e) *Attorney to furnish TIN.* A payor that is required to file an information return under this section must solicit a TIN from the attorney at or before the time the payor makes a payment to the attorney. The attorney must furnish the correct TIN to the payor, but is not required to certify the TIN. A payment for which a return of information is required under this section is

subject to backup withholding under section 3406 and the regulations thereunder.

(f) *Examples*. The following examples illustrate the provisions of this section. The examples assume that P is not a payor with respect to A, the attorney, under section 6041. See section 6041 and the regulations thereunder for rules regarding whether P is required under section 6041 to file information returns with respect to C. The examples are as follows:

Example 1. One check—joint payees—taxable to claimant. Employee C, who sues employer P for back wages, is represented by attorney A. P settles the suit for $300,000. The $300,000 represents taxable wages to C under existing legal principles. P writes a settlement check payable jointly to C and A in the amount of $200,000, net of income and FICA tax withholding with respect to C. P delivers the check to A. A retains $100,000 of the payment as compensation for legal services and disburses the remaining $100,000 to C. P must file an information return with respect to A for $200,000 under paragraph (a)(1) of this section. P also must file an information return with respect to C under sections 6041 and 6051, in the amount of $300,000. See §§ 1.6041–1(f) and 1.6041–2.

Example 2. One check—joint payees—excludable to claimant. C, who sues corporation P for damages on account of personal physical injuries, is represented by attorney A. P settles the suit for a $300,000 damage payment that is excludable from C's gross income under section 104(a)(2). P writes a $300,000 settlement check payable jointly to C and A and delivers the check to A. A retains $120,000 of the payment as compensation for legal services and remits the remaining $180,000 to C. P must file an information return with respect to A for $300,000 under paragraph (a)(1) of this section. P does not file an information return with respect to tax-free damages paid to C.

Example 3. Separate checks—taxable to claimant. C, an individual plaintiff in a suit for lost profits against corporation P, is represented by attorney A. P settles the suit for $300,000, all of which will be includible in C's gross income. A requests P to write two checks, one payable to A in the amount of $100,000 as compensation for legal services and the other payable to C in the amount of $200,000. P writes the checks in accordance with A's instructions and delivers both checks to A. P must file an information return with respect to A for $100,000 under paragraph (a)(1) of this section. Pursuant to § 1.6041–1(a) and (f), P must file an information return with respect to C for the $300,000.

Example 4. Check made payable to claimant, but delivered to nonpayee attorney. Corporation P is a defendant in a suit for damages in which C, the plaintiff, has been represented by attorney A throughout the proceeding. P settles the suit for $300,000. Pursuant to a request by A, P writes the $300,000 settlement check payable solely to C and delivers it to A at A's office. P is not required to file an information return under paragraph (a)(1) of this section with respect to A, because there is no payment to an attorney within the meaning of paragraph (d)(4) of this section.

Example 5. Multiple attorneys listed as payees. Corporation P, a defendant, settles a lost profits suit brought by C for $300,000 by issuing a check naming C's attorneys, Y, A, and Z, as payees in that order. Y, A, and Z do not belong to the same law firm. P delivers the payment to A's office. A deposits the check proceeds into a trust account and makes payments by separate checks to Y of $30,000 and to Z of $15,000, as compensation for legal services, pursuant to authorization from C to pay these amounts. A also makes a payment by check of $155,000 to C. A retains $100,000 as compensation for legal services. P must file an information return for $300,000 with respect to A under paragraphs (a)(1) and (b)(1)(i) of this section. A, in turn, must file information returns with respect to Y of $30,000 and to Z of $15,000 under paragraphs (a)(1) and (b)(2) of this section because A is not required to file information returns under section 6041 with respect to A's payments to Y and Z because A's role in making the payments to Y and Z is merely ministerial. See § 1.6041–1(e)(1), (e)(2) and (e)(5) *Example 7* for information reporting requirements with respect to A's payments to Y and Z. As described in *Example 3*, P must also file an information return with respect to C, pursuant to § 1.6041–1(a) and (f).

Example 6. Amount of the payment—attorney does not provide TIN. (i) Corporation P, a defendant, settles a suit brought by C for $300,000 of damages. P will pay the damages by a joint check to C and his attorney, A. A failed to furnish P with A's TIN. P is required to deduct and withhold 28 percent tax from the $300,000 under section 3406(a)(1)(A) and paragraph (e) of this section. P writes the check to C and A as joint payees, in the amount of $216,000. P also must file an information return with respect to A under paragraph (a)(1) of this section in the amount of $300,000, as prescribed in paragraph (d)(5) of this section. If the damages are reportable under section 6041 because they are not excludable from gross income under existing legal principles, and are not subject to any exception under section 6041, P must also file an information return with respect to C pursuant to § 1.6041–1(a) and (f) in the amount of $300,000.

(ii) Rather than paying by joint check to C and A, P will pay the damages by a joint

check to C and F, A's law firm. F failed to furnish its TIN to P. P is required to deduct and withhold 28 percent tax from the $300,000 under section 3406(a)(1)(A) and paragraph (e) of this section. P writes the check to C and F as joint payees, in the amount of $216,000. P also must file an information return with respect to F under paragraph (a)(1) of this section in the amount of $300,000, as prescribed in paragraph (d)(5) of this section. If the damages are reportable under section 6041 because they are not excludable from gross income under existing legal principles, and are not subject to any exception under section 6041, P must also file an information return with respect to C pursuant to §1.6041–1(a) and (f) in the amount of $300,000.

Example 7. Home mortgage lending transaction. (i) Individual P agrees to purchase a house that P will use solely as a residence. P obtains a loan from lender L to finance a portion of the cost of acquiring the house. L disburses loan proceeds of $300,000 to attorney A, who is the settlement agent, by a check naming A as the sole payee. A, in turn, writes checks from the loan proceeds and from other funds provided by P to the persons involved in the purchase of the house, including a check for $800 to attorney B, whom P hired to provide P with legal services relating to the closing.

(ii) P, not L, is the payor of the payment to A under paragraph (d)(3) of this section. P, however, is not required to file an information return with respect to A under paragraph (a)(1) of this section because the payment was not made in the course of P's trade or business. Even if P made the payment in the course of P's trade or business, P would not be required to file an information return under section 6045(f) with respect to A because P is excepted under paragraph (c)(6) of this section.

(iii) A is not required to file an information return under paragraph (a)(1) of this section with respect to the payment to B because A is not the payor as that term is defined under paragraph (d)(3) of this section. A is not required to file an information return under paragraph (b)(2) with respect to the payment to B because A was listed as sole payee on the check it received from P. See section 6041 and §1.6041–1(e) for whether A or L must file information returns under that section. See section 6045(e) and §1.6045–4 for whether A is required to file an information return under that section.

Example 8. Business mortgage lending transaction. The facts are the same as in *Example 7* except that P buys real property that P will use in a trade or business. P, not L, is the payor of the payment to A under paragraph (d)(3) of this section. P, however, is not required to file an information return under section 6045(f) with respect to A because P is excepted under paragraph (c)(6) of this section. A is not required to file an information return under paragraphs (a) or (b)(2) of this section with respect to the payment to B. See section 6041 and §1.6041–1(e) to determine whether P or L must file an information return under that section with respect to the payment to A, and whether P or A must file a return with respect to the payment to B. See section 6045(e) for rules regarding whether A is required to file information returns under that section.

Example 9. Qualified settlement fund. Corporation P agrees to settle for $300,000 a class action lawsuit brought by attorney A on behalf of a claimant class. Pursuant to the settlement agreement and a preliminary order of approval by a court, A establishes a bank account in the name of Q Settlement Fund, which is a qualified settlement fund (QSF) under §1.468B–1. A is also designated by the court as the administrator of the QSF. Corporation P transfers $300,000 by wire in Year 1 to A, who deposits the funds into the Q Settlement Fund. In Year 2, the court approves an award of attorney's fees of $105,000 for A. In Year 2, Q Settlement Fund delivers $105,000 to A. P is required to file an information return under paragraph (a) of this section with respect to A for Year 1 for the $300,000 payment it made to A. The Q Settlement Fund is required to file an information return under section 6041(a) and §1.468B–2(l)(2) with respect to A for Year 2 for the $105,000 payment it made to A.

(g) *Cross reference to penalties.* See the following sections regarding penalties for failure to comply with the requirements of section 6045(f) and this section:

(1) Section 6721 for failure to file a correct information return.

(2) Section 6722 for failure to furnish a correct payee statement.

(3) Section 6723 for failure to comply with other information reporting requirements (including the requirement to furnish a TIN).

(4) Section 7203 for willful failure to supply information (including a TIN).

(h) *Effective date.* The rules in this section apply to payments made on or after January 1, 2007.

[T.D. 9270, 71 FR 39551, July 13, 2006, as amended at 71 FR 47080, Aug. 16, 2006]

§1.6046–1 Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock.

(a) *Officers or directors*—(1) *When liability arises on January 1, 1963.* Each U.S. citizen or resident who is on January 1, 1963, an officer or director of a

foreign corporation shall make a return on Form 959 showing the name, address, and identifying number of each U.S. person who, on January 1, 1963, owns 5 percent or more in value of the outstanding stock of such foreign corporation.

(2) *When liability arises after January 1, 1963*—(i) *Requirement of return.* Each U.S. citizen or resident who is at any time after January 1, 1963, an officer or director of a foreign corporation shall make a return on Form 959 setting forth the information described in subdivision (ii) of this subparagraph with respect to each U.S. person who, during the time such citizen or resident is such an officer or director:

(*a*) Acquires (whether in one or more transactions) outstanding stock of such corporation which has, or which when added to any such stock then owned by him (excluding any stock owned by him on January 1, 1963, if on that date he owned 5 percent or more in value of such stock) has, a value equal to 5 percent or more in value of the outstanding stock of such foreign corporation, or

(*b*) Acquires (whether in one or more transactions) an additional 5 percent or more in value of the outstanding stock of such foreign corporation.

(ii) *Information required to be shown on return.* The return required under subdivision (i) of this subparagraph shall contain the following information:

(*a*) Name, address, and identifying number of each shareholder with respect to whom the return is filed;

(*b*) A statement showing that the shareholder is either described in subdivision (i)(*a*) or (i)(*b*) of this subparagraph; and

(*c*) The date on which the shareholder became a person described in subdivision (i)(*a*) or (i)(*b*) of this subparagraph.

(3) *Application of rules.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. A, a United States citizen, is, on January 1, 1963, a director of M, a foreign corporation. X, on January 1, 1963, is a United States person owning 5 percent in value of the outstanding stock of M Corporation. A must file a return under the provisions of subparagraph (1) of this paragraph.

Example 2. The facts are the same as in Example (1) except that X owns only 2 percent in value of the outstanding stock of M Corporation on January 1, 1963. On July 1, 1963, X acquires 2 percent in value of the outstanding stock of M Corporation and on September 1, 1963, he acquires an additional 2 percent in value of such stock. The July 1, 1963, transaction does not give rise to liability to file a return; however, A must file a return as a result of the September 1, 1963, transaction because X's holdings now exceed 5 percent.

Example 3. The facts are the same as in Example (2) and, on September 15, 1963, X acquires an additional 4 percent in value of the outstanding stock of M Corporation (X's total holdings are now 10 percent). On November 1, 1963, X acquires an additional 2 percent in value of the outstanding stock of M Corporation. The September 15, 1963, transaction does not give rise to liability to file a return since X has not acquired 5 percent in value of the outstanding stock of M Corporation since A last became liable to file a return. However, A must file a return as a result of the November 1, 1963, transaction because X has not acquired an additional 5 percent in value of the outstanding stock of M Corporation.

Example 4. The facts are the same as in examples (2) and (3) and, in addition, B, a United States citizen, becomes an officer of M Corporation on October 1, 1963. B is not required to file a return either as a result of the facts set forth in Example (2) or as a result of the September 15, 1963, transaction described in Example (3). However, B is required to file a return as a result of the November 1, 1963, transaction described in Example (3) because X has acquired an additional 5 percent in value of the outstanding stock of M Corporation while B is an officer or director.

(b) *Returns required of U.S. persons when liability to file arises on January 1, 1963.* Each U.S. person who, on January 1, 1963, owns 5 percent or more in value of the outstanding stock of a foreign corporation, shall make a return on Form 959 with respect to such foreign corporation setting forth the following information:

(1) The name, address, and identifying number of the shareholder (or shareholders) filing the return, and the internal revenue district in which such shareholder filed his most recent United States income tax return;

(2) The name, business address, and employer identification number, if any, of the foreign corporation, the name of the country under the laws of which it is incorporated, and the name of the country in which is located its principal place of business;

(3) The date of organization and, if any, of each reorganization of the foreign corporation if such reorganization occurred on or after January 1, 1960, while the shareholder owned 5 percent or more in value of the outstanding stock of such corporation;

(4) The name and address of the foreign corporation's statutory or resident agent in the country of incorporation;

(5) The name, address, and identifying number of any branch office or agent of the foreign corporation located in the United States;

(6) If the foreign corporation has filed a United States income tax return, or participated in the filing of a consolidated return, for any of its last three calendar or fiscal years immediately preceding January 1, 1963, state each year for which a return was filed (including, in the case of a consolidated return, the name of the corporation filing such return), the type of form used, the internal revenue office to which it was sent, and the amount of tax, if any, paid;

(7) The name and address of the person (or persons) having custody of the books of account and records of the foreign corporation, and the location of such books and records if different from such address;

(8) The names, addresses, and identifying numbers of all United States persons who are principal officers (for example, president, vice president, secretary, treasurer, and comptroller) or members of the board of directors of the foreign corporation as of January 1, 1963;

(9) A complete description of the principal business activities in which the foreign corporation is actually engaged and, if the foreign corporation is a member of a group constituting a chain of ownership with respect to each unit of which the shareholder owns 5 percent or more in value of the outstanding stock, a chart showing the foreign corporation's position in the chain of ownership and the percentages of ownership;

(10) The following information prepared in accordance with generally accepted accounting principles and in such detail as is customary for the corporation's accounting records:

(i) The corporation's profit and loss statement for the most recent complete annual accounting period; and

(ii) The corporation's balance sheet as of the end of the most recent complete annual accounting period;

(11) A statement showing as of January 1, 1963, the amount and type of any indebtedness of the foreign corporation:

(i) To any United States person owning 5 percent or more in value of its stock, or

(ii) To any other foreign corporation owning 5 percent or more in value of the outstanding stock of the foreign corporation with respect to which the return is filed provided that the shareholder filing the return owns 5 percent or more in value of the outstanding stock of such other foreign corporation,

together with the name, address, and identifying number, if any, of each such shareholder or entity;

(12) A statement, as of January 1, 1963, showing the name, address, and identifying number, if any, of each person who is, on January 1, 1963, a subscriber to the stock of the foreign corporation, and the number of shares subscribed to by each;

(13) A statement showing the number of shares of each class of stock of the foreign corporation owned by each shareholder filing the return and:

(i) If such stock was acquired after December 31, 1953, the dates of acquisition, the amounts paid or value given therefor, the method of acquisition, i.e., by original issue, purchase on open market, direct purchase, gift, inheritance, etc., and from whom acquired; or

(ii) If such stock was acquired before Janaury 1, 1954, a statement that such stock was acquired before such date, and the value at which such stock is carried on the books of such shareholder;

(14) A statement showing as of January 1, 1963, the name, address, and identifying number of each United States person who owns 5 percent or more in value of the outstanding stock of the foreign corporation, the classes of stock held, the number of shares of each class held, including the name, address, and identifying number, if

any, of each actual owner if such person is different from the shareholder of record and a statement of the nature and amount of the interests of each such actual owner; and

(15) The total number of shares of each class of outstanding stock of the foreign corporation (or other data indicating the shareholder's percentage of ownership).

(c) *Returns required of U.S. persons when liability to file arises after January 1, 1963*—(1) *U.S. persons required to file.* A return on Form 959, containing the information required by subparagraph (3) of this paragraph, shall be made by each U.S. person when at any time after January 1, 1963:

(i) Such person acquires (whether in one or more transactions) outstanding stock of such foreign corporation which has, or which when added to any such stock then owned by him (excluding any stock owned by him on January 1, 1963, if on that date he owned 5 percent or more in value of such stock) has, a value equal to 5 percent or more in value of the outstanding stock of such foreign corporation, or

(ii) Such person, having already acquired the interest referred to in paragraph (b) of this section or in subdivision (i) of this subparagraph—

(*a*) Acquires (whether in one or more transactions) an additional 5 percent or more in value of the outstanding stock of such foreign corporation,

(*b*) Owns 5 percent or more in value of the outstanding stock of such foreign corporation when such foreign corporation is reorganized (as defined in paragraph (f)), or

(*c*) Disposes of sufficient stock in such foreign corporation to reduce his interest to less than 5 percent in value of the outstanding stock of such foreign corporation.

The provisions of this subparagraph may be illustrated by the following examples:

Example 1. On January 15, 1963, A, a United States person, acquires 5 percent in value of the outstanding stock of M, a foreign corporation. A must file a return under the provisions of this subparagraph.

Example 2. On January 1, 1963, B, a United States person, owns 2 percent in value of the outstanding stock of M, a foreign corporation. B is not required to file a return under the provisions of this section because he does not own 5 percent or more in value of the outstanding stock of M Corporation. On February 1, 1963, B acquires an additional 3 percent in value of the outstanding stock of M Corporation. B must file a return under the provisions of this subparagraph.

Example 3. On January 1, 1963, C, a United States person, owns 6 percent in value of the outstanding stock of M, a foreign corporation. C must file a return under the provisions of paragraph (b) of this section. On February 1, 1963, C acquires an additional 2 percent in value of the outstanding stock of M Corporation in a transaction not involving a reorganization. C is not required to file a return under the provisions of this subparagraph.

Example 4. The facts are the same as in Example (3) except that, in addition, on April 1, 1963, C acquires 2 percent in value of the outstanding stock of M Corporation in a transaction not involving a reorganization. (C's total holdings are now 10 percent.) C is not required to file a return under the provisions of this subparagraph because he has not acquired 5 percent or more in value of the outstanding stock of M Corporation since he last became liable to file a return. On May 1, 1963, C acquires 1 percent in value of the outstanding stock of M Corporation. C must file a return under the provisions of this subparagraph.

Example 5. On June 1, 1963, D, a United States person, owns 12 percent in value of the outstanding stock of M, a foreign corporation. Also, on June 1, 1963, M Corporation is reorganized and, as a result of such reorganization, D owns only 6 percent of the outstanding stock of such foreign corporation. D must file a return under the provisions of this subparagraph.

Example 6. The facts are the same as in Example (5) except that, in addition, on November 1, 1970, D donates 2 percent of the outstanding stock of M Corporation to a charity. Since D has disposed of sufficient stock to reduce his interest in M Corporation to less than 5 percent in value of the outstanding stock of such corporation, D must file a return under the provisions of this subparagraph.

(2) *Shareholders who become U.S. persons.* A return on Form 959, containing the information required by subparagraph (3) of this paragraph, shall be made by each person who at any time after Janaury 1, 1963, becomes a U.S. person while owning 5 percent or more in value of the outstanding stock of such foreign corporation.

(3) *Information required to be shown on return*—(i) *In general.* The return on Form 959, required to be filed by persons described in subparagraph (1) or

(2) of this paragraph, shall set forth the same information as is required by the provisions of paragraph (b) of this section except that where such provisions require information with respect to January 1, 1963, such information shall be furnished with respect to the date on which liability arises to file the return required under this paragraph.

(ii) *Additional information*. In addition to the information required under subdivision (i) of this subparagraph, the following information shall also be furnished in the return required under this paragraph:

(*a*) The date on or after January 1, 1963, if any, on which such shareholder (or shareholders) last filed a return under this section with respect to the corporation;

(*b*) If a return is filed by reason of becoming a United States person, the date the shareholder became a United States person;

(*c*) If a return is filed by reason of the disposition of stock, the date and method of such disposition and the person to whom such disposition was made; and

(*d*) If a return is filed by reason of the organization or reorganization of the foreign corporation on or after January 1, 1963, the following information with respect to such organization or reorganization:

(*1*) A statement showing a detailed list of the classes and kinds of assets transferred to the foreign corporation including a description of the assets (such as a list of patents, copyrights, stock, securities, etc.), the fair market value of each asset transferred (and, if such asset is transferred by a United States person, its adjusted basis), the date of transfer, the name, address, and identifying number, if any, of the owner immediately prior to the transfer, and the consideration paid by the foreign corporation for such transfer;

(*2*) A statement showing the assets transferred and the notes or securities issued by the foreign corporation, the name, address, and identifying number, if any, of each person to whom such transfer or issue was made, and the consideration paid to the foreign corporation for such transfer or issue; and

(*3*) An analysis of the changes in the corporation's surplus accounts occurring on or after January 1, 1963.

(iii) *Exclusion of information previously furnished*. In any case where any identical item of information required to be filed under this paragraph by a shareholder with respect to a foreign corporation has previously been furnished by such shareholder in any return made in accordance with the provisions of this section, such shareholder may satisfy the requirements of this paragraph by filing Form 959, identifying such item of information, the date furnished, and stating that it is unchanged.

(d) *Associations, etc*. Returns are required to be filed in accordance with the provisions of this section with respect to any foreign association, foreign joint-stock company, or foreign insurance company, etc., which would be considered to be a corporation under § 301.7701–2 of this chapter (Regulations on Procedure and Administration). Persons who would qualify by the nature of their functions and ownership in such associations, etc., as officers, directors, or shareholders thereof will be treated as such for purposes of this section without regard to their designations under local law.

(e) *Special provisions*—(1) *Return jointly made*. Any two or more persons required under paragraph (a) of this section to make a return with respect to one or more shareholders of the same corporation, or under paragraph (b) or (c) of this section to make a return with respect to the same corporation, may in lieu of making several returns, jointly make one return.

(2) *Separate return for each corporation*. When returns are required with respect to more than one foreign corporation, a separate return must be made for each corporation.

(3) *Use of power of attorney by officers or directors*—(i) *In general*. Any two or more persons required under paragraph (a) of this section to make a return with respect to one or more shareholders of the same corporation may, by means of one or more duly executed powers of attorney, constitute one of their number as attorney in fact for the purpose of making such returns or

for the purpose of making a joint return under subparagraph (1) of this paragraph.

(ii) *Nature of power of attorney*. The power of attorney referred to in subdivision (i) of this subparagraph shall be limited to the making of returns required under paragraph (a) of this section and shall be limited to a single calendar year with respect to which such returns are required.

(iii) *Manner of execution of power of attorney*. The use of technical language in the preparation of the power of attorney referred to in subdivision (i) of this subparagraph is not necessary. Such power of attorney shall be signed by the individual United States citizen or resident required to file a return or returns under paragraph (a) of this section. Such power of attorney must be acknowledged before a notary public or, in lieu thereof, witnessed by two disinterested persons. The notarial seal must be affixed unless such seal is not required under the laws of the state or country wherein such power of attorney is executed.

(iv) *Manner of execution of return under authority of power of attorney*. A return made under authority of one or more powers of attorney referred to in subdivision (i) of this subparagraph shall be signed by the attorney in fact for each principal for which such attorney in fact is acting. A copy of such one or more powers of attorney shall be kept at a convenient and safe location accessible to internal revenue officers, and shall at all times be available for inspection by such officers.

(v) *Effect on penalties*. The fact that a return is made under authority of a power of attorney referred to in subdivision (i) of this subparagraph shall not affect the principal's liability for penalties provided for failure to file a return required under paragraph (a) of this section or for filing a false or fraudulent return.

(4) *Persons excepted from filing returns*—(i) *Return required of officer or director under paragraph (a)(1)*. Notwithstanding paragraph (a)(1) of this section, any U.S. citizen or resident required to make a return under such paragraph with respect to shareholders of a foreign corporation, need not make such return if, on January 1, 1963, three or fewer U.S. persons own 95 percent or more in value of the outstanding stock of such foreign corporation and file a return or returns with respect to such corporation under paragraph (b) of this section.

(ii) *Return required of officer or director under paragraph (a)(2)*. Notwithstanding paragraph (a)(2) of this section, any U.S. citizen or resident required to make a return under such paragraph with respect to a person acquiring stock of a foreign corporation in an acquisition described in subdivision (i)(*a*) or (*b*) of such paragraph need not make such return, if:

(*a*) As a result of such acquisition of stock of such foreign corporation, a U.S. person files a return as a shareholder under paragraph (c)(1) of this section, and

(*b*) Immediately after such acquisition of stock, three or fewer U.S. persons own 95 percent or more in value of the outstanding stock of such foreign corporation.

(iii) *Return required by reason of attribution rules*. Notwithstanding paragraph (b) or (c) of this section, any person required to make a return under such paragraph with respect to a foreign corporation need not make such return, if:

(*a*) Such person does not directly own an interest in the foreign corporation,

(*b*) Such person is required to furnish the information solely by reason of attribution of stock ownership from a U.S. person under paragraph (i) of this section, and

(*c*) The person from whom the stock ownership is attributed furnishes all of the information required under paragraph (b) or (c) of this section of the person to whom such stock ownership is attributed.

(iv) *Return required of officer or director with respect to person described in subdivision (iii)*. Notwithstanding paragraph (a) of this section, any U.S citizen or resident required to make a return under such paragraph with respect to a person exempted under subdivision (iii) of this subparagraph from making a return need not make a return with respect to such person.

(5) *Persons excepted from furnishing items of information.* Any person required to furnish any item of information under paragraph (b) or (c) of this section with respect to a foreign corporation, may, if such item of information is furnished by another person having an equal or greater stock interest (measured in terms of value of such stock) in such foreign corporation, satisfy such requirement by filing a statement with his return on Form 959 indicating that such liability has been satisfied and identifying the return in which such item of information was included.

(f) *Meaning of terms.* For purposes of this section:

(1) *Acquisition.* Stock in a foreign corporation shall be considered acquired when a person has an unqualified right to receive such stock even though such stock is not actually issued. For example, when under the law of a foreign country, all the necessary steps for incorporation are completed but stock in the corporation will not be issued within 30 days, every United States citizen or resident who is an officer or a director of such corporation, provided a United States person has an interest of 5 percent or more in such corporation, and every such United States person shall, within 90 days of the date of incorporation, file the returns required under section 6046 and this section. In the case of a reorganization, new stock may be acquired, depending on the type of reorganization, whether or not any stock certificates are surrendered or exchanged or the designation of such stock is altered.

(2) *Reorganization.* With respect to a foreign corporation, the term ''reorganization'' shall mean not only a transaction described in section 368(a)(1) and the regulations thereunder but also any other transaction or series of transactions which has the same effect.

(3) *U.S. person*—(i) *In general.* For purposes of section 6046 and this section, the term *United States person* has the meaning assigned to it by section 7701(a)(30), except as provided in paragraphs (f)(3)(ii) and (iii) of this section.

(ii) *Special rule for individuals residing in certain possessions.*—(A) With respect to an individual who is a bona fide resident of Puerto Rico, the term *United States person* has the meaning assigned to it by § 1.957–3 except that the rules of § 1.937–2(g)(1) will apply.

(B) With respect to individuals who are bona fide residents of any section 931 possession, as defined in § 1.931–1(c)(1), the term *United States person* has the meaning assigned to it by § 1.957–3.

(iii) *Special rule for certain nonresident aliens.* An individual for whom an election under section 6013(g) or (h) is in effect will, subject to the exceptions contained in paragraph (f)(3)(ii) of this section, be considered a United States person for purposes of section 6046 and this section.

(4) *Applicable Form 959.* The Form 959 which shall be used for purposes of this section is Form 959 (Revised January 1963) or such subsequent revision of such form as may be in use at the time the liability to file a return on Form 959 arises.

(5) *Accounting period and taxable year.* In the case of a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period.

(g) *Method of reporting.* All amounts furnished in returns prescribed under this section shall be expressed in United States currency with a statement of the exchange rates used. All statements required to be submitted on or with returns under this section shall be rendered in the English language. For taxable years ending after December 31, 1994, with respect to returns filed after December 31, 1995, all amounts furnished under paragraph (c) of this section shall be expressed in United States dollars computed and translated in conformity with United States generally accepted accounting principles. Amounts furnished under paragraph (c)(3)(i) of this section shall also be furnished in the foreign corporation's functional currency as required on the form. Information described in paragraphs (b)(10) and (c)(3) of this section shall be submitted in such form or manner as the form shall prescribe. If an individual who is a United States person required to make a return with respect to a foreign corporation under section 6046 is entitled

under a treaty to be treated as a nonresident of the United States, and if the individual claims this treaty benefit, and if there are no other United States persons that are required to furnish information under section 6046 with respect to the foreign corporation, then the individual may satisfy the requirements of paragraphs (b)(10), (11) and (12), (c)(3)(ii)(*d*), and (g) of this section by filing the audited foreign financial statements of the foreign corporation with the individual's return required under section 6046.

(h) *Actual ownership of stock*. If any shareholder, referred to in this section, is not the actual owner of the stock of the foreign corporation, the information required under this section shall be furnished in the name of and by such actual owner. For example, in the case of stock held by a nominee, the information required under this section shall be furnished by the actual owner of such stock.

(i) *Constructive ownership of stock*—(1) *In general*. Stock owned directly or indirectly by or for a foreign corporation or a foreign partnership shall be considered as being owned proportionately by its shareholders or partners. Thus, any United States person who is a member of a nonresident foreign partnership which becomes a shareholder in a foreign corporation shall be considered to be a shareholder in such foreign corporation to the extent of his proportionate share in such partnership.

(2) *Members of family*. An individual shall be considered as owning the stock owned directly or indirectly by or for his brothers and sisters (whether by the whole or half blood), his spouse, his ancestors, and his lineal descendants. However, when stock is treated as owned by an individual under the rule provided in this subparagraph, it shall not be treated as owned by him for the purpose of again applying such rule in order to make another the constructive owner of such stock. The provisions of this subparagraph may be illustrated by the following example:

Example. H, W, and HF are United States citizens. W, wife of H, owns 20 percent of the value of the outstanding stock of X, a foreign corporation. X Corporation owns 90 percent of the value of the outstanding stock of Y Corporation, a foreign corporation. Y Corporation becomes the owner of 50 percent of the value of the outstanding stock of each of two newly organized foreign corporations, M and N. In applying the ''members of family'' rule, H is considered to own 20 percent of the value of the outstanding stock of X Corporation, and 18 percent of the value of the outstanding stock of Y Corporation, and 9 percent of M Corporation and N Corporation. However, HF, the father of H, is not considered to own stock of X, Y, M, or N since his son, H, is not treated as the owner of such stock for purposes of again applying the ''members of family'' rule.

(j) *Time and place for filing return*—(1) *Time for filing*. Any return required by section 6046 and this section shall be filed on or before the 90th day after the date on which a United States citizen, resident, or person becomes liable to file such return under any provision of section 6046(a) and of paragraph (a), (b), or (c) of this section. With respect to returns filed after September 3, 1982, such return shall be filed on or before such later date (if any) as may be authorized by the return form. The Director of the Internal Revenue Service Center where the return is required to be filed is authorized to grant reasonable extensions of time for filing returns under section 6046 and this section in accordance with the applicable provisions of section 6081(a) and § 1.6081–1.

(2) *Place for filing*. Returns required by section 6046 and this section shall be filed with the Internal Revenue Service Center designated in the instructions of the applicable form.

(k) *Penalties*. (1) For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

(2) For civil penalty for failure to file return, or failure to show information required on a return, under this section, see section 6679.

(l) *Effective/applicability date*. Paragraph (f)(3) of this section applies to taxable years ending after April 9, 2008.

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§ 1.6046A–1 Return requirement for United States persons who acquire or dispose of an interest in a foreign partnership, or whose proportional interest in a foreign partnership changes substantially.

(a) *Return requirement*—(1) *General rule*. If a United States person has a reportable event (as defined in paragraph (b)(1) of this section) during the person's tax year, then, except as provided in paragraph (f) of this section, the United States person is required to complete and file Form 8865, ''Return of U.S. Persons With Respect to Certain Foreign Partnerships,'' containing the information described in paragraph (c) of this section.

(2) *Separate return for each partnership*. If a United States person has a reportable event with respect to an interest in more than one foreign partnership, the United States person must file a separate Form 8865 for each foreign partnership.

(b) *Definitions*—(1) *Reportable event*. There are three categories of reportable events under section 6046A: acquisitions, dispositions, and changes in proportional interests.

(i) *Acquisitions*. A United States person that acquires a foreign partnership interest has a reportable event if—

(A) The person did not own a ten-percent or greater direct interest in the partnership and as a result of the acquisition the person owns a ten-percent or greater direct interest in the partnership. For purposes of this paragraph (b)(1)(i)(A), an acquisition includes an increase in a person's direct proportional interest; or

(B) Subject to paragraph (b)(2) of this section, compared to the person's direct interest when the person last had a reportable event, after the acquisition the person's direct interest has increased by at least a ten-percent interest.

(ii) *Dispositions*. A United States person that disposes of a foreign partnership interest has a reportable event if—

(A) The person owned a ten-percent or greater direct interest in the partnership before the disposition and as a result of the disposition the person owns less than a ten-percent direct interest. For purposes of this paragraph (b)(1)(ii)(A), a disposition includes a decrease in a person's direct proportional interest; or

(B) Subject to paragraph (b)(2) of this section, compared to the person's direct interest when the person last had a reportable event, after the disposition the person's direct interest has decreased by at least a ten-percent interest.

(iii) *Changes in proportional interests not otherwise reportable as acquisitions or dispositions under paragraph (b)(1)(i)(A) or (b)(1)(ii)(A) of this section*. A United States person has a reportable event if, subject to paragraph (b)(2) of this section, compared to the person's direct proportional interest the last time the person had a reportable event, the person's direct proportional interest has increased or decreased by at least the equivalent of a ten-percent interest.

(2) *Special rule for foreign partnership interests owned on December 31, 1999*. If a United States person owned a ten-percent or greater direct interest in a foreign partnership on December 31, 1999, then to determine whether the person has a reportable event under paragraph (b)(1)(i)(B), (b)(1)(ii)(B), or (b)(1)(iii) of this section, the comparison should be made to the person's direct interest on December 31, 1999. Once the person has a reportable event after December 31, 1999, future comparisons should be made by reference to the last reportable event.

(3) *Change in a proportional interest*. A partner's proportional interest in a foreign partnership may change for a number of reasons, for example, the change may be caused by changes in other partners' interests resulting from a partner withdrawing from the partnership. A proportional change may also occur by operation of the partnership agreement, for example, if the partnership agreement provides that a partner's interest in profits will change on a set date or when the partnership has earned a specified amount of profits and one of those events occurs.

(4) *Ten-percent interest*. Under section 6046A(d) and this section, a *ten-percent interest* in a foreign partnership, as described in section 6038(e)(3)(C) and the

regulations thereunder, means an interest equal to ten percent of the capital interest in such partnership, an interest equal to ten percent of the profits interest in such partnership, or an interest to which ten percent of the deductions or losses of such partnership are allocated.

(5) *United States person. United States person* means a person described in section 7701(a)(30).

(6) *Foreign partnership. Foreign partnership* means any partnership that is a foreign partnership under sections 7701(a)(2) and (5).

(7) *Examples.* The rules of paragraph (a) of this section and this paragraph (b) are illustrated by the following examples:

Example 1. Acquisition of an indirect interest. FP, a foreign partnership, has two partners, *FC1* and *FC2*, both foreign corporations. *FC1* owns a 40% interest in *FP*, and *FC2* owns a 60% interest in *FP*. No United States person owns an interest in *FP*, either directly, or constructively under section 6038(e)(3)(C) and section 267(c). On January 1, 2001, *US*, a United States person and calendar year taxpayer, acquires by purchase 100% of *FC2's* stock. *US* has acquired an indirect interest of 60% in *FP*. See sections 6038(e)(3)(C) and 267(c)(1). However, *US* is not required to report the January 1, 2001 indirect acquisition under section 6046A. *US* did not own a 10% or greater direct interest in *FP* before the acquisition, and *US* does not own a 10% or greater direct interest as a result of the acquisition. (*US* must, however, comply with the reporting requirements under section 6038 (controlled foreign corporation and controlled foreign partnership reporting) with respect to *FC2* and *FP*.)

Example 2. Acquisition of direct interests. (i) Assume the same facts as *Example 1*. In addition, on June 1, 2001, *US* purchases a 5% direct interest in *FP* from *FC1*. *US* did not own a 10% or greater direct interest in *FP* before the acquisition. After the acquisition, *US* does not own a direct interest of 10% or more. *US* owns a 10% or greater total interest (direct and indirect), but only a 5% direct interest. Therefore, *US* is not required to report the June 1, 2001, acquisition under section 6046A.

(ii) On September 1, 2001, *US* purchases a 7% direct interest in *FP* from *FC1*. The September 1, 2001 acquisition constitutes a reportable event under paragraph (b)(1)(i)(A) of this section. Before the September 1 acquisition, US did not own a 10% or greater direct interest in *FP*. After the September 1 acquisition, *US* owns a 12% direct interest, and therefore, as a result of the September 1 acquisition, *US* now owns a 10% or greater direct interest in *FP*. Consequently, *US* must report its September 1 acquisition under section 6046A on Form 8865 filed with *US's* 2001 income tax return.

(iii) On December 1, 2001, *US* acquires an additional 4% direct interest in *FP* from *FC1*, so that *US's* total direct interest has increased from 12% to 16%. This acquisition does not constitute a reportable event. Compared to *US's* direct interest when *US* last had a reportable event (12% on September 1, 2001), after acquiring the 4% interest *US's* direct interest has not increased by at least a 10% direct interest (i.e., its direct interest increased by only 4%). Therefore, *US* does not have to report the December 1, 2001, acquisition under section 6046A. On April 1, 2002, *FC2* distributes a 6% direct interest in *FP* to *US*. *US* now owns a 22% direct interest in *FP*. Compared to *US's* direct interest when *US* last had a reportable event (12% on September 1, 2001), after the April 1 acquisition *US's* direct interest has increased by at least a 10% interest (12% to 22%). *US* must report the April 1, 2002 acquisition on a Form 8865 attached to *US's* 2002 income tax return.

Example 3. Change in proportional interest resulting from withdrawal of a partner. Assume the same facts as *Example 3*. In addition, on January 5, 2003, *FC2* withdraws entirely from *FP*. As a result, the direct interests of *US* and *FC1* in *FP* each increase by at least the equivalent of 10% interests. Compared to *US's* direct interest the last time *US* had a reportable event (22% on April 1, 2002), *US's* direct interest has increased by at least the equivalent of a ten percent interest. Therefore, *US* has had a reportable event pursuant to paragraph (b)(1)(iii) of this section, and *US* must report the change in its interest resulting from *FC2's* withdrawal from the partnership on *US's* Form 8865 filed with *US's* 2003 tax year income tax return.

Example 4. Change in proportional interest constituting an acquisition. *FP* is a foreign partnership that has no United States persons as direct or constructive partners. *US* is a United States person and a calendar year taxpayer. On January 1, 2001, *US* purchases an 8% direct interest in *FP*. *US* is not required to report this acquisition. US did not own a 10% or greater direct interest in *FP*, and *US* does not own a 10% or greater direct interest as a result of the acquisition. On March 1, 2001, *FC*, a foreign partner of *FP*, withdraws from *FP*, and as result, *US's* direct interest in *FP* increases by a 7% interest. The increase in *US's* direct interest is considered an acquisition of an interest under paragraph (b)(1)(i)(A) of this section. *US* did not own a 10% or greater direct interest in *FP* before *FC* withdrew, and as a result of the increase in *US's* direct interest because of *FC's* withdrawal from *FP*, *US* now owns a 10% or greater direct interest in *FP*. Therefore, *US* must report under section 6046A the increase in *US's* direct interest resulting from the

withdrawal of *FC* from *FP* on Form 8865 filed with *US's* tax return for *US's* 2001 tax year.

(c) *Content of return.* The Form 8865 that must be filed under paragraph (a)(1) of this section must contain the following information in such form and manner and to the extent that Form 8865 and its instructions prescribe—

(1) The name, address, and taxpayer identification number of the United States person required to file the return;

(2) Information about other persons (foreign or domestic) whose interests in the foreign partnership the person reporting under section 6046A is considered to own under section 6038(e)(3)(C) and section 267(c);

(3) Information about all foreign entities that were disregarded as entities separate from their owners under §§ 301.7701–2 and 301.7701–3 of this chapter that were owned by the foreign partnership during the partnership's tax year ending with or within the tax year of the person filing Form 8865 pursuant to section 6046A;

(4) For each reportable event, the date of the event, the type of event (acquisition, disposition, or change in proportional interest), and the United States person's direct percentage interest in the foreign partnership immediately before and immediately after the event;

(5) The fair market value of the interest acquired or disposed of;

(6) Information about partnerships (foreign and domestic) in which the foreign partnership owned a direct interest, or a constructive interest of ten percent or more under sections 267(c)(1) and (5) and the regulations thereunder, during the partnership's tax year ending with or within the tax year of the person filing Form 8865 pursuant to section 6046A; and

(7) Any other information required to be submitted by Form 8865 and its instructions.

(d) *Time and manner for filing returns.* The Form 8865 must be filed with the timely filed (including extensions) income tax return of the United States person for the tax year in which the reportable event occurs. If the United States person is not required to file an income tax return for its tax year in which the reportable event occurs, but is required to file an information return for that year (for example, Form 1065, ''U.S. Partnership Return of Income,'' or Form 990, ''Return of Organization Exempt from Income Tax''), the United States person should attach the Form 8865 to its information return filed for that tax year.

(e) *Duplicate returns.* If required by the instructions to Form 8865, a duplicate Form 8865 (including attachments and schedules) must also be filed.

(f) *Persons excepted from filing return*—(1) *Section 6038B overlap.* If a United States person acquires an interest in a foreign partnership as a result of a section 721 contribution required to be reported under section 6038B, and the person properly reports the contribution under section 6038B, then the United States person is not required to report the acquisition of the partnership interest under section 6046A(a) should it constitute a reportable event under paragraph (b)(1) of this section. The acquisition will still constitute a reportable event for purposes of making future comparisons pursuant to paragraphs (b)(1)(i)(B), (b)(1)(ii)(B) and (b)(1)(iii) of this section. A person that fails to properly report the section 721 contribution under section 6038B and the regulations thereunder and that fails to properly report the acquisition of the partnership interest under section 6046A may be subject to the penalties applicable to a failure to comply with the requirements of section 6038B, as well as the penalties applicable for a failure to comply with the requirements of section 6046A. See paragraph (h) of this section for more information about the penalties for failure to comply with the requirements of section 6046A.

(2) *Trusts relating to state and local government employee retirement plans.* The return requirement of section 6046A does not apply to trusts relating to state and local government employee retirement plans, unless the instructions to Form 8865 provide otherwise.

(3) *Reporting under this section not required of partnerships excluded from the application of subchapter K.* The reporting requirements of this section will not apply to any United States person in respect of an eligible partnership as

described in § 1.761–2(a) in which that United States person is a partner, if such partnership has validly elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in the manner specified in § 1.761–2(b)(2)(i), or is deemed to have elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in accordance with the provisions of § 1.761–2(b)(2)(ii).

(4) *Exclusion for satellite organizations.* The return requirement of section 6046A does not apply to the International Telecommunications Satellite Organization (or a successor organization) or the International Maritime Satellite Organization (or a successor organization).

(g) *Method of reporting.* Except as otherwise provided on Form 8865, or the accompanying instructions, any amounts required to be reported under section 6046A and this section must be expressed in United States dollars, with a statement of the exchange rates used. All statements required on or with Form 8865 pursuant to this section must be in English.

(h) *Penalties for violating section 6046A.* For penalties for violating section 6046A, see sections 6679 and 7203.

(i) *Statute of limitations.* For exceptions to the limitations on assessment in the event of a failure to provide information under section 6046A, see section 6501(c)(8).

(j) *Effective date.* This section applies to reportable events occurring after December 31, 1999. No reporting under section 6046A is required for reportable events occurring on or before December 31, 1999.

[T.D. 8851, 64 FR 72556, Dec. 28, 1999]

§ 1.6046–2 Returns as to foreign corporations which are created or organized, or reorganized, on or after September 15, 1960, and before January 1, 1963.

(a) *Requirement of returns.* In the case of any foreign corporation which is created or organized, or reorganized, on or after September 15, 1960, and before January 1, 1963:

(1) Each United States citizen or resident who was an officer or director of such corporation at any time within 60 days after such creation or organization, or reorganization, and

(2) Each United States shareholder of such corporation by or for whom, at any time within 60 days after such creation or organization, or reorganization, 5 percent or more in value of such corporation's then outstanding stock was owned directly or indirectly (including, in the case of an individual stock owned by members of his family),

shall file a return on Form 959 (Rev. Oct. 1960), United States Information Return With Respect to the Creation or Organization, or Reorganization, of a Foreign Corporation.

(b) *Information required to be shown on return.* The return required by section 6046, prior to its amendment by section 20(b) of the Revenue Act of 1962, and this section shall set forth the following information:

(1) The name and address of the person (or persons) filing the return, and an indication that he is a United States shareholder, officer, or director;

(2) The name and business address of the foreign corporation;

(3) The name of the country under the laws of which the foreign corporation was created or organized, or reorganized;

(4) The name and address of the foreign corporation's statutory or resident agent in the country of incorporation;

(5) The date of the foreign corporation's creation or organization, or reorganization;

(6) A statement of the manner in which the creation or organization, or reorganization, of the foreign corporation was effected;

(7) A complete statement of the reasons for, and the purposes sought to be accomplished by, the creation or organization, or reorganization, of the foreign corporation;

(8) A statement showing the classes and kinds of assets transferred to the foreign corporation in connection with its creation or organization, or reorganization, including a list completely describing each asset or group of assets, its value, date of transfer, and the name and address of person (or persons) owning such asset or group immediately prior to the transfer;

(9) A statement showing the assets transferred and the securities issued by the foreign corporation in its creation or organization or reorganization, as well as the name and address of each person to whom such a transfer or issuance was made;

(10) A statement specifying the amount and type of any indebtedness due from the foreign corporation to each of its shareholders and the name of each such shareholder;

(11) The names and addresses of the shareholders of the foreign corporation at the time of its creation or organization or reorganization, and the classes of stock and number of shares held by each;

(12) The names and addresses of subscribers to the stock of the foreign corporation, and the number of shares subscribed to by each; and

(13) The name and address of the person (or persons) having custody of the books of account and records of the foreign corporation, and the location of such books and records if different from such address.

(c) *Time and place for filing return.* The return required by section 6046, prior to its amendment by section 20(b) of the Revenue Act of 1962, and this section shall be filed with the Internal Revenue Service Center designated in the instructions of the applicable form. Such return shall be filed on or before the 90th day after the date such foreign corporation is created or organized, or reorganized.

[T.D. 6623, 27 FR 11882, Dec. 1, 1962, as amended by T.D. 7322, 39 FR 30932, Aug. 27, 1974]

§ 1.6046–3 Returns as to formation or reorganization of foreign corporations prior to September 15, 1960.

(a) *Requirement of returns.* Every attorney, accountant, fiduciary, bank, trust company, financial institution, or other person, who, on or before September 14, 1960, aids, assists, counsels, or advises in, or with respect to, the formation, organization, or reorganization of any foreign corporation shall file an information return on Form 959 (as in use prior to the October 1960 revision). The return must be filed in every such case regardless of:

(1) The nature of the counsel or advice given, whether for or against the formation, organization, or reorganization of the foreign corporation, or the nature of the aid or assistance rendered, and

(2) The action taken upon the advice or counsel, that is, whether the foreign corporation is actually formed, organized or reorganized.

(b) *Special provisions*—(1) *Employers.* In the case of aid, assistance, counsel, or advice in, or with respect to, the formation, organization, or reorganization of a foreign corporation given by a person in whole or in part through the medium of employees (including, in the case of a corporation, the officers thereof), the return made by the employer must set forth in detail the information required by this section including that which, as an incident to such employment, is within the possession or knowledge or under the control of such employees.

(2) *Employees.* The obligation of an employee (including, in the case of a corporation, the officers thereof) to file a return with respect to any aid, assistance, counsel, or advice in or with respect to the formation, organization, or reorganization of a foreign corporation, given as an incident to his employment, will be satisfied if a return as prescribed by this section is duly filed by the employer. Clerks, stenographers, and other employees rendering aid or assistance solely of a clerical or mechanical character in or with respect to the formation, organization, or reorganization of a foreign corporation are not required to file returns by reason of such services.

(3) *Partners.* In the case of aid, assistance, counsel, or advice in, or with respect to, the formation, organization, or reorganization of a foreign corporation given by one or more members of a partnership in the course of its business, the obligation of each such individual member to file a return will be satisfied if a return as prescribed by this section is duly filed by the partnership executed by all the members of the firm who gave any such aid, assistance, counsel, or advice. If, however, the partnership has been dissolved at the time the return is due, individual returns must be filed by each member of the former partnership who gave any such aid, assistance, counsel, or advice.

(4) *Return jointly made.* If two or more persons aid, assist, counsel, or advise in, or with respect to, the formation, organization, or reorganization of a particular foreign corporation, any two or more of such persons may, in lieu of filing several returns, jointly execute and file one return.

(5) *Separate return for each corporation.* If a person aids, assists, counsels, or advises in, or with respect to, the formation, organization, or reorganization of more than one foreign corporation, a separate return must be filed with respect to each foreign corporation.

(c) *Information required to be shown on return.* The return required by section 6046, prior to its amendment by section 7(a) of the Act of September 14, 1960, and this section shall set forth the following information to the extent the information is within the possession or knowledge, or under the control, of the person filing the return:

(1) The name and address of the person (or persons) to whom, and the person (or persons) for whom, or on whose behalf, the aid, assistance, counsel, or advice was given;

(2) The name and address of the foreign corporation and the country under the laws of which it was formed, organized, or reorganized;

(3) The month and year when the foreign corporation was formed, organized, or reorganized;

(4) A statement of the manner in which the formation, organization, or reorganization of the foreign corporation was effected;

(5) A complete statement of the reasons for, and the purposes sought to be accomplished by, the formation, organization, or reorganization of the foreign corporation;

(6) A statement showing the classes and kinds of assets transferred to the foreign corporation in connection with its formation, organization, or reorganization, including a detailed list of any stock or securities included in such assets, and a statement showing the names and addresses of the persons who were the owners of such assets immediately prior to the transfer;

(7) The names and addresses of the shareholders of the foreign corporation at the time of the completion of its formation, organization, or reorganization, showing the classes of stock and number of shares held by each and, in the case of Forms 959 filed after December 31, 1958, the names and addresses of the subscribers to the stock of the foreign corporation and the number of shares subscribed to by each;

(8) The name and address of the person (or persons) having custody of the books of account and records of the foreign corporation; and

(9) Such other information as is required by the return form.

(d) *Privileged communications.* An attorney-at-law is not required to file a return with respect to any advice given or information obtained through the relationship of attorney and client.

(e) *Time and place for filing return*—(1) *Time for filing.* Returns required by section 6046, prior to its amendment by section 7(a) of the Act of September 14, 1960, and this section shall be filed within 30 days after the first performance of any of the functions referred to in paragraph (a) of this section. If in a particular case, the aid, assistance, counsel, or advice given by any person extends over a period of more than one day, such person, to avoid multiple filing of returns, shall file a return within 30 days after either of the following events:

(i) The formation, organization, or reorganization of the foreign corporation, or

(ii) The termination of his aid, assistance, counsel, or advice in, or with respect to, the formation, organization, or reorganization of the foreign corporation.

(2) *Place for filing.* Returns required by section 6046 of the Internal Revenue Code of 1954 and this section shall be filed with the Internal Revenue Service Center designated in the instructions of the applicable form.

(f) *Penalties.* For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6623, 27 FR 11882, Dec. 1, 1962; T.D. 7322, 39 FR 30932, Aug. 27, 1974]

§ 1.6047–1 Information to be furnished with regard to employee retirement plan covering an owner-employee.

(a) *Trustees and insurance companies*—(1) *Requirement of return.* (i) Every trustee of a trust described in section 401(a) and exempt from tax under section 501(a) which makes payments of amounts described in subparagraph (2) of this paragraph aggregating $10 or more during any calendar year to an individual (or his beneficiary) who was covered, within the meaning of paragraph (a)(2) of § 1.401–10, as an owner-employee under the plan of which such trust is a part shall make a return on Forms 1096 and 1099 for such year showing the name and address of the person to whom paid, the aggregate amount of such payments, specifically identified as an amount to which this paragraph applies, and such other information as is required by the forms. A separate Form 1099 shall be filed with respect to each payee. The term ''owner-employee'' means an owner-employee as defined in section 401(c)(3) and paragraph (d) of § 1.401–10. Any custodial account which satisfies the requirements of section 401(f) shall be treated as a qualified trust and the custodian of such a custodial account must comply with the requirements of this section as if he were the trustee.

(ii) Every issuer of a contract which is treated as an annuity contract under sections 401 through 404 purchased by a trust described in section 401(a) and exempt from tax under section 501(a) or under a plan described in section 403(a) which makes payments of amounts described in subparagraph (2) of this paragraph aggregating $10 or more during any calendar year to an individual (or his beneficiary) who was covered, within the meaning of paragraph (a)(2) of § 1.401–10, as an owner-employee under the plan of which such trust is a part or under which such contract was purchased shall make a return on Forms 1096 and 1099 for such year showing the name and address of the person to whom paid, the aggregate amount of such payments, specifically identified as an amount to which this paragraph applies, and such other information as is required by the form. A separate Form 1099 shall be filed with respect to each payee.

(2) *Amounts subject to this section.* The amounts subject to reporting under subparagraph (1) of this paragraph include all amounts distributed or made available to which section 402(a) (relating to employees' trusts) or section 403(a) (relating to employee annuity plans) applies, whether or not such amounts are includible in gross income and whether or not attributable to contributions made while the individual to whom they relate was an owner-employee. However, amounts subject to reporting do not include any amounts distributed or made available by the trustee of any trust or the issuer of any contract under any plan with respect to which he has not received the notification provided in either subparagraph (3) of this paragraph or paragraph (b) of this section. Amounts distributed or made available under the plan include, for example, amounts received by the individual as loans on contracts purchased under the plan, and payments made to the individual by reason of the surrender of contracts purchased under the plan, whether or not prior to their maturity.

(3) *Notification by trustee.* The trustee of any trust described in section 401(a) and exempt from tax under section 501(a) who receives notification from any owner-employee that contributions have been made to the trust on behalf of that owner-employee as an owner-employee shall notify in writing the issuer of any contract which is treated as an annuity contract under sections 401 through 404 purchased by the trust for the benefit of that owner-employee that such contributions have been made to such trust. Such notification shall be delivered to such issuer at the time such contract is purchased or within 90 days after the notification required by paragraph (b) of this section is received by the trustee, whichever is later. Only one such notification must be made with respect to any contract.

(4) *Record keeping.* Any trustee, insurance company, or other person, which is referred to in subparagraph (1) of this paragraph and which is notified under section 6047(b) that contributions to the trust or under the plan have been made on behalf of an owner-employee shall maintain a record of such notification until all funds of the

trust or under the plan on behalf of the owner-employee have been distributed.

(5) *Inclusion of other payments.* The Form 1099 filed under this section by any person with respect to payments to another person during a calendar year may, at the election of the maker, include other payments made by him to such other person during such year which are required to be reported on Form 1099.

(6) *Time and place for filing.* The return required under this section for any calendar year shall be filed after the close of that year and on or before February 28 (March 31 if filed electronically) of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096. For extensions of time for filing returns under this section, see § 1.6081–1.

(b) *Notification by owner-employee.* Any owner-employee on behalf of whom contributions are made to a trust described in section 401(a) and exempt under section 501(a) or under a plan described in section 403(a) shall notify in writing:

(1) The trustee of such a trust, or

(2) The issuer of any contract which is treated as an annuity contract under sections 401 through 404 under such plan,

that such contributions have been made to such trust or plan. Such notification shall be delivered to such trustee or such issuer during the first calendar year in which such contributions are made or on or before February 28 of the year following such year. Only one such notification must be made with respect to any contract or any trust.

(c) *Penalties.* For civil penalty for failure to file a return required by this section, and for criminal penalty for furnishing fraudulent information under this section, see §§ 301.6652–3 and 301.7207–1 respectively.

(d) *Permission to submit information required by Form 1099 on magnetic tape.* For rules relating to permission to submit the information required by Form 1099 on magnetic tape or other media, see § 1.9101–1.

[T.D. 6677, 28 FR 10147, Sept. 17, 1963, as amended by T.D. 6883, 31 FR 6589, May 3, 1966; T.D. 7551, 43 FR 29292, July 7, 1978; T.D. 8895, 65 FR 50407, Aug. 18, 2000]

§ 1.6049–1 Returns of information as to interest paid in calendar years before 1983 and original issue discount includible in gross income for calendar years before 1983.

(a) *Requirement of reporting*—(1) *In general.* (i) Every person who makes payments of interest (as defined in § 1.6049–2) aggregating $10 or more to any other person during a calendar year before 1983 shall make an information return on Forms 1096 and 1099 for such calendar year showing the aggregate amount of such payments, the name and address of the person to whom paid, the total of such payments for all persons, and such other information as is required by the forms. In the case of interest paid during calendar years beginning with 1963 and continuing until such time as the Commissioner determines that it is feasible to aggregate payments on two or more accounts, insurance contracts, or investment certificates and this subdivision is amended accordingly to provide for reporting on an aggregate basis, the requirement of this subdivision for the filing of Form 1099 will be met if a person making payments of interest to another person on two or more such accounts, insurance contracts, or investment certificates, files a separate Form 1099 with respect to each such account, contract, or certificate on which $10 or more of interest is paid to such other person during the calendar year. In the case of evidences of indebtedness described in section 6049(b)(1)(A), separate Forms 1099 may be filed as provided in the preceding sentence with respect to holdings in different issues. Thus, if a bank pays to a person interest totaling $15 on one account and $20 on a second account, it may file separate Forms 1099 with respect to the payments of $15 and $20. If the interest on the second account totaled $5 instead of $20, no return would be required with respect to the $5.

(ii)(*a*) Every person which is a corporation that has outstanding any

bond, debenture, note, or certificate or other evidence of indebtedness (referred to in this section and § 1.6049–2 as an obligation) in ''registered form'' (as defined in paragraph (d) of § 1.6049–2) issued after May 27, 1969 (other than an obligation issued by a corporation pursuant to a written commitment which was binding on May 27, 1969, and at all times thereafter) and on or before December 31, 1982, as to which there is during any calendar year before 1983 an amount of original issue discount (as defined in § 1.6049–2) aggregating $10 or more includible as interest in the gross income for such calendar year of any holder (determined, if semiannual record date reporting is being used under (*b*)(*1*) of this subdivision, by treating each holder as holding the obligation on every day it was outstanding during the calendar year), shall make an information return on Forms 1096 and 1099–OID for such calendar year showing the following:

(*1*) The name and address of each record holder for whom such aggregate amount of original issue discount is $10 or more and, for calendar years subsequent to 1972, the account, serial, or other identifying number of each obligation for which a return is being made.

(*2*) The aggregate amount of original issue discount includible by each such holder for the period during the calendar year for which the return is made (or, if the aggregation rules of (*b*)(*2*) of this subdivision are being used, that he held the obligations). If however, the semiannual record date reporting rules are being used under (*b*)(*1*) of this subdivision, such aggregate amount shall be determined by treating each such record date holder as if he held each such obligation on every day it was outstanding during the calendar year. For purposes of this section, an obligation shall be considered to be outstanding from the date of original issue (as defined in paragraph (b)(3) of § 1.1232–3). In the case of a time deposit open account arrangement to which paragraph (e)(5) of § 1.1232–3A applies, for example, the amount to be shown under this subdivision (*2*) on the Forms 1096 and 1099–OID is the sum (computed under such paragraph (e)(5)) of the amounts separately computed for each deposit made pursuant to the arrangement.

(*3*) The issue price of the obligation (as defined in paragraph (b)(2) of § 1.1232–3).

(*4*) The stated redemption price of the obligation at maturity (as defined in paragraph (b)(1)(iii) of § 1.1232–3).

(*5*) The ratable monthly portion of original issue discount with respect to the obligation as defined in section 1232(a)(3)(A) (determined without regard to a reduction for a purchase allowance or whether the holder purchased at a premium).

(*6*) The name and address of the person filing the form.

(*7*) Such other information as is required by the form. And,

(*8*) The sum, for all such holders of the aggregate amounts of such original issue discount includible for such calendar year for each such holder.

(*b*) With respect to any obligation (other than an obligation to which paragraph (e) or (f) of § 1.1232–3A applies (relating respectively to deposits in banks and similar financial institutions and to face-amount certificates)), the issuing corporation (or an agent acting on its behalf):

(*1*) Shall be permitted (until this subdivision (*1*) is amended) to prepare a Form 1099–OID only for each person who is a holder of record of the obligation on the semiannual record date (if any) used by the corporation (or agent) for the payment of stated interest or, if there is no such date, the semiannual record dates shall be considered to be June 30, and December 31.

(*2*) Shall be permitted to aggregate all original issue discount with respect to 2 or more obligations of the same issue for which the amounts specified in (*a*)(*2*), (*a*)(*3*), (*a*)(*4*), and (*a*)(*5*) of this subdivision are proportional and, therefore, may file one Form 1099–OID for all such obligations being aggregated, except that for calendar year 1971 this aggregation rule shall apply only where such specified amounts are identical. For an illustration of proportional aggregation, see example (4) in (*d*) of this subdivision.

(*c*) In any case in which any one holder of a particular obligation for the calendar year held such obligation on more than one record date, only one

Form 1099–OID shall be filed for that year with respect to that holder and that obligation. This provision applies only in the case in which any corporation prepares Forms 1099–OID in accordance with the record date reporting rule of (*b*)(*1*) of this subdivision.

(*d*) The requirements of (*a*)(*3*), (*a*)(*4*), and (*a*)(*5*) of this subdivision shall not apply to a time deposit open account arrangement to which paragraph (e)(5) of § 1.1232–3A applies, or to a face-amount certificate to which paragraph (f) of § 1.1232–3A applies.

(*e*) The provisions of this subdivision (ii) may be illustrated by the following examples:

Example 1. On January 1, 1971, a corporation issued a 10-year bond in registered form which pays stated interest to the holder of record on June 30 and December 31. The bond has an issue price (as defined in paragraph (b)(2) of § 1.1232–3) of $7,600, a stated redemption price (as defined in paragraph (b)(1) of § 1.1232–3) at maturity of $10,000, and a ratable monthly portion of original issue discount (as defined in section 1232(a)(3)(A)) of $20. The corporation's books indicate that A was the holder of record on June 30, 1971, and B was the holder on December 31, 1971. Under (*b*)(*1*) of this subdivision, the corporation is permitted to file separate Forms 1099–OID for both A and B showing, on each form, all items required by (*a*) of this subdivision, including the total original issue discount of $240 for the entire calendar year (which includes original issue discount for all holders), the issue price of $7,600, the stated redemption price at maturity of $10,000, and the ratable monthly portion of original issue discount of $20.

Example 2. Assume the facts stated in Example (1), except that A is recorded on the books of the corporation as holding the bond on June 30 and December 31, 1971. The corporation shall complete and file only one Form 1099–OID for A.

Example 3. Assume the facts stated in Example (1), except that the books of the corporation show that A held 2 of the bonds at all times in 1971. The amounts of the items listed in (*a*)(*2*), (*a*)(*3*), (*a*)(*4*), and (*a*)(*5*) of this subdivision are identical for the 2 bonds. Under (*b*)(*2*) of this subdivision, the corporation is permitted to treat the 2 bonds as one for purposes of completing and filing a Form 1099–OID for 1971 and aggregate the amounts being reported.

Example 4. On January 1, 1972, a corporation issued to C 3 bonds in registered form of the same issue with stated redemption prices of $1,000, $5,000, and $10,000. The aggregate amounts of original issue discount for each year, the issue prices, the stated redemption prices, and the monthly portions of original issue discount are the same for each $1,000 of stated redemption price. Thus, all relevant amounts for any one bond are proportional to such amounts for any other bond. Therefore, so long as C holds the bonds the corporation shall be permitted to aggregate on one Form 1099–OID all original issue discount with respect to such obligations in accordance with (*b*)(*2*) of this subdivision.

Example 5. On June 1, 1971, a corporation issues a 10-year bond to D, for which the ratable monthly portion of original issue discount is $10. For 1971, the corporation uses the record date reporting system permitted by (*b*)(*1*) of this subdivision. The corporation's books show that E held the bond on June 30, 1971, and that F held the bond on December 31, 1971, the dates on which the corporation pays stated interest on the bond. The corporation shall file a Form 1099–OID for both E and F showing on each form the aggregate amount of original issue discount includible for 1971 or $70 since E and F are each treated as if each held the bond every day it was outstanding and it was outstanding 7 months in 1971. As to D, the corporation is not required to file a Form 1099–OID since D did not hold the bond on either of the 2 record dates.

(iii) Every person who during a calendar year before 1983 receives payments of interest as a nominee on behalf of another person aggregating $10 or more shall make an information return on Forms 1096 and 1087 for such calendar year showing the aggregate amount of such interest, the name and address of the person on whose behalf received, the total of such interest received on behalf of all persons, and such other information as is required by the forms.

(iv) Except with respect to an obligation to which paragraph (e) or (f) of § 1.1232–3A applies (relating respectively to deposits in banks and similar financial institutions and to face-amount certificates), every person who is a nominee on behalf of the actual owner of an obligation as to which there is original issue discount aggregating $10 or more includible in the gross income of such owner during a calendar year before 1983, regardless of whether he receives a Form 1099–OID with respect to such discount, shall make an information return on Forms 1096 and 1087–OID for such calendar year showing in the manner prescribed on such forms the same information for

the actual owner as is required or permitted in subdivision (ii) of this subparagraph for the record holder.

(v) Notwithstanding the provisions of subdivisions (iii) and (iv) of this subparagraph, the filing of Form 1087 or Form 1087–OID is not required if:

(*a*) The record owner is required to file a fiduciary return on Form 1041 disclosing the name, address, and identifying number of the actual owner;

(*b*) The record owner is a nominee of a banking institution or trust company exercising trust powers, and such banking institution or trust company is required to file a fiduciary return on Form 1041 disclosing the name, address, and identifying number of the actual owner; or

(*c*) The record owner is a banking institution or trust company exercising trust powers, or a nominee thereof, and the actual owner is an organization exempt from taxation under section 501(a) for which such banking institution or trust company files an annual return,

but only if the name, address, and identifying number of the record owner are included on or with the Form 1041 fiduciary return filed for the estate or trust or the annual return filed for the tax exempt organization.

(vi) Every person carrying on the banking business who makes payments of interest to another person (whether or not aggregating $10 or more) during a calendar year with respect to a certificate of deposit issued in bearer form (other than such a certificate issued in an amount of $100,000 or more) shall make an information return on Forms 1096 and 1099–BCD for such calendar year. The preceding sentence applies whether such payments are made during the term of the certificate or at its redemption. The information return required by this subdivision for the calendar year shall show the following:

(*a*) The name, address, and taxpayer identification number of the person to whom the interest is paid;

(*b*) The aggregate amount of interest paid to such person during the calendar year with respect to the certificate of deposit;

(*c*) The name, address, and taxpayer identification number of the person to whom the certificate was originally issued;

(*d*) The portion of the interest with respect to the certificate reported under (*b*) that is attibutable to the current calendar year; and

(*e*) Such other information as is required by the form.

The application of this subdivision (vi) may be illustrated by the following examples:

Example 1. On June 1, 1978, X Bank issues a $1,000 bearer certificate of deposit to A. The certificate of deposit is not redeemable until May 31, 1979, and no interest is to be paid on the instrument until its redemption. On September 1, 1978. A transfers the bearer certificate to B and on May 31, 1979, B presents the certificate to X for payment and receives the $1,000 principal amount plus all the accrued interest. Under paragraph (a)(1)(vi) of this section, X is not required to make an information return for 1978 with respect to the bearer certificate of deposit because no interest is actually paid to a holder of the certificate during 1978. X is required to file an information return for 1979 with respect to the certificate, identifying B as the payee of the entire amount of the interest and A as the original purchaser of the certificate. (For rules relating to statements to be made to recipients of interest payments, see § 1.6049–3.)

Example 2. On July 1, 1978, Y Bank issues a $5,000 bearer certificate of deposit to C. The certificate of deposit is not redeemable until June 30, 1981, and no interest is to be paid on the instrument until its redemption. C holds the certificate for the entire term and on June 30, 1981, presents it to Y for payment and receives the $5,000 principal amount plus the accrued interest. Under paragraph (a)(1)(vi) of this section, Y is not required to file an information return for calendar years 1978, 1979, or 1980 with respect to this bearer certificate of deposit because no interest is acutally paid to C during those calendar years. Y is required to file an information return for 1981 with respect to the certificate identifying C as the payee of the entire amount of the interest and as the original purchaser. (Although Y is not required to file an information return for interest paid on the certificate until its redemption in 1981, C must report as income on his tax returns for 1978, 1979, 1980, and 1981 the ratable portion of such interest includible in income under section 1232.)

(2) *Definitions.* (i) The term ''person'' when used in this section does not include the United States, a State, the District of Columbia, a foreign government, a political subdivision of a State

or of a foreign government, or an international organization. Therefore, interest paid by or to one of these entities need not be reported. Similarly, original issue discount in respect of an obligation issued by or to one of these entities need not be reported.

(ii) For purposes of this section, a person who receives interest shall be considered to have received it as a nominee if he is not the actual owner of such interest and if he was required under §1.6109–1 to furnish his identifying number to the payer of the interest (or would have been so required if the total of such interest for the year had been $10 or more), and such number was (or would have been) required to be included on an information return filed by the payer with respect to the interest. However, a person shall not be considered to be a nominee as to any portion of an interest payment which is actually owned by another person whose name is also shown on the information return filed by the payer or nominee with respect to such interest payment. Thus, in the case of a savings account jointly owned by a husband and wife, the husband will not be considered as receiving any portion of the interest on that account as a nominee for his wife if his wife's name is included on the information return filed by the payer with respect to the interest.

(iii) For purposes of this section, in the case of a person who receives a Form 1099–OID, the determination of who is considered a nominee shall be made in a manner consistent with the principles of subdivision (ii) of this subparagraph.

(iv) For purposes of this section and §1.6049–3, the term ''Form 1099–OID'' means the appropriate Form 1099 for original issue discount prescribed for the calendar year.

(3) *Determination of person to whom interest is paid or for whom it is received.* For purposes of applying the provisions of this section, the person whose identifying number is required to be included by the payer of interest on an information return with respect to such interest shall be considered the person to whom the interest is paid. In the case of interest received by a nominee on behalf of another person, the person whose identifying number is required to be included on an information return made by the nominee with respect to such interest shall be considered the person on whose behalf such interest is received by the nominee. Thus, in the case of interest made payable to a person other than the record owner of the obligation with respect to which the interest is paid, the record owner of the obligation shall be considered the person to whom the interest is paid for purposes of applying the reporting requirements of this section, since his identifying number is required to be included on the information return filed under such section by the payer of the interest. Similarly, if a stockbroker receives interest on a bond held in street name for the joint account of a husband and wife, the interest is considered as received on behalf of the husband since his identifying number should be shown on the information return filed by the nominee under this section. Thus, if the wife has a separate account with the same stockbroker, any interest received by the stockbroker for her separate account should not be aggregated with the interest received for the joint account for purposes of information reporting. For regulations relating to the use of identifying numbers, see §1.6109–1.

(4) *Determination of person by whom original issue discount is includible or for whom a Form 1099–OID showing original issue discount is received.* For purposes of applying the provisions of this section, the determination of the person by whom original issue discount is includible or for whom a Form 1099–OID is received shall be made in a manner consistent with the principles of subparagraph (3) of this paragraph.

(5) *Inclusion of other payments.* The Form 1099 filed by any person with respect to payments of interest to another person during a calendar year prior to 1972 may, at the election of the maker, include payments other than interest made by him to such other person during such year which are required to be reported on Form 1099. Similarly, the Form 1087 filed by a nominee with respect to payments of interest received by him on behalf of any other person during a calendar

year prior to 1972 may include payments of dividends received by him on behalf of such person during such year which are required to be reported on Form 1087. However, except as provided in subparagraph (1)(ii)(*b*) of this paragraph, a separate Form 1087–OID or 1099–OID shall be filed for each obligation in respect of which original issue discount is required to be reported for any calendar year before 1983. In addition, any person required to report payments on both Forms 1087, 1087–OID, 1099, and 1099–OID, for any calendar year may use one Form 1096 to summarize and transmit such forms.

(b) *When payment deemed made.* For purposes of section 6049, interest is deemed to have been paid when it is credited or set apart to a person without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and is made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition.

(c) *Time and place for filing*—(1) *Payment of interest.* The returns required under this section for any calendar year for the payment of interest shall be filed after September 30 of such year, but not before the payer's final payment for the year, and on or before February 28 of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096. For extensions of time for filing returns under this section, see § 1.6081–1.

(2) *Original issue discount.* (i) The returns required under this section for any calendar year for original issue discount shall be filed after December 31 of such year and on or before February 28 of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096. For extensions of time for filing returns under this section, see § 1.6081–1.

(ii) The time for filing returns for the calendar year 1971 required under this section for original issue discount in respect of obligations to which paragraph (e) of § 1.1232–3A applies (relating to deposits in banks and other similar financial institutions) is extended to April 15, 1972.

(d) *Penalty.* For penalty for failure to file the statements required by this section, see § 301.6652–1 of this chapter (Regulations on Procedure and Administration).

(e) *Permission to submit information required by Form 1087 or 1099 on magnetic tape.* For rules relating to permission to submit the information required by Form 1087 or 1099 on magnetic tape or other media, see § 1.9101–1.

(Secs. 6049 (a), (b), and (d) and 7805 of the Internal Revenue Code of 1954 (96 Stat. 592, 594; 26 U.S.C. 6049 (a), (b), and (d); 68A Stat. 917, 26 U.S.C. 7805), and in sec. 309 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 591)

[T.D. 6628, 27 FR 12800, Dec. 28, 1962, as amended by T.D. 6879, 31 FR 3494, Mar. 8, 1966; T.D. 6883, 31 FR 6589, May 8, 1966; T.D. 7000, 34 FR 996, Jan. 23, 1969, T.D. 7154, 36 FR 25009, Dec. 28, 1971; 37 FR 527, Jan. 13, 1972; T.D. 7311, 39 FR 11881, Apr. 1, 1974; T.D. 7584, 44 FR 1103, Jan. 4, 1979; T.D. 7881, 48 FR 12968, Mar. 28, 1983]

§ 1.6049–2 Interest and original issue discount subject to reporting in calendar years before 1983.

(a) *Interest in general.* Except as provided in paragraph (b) of this section, the term ''interest'' when used in this section and §§ 1.6049–1 and 1.6049–3 means:

(1) Interest on evidences of indebtedness issued by a corporation in ''registered form'' (as defined in paragraph (d) of this section). The phrase ''evidences of indebtedness'' includes bond, debentures, notes, certificates and other similar instruments regardless of how denominated.

(2) Interest on deposits (except deposits evidenced by negotiable time certificates of deposit issued in an amount of $100,000 or more) paid (or credited) by persons carrying on the banking business. In the case of a certificate of deposit issued in bearer form, the term ''interest'', as used in the preceding sentence and in paragraph (a)(1)(vi) of § 1.6049–1, has the same meaning as in § 1.61–7 (regardless of whether taxable to the payee in the year the information return is made).

(3) Amounts, whether or not designated as interest, paid (or credited) by mutual savings banks, savings and

loan associations, building and loan associations, cooperative banks, homestead associations, credit unions, or similar organizations in respect of deposits, face amount certificates, investment certificates, or withdrawable or repurchasable shares. Thus, even though amounts paid or credited by such organizations with respect to deposits are designated as ''dividends'', such amounts are included in the definition of interest for purposes of section 6049.

(4) Interest on amounts held by insurance companies under agreements to pay interest thereon. This includes interest paid by insurance companies with respect to policy ''dividend'' accumulations (see sections 61 and 451 and the regulations thereunder for rules as to when such interest is considered paid), and interest paid with respect to the proceeds of insurance policies left with the insurer. The so-called ''interest element'' in the case of annuity or installment payments under life insurance or endowment contracts does not constitute interest for purposes of this section.

(5) Interest on deposits with stockbrokers, bondbrokers, and other persons engaged in the business of dealing in securities.

(b) *Exceptions*. The term ''interest'' when used in section 6049 does not include:

(1) Interest on obligations described in section 103(a) (1) or (3), relating to certain governmental obligations.

(2) Any payment by:

(i) A foreign corporation,

(ii) A nonresident alien individual, or

(iii) A partnership composed in whole or in part of nonresident aliens,

if such corporation, individual, or partnership is not engaged in trade or business within the United States and does not have an office or place of business or a fiscal or paying agent in the United States.

(3) Any interest which is subject to withholding under section 1441 or 1442 (relating to withholding of tax on nonresident aliens and foreign corporations, respectively) by the person making the payment, or which would be so subject to withholding but for the provisions of a treaty, or for the fact that under section 861(a)(1) it is not from sources within the United States, or for the fact that withholding is not required by reason of paragraph (a) or (f) of § 1.1441–4.

(4) In the case of a nominee, any interest which he receives and with respect to which he is required to withhold under section 1441 or 1442, or would be so required to withhold but for the provisions of a treaty, or for the fact that under section 861(a)(1) it is not from sources within the United States, or for the fact that withholding is not required by reason of paragraph (a) or (f) of § 1.1441–4.

(5) Any amount on which the person making the payment is required to deduct and withhold a tax under section 1451 (relating to tax-free covenant bonds), or would be so required but for section 1451(d) (relating to benefit of personal exemptions).

(6) Any amount which is subject to reporting as original issue discount.

(c) *Original issue discount*—(1) *In general*. The term ''original issue discount'' when used in this section and §§ 1.6049–1 and 1.6049–3 means original issue discount subject to the ratable inclusion rules of paragraph (a) of § 1.1232–3A, determined without regard to any reduction by reason of a purchase allowance under paragraph (a)(2)(ii) of § 1.1232–3A or a purchase at a premium as defined in paragraph (d)(2) of § 1.1232–3.

(2) *Coordination with interest reporting*. In the case of an obligation issued after May 27, 1969 (other than an obligation issued pursuant to a written commitment which was binding on May 27, 1969, and at all times thereafter) and on or before December 31, 1982, original issue discount which is not subject to the reporting requirements of paragrah (a)(1)(ii) of § 1.6049–1 is interest within the meaning of pargraph (a) of this section. Original issue discount which is subject to the reporting requirements of paragraph (a)(1)(ii) of § 1.6049–1 is not interest within the meaning of paragraph (a) of this section.

(3) *Exceptions*. Reporting of original issue discount is not required in respect of an obligation which paragraph (b)(2) of this section except from interest reporting.

(d) *Definition of ''in registered form.''* For purposes of § 1.6049–1 and this section, an evidence of indebtedness is in registered form if it is registered as to both principal and interest (or, for purposes of reporting with respect to original issue discount, if it is registered as to principal) and if its transfer must be effected by the surrender of the old instrument and either the reissuance by the corporation of the old instrument to the new holder or the issuance by the corporation of a new instrument to the new holder.

(Secs. 6049 (a), (b), and (d) and 7805 of the Internal Revenue Code of 1954 (96 Stat. 592, 594; 26 U.S.C. 6049 (a), (b), and (d); 68A Stat. 917, 26 U.S.C. 7805), and in sec. 309 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 591)

[T.D. 6628, 27 FR 12801, Dec. 28, 1962, as amended by T.D. 6908, 31 FR 16774, Dec. 31, 1966; T.D. 6966, 33 FR 11262, Aug. 8, 1968; T.D. 7154, 36 FR 25011, Dec. 28, 1971; T.D. 7584, 44 FR 1104, Jan. 4, 1979; T.D. 7881, 48 FR 12968, Mar. 28, 1983]

§ 1.6049–3 Statements to recipients of interest payments and holders of obligations to which there is attributed original issue discount in calendar years before 1983.

(a) *Requirement.* Every person filing (1) a Form 1099 or 1087 under section 6049(a)(1) and § 1.6049–1 with respect to payments of interest or (2) a Form 1099–OID or 1087–OID with respect to original issue discount includible in gross income, shall furnish to the person whose identifying number is (or should be) shown on the form a written statement showing the information required by paragraph (b) of this section. With respect to interest, no statement is required to be furnished under section 6049(c) and this section to any person if the aggregate of the payments to (or received on behalf of) such person shown on the form would be less than $10. With respect to original issue discount, no statement is required to be furnished under section 6049(c) and this section to any person if the aggregate amount of original issue discount on the statement to such person with respect to the obligation would be less than $10. References in this section to Form 1099 shall be construed to include Form 1099–BCD, except that in applying paragraph (b)(2) of this section no information relating to the person to whom the certificate of deposit was originally issued shall be disclosed to another person to whom the payment of interest is made.

(b) *Form of statement*—(1) *In general.* The written statement required to be furnished to a person under paragraph (a) of this section shall show:

(i) With respect to payments of interest (as defined in § 1.6049–2) aggregating $10 or more to any person during a calendar year before 1983:

(*a*) The aggregate amount of payments shown on the Form 1099 or 1087 as having been made to (or received on behalf of) such person and a legend stating that such amount is being reported to the Internal Revenue Service, and

(*b*) The name and address of the person filing the form, and

(ii) With respect to original issue discount (as defined in § 1.6049–2) which would aggregate $10 or more on the statement to the holder during a calendar year after 1970 and prior to calendar year 1983:

(*a*) The aggregate amount or original issue discount includible by (or on behalf of) such person with respect to the obligation, as shown on Form 1099–OID or Form 1087–OID for such calendar year (determined by applying the rules of paragraph (a)(1)(ii) of § 1.6049–1 for purposes of completing either form),

(*b*) All other items shown on such Form 1099–OID or Form 1087–OID for such calendar year (so determined), and

(*c*) A legend stating that such amount and such items are being reported to the Internal Revenue Service.

(2) *Special rule.* The requirements of this section for the furnishing of a statement to any person, including the legend requirement of this paragraph, may be met by the furnishing to such person of a copy of the Form 1099, 1099–OID, 1087, or 1087–OID filed pursuant to § 1.6049–1, or a reasonable facsimile thereof, in respect of such person. However, in the case of Form 1087–OID or 1099–OID, a copy of the instructions must also be sent to such person. A statement shall be considered to be furnished to a person within the meaning of this section if it is mailed to such person at his last known address.

(c) *Time for furnishing statements*—(1) *In general*—(i) *Payment of interest*. Each statement required by this section to be furnished to any person for a calendar year for the payment of interest shall be furnished to such person after November 30 of the year and on or before January 31 of the following year, but no statement may be furnished before the final interest payment for the calendar year has been paid. However, the statement may be furnished at any time after April 30 if it is furnished with the final interest payment for the calendar year.

(ii) *Original issue discount*. (*a*) Except as otherwise provided in this subdivision (ii), each statement required by this section to be furnished to any person for a calendar year for original issue discount shall be furnished to such person after December 31 of the year and on or before January 31 of the following year.

(*b*) The time for furnishing each statement required by this section to be furnished to any person for the calendar year 1971 for original issue discount in respect of obligations to which paragraph (e) of §1.1232–3A applies (relating to deposits in banks and other similar financial institutions) is extended to March 15, 1972.

(*c*) The time for furnishing each statement required by this section to be furnished by a nominee to any person for the calendar year 1971 for original issue discount is extended to February 28, 1972.

(2) *Extensions of time*. For good cause shown upon written application of the person required to furnish statements under this section, the district director may grant an extension of time not exceeding 30 days in which to furnish such statements. The application shall be addressed to the district director with whom the income tax returns of the applicant are filed and shall contain a full recital of the reasons for requesting the extension to aid the district director in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to the district director signed by the applicant will suffice as an application. The application shall be filed on or before the date prescribed in subparagraph (1) of this paragraph for furnishing the statements required by this section.

(3) *Last day for furnishing statement*. For provisions relating to the time for performance of an act when the last day prescribed for performance falls on Saturday, Sunday, or a legal holiday, see §301.7503–1 of this chapter (Regulations on Procedure and Administration).

(d) *Penalty*. For provisions relating to the penalty provided for failure to furnish a statement under this section see §301.6678–1 of this chapter (Regulations on Procedure and Administration).

(Secs. 6049 (a), (b), and (d) and 7805 of the Internal Revenue Code of 1954 (96 Stat. 592, 594; 26 U.S.C. 6049 (a), (b), and (d); 68A Stat. 917, 26 U.S.C. 7805), and in sec. 309 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 591)

[T.D. 6628, 27 FR 12801, Dec. 28, 1962, as amended by T.D. 7154, 36 FR 25011, Dec. 28, 1971; 37 FR 527, Jan. 13, 1972; T.D. 7584, 44 FR 1104, Jan. 4, 1979; T.D. 7624, 44 FR 31012, May 30, 1979; T.D. 7881, 48 FR 12968, Mar. 28, 1983]

§1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

(a) *Requirement of reporting*—(1) *In general*. Except as provided in paragraph (c) of this section, an information return shall be made by a payor, as defined in paragraph (a)(2) of this section, of amounts of interest and original issue discount paid after December 31, 1982. Such return shall contain the information described in paragraph (b) of this section.

(2) *Payor*. For payments made after December 31, 2002, a payor is a person described in paragraph (a)(2)(i) or (ii) of this section.

(i) Every person who makes a payment of the type and of the amount subject to reporting under this section (or under an applicable section under this chapter) to any other person during a calendar year.

(ii) Every person who collects on behalf of another person payments of the type and of the amount subject to reporting under this section (or under an applicable section under this chapter), or who otherwise acts as a middleman (as defined in paragraph (f)(4) of this section) with respect to such payment.

(b) *Information to be reported*—(1) *Interest payments.* Except as provided in paragraphs (b) (3) and (5) of this section, in the case of interest other than original issue discount treated as interest under §1.6049–5(f), an information return on Form 1099 shall be made for the calendar year showing the aggregate amount of the payments, the name, address, and taxpayer identification number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the payments, if any, and such other information as required by the forms. An information return is generally not required if the amount of interest paid to a person aggregates less than $10 or if the payment is made to a person who is an exempt recipient described in paragraph (c)(1)(ii) of this section, unless the payor backup withholds under section 3406 on such payment (because, for example, the payee (i.e., exempt recipient) has failed to furnish a Form W–9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to §31.6413(a)–3 of this chapter (Employment Tax Regulations). For reporting interest paid to a Canadian nonresident alien individual, see §1.6049–8.

(2) *Original issue discount.* Except as provided in paragraph (b)(3) and (b)(5) of this section, in the case of original issue discount, an information return on Forms 1096 and 1099 shall be made for each calendar year of any holder of an obligation as to which there is original issue discount includible in gross income aggregating $10 or more. For calendar years before 1992, semiannual record date reporting under §1.6049–1(a)(1)(ii)(*b*)(*1*) may be used, and if it is used, the original issue discount includible in gross income is determined by treating each holder as holding the obligation on every day it was outstanding during the calendar year. An information return shall be made, however, in any case in which an amount of tax is required to be deducted and withheld under section 3406. In such case, the amount required to be reported is the amount subject to withholding even if the amount of original issue discount includible in gross income is less than $10. With respect to an obligation described in §1.1232–3A (e) or (f) (relating respectively to deposits in banks and similar financial institutions and to face-amount certificates), §1.6049–1(a)(1)(ii)(*d*) and the last sentence of §1.6049–1(a)(1)(ii)(*a*)(*2*) shall apply. The information return shall show:

(i) The name, address, and taxpayer identification number of each record holder for whom an amount of original issue discount is includible in gross income;

(ii) The account, serial, or other identifying number of each obligation with respect to which a return is being made;

(iii) The aggregate amount of original issue discount includible in the gross income of each holder for the period during the calendar year for which the return is made (or, if the aggregation rules of §1.6049–1(a)(1)(ii)(*b*)(*2*) are being used, the aggregate amount or original issue discount for the period such holder held the obligations). For calendar years before 1992, semiannual record date reporting under §1.6049–1(a)(1)(ii)(*b*)(*1*) may be used, and if it is used, the original issue discount includible in gross income is determined by treating each holder as holding the obligation on every day it was outstanding during the calendar year. For purposes of this section, an obligation shall be considered to be outstanding from the date of original issue (as defined in §1.1232–3(b)(3));

(iv) The amount of tax withheld under section 3406, if any;

(v) The name and address of the person filing the return: and

(vi) Such other information as is required by the forms.

Section 1.6049–1(a)(1)(ii)(*b*)(*2*) and, for calendar years before 1992, §1.6049–1(a)(1)(ii)(*b*)(*1*), and (*c*), apply for purposes of this paragraph.

(3) *Returns made by middleman*—(i) *In general.* Except as provided in paragraph (b)(5) of this section, every person acting as a middleman (as defined in paragraph (f)(4) of this section) shall make an information return for the calendar year. In the case of interest payments (other than original issue discount and other than interest described in §1.6049–8), the information return shall be made on Form 1099 and

shall show the aggregate amount of the interest, the name, address, and taxpayer identification number of the person on whose behalf received, the amount of tax withheld under section 3406, if any, and such other information as required by the forms. In the case of original issue discount, the information return shall show the information required to be shown for the person on whose behalf received, as described in paragraph (b)(2) of this section. See §1.6049–5(f) to determine whether a middleman is required to make an information return with respect to original issue discount. A middleman shall make an information return regardless of whether the middleman receives a Form 1099. A middleman shall not be required to make an information return if the payment of interest aggregates less than $10 or if the payment is made to an exempt recipient described in paragraph (c)(1)(ii) of this section, unless the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W–9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to §31.6413(a)–3 of this chapter (Employment Tax Regulations).

(ii) *Forwarding of interest coupons and original issue discount obligations.* In the case of a middleman who, from within the United States, forwards an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States, the middleman shall make an information return on Form 1099 for the calendar year showing, in the case of an interest coupon, the information required under paragraph (b)(3)(i) of this section and, in the case of a discount obligation, information required under paragraph (b)(2) of this section. For purposes of this paragraph (b)(3)(ii), a middleman is considered to forward an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States if the middleman forwards the coupon or obligations outside the United States on or after the date when the payee is entitled to be paid or at an earlier date that is within 90 days of such date or if the middleman has actual knowledge that the coupon or obligation is being forwarded outside the United States for presentation, collection, or payment outside the United States. However, the transfer, although subject to information reporting under this section, is not subject to backup withholding under section 3406.

(iii) *Example.* The following example illustrates the provisions of paragraph (b)(3)(ii) of this section:

Example. Individual F, who is entitled to payment on an interest coupon, instructs an office of Bank M in the United States to forward the coupon to Bank N for collection by Bank N outside the United States. Bank M in the United States forwards the interest coupon to Bank N outside the United States. Bank M is required to make an information return for the calendar year under paragraph (b)(3)(ii) of this section showing the aggregate amount of the interest coupon forwarded, the name, address of the permanent residence, and the taxpayer identification number, if any, of Individual F and such other information as the form requires.

(4) *Returns made with respect to payments on certificates of deposit issued in bearer form.* Except as provided in paragraph (b)(5) of this section, every person carrying on the banking business who makes payments of interest to another person (whether or not aggregating $10 or more) during a calendar year with respect to a certificate of deposit issued in bearer form shall make an information return on Forms 1096 and 1099. The information return shall show the information required in §1.6049–1(a)(1)(vi) (*a*) through (*e*) inclusive and a statement as to the amount of tax withheld under section 3406, if any.

(5) *Interest payments to Canadian nonresident alien individuals*—(i) *General rule.* In the case of interest paid to a Canadian nonresident alien individual (as described in §1.6049–8(a)), the payor or middleman shall make an information return on Form 1042–S for the calendar year in which the interest is paid. The payor or middleman shall prepare and transmit Form 1042–S at the time and in the manner prescribed by section 1461 and the regulations under that section and by the form and its accompanying instructions. See §1.6049–6(e)(4) for furnishing a copy of

the Form 1042–S to the payee. To determine whether an information return is required for original issue discount, see §§ 1.6049–5(f) and 1.6049–8(a).

(ii) *Effective date.* Paragraph (b)(5)(i) of this section shall be effective for payments made after December 31, 1996 with respect to a Form W–8 (Certificate of Foreign Status) furnished to the payor or middleman after that date.

(c) *Information returns not required*—(1) *Payment to exempt recipient*—(i) *In general.* No information return is required with respect to any payment made to an exempt recipient described in paragraph (c)(1)(ii) of this section, except to the extent otherwise provided in § 1.6049–5(d)(3) (ii) and (iii). However, if the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W–9 on request), then the payor is required to make a return under this section, unless the payor refunds the amount withheld in accordance with § 31.6413(a)–3 of this chapter (Employment Tax Regulations).

(ii) *Exempt recipient defined.* The term *exempt recipient* means any person described in paragraphs (c)(1)(ii)(A) through (Q) of this section. An exempt recipient is generally exempt from information reporting without filing a certificate claiming exempt status unless the provisions of this paragraph (c)(1)(ii) require a payee to file a certificate.

A payor may, in any case, require a payee that is a U.S. person not otherwise required to file a certificate under this paragraph (c)(1)(ii) to file a certificate in order to qualify as an exempt recipient. See § 31.3406(h)–3(a)(1)(iii) and (c)(2) of this chapter for the certificate that a payee that is a U.S. person must provide when a payor requires the certificate to treat the payee as an exempt recipient under this paragraph (c)(1)(ii). A payor may treat a payee as an exempt recipient based upon a properly completed form as described in § 31.3406(h)–3(e)(2) of this chapter, its actual knowledge that the payee is a person described in this paragraph (c)(1)(ii), or the indicators described in this paragraph (c)(1)(ii).

(A) *Corporation.* A corporation, as defined in section 7701(a)(3), whether domestic or foreign, is an exempt recipient. In addition, for purposes of this paragraph (c)(1), the term *corporation* includes a partnership all of whose members are corporations described in this paragraph (c)(1), but only if the partnership files with the payor a certificate stating that each member of the partnership meets one of the requirements of paragraph (c)(1)(ii)(A) (*1*) through (*4*) of this section. Absent actual knowledge otherwise, a payor may treat a payee as a corporation (and, therefore, as an exempt recipient) if one of the requirements of paragraph (c)(1)(ii)(A) (*1*), (*2*), (*3*), or (*4*), of this section are met before a payment is made.

(*1*) The name of the payee contains an unambiguous expression of corporate status that is Incorporated, Inc., Corporation, Corp., P.C., (but not Company or Co.) or contains the term *insurance company*, *indemnity company*, *reinsurance company*, or *assurance company*, or its name indicates that it is an entity listed as a per se corporation under § 301.7701–2(b)(8)(i) of this chapter.

(*2*) The payor has on file a corporate resolution or similar document clearly indicating corporate status. For this purpose, a similar document includes a copy of Form 8832, filed by the entity to elect classification as an association under § 301.7701–3(b) of this chapter.

(*3*) The payor receives a Form W–9 which includes an EIN and a statement from the payee that it is a domestic corporation.

(*4*) The payor receives a withholding certificate described in § 1.1441–1(e)(2)(i), that includes a certification that the person whose name is on the certificate is a foreign corporation.

(B) *Tax exempt organization*—(*1*) *In general.* Any organization that is exempt from taxation under section 501(a) is an exempt recipient. A custodial account under section 403(b)(7) shall be considered an exempt recipient under this paragraph. A payor may treat an organization as an exempt recipient under this paragraph (c)(1)(ii)(B) without requiring a certificate if the organization's name is listed in the compilation by the Commissioner of organizations for which a deduction for charitable contributions is

allowed, if the name of the organization contains an unambiguous indication that it is a tax-exempt organization, or if the organization is known to the payor to be a tax-exempt organization.

(*2*) *Examples*. The application of the provisions of this paragraph (c)(1)(ii)(B) may be illustrated by the following examples:

Example 1. The following persons maintain accounts at M Bank: N College, O University, and P Church. M may treat N, O, and P as exempt recipients even though such persons have not filed an exemption certificate with M because the names of the organizations contain an unambiguous indication that they are tax exempt organizations.

Example 2. Q is listed in the current edition of Internal Revenue Service Publication 78 as an organization for which deductions are permitted for charitable contributions under section 170(c). Such listing has not been revoked by an announcement published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter). A payor may treat Q as an exempt recipient even though Q has not filed an exemption certificate with the payor.

Example 3. Employer R maintains a section 403(b)(7) custodial account with Regulated Investment Company S on behalf of R's employees. S may treat the account as an exempt recipient even though R or its employees have not filed an exemption certificate with S.

(C) *Individual retirement plan*. An individual retirement plan as defined in section 7701(a)(37) is an exempt recipient. A payor may treat any such plan of which it is the trustee or custodian as an exempt recipient under this paragraph (c)(1) without requiring a certificate.

(D) *United States*. The United States Government and any wholly-owned agency or instrumentality thereof are exempt recipients. A payor may treat a person as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the name of such person reasonably indicates it is described in this paragraph (c)(1).

(E) *State*. A State, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, wholly-owned agency or instrumentality of any one or more of the foregoing, and a pool or partnership composed exclusively of any of the foregoing are exempt recipients. A payor may treat a person as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the name of such person reasonably indicates it is described in this paragraph (c)(1) or if such person is known generally in the community to be a State, the District of Columbia, a possession of the United States or a political subdivision or a wholly-owned agency or instrumentality of any one or more of the foregoing (for example, an account held in the name of ''Town of S'' or ''County of T'' may be treated as held by an exempt recipient under this paragraph (c)(1)(ii)(E)).

(F) *Foreign government*. A foreign government, a political subdivision of a foreign government, and any wholly-owned agency or instrumentality of either of the foregoing are exempt recipients. A payor may treat a foreign government or a political subdivision thereof as an exempt recipient under this paragraph (c)(1) without requiring a certificate provided that its name reasonably indicates that it is a foreign government or provided that it is known to the payor to be a foreign government or a political subdivision thereof (for example, an account held in the name of the ''Government of V'' may be treated as held by a foreign government).

(G) *International organization*. An international organization and any wholly-owned agency or instrumentality thereof are exempt recipients. The term *international organization* shall have the meaning ascribed to it in section 7701(a)(18). A payor may treat a payee as an international organization without requiring a certificate if the payee is designated as an international organization by executive order (pursuant to 22 U.S.C. 288 through 288(f)).

(H) *Foreign central bank of issue*. A foreign central bank of issue is an exempt recipient. A foreign central bank of issue is a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. See §1.895–1(b)(1). A payor may treat a person as a foreign central bank of issue (and, therefore, as an exempt recipient)

without requiring a certificate provided that such person is known generally in the financial community as a foreign central bank of issue or if its name reasonably indicates that it is a foreign central bank of issue.

(I) *Securities or commodities dealer*. A dealer in securities, commodities, or notional principal contracts, that is registered as such under the laws of the United States or a State or under the laws of a foreign country is an exempt recipient. A payor may treat a dealer as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the person is known generally in the investment community to be a dealer meeting the requirements set forth in this paragraph (c)(1) (for example, a registered broker-dealer or a person listed as a member firm in the most recent publication of members of the National Association of Securities Dealers, Inc.).

(J) *Real estate investment trust*. A real estate investment trust, as defined in section 856 and §1.856–1, is an exempt recipient. A payor may treat a person as a real estate investment trust (and, therefore, as an exempt recipient) without requiring a certificate if the person is known generally in the investment community as a real estate investment trust.

(K) *Entity registered under the Investment Company Act of 1940*. An entity registered at all times during the taxable year under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1), (or during such portion of the taxable year that it is in existence), is an exempt recipient. An entity that is created during the taxable year will be treated as meeting the registration requirement of the preceding sentence provided that such entity is so registered at all times during the taxable year for which such entity is in existence. A payor may treat such an entity as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the entity is known generally in the investment community to meet the requirements of the preceding sentence.

(L) *Common trust fund*. A common trust fund, as defined in section 584(a), is an exempt recipient. A payor may treat the fund as an exempt recipient without requiring a certificate provided that its name reasonably indicates that it is a common trust fund or provided that it is known to the payor to be a common trust fund.

(M) *Financial institution*. A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization, whether organized in the United States or under the laws of a foreign country is an exempt recipient. A financial institution also includes a clearing organization defined in §1.163–5(c)(2)(i)(D)(*8*) and the Bank for International Settlements. A payor may treat any person described in the preceding sentence as an exempt recipient without requiring a certificate if the person's name (including a foreign name, such as ''Banco'' or ''Banque'') reasonably indicates the payee is a financial institution described in the preceding sentence. In the case of a foreign person, a payor may also treat a person on such list as the Internal Revenue Service may publish or approve (such as in the Thomson Bank Directory or a list approved by the Federal Reserve Board).

(N) *Trust*. A trust which is exempt from tax under section 664(c) (i.e., a charitable remainder annuity trust or a charitable remainder unitrust) or is described in section 4947(a)(1) (relating to certain charitable trusts) is an exempt recipient. A payor which is a trustee of the trust may treat the trust as an exempt recipient without requiring a certificate.

(O) *Nominees or custodians*. A nominee or custodian.

(P) *Brokers*. A broker as defined in section 6045(c) and §1.6045–1(a)(1).

(Q) *Swap dealers*. A dealer in notional principal contracts as defined in §1.446–3(c)(4)(iii).

(iii) *Exempt recipient no longer exempt*. Any person who ceases to be an exempt recipient shall, no later than 10 days after such cessation, notify the payor in writing when it ceases to be an exempt recipient unless it reasonably appears that the person formerly qualifying as an exempt recipient will not

thereafter receive a reportable payment from the payor. If a payor treats a person as an exempt recipient by requiring the exempt recipient to file a certificate claiming exempt status, that person shall revoke the certificate as provided in the preceding sentence. If the exempt recipient terminates its relationship with the payor prior to the time that the notice of change in status is otherwise required, the exempt recipient is not required to notify the payor. If, however, the person who formerly qualified as an exempt recipient later reinstates the relationship with the payor, the person must, prior to receiving a reportable payment from such relationship, notify the payor that it no longer qualifies as an exempt recipient in case the payor relies upon the previous treatment.

(2) *Payments by certain middlemen.* An information return shall not be required if:

(i) The record owner is required to file a fiduciary return on Form 1041 disclosing the name, address, and taxpayer identification number of the actual owner, and furnishes Form K–1 to each actual owner containing the information required to be shown on the form, including amounts withheld under section 3406;

(ii) The record owner is a nominee of a banking institution or trust company exercising trust powers, and such banking institution or trust company is required to file a fiduciary return on Form 1041 disclosing the name, address, and identifying number of the actual owner, and furnishes Form K–1 to each actual owner containing the information required to be shown on the form, including amounts withheld under section 3406;

(iii) The record owner is a banking institution or trust company exercising trust powers, or a nominee thereof, and the actual owner is an organization exempt from taxation under section 501(a) for which such banking institution or trust company files an annual return, but only if the name, address, and taxpayer identification number of the record owner is included on or with the Form 1041 fiduciary return filed for the estate or trust or the annual return filed for the tax exempt organization.

(3) *Coordination with reporting rules for widely held fixed investment trusts under § 1.671–5 of this chapter.* See § 1.671–5 for the reporting rules for widely held fixed investment trusts (as defined under that section).

(d) *Special rules*—(1) *Aggregation of payments.* For purposes of paragraph (b) of this section, until such time as the Commissioner determines that it is feasible to require aggregation of payments on two or more accounts, insurance contracts, or investment certificates, and, until this section is amended accordingly to provide for reporting on an aggregate basis, the requirement for filing Form 1099 under this section will be met if a person making payments of interest subject to reporting files a separate Form 1099 with respect to each account, insurance contract, or investment certificate. In the case of obligations described in section 6049(b)(1)(A), separate Forms 1099 may be filed as provided in the preceding sentence with respect to holdings in different issues.

(2) *Treatment of original issue discount.* The amount of original issue discount subject to reporting under section 6049 shall be the amount of original issue discount includible in the gross income of any holder that is treated as paid under § 1.6049–5(f).

(3) *Conversion into United States dollars of amounts paid in foreign currency*—(i) *Conversion rules.* When a payment is made in foreign currency, the U.S. dollar amount of the payment shall be determined by converting such foreign currency into U.S. dollars on the date of payment at the spot rate (as defined in § 1.988–1(d)(1)) or pursuant to a reasonable spot rate convention. For example, a withholding agent may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner or the Commissioner's delegate.

(ii) *Special rule for § 1.988–5(a) transactions where the payor on both components of a qualified hedging transaction is the same person*—(A) *In general.* Interest or original issue discount on a qualified

debt instrument that is part of a qualified hedging transaction under § 1.988–5(a) shall be computed for section 6049 reporting purposes under the rules described in § 1.988–5(a)(9)(ii) if—

(*1*) The payor on the qualified debt instrument and the counterparty to the § 1.988–5(a) hedge are the same person; and

(*2*) The payee complies with the requirements of § 1.988–5(a) and so notifies its payor prior to the date required for filing Form 1099 as required by this section.

(B) *Effective date*. The provisions of this paragraph (d)(3)(ii) apply to transactions entered into after December 31, 2000.

(4) *Determination of person to whom interest or original issue discount is paid or for whom it is received*. Section 1.6049–1(a)(3) and (4) shall apply with respect to payments of interest and original issue discount after December 31, 1982.

(5) *Payments by governmental units*. In the case of payments made by any governmental unit or any agency or instrumentality thereof, the officer or employee having control of the payment of interest or original issue discount (or the person appropriately designated for purposes of this section) shall make the returns and statements required under section 6049.

(6) *When payment deemed made*—(i) *In general*. Except as provided in paragraph (d)(6)(ii) of this section, for purposes of section 6049, interest is deemed to have been paid when it is credited or set apart to a person without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and is made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition.

(ii) *Instruments paid on presentment or demand*. In the case of a payment made on an obligation described in paragraph (e)(2) of this section (relating to transactional reporting), interest is deemed to have been paid at the time the obligation is presented for payment. For example, interest represented by a coupon detached from a bond is considered paid for purposes of section 6049 when the coupon is presented for payment.

(7) *Magnetic media requirement*. For rules relating to permission to submit the information required by Form 1099 on magnetic tape or other media, see § 1.9101–1. For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011–2 of this chapter (Regulations on Procedure and Administration).

(8) *Obligations that are not exempt from taxation*. When an issuer of an obligation that is not exempt from taxation receives an envelope or ''shell'', signed by the payee, stating that interest on the obligation is exempt from taxation under section 103(a) (as described in § 1.6049–5(b)(2), the issuer shall make an information return under section 6049. The information return shall show the name, address, and taxpayer identification number of the person who signed the statement claiming that interest on the obligation is exempt from taxation, the amount of interest paid, and such other information as is required by the form. An information return is required regardless of the amount of interest. The issuer shall also furnish a written statement to such person showing the information required by § 1.6049–6(b).

(9) *Savings bonds*—(i) *In general*. A person who makes payment on a United States savings bond when the bond is presented for payment shall report the difference between the amount to be paid and the amount paid for the bond. The amount subject to reporting shall not be reduced to take into account:

(A) Amounts previously included in the income of a holder as a result of an election under section 454 to include annually the increase in the redemption price of the bond; or

(B) Amounts accrued prior to transfer of the bond where the bond has been reissued in the name of the person presenting the bond for payment.

With respect to a savings bond that is reissued in another person's name, the amount subject to reporting when the bond is reissued is the amount of interest that has accrued. With respect to a savings bond that is exchanged in a tax-deferred transaction (as described in section 1037), the amount subject to

reporting is the amount of cash paid to the holder at the time of the transaction.

(ii) *Examples.* The application of the provisions of paragraph (d)(9)(i) of this section may be illustrated by the following examples:

Example 1. On June 10, 1943, A purchases a $50 Series E savings bond. The amount paid for the savings bond is $37.50. A elects under section 454 to include the increase in the redemption price of the bond annually in income. A presents the bond to Bank M to be cashed on July 1, 1983. The amount to be paid on the bond on that date is $204.96. Bank M is required to make an information return under section 6049 showing that it paid $167.46 (the difference between $204.96 and $37.50) of interest, without regard to A's election to include annually the increase in the redemption price of the bond.

Example 2. On December 1, 1970, B purchases a $500 Series E savings bond. The amount paid for the bond is $375. On August 1, 1984, the bond is reissued by the Bureau of Public Debt by deleting B's name and inserting the name of B's child. At the time of reissue, the redemption value of the bond is $1,015.80. The accrued interest is $640.80 (the difference between $1,015.80 and $375). The reissue is a taxable transaction, and B must include in income the accrued interest at the time of reissue. The Bureau of Public Debt is required to make an information return under section 6049 showing that it paid $640.80 of interest to B.

Example 3. Assume the same facts as in example (2) except that B exchanges the bond for a Series HH savings bond in the amount of $1,000 issued in B's name. The exchange is tax-deferred under section 1037. The Bureau of Public Debt stamps a legend on the bond stating that interest of $625 has been deferred. The amount of $15.80 is paid to B. The Bureau of the Public Debt must make an informatiion return showing that it paid $15.80 of interest to B.

Example 4. Assume the same facts as in example (3) except that the exchange is not a tax-deferred exchange. The Bureau of the Public Debt must make an information return showing that it paid $640.80 of interest to B.

(e) *Transactional reporting*—(1) *In general.* An information return required to be made under paragraph (b) of this section may be made on a transaction-by-transaction basis, rather than on an annual aggregation basis, if payment described in paragraph (e)(2) of this section is made by a person described in paragraph (e)(3) of this section.

(2) *Payments subject to transactional reporting.* An information return may be made on a transactional basis if payment is made on:

(i) A United States savings bond,

(ii) An interest coupon (but see §1.6049–5(b) which provides that no information return is required to be made with respect to an interest coupon that is exempt from taxation),

(iii) A discount obligation having a maturity at issue of 1 year or less, including commercial paper and short-term government obligations defined in section 1232(a)(3), and

(iv) Any obligation similar to those described in subdivisions (i) through (iii).

The information return with respect to payments on the types of obligations described in this paragraph shall be made on Form 1099–INT. A payor may include all interest paid in one transaction on one information return, irrespective of whether obligations of different issuers are paid as part of the transaction.

(3) *Persons subject to transactional reporting.* A person may make a return on a transactional basis if the person is:

(i) A middleman (as defined in paragraph (f)(4) of this section) who is required to make an information return under paragraph (b)(3) of this section with respect to any payment described in paragraph (e)(2) of this section, or

(ii) A Federal agency making payments on a United States savings bond.

(4) *Transaction defined.* For purposes of this paragraph (e), a transaction means a payment at one time on one or more obligations. For example, if an individual who is exempt from withholding under section 3406 presents at one time five Series EE bonds on each of which $3 of interest has accrued, $15 of interest will be paid as part of the transaction. Accordingly, an information return is required under §1.6049–4 (a)(2)(iii) because the interest paid in the transaction exceeds $10. If only three of the savings bonds were presented, however, no return would be required even if the remaining two bonds were redeemed the following day. See paragraph (a)(2)(i) of this section for the requirement that an information

return be made if any amount of tax is withheld under section 3406.

(5) *Information required.* The information return for any transaction under paragraph (e) of this section shall show the following:

(i) The name, address, and taxpayer identification number of the person to whom the interest is paid;

(ii) The name and address of the person filing the form;

(iii) The amount of interest paid;

(iv) The amount of tax withheld under section 3406, if any; and

(v) Such other information as is required by the form.

(f) *Definitions.* For purposes of section 6049, this section, and §§1.6049–5 and 1.6049–6:

(1) *Person.* The term *person* includes any governmental unit, international organization, and any agency or instrumentality thereof. Therefore, interest paid by one of these entities must be reported unless one of the exceptions under section 6049 applies.

(2) *Natural person.* The term *natural person* means any individual, but shall not include a partnership (whether of not composed entirely of individuals), a trust, or an estate.

(3) *Obligation.* The term *obligation* includes bonds, debentures, notes, certificates, and other evidences of indebtedness regardless of how denominated.

(4) *Middleman*—(i) *In general.* The term *middleman* means any person. including a financial institution as described in paragraph (c)(1)(ii)(M) of this section, a broker as defined in section 6045(c), or a nominee, who makes payment of interest for, or collects interest on behalf of, another person, or otherwise acts in a capacity as intermediary between a payor and a payee. For example, a person (other than an issuer of an obligation) who makes payment on an interest coupon of the obligation to another person is a middleman, irrespective of whether such person purchases the coupon for his own account, accepts the coupon as agent for the payee, or otherwise deals with the coupon. The term ''middleman'' also includes a trustee, including a corporate trustee of a trust where the trust is the payee. See §1.6049–4(c)(2) providing that the trustee does not have to make an information return on Form 1099 to a beneficiary if the trustee is required to file Form 1041 and furnishes Form K–1 to the beneficiary showing the information required to be shown on the form, including amounts withheld under section 3406. A person shall be considered to be a middleman as to any portion of an interest payment made to such person which portion is actually owned by another person, whether or not the other person's name is also shown on the information return filed with respect to such interest payment, except that a husband or wife will not be considered as acting in the capacity of a middleman with respect to his or her spouse. A person who, from within the United States, forwards an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States is also a middleman for purposes of this section (but the transfer, although subject to information reporting under this section, does not make the payment subject to backup withholding under section 3406).

(ii) *Example.* The application of the provisions of paragraph (f)(4) of this section may be illustrated by the following example:

Example. In January, 1984, Broker B purchases on behalf of its customer, Individual A, and obligation issued by partnership RR in a public offering on that date. Broker B holds the obligation for A throughout 1984. Broker B is required to make an information return showing the amount of original issue discount treated as paid to A under §1.6049–5(f).

(g) *Time and place for filling a return for the payment of interest*—(1) *Annual return.* Except as provided in paragraph (g)(2) of this section, the returns required under this section for any calendar year for the payment of interest shall be filed after September 30 of such year, but not before the payor's final payment to the payee for the year, and on or before February 28 (March 31 if filed electronically) of the following year. Such returns shall be filed with the appropriate Internal Revenue Service Center, the address of which is listed in the instructions for Form 1096. For extensions of time for filing returns under this section, see §1.6081–1.

(2) *Transactional return*. In the case of a return under paragraph (e) of this section, relating to returns on a transactional basis, such return shall be filed at any time but in no event later than February 28 (March 31 if filed electronically) of the year following the calendar year in which the interest was paid. The return shall be filed with the appropriate Internal Revenue Service Center, the address of which is listed in the instructions for Form 1096. For extensions of time for filing returns under this section, see § 1.6081–1.

(3) *Cross-reference to penalty*. For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6049(a) and § 1.6049–4(a)(1), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

[T.D. 7881, 48 FR 12968, Mar. 28, 1983, as amended by T.D. 8366, 56 FR 49518, Sept. 30, 1991; T.D. 8664, 61 FR 17573, Apr. 22, 1996; T.D. 8734, 62 FR 53480, Oct. 14, 1997; T.D. 8804, 63 FR 72188, Dec. 31, 1998; T.D. 8856, 64 FR 73412, Dec. 30, 1999; T.D. 8881, 65 FR 32207, 32212, May 22, 2000; T.D. 8895, 65 FR 50407, Aug. 18, 2000; T.D. 9010, 67 FR 48759, July 26, 2002; T.D. 9241, 71 FR 4025, Jan. 24, 2006]

§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.

(a) *Interest subject to reporting requirement*. For purposes of §§ 1.6049–4, 1.6049–6 and this section, except as provided in paragraph (b) of this section, the term ''interest'' means:

(1) Interest on an obligation:

(i) In registered form (as defined in § 5f.103–1(c)), or

(ii) Of a type offered to the public. Principles consistent with § 5f.163–1 shall be applied to determine whether an obligation is of a type offered to the public.

(2) Interest on deposits with persons carrying on the banking business. Such term shall include deposits evidenced by time certificates of deposit issued in any amount whether negotiable or nonnegotiable. The term ''interest'' includes payments to a mortgage escrow account and amounts paid with respect to repurchase agreements and banker's acceptances. Property which the payee receives from the payor as interest (or in lieu of a cash payment of interest) shall be interest for purposes of section 6049. The amount subject to reporting is the fair market value of such property.

(3) Amounts, whether or not designated as interest, paid or credited by mutual savings banks, savings and loan associations, building and loan associations, cooperative banks, homestead associations, credit unions, industrial loan associations or banks, or similar organizations, in respect of deposits, face amount certificates, investment certificates, or withdrawable or repurchasable shares. Thus, even though amounts paid or credited by such organizations with respect to deposits are designated as ''dividends'', such amounts are included in the definition of interest for purposes of section 6049. The term ''interest'' includes payments to a mortgage escrow account and amounts paid with respect to repurchase agreements. Property which the payee receives from the payor as interest (or in lieu of a cash payment of interest) is ''interest'' for purposes of section 6049. The fair market value of such property is the amount subject ot reporting.

(4) Interest on amounts held by insurance companies under an agreement to pay interest thereon. Any increment in value of ''advance premiums'', ''prepaid premiums'', or ''premium deposit funds'' which is applied to the payment of premiums due on insurance policies, or made available for withdrawal by the policyholder, shall be considered interest subject to reporting. Interest that an insurance company pays pursuant to an agreement with the policyholder to a beneficiary because he payment due has been delayed is interest subject to reporting. Interest subject to reporting also includes interest paid by insurance companies with respect to policy ''dividend'' accumulations (see sections 61 and 451 and the regulations thereunder for rules as to when such interest is considered paid), and interest paid with respect to the proceeds of insurance policies left with the insurer. The so-called ''interest element'' in the

case of annuity or installment payments under life insurance or endowment contracts does not constitute interest for purposes of section 6049.

(5) Interest on deposits with brokers as defined in section 6045(c) and the regulations thereunder. Any payment made in lieu of interest to a person whose obligation has been borrowed in connection with a short sale or other similar transaction is subject to reporting under section 6049. See §1.6045–2T for reporting requirements with respect to payments in lieu of tax-exempt interest. See §1.6045–2 for reporting requirements with respect to payments in lieu of tax-exempt interest.

(6) Interest paid on amounts held by investment companies as defined in section 3 of the Investment Company Act (15 U.S.C. section 80–a) and on amounts paid on pooled funds or trusts. The interest to be reported with respect to a widely held fixed investment trust, as defined in §1.671–5(b)(22), shall be the interest earned on the assets held by the trust. See §1.671–5 for the reporting rules for widely held fixed investment trusts (as defined under that section).

(b) *Interest excluded from reporting requirement*. The term *interest* or *original issue discount* (OID) does not include—

(1) Interest on any obligation issued by a natural person as defined in §1.6049–4(f)(2), irrespective of whether such interest is collected on behalf of the holder of the obligation by a middleman.

(2) Interest on any obligation if such interest is exempt from taxation under section 103(a), relating to certain governmental obligations, or interest which is exempt from taxation under any other provision of law without regard to the identity of the holder. The holder of a tax exempt obligation that is not in registered form must provide written certification to the payor (other than the issuer of the obligation) that the obligation is exempt from taxation. A statement that interest coupons are tax exempt on the envelope or shell commonly used by financial institutions to process such coupons, signed by the payee, will be sufficient for this purpose if the envelope is properly completed (i.e., shows the name, address, and taxpayer identification number of the payee). A payor may rely on such written certification in treating such interest as tax exempt for purposes of section 6049. See §1.6049–4(d)(8) with respect to the requirement that the issuer of a taxable obligation shall make an information return if such issuer receives an envelope which improperly claims that the interest coupons contained therein are tax exempt.

(3) Interest on amounts held in escrow to guarantee performance on a contract or to provide security. However, interest on amounts held in escrow with a person described in paragraph (a)(2) or (3) of this section is interest subject to reporting under section 6049.

(4) Interest that a governmental unit pays with respect to tax refunds.

(5) Interest on deposits for security, such as deposits posted with a public utility company. However, interest on deposits posted for security with a person described in paragraph (a)(2) or (3) of this section is interest subject to reporting under section 6049.

(6) Amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code (Code) and the regulations under those provisions) paid outside the United States by a non-U.S. payor or a non-U.S. middleman (as defined in paragraph (c)(5) of this section). See paragraph (e) of this section for circumstances in which a payment is considered to be made outside the United States.

(7) Portfolio interest, as defined in §1.871–14(b)(1), paid with respect to obligations in bearer form described in section 871(h)(2)(A) or 881(c)(2)(A) or with respect to a foreign-targeted registered obligation described in §1.871–14(e)(2) for which the documentation requirements described in §1.871–14(e)(3) and (4) have been satisfied (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian or nominee of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor).

(8) Portfolio interest described in §1.871–14(c)(1)(ii), paid with respect to

obligations in registered form described in section 871(h)(2)(B) or 881(c)(2)(B) that is not described in paragraph (b)(7) of this section.

(9) Any amount paid by an international organization described in §1.6049–4(c)(1)(ii)(G) (or its paying, transfer, or other agent that is not also a payee's agent) with respect to an obligation of which the international organization is the issuer.

(10)(i) Amounts paid outside the United States (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian or nominee or other agent of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor) with respect to an obligation that: Has a face amount or principal amount of not less than $500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); has a maturity (at issue) of 183 days or less; satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I) and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of §1.163–5(c)(2)(i)(D)(*3*)) and is issued in accordance with the procedures of §1.163–5(c)(2)(i)(D); and has on its face the following statement (or a similar statement having the same effect):

By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder).

(ii) If the obligation is in registered form, it must be registered in the name of an exempt recipient described in §1.6049–4(c)(1)(ii). For purposes of this paragraph (b)(10), a middleman may treat an obligation as described in section 163(f)(2)(B)(i) and (ii)(I) and the regulations under that section if the obligation, or coupons detached therefrom, whichever is presented for payment, contains the statement described in this paragraph (b)(10). The exemption from reporting described in this paragraph (b)(10) shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(11) Amounts paid with respect to an account or deposit with a U.S. or foreign branch of a domestic or foreign corporation or partnership that is paid with respect to an obligation described in either paragraph (b)(11)(i) or (ii) of this section, if the branch is engaged in the commercial banking business; and the interest or OID is paid outside the United States (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that acts as a custodian, nominee, or other agent of the payee, and collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor). The exemption from reporting described in this paragraph (b)(11) shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(i) An obligation is described in this paragraph (b)(11)(i) if it is not in registered form (within the meaning of section 163(f) and the regulations under that section), is described in section 163(f)(2)(B) and issued in accordance with the procedures of §1.163–5(c)(2)(i)(C) or (D), and, in the case of a U.S. branch, is part of a larger single public offering of securities. For purposes of this paragraph (b)(11)(i), a middleman may treat an obligation as described in section 163(f)(2)(B) if the obligation, and any detachable coupons, contains the statement described in section 163(f)(2)(B)(ii)(II) and the regulations under that section.

(ii)(A) An obligation is described in this paragraph (b)(11)(ii) if it produces income described in section 871(i)(2)(A); has a face amount or principal amount of not less than $500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I) and the regulations thereunder (as if the obligation

would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) and is issued in accordance with the procedures of §1.163–5(c)(2)(i) (C) or (D) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of §1.163–5(c)(2)(i)(D)(3)). For purposes of this paragraph (b)(11)(ii), a middleman may treat an obligation as described in sections 163(f)(2)(b) (i) and (ii) and the regulations under that section if the obligation, or any detachable coupon, contains the statement described in paragraph (b)(11)(ii)(b) of this section.

(B) The obligation must have on its face, and on any detachable coupons, the following statement (or a similar statement having the same effect):

By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) and regulations under that section) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) and the regulations under that section).

(C) If the obligation is in registered form, it must be registered in the name of an exempt recipient described in §1.6049–4(c)(1)(ii).

(12) Payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat the payment as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with paragraph (d)(1) of this section or presumed to be made to a foreign payee under paragraph (d)(2) or (3) of this section. However, such payments may be reportable under §1.1461–1 (b) and (c). The provisions of §1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code. In the event of a conflict between the provisions of §1.1441–1 and paragraph (d) of this section in determining the foreign status of the payee, the provisions of §1.1441–1 shall govern for payments of amounts subject to withholding under chapter 3 of the Code and the provisions of paragraph (d) of this section shall govern in other cases. This paragraph (b)(12) does not apply to interest paid to a Canadian nonresident alien individual as provided in §1.6049–8.

(13) Amounts for the period that the debt obligation with respect to which the interest arises represents an asset blocked as described in §1.1441–2(e)(3). Payment of such amounts, including interest that is past due and OID on obligations that mature on or before the date that the assets are no longer blocked, is deemed to occur in accordance with the rules of §1.1441–2(e)(3).

(14) Payments made by a foreign intermediary described in §1.1441–1(e)(3)(i) of amounts that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in §1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in §1.1441–1(b)(2)(iv) (other than a U.S. branch that is treated as a U.S. person) that are associated with a valid withholding certificate described in §1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under §1.6049–4 and were not so reported. For example, if a foreign intermediary or U.S. branch described in §1.1441–1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under §1.6049–4(c)(1)(ii) to the person from whom the intermediary or U.S. branch receives the payment, the amount paid by the foreign intermediary or U.S. branch to such person is interest or original issue discount. The exception of this paragraph (b)(14) shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Internal Revenue Code.

(15) Amounts of interest as determined under the provisions of §1.446–3(g)(4) (dealing with interest in the

case of a significant non-periodic payment with respect to a notional principal contract). Such amounts are governed by the provisions of section 6041. See § 1.6041–1(d)(5).

(c) *Applicable rules*—(1) *Documentary evidence for offshore accounts and for possessions accounts.* A payor may rely on documentary evidence described in this paragraph (c)(1) instead of a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) in the case of a payment made outside the United States to an offshore account, in the case of a payment made to a U.S. possessions account or, in the case of broker proceeds described in § 1.6045–1(c)(2), in the case of a sale effected outside the United States (as defined in § 1.6045–1(g)(3)(iii)(A)). For purposes of this paragraph (c)(1), an *offshore account* means an account maintained at an office or branch of a U.S. or foreign bank or other financial institution at any location outside the United States (*i.e.*, other than in any of the fifty States or the District of Columbia) and outside of possessions of the United States. Thus, for example, an account maintained in a foreign country at a branch of a U.S. bank or of a foreign subsidiary of a U.S. bank is an offshore account. For purposes of this paragraph (c)(1), a *U.S. possessions account* means an account maintained at an office or branch of a U.S. or foreign bank or other financial institution located within a possession of the United States. For the definition of a payment made outside the United States, see paragraph (e) of this section. A payor may rely on documentary evidence if the payor has established procedures to obtain, review, and maintain documentary evidence sufficient to establish the identity of the payee and the status of that person as a foreign person (including, but not limited to, documentary evidence described in § 1.1441–6(c)(3) or (4)); and the payor obtains, reviews, and maintains such documentary evidence in accordance with those procedures. A payor maintains the documents reviewed by retaining the original, certified copy, or a photocopy (or microfiche or similar means of record retention) of the documents reviewed and noting in its records the date on which and by whom the document was received and reviewed. Documentary evidence furnished for the payment of an amount subject to withholding under chapter 3 of the Internal Revenue Code must contain all of the information that is necessary to complete a Form 1042-S for that payment. A payor may also rely on documentary evidence associated with a flow-through withholding certificate for payments treated as made to foreign partners of a nonwithholding foreign partnership, as defined in § 1.1441–1(c)(28), the foreign beneficiaries of a foreign simple trust, as defined in § 1.1441–1(c)(24), or foreign owners of a foreign grantor trust, as defined in § 1.1441–1(c)(26), even though the partnership or trust account is maintained in the United States.

(2) *Other applicable rules.* The provisions of § 1.1441–1(e)(4)(i) through (ix) (regarding who may sign a certificate, validity period of certificates, retention of certificates, etc.) shall apply (by substituting the term *payor* for the term *withholding agent* and disregarding the fact that the provisions under § 1.1441–1(e)(4) only apply to amounts subject to withholding under chapter 3 of the Code) to withholding certificates and documentary evidence furnished for purposes of this section. See § 1.1441–1(b)(2)(vii) for provisions dealing reliable association of a payment with documentation.

(3) *Standards of knowledge.* A payor may not rely on a withholding certificate or documentary evidence described in paragraph (c)(1) or (4) of this section if it has actual knowledge or reason to know that any information or certification stated in the certificate or documentary evidence is unreliable. A payor has reason to know that information or certifications are unreliable only if the payor would have reason to know under the provisions of § 1.1441–7(b)(2)(ii) and (3) that the information and certifications provided on the certificate or in the documentary evidence are unreliable or, in the case of a Form W–9 (or an acceptable substitute), it cannot reasonably rely on the documentation as set forth in § 31.3406(h)–3(e) of this chapter (see the information and certification described in § 31.3406(h)–3(e)(2)(i) through (iv) of this chapter that are required in order

for a payor reasonably to rely on a Form W–9). The provisions of § 1.1441–7(b)(2)(ii) and (3) shall apply for purposes of this paragraph (c)(3) irrespective of the type of income to which § 1.1441–7(b)(2)(ii) is otherwise limited. The exemptions from reporting described in paragraphs (b)(10) and (11) of this section shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(4) *Special documentation rules for certain payments.* This paragraph (c)(4) modifies the provisions of paragraph (c)(1) of this section for payments to offshore accounts maintained at a bank or other financial institution of amounts that are not subject to withholding under chapter 3 of the Internal Revenue Code, other than amounts described in paragraph (d)(3)(iii) of this section (dealing with U.S. short-term OID and U.S. bank deposit interest). Amounts are not subject to withholding under chapter 3 of the Internal Revenue Code if they are not included in the definition of amounts subject to withholding under § 1.1441–2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds).

(i) *Special rule when non-renewable documentary evidence is customary.* If it is customary in the country in which a branch or office of a bank or other financial institution is located to obtain documentary evidence described in paragraph (c)(1) of this section, but it is not customary for such documentary evidence to be renewed, then a payor may, in lieu of obtaining a withholding certificate, request such documentary evidence for an account maintained at such branch or office. The bank or other financial institution may rely on such documentary evidence to treat a person as a foreign person without renewing such documentary evidence in accordance with paragraph (c)(2) of this section and § 1.1441–1(e)(4)(ii) if it may rely on the documentary evidence as sufficient to establish the person's foreign status under § 1.1441–7(b)(7) and (8). If, however, the bank or other financial institution may, under § 1.1441–7(b)(8) treat a payee as a foreign person even though it has a residence or mailing address for the payee in the United States, or has standing instructions to pay amounts from its account to an address in the United States or an account maintained in the United States, then the payor shall rely on the documentary evidence only for a period of three full calendar years after the calendar year in which the documentary evidence is provided to the payor or, if earlier, until the payor is aware of a change of circumstances that affects the validity of the documentation as establishing the payee's status as a foreign person.

(ii) *Statement in lieu of documentary evidence.* If under the local laws, regulations, or practices applicable to a type of account or transaction it is not customary to obtain documentary evidence described in paragraph (c)(1) of this section, the bank or other financial institution may, instead of obtaining a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) or documentary evidence described in paragraph (c)(1) of this section, establish a payee's foreign status based on the statement described in this paragraph (4)(ii) (or such substitute statement as the Internal Revenue Service may prescribe) made on an account opening form. The statement shall be valid only if the mailing and residence addresses of the payee are outside the United States and there are no other indicia of U.S. status. If reliance is not permitted because there are indicia of U.S. status then the payor must obtain either documentary evidence described in paragraph (c)(1) of this section or a Form W–8 described in § 1.1441–1(e)(2)(i) to treat the customer as a foreign payee. In such a case, the form or documentary evidence must be renewed every three years in accordance with the renewal procedures set forth in § 1.1441–1(e)(4)(ii)(A) for as long as indicia of U.S. status continue to be present. The statement referred to in this paragraph (c)(4)(i) of this section must appear near the signature line and must read as follows:

By opening this account and signing below, the account owner represents and warrants that he/she/it is not a U.S. person for purposes of U.S. Federal income tax and that he/she/it is not acting for, or on behalf of, a U.S. person. A false statement or misrepresentation of tax status by a U.S. person could lead

to penalties under U.S. law. If your tax status changes and you become a U.S. citizen or a resident, you must notify us within 30 days.

(iii) *Continuous validity of declaration of foreign status subject to due diligence by financial institution.* A declaration of foreign status described in paragraph (c)(4)(ii) of this section does not expire unless the bank or financial institution becomes aware of circumstances indicating that the customer may be a U.S. person.

(iv) *Exception for existing accounts.* The rules of paragraphs (c)(4)(i) and (iii) of this section shall apply to accounts opened on or after January 1, 2001. For accounts opened before 2001, a bank or other financial institution may rely on the rules contained in §§35a.9999–3(ii) Q&A 34 and 35a.9999–4T Q&A 1 and 5 of this chapter in effect prior to January 1, 2001 (see 26 CFR Parts 30–39 revised as of April 1, 2000).

(5) *U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman.* The terms *payor* and *middleman* have the meanings ascribed to them under §1.6049–4(a). A *non-U.S. payor* or *non-U.S. middleman* means a payor or middleman other than a U.S. payor or U.S. middleman. The term *U.S. payor* or *U.S. middleman* means—

(i) *Definition.* (A) A person described in section 7701(a)(30) (including a foreign branch or office of such person);

(B) The government of the United States or the government of any State or political subdivision thereof (or any agency or instrumentality of any of the foregoing);

(C) A controlled foreign corporation within the meaning of section 957(a);

(D) A foreign partnership, if at any time during its tax year, one or more of its partners are U.S. persons (as defined in §1.1441–1(c)(2)) who, in the aggregate hold more than 50 percent of the income or capital interest in the partnership or if, at any time during its tax year, it is engaged in the conduct of a trade or business in the United States;

(E) A foreign person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of its taxable year preceding the collection or payment (or such part of such period as the person has been in existence), was effectively connected with the conduct of trade or business within the United States; or

(F) A U.S. branch of a foreign bank or a foreign insurance company described in §1.1441–1(b)(2)(iv).

(ii) *Reporting by U.S. payors in U.S. possessions.* U.S. payors are not required to report on Form 1099 income that is from sources within a possession of the United States and that is exempt from taxation under section 931, 932, or 933, each of which sections exempts certain income from sources within a possession of the United States paid to a bona fide resident of that possession. For purposes of this paragraph (c)(5)(ii), a U.S. payor may treat the beneficial owner as a bona fide resident of the possession of the United States from which the income is sourced if, prior to payment of the income, the U.S. payor can reliably associate the payment with valid documentation that supports the claim of residence in the possession of the United States from which the income is sourced. This paragraph (c)(5)(ii) shall not apply if the U.S. payor has actual knowledge or reason to know that the documentation is unreliable or incorrect or that the income does not satisfy the requirements for exemption under section 931, 932, or 933. For the rules determining whether income is from sources within a possession of the United States, see section 937(b) and the regulations thereunder.

(6) *Examples.* The following examples illustrate the provisions of paragraphs (b) and (c) of this section:

Example 1. FC is a foreign corporation that is not engaged in a trade or business in the United States during the current calendar year. D, an individual who is a resident and citizen of the United States, holds a registered obligation issued by FC in a public offering. Interest is paid on the obligation within the United States by DC, a U.S. corporation that is the designated paying agent of FC. D does not have an account with DC. Although interest paid on the obligation issued by FC is foreign source, the interest paid by DC to D is considered to be interest for purposes of information reporting under section 6049 because it is paid in the United States.

Example 2. The facts are the same as in *Example 1* except that D is a nonresident alien individual who has furnished DC with a

Form W–8 in accordance with the provisions of §1.1441–1(e)(1)(ii). By reason of paragraph (b)(12) of this section, the payment of interest by DC to D is not considered to be a payment of interest for purposes of information reporting under section 6049. Therefore, DC is not required to make an information return under section 6049.

Example 3. The facts are the same as in *Example 2* except that the obligation of FC is held in a custodial account for D by FB, a foreign branch of a U.S. financial institution. By reason of paragraph (c)(5) of this section, FB is considered to be a U.S. middleman. Therefore, FB is required to make an information return unless FB may treat D as a beneficial owner that is a foreign person in accordance with the provisions of §1.1441–1(e)(1)(ii).

Example 4. The facts are the same as in *Example 3* except that the FC obligation is held for D by NC, in a custodial account at NC's foreign branch. NC is a foreign corporation that is a non-U.S. middleman described in paragraph (c)(5) of this section. Under paragraph (b)(6) of this section, the payment by NC to D is not considered to be a payment of interest for purposes of section 6049. Therefore, NC is not required to make an information return under section 6049 with respect to the payment.

(d) *Determination of status as U.S. or foreign payee and applicable presumptions in the absence of documentation*—(1) *Identifying the payee*. The provisions of §§1.1441–1(b)(2), 1.1441–5(c)(1), (e)(2) and (3) shall apply (by applying the term *payor* instead of the term *withholding agent*) to identify the payee for purposes of this section (and other sections of the regulations under this chapter to which this paragraph (d)(1) applies), except to the extent provided in this paragraph (d)(1) in the case of a payment of amounts that are not subject to withholding under chapter 3 of the Internal Revenue Code. Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under §1.1441–2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds). The exceptions to the application of §1.1441–1(b)(2) to amounts that are not subject to withholding under chapter 3 of the Code are as follows:

(i) The provisions of §1.1441–1(b)(2)(ii), dealing with payments to a U.S. agent of a foreign person, shall not apply. Thus, a payment to a U.S. agent of a foreign person is treated as a payment to a U.S. payee.

(ii) Payments to U.S. branches of certain banks or insurance companies described in §1.1441–1(b)(2)(iv) shall be treated as payments to a foreign payee, irrespective of the fact that the U.S. branch may have arranged with the payor to be treated as a U.S. person for payments of amounts subject to withholding and irrespective of the fact that the branch is treated as a U.S. payor for purposes of paragraph (c)(5) of this section.

(2) *Presumptions of U.S. or foreign status in the absence of documentation*—(i) *In general*. Except as otherwise provided in this paragraph (d)(2)(i), for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(2) applies), the provisions of §1.1441–1(b)(3)(i) through (ix) and §1.1441–5(d) and (e)(6) shall apply (by applying the term *payor* instead of the term *withholding agent*) to determine the classification (e.g., individual, corporation, partnership, trust), status (i.e., a U.S. or a foreign person), and other relevant characteristics (e.g., beneficial owner or intermediary) of a payee if a payment cannot be reliably associated with valid documentation under §1.1441–1(b)(2)(vii) irrespective of whether the payments are subject to withholding under chapter 3 of the Internal Revenue Code. The provisions of §1.1441–1(b)(3)(iii)(D) and (vii)(B) shall not apply, however, to payments to amounts that are not subject to withholding. The rules of §1.1441–1(b)(2)(vii) shall apply for purposes of determining when a payment can reliably be associated with documentation, by applying the term *payor* instead of the term *withholding agent*. For this purpose, the documentary evidence or statement described in paragraph (c)(4) of this section can be treated as documentation with which a payment can be associated.

(ii) *Grace period in the case of indicia of a foreign payee*. When the conditions of this paragraph (d)(2)(ii) are satisfied, the 30-day grace period provisions under section 3406(e) shall not apply and the provisions of this paragraph (d)(2)(ii) shall apply instead. A payor

that, at any time during the grace period described in this paragraph (d)(2)(ii), credits an account with payments described in §1.1441–6(c)(2) (or credits an account with broker proceeds from securities described in §1.1441–6(c)(2)), that are reportable under sections 6042, 6045, 6049, or 6050N may, instead of treating the account as owned by a U.S. person and applying backup withholding under section 3406, if applicable, choose to treat the account as owned by a foreign person if, at the beginning of the grace period, the address that the payor has in its records for the account holder is in a foreign country, the payor has been furnished the information contained in a withholding certificate described in §1.1441–1(e) (2)(i) or (3)(i) (by way of a facsimile copy of the certificate or other non-qualified electronic transmission of the information required to be stated on the certificate), or the payor holds a withholding certificate that is no longer reliable other than because the validity period as described in §1.1441–1(e)(4)(ii)(A) has expired. In the case of a newly opened account, the grace period begins on the date that the payor first credits the account.

In the case of an existing account for which the payor holds a Form W–8 or documentary evidence of foreign status, the grace period begins on the date that the payor first credits the account after the existing documentation held with regard to the account can no longer be relied upon (other than because the validity period described in §1.1441–1(e)(4)(ii)(A) has expired). A new account shall be treated as an existing account if the account holder already holds an account at the branch location at which the new account is opened. It shall also be treated as an existing account if an account is held at another branch location if the institution maintains a coordinated account information system described in §1.1441–1(e)(4)(ix). The grace period terminates on the earlier of the close of the 90th day from the date on which the grace period begins or the date that the documentation is provided. The grace period also terminates when the remaining balance in the account (due to withdrawals or otherwise) is equal to or less than 31 percent of the total amounts credited since the beginning of the grace period that would be subject to backup withholding if the provisions of this paragraph (d)(2)(ii) did not apply. At the end of the grace period, the payor shall treat the amounts credited to the account during the grace period as paid to a U.S. or foreign payee depending upon whether documentation has been furnished and the nature of any such documentation furnished upon which the payor may rely to treat the account as owned by a U.S. or foreign payee. If the documentation has not been received on or before the date of expiration of the grace period, the payor may also apply the presumptions described in this paragraph (d) to amounts credited to the account after the date on which the grace period expires (until such time as the payor can reliably associate the documentation with amounts credited). See §31.6413(a)–3(a)(1)(iv) of this chapter for treating backup withheld amounts under section 3406 as erroneously withheld when the documentation establishing foreign status is furnished prior to the end of the calendar year in which backup withholding occurs. If the provisions of this paragraph (d)(2)(ii) apply, the provisions of §31.3406(d)–3 of this chapter shall not apply. For purposes of this paragraph (d)(2)(ii), an account holder's reinvestment of gross proceeds of a sale into other instruments constitutes a withdrawal and a non-qualified electronic transmission of information on a withholding certificate is a transmission that is not in accordance with the provisions of §1.1441–1(e)(4)(iv). See §1.1092(d)–1 for a definition of the term *actively traded* for purposes of this paragraph (d)(2)(ii).

(iii) *Joint owners*. Amounts paid to accounts held jointly for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (b) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§31.3406(d)–1 through 31.3406(d)-5 of this chapter, or with documentation

described in paragraph (b)(12) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (d)(2)(iii), the grace period described in paragraph (d)(2)(ii) of this section shall apply only if each payee qualifies for such grace period.

(3) *Payments to foreign intermediaries or flow-through entities*—(i) *Payments of amounts subject to withholding under chapter 3 of the Internal Revenue Code.* In the case of payments of amounts that the payor may treat as made to a foreign intermediary or flow-through entity in accordance with §§1.1441–1(b)(3)(ii)(C) and (b)(3)(v)(A), 1.1441–5(c) or (e) and that are subject to withholding under §1.1441–2(a), the provisions of §§1.1441-1(b)(2)(v) and 1.1441–5(c)(1), (e)(2), and (3) shall apply (by applying the term *payor* instead of the term *withholding agent*) to identify the payee. If a payment of an amount subject to withholding cannot be reliably associated with valid documentation from a payee in accordance with §1.1441–1(b)(2)(vii) the presumption rules of §1.1441–1(b)(3)(v) and §1.1441–5(d) and (e)(6) shall apply to determine the payee's status for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(3) applies).

(ii) *Payments of amounts not subject to withholding under chapter 3 of the Internal Revenue Code.* Except as provided in paragraph (d)(3)(iii) of this section, amounts that are not subject to withholding under chapter 3 of the Internal Revenue Code that the payor may treat as paid to a foreign intermediary or flow-through entity shall be treated as made to an exempt recipient described in §1.6049–4(c) except to the extent that the payor has actual knowledge that any person for whom the intermediary or flow-through entity is collecting the payment is a U.S. person who is not an exempt recipient. In the case of such actual knowledge, the payor shall treat the payment that it knows is allocable to such U.S. person as a payment to a U.S. payee who is not an exempt recipient and has actual knowledge of the amount allocable to such a person.

(iii) *Special rule for payments of certain short-term original issue discount and bank deposit interest*—(A) *General rule.* A payment of U.S. source deposit interest described in section 871(i)(2)(A) or 881(d)(3) or interest or original issue discount on the redemption of an obligation with a maturity from the date of issue of 183 days or less (short-term OID) described in section 871(g)(1)(B) or 881(e) that the payor may treat as paid to a foreign intermediary or flow-through entity in accordance with the provisions of §1.1441-1(b)(3)(ii)(C), (v)(A), §1.1441–5(d) or (e), shall be treated as paid to an undocumented U.S. payee that is not an exempt recipient under paragraph §1.6049–4(c) unless the payor has documentation from the payees of the payment and the payment is allocated to foreign payees, as a group, and to each U.S. non-exempt recipient payee. See §1.1441–1(e)(3)(iv)(C)(*2*).

(B) *Payee may be an intermediary.* If a payment is made to a person described in §1.6049–4(c)(1)(ii) that has not provided an intermediary withholding certificate under §1.1441–1(e)(3)(i) but the payor knows or has reason to know that the payee may be an intermediary, the payor must apply the rules of paragraph (d)(3)(iii)(A) of this section. A payor has reason to know that such a person may be an intermediary if that person has provided documentation as an intermediary for another account with the same payor.

(iv) *Short-term deposits and repurchase transactions.* The provisions of paragraph (d)(3)(ii) of this section and not paragraph (d)(3)(iii) of this section shall apply to deposits with banks and other financial institutions that remain on deposit for a period of two weeks or less, to amounts of original issue discount arising from a sale and repurchase transaction that is completed within a period of two weeks or less, or to amounts described in paragraphs (b)(7), (10) and (11) of this section (relating to certain obligations issued in bearer form).

(4) *Examples.* The rules of paragraphs (d)(1) through (3) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP pays interest from sources within the United States to an account maintained in

the United States by X. The interest is not deposit interest described in sections 871(i)(2)(A) or 881(d). USP does not have a withholding certificate from X as defined in §1.1441–1(c)(16). Moreover, USP cannot treat X as an exempt recipient, as defined in §1.6049–4(c)(1)(ii), without documentation and there is no indication that X is an individual, trust, or estate.

(ii) *Analysis.* The U.S. source interest is an amount subject to withholding as defined in §1.1441–2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of §§1.1441–1(b)(2) and 1.1441–5(c) and (e) to determine the payee of the interest. Under §1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of §1.1441–5 apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of §1.1441–1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. Under §1.1441–1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether X is presumed to be a U.S. or foreign partnership. Under §§1.1441–1(b)(3)(iii) and 1.1441–5(d)(2), X is presumed to be a U.S. partnership in absence of any indicia of foreign partnership status. The U.S. source interest paid to X is reportable under section 6049 on Form 1099 and the interest is subject to backup withholding under section 3406 because X has not provided its TIN on a valid Form W–9.

Example 2. (i) *Facts.* The facts are the same as in *Example 1,* except that the interest paid by USP is from sources outside the United States.

(ii) *Analysis.* Interest from sources outside the United States is not an amount subject to withholding, as defined in §1.1441–2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of §§1.1441–1(b)(2) and 1.1441–5(c) and (e) to determine the payee. Under §1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of §1.1441–5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of §1.1441–1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. These rules apply irrespective of whether the payment is an amount subject to withholding. Under §1.1441–1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Under §§1.1441–1(b)(3)(iii) and 1.1441–5(d)(2), X is presumed to be a U.S. partnership in absence of any indicia of foreign partnership status. The foreign source interest is a payment subject to reporting on Form 1099 under §1.6049–5(a). Further, because X is a non-exempt recipient that has failed to provide its TIN on a valid Form W–9, the foreign source interest is subject to backup withholding under section 3406.

Example 3. (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP makes a payment of U.S. source interest outside the United States to an offshore account of X. See paragraphs (c)(1) for a definition of offshore account and (e) for a payment outside the United States. USP does not have a withholding certificate from X as defined in §1.1441–1(c)(16) nor does it have documentary evidence as described in §1.1441–1(e)(1)(ii)(A)(*2*) and 1.6049–5(c)(1).

(ii) *Analysis.* The interest is an amount subject to withholding as defined in §1.1441–2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of §1.1441–1(b)(2) and §1.1441–5(c) and (e) to determine the payee. Under §1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of §1.1441–5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of §1.1441–1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. Under §1.1441–1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Under §§1.1441–1(b)(3)(iii)(D) and 1.1441–5(d)(2), X is presumed to be a foreign partnership. Therefore, under paragraph (d)(1) of this section and §1.1441–5(c)(1)(i)(E), the payees of the interest are presumed to be the partners of X. Under §1.1441–5(d)(3), the partners are presumed to be undocumented foreign persons. Therefore, USP must withhold 30 percent of the interest payment under §1.1441–1(b)(1) and report the payment on Form 1042–S in accordance with §1.1461–1(c).

Example 4. (i) *Facts.* The facts are the same as in *Example 3,* except that the interest is paid by F, a non-U.S. payor.

(ii) *Analysis.* The analysis and result are the same as in *Example 3.* F is a withholding agent under §1.1441–7 and its status as a non-

U.S. payor under paragraph (c)(5) of this section is irrelevant.

Example 5. (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP makes a payment outside the United States of interest from sources outside the United States to an offshore account of X. USP does not have a withholding certificate from X as defined in §1.1441–1(c)(16) nor does it have documentary evidence as described in §§1.1441–1(e)(1)(ii)(A)(*2*) and 1.6049–5(c)(1). USP does not have actual knowledge of an employer identification number for X. X does not appear to be an individual, trust, or estate and cannot be treated as an exempt recipient, as defined in §1.6049–4(c)(1)(ii) in the absence of documentation.

(ii) *Analysis.* The interest is not an amount subject to withholding as defined in §1.1441–2(a). Under paragraph (d)(1) of this section, USP must apply the rules of §§1.1441–1(b)(2) and 1.1441–5(c) and (e) to determine the payee of the interest. Under §1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of §1.1441–5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, §1.1441–1(b)(3)(ii) applies to determine X's classification as an individual, trust, estate, corporation or partnership. Under §1.1441–1(b)(3)(ii)(B), X is treated as a partnership, since it does not appear to be an individual, trust, or estate and cannot be treated as an exempt recipient without documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Paragraph (d)(2)(i) also states that the presumptions of foreign status for payments made to offshore accounts contained in §§1.1441–1(b)(3)(iii)(D) and 1.1441–5(d)(2) do not apply to amounts that are not subject to withholding. Therefore, under §§1.1441–1(b)(3)(iii) and 1.1441–5(d)(2), X is presumed to be a U.S. partnership because it does not have actual knowledge that X's employer identification number begins with the digits ''98.'' Therefore, USP must treat X as a U.S. person that is not an exempt recipient and report the payment on Form 1099 under section 6049. Under §31.3406(g)–1(e) of this chapter, however, USP is not required to backup withhold on the payment unless it has actual knowledge that X is a U.S. person that is not an exempt recipient.

Example 6. (i) *Facts.* The facts are the same as in *Example 5*, except that the interest is paid by F, a non-U.S. payor, as defined under paragraph (c)(5) of this section.

(ii) *Analysis.* The analysis is the same as under *Example 5*. However, because F is a non-U.S. payor paying foreign source interest outside the United States, paragraph (b)(6) of this section exempts the payment from reporting under section 6049.

Example 7. (i) *Facts.* USP, a U.S. payor as defined in paragraph (c)(5) of this section, makes a payment of U.S. source interest to NQI, a foreign corporation and a nonqualified intermediary as defined in §1.1441–1(c)(14). The interest is not deposit interest as defined in sections 871(i)(2)(A) and 881(d). The interest is paid inside the United States to an account maintained in the United States. NQI has provided USP with a nonqualified intermediary withholding certificate, as described in §1.1441–1(e)(3)(iii), but has not attached any documentation from the persons on whose behalf it acts or a withholding statement as described in §1.1441–1(e)(3)(iv).

(ii) *Analysis.* U.S. source interest is an amount subject to withholding under §1.1441–2(a). USP may treat the payment as made to a foreign intermediary under §1.1441–1(b)(3)(v)(A) because USP has received a nonqualified intermediary withholding certificate from NQI. Under paragraph (d)(3)(i) of this section, USP must apply §1.1441–1(b)(2)(v) to determine the payees of the payment. Under §1.1441–1(b)(2)(v)(A), USP must treat the persons on whose behalf NQI is acting as the payees. Paragraph (d)(3)(i) of this section also requires USP to apply the presumption rules of §1.1441–1(b)(3)(v) if it cannot reliably associate the payment with valid documentation from a payee. See §1.1441–1(b)(2)(vii). Under §1.1441–1(b)(3)(v)(B), the interest is treated as paid to an unknown foreign payee because it cannot be reliably associated with documentation under §1.1441–1(b)(2)(vii). Therefore, the payment is not subject to reporting on Form 1099 under paragraph (b)(12) of this section because the payment is presumed made to a foreign person. The payment is subject to withholding, however, under §1.1441–1(b) at a rate of 30 percent and is subject to reporting on Form 1042–S under §1.1461–1(c).

Example 8. (i) *Facts.* The facts are the same as in *Example 7*, except that the interest is paid outside the United States, as defined in paragraph (e) of this section to an offshore account, as defined in paragraph (c)(1) of this section.

(ii) *Analysis.* The analysis and results are the same as in *Example 7*. The rules of §1.1441–1(b)(3)(v) apply irrespective of where the account is maintained or the payment made.

Example 9. (i) *Facts.* The facts are the same as in *Example 8*, except that the interest is paid by F, a non-U.S. payor, as defined in paragraph (c)(5) of this section.

(ii) *Analysis.* The analysis and results are the same as in *Example 7*.

Example 10. (i) USP, a U.S. payor as defined in paragraph (c)(5) of this section, makes a payment of foreign source interest to NQI, a

foreign corporation and a nonqualified intermediary as defined in §1.1441–1(c)(14). NQI has provided USP with a nonqualified intermediary withholding certificate, as described in §1.1441–1(e)(3)(iii), but has not attached any documentation from the persons on whose behalf it acts or a withholding statement as described in §1.1441–1(e)(3)(iv).

(ii) *Analysis.* Foreign source interest is not an amount subject to withholding under chapter 3 of the Internal Revenue Code. See §1.1441–2(a). Under paragraph (d)(3)(ii)(A) of this section, amounts that are not subject to withholding under chapter 3 of the Internal Revenue Code that a payor may treat as paid to a foreign intermediary are treated as made to an exempt recipient described in §1.6049–4(c). Therefore, the foreign source interest is not subject to reporting on Form 1099.

Example 11. (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP pays U.S. source original issue discount from the redemption of an obligation described in section 871(g)(1)(B) to NQI, a foreign corporation that is a nonqualified intermediary as defined in §1.1441–1(c)(14). The redemption proceeds are paid to an account NQI has with USP in the United States. NQI provides a nonqualified intermediary withholding certificate as described in §1.1441–1(e)(3)(iii) but does not attach any payee documentation or a withholding statement described in §1.1441–1(e)(3)(iv).

(ii) *Analysis.* Under paragraph (d)(3)(ii)(A) of this section, USP must treat the payment as made to an undocumented U.S. payee that is not an exempt recipient and report the payment on Form 1099. Further, because the payment is made inside the United States, the exception to backup withholding for offshore accounts contained in §31.3406(g)–1(e) of this chapter does not apply and the payment is subject to backup withholding.

Example 12. (i) *Facts.* P, a payor, makes a payment to NQI of U.S. source interest on debt obligations issued prior to July 18, 1984. Therefore, the interest does not qualify as portfolio interest under section 871(h) or 881(d). NQI is a nonqualified foreign intermediary, as defined in §1.1441–1(c)(14), and has furnished P a valid nonqualified intermediary withholding certificate described in §1.1441–1(e)(3)(iii) to which it has attached a valid Form W–9 for A, and two valid beneficial owner Forms W–8, one for B and one for C. A is not an exempt recipient under §1.6049–4(c). NQI furnishes a withholding statement, described in §1.1441–1(e)(3)(iv), in which it allocates 20 percent of the U.S. source interest to A, but does not allocate the remaining 80 percent of the interest between B and C. B's withholding certificate indicates that B is a foreign pension fund, exempt from U.S. tax under the U.S. income tax treaty with Country T. C's withholding certificate indicates that C is a foreign corporation not entitled to a reduced rate of withholding.

(ii) *Analysis.* Under paragraph (d)(3)(i) of this section, P applies the rules of §1.1441–1(b)(2)(v) to determine the payees of the interest. Under that section, the payees are the persons on whose behalf NQI acts—A, B and C. Because P can reliably associate 20 percent of the payment with valid documentation provided by A, P must treat 20 percent of the interest as paid to A, a U.S. person not exempt from reporting, and report the payment on Form 1099. P cannot reliably associate the remaining 80 percent of the payment with valid documentation under §1.1441–1(b)(2)(vii) and, therefore, under paragraph (d)(3)(i) of this section must apply the presumption rules of §1.1441–1(b)(3)(v). Under that section, the interest is presumed paid to an unknown foreign payee. Under paragraph (b)(12) of this section, P is not required to report the interest presumed paid to a foreign person on Form 1099. Under §1.1441–1(b), 80 percent of the interest is subject to 30 percent withholding, however, and the interest is reportable on Form 1042-S under §1.1461–1(c).

Example 13. (i) *Facts.* The facts are the same as in *Example 12,* except that P can reliably associate 30 percent of the payment of interest to B, but cannot reliably associate the remaining 70 percent with A or C.

(ii) *Analysis.* Under paragraph (d)(3)(i) of this section, P applies the rules of §1.1441–1(b)(2)(v) to determine the payees of the interest. Under that section, the payees are the persons on whose behalf NQI acts—A, B and C. Because P can reliably associate 30 percent of the payment with B, a foreign pensions fund exempt from withholding under an income tax treaty, P may treat that payment as paid to B and not subject to reporting on Form 1099 under paragraph (b)(12) of this section. P cannot reliably associate the remaining 70 percent of the payment with valid documentation under §1.1441–1(b)(2)(vii) and, therefore, under paragraph (d)(3)(i) of this section must apply the presumption rules of §1.1441–1(b)(3)(v). Under that section, the interest is presumed paid to an unknown foreign payee. Under paragraph (b)(12) of this section, P is not required to report the interest presumed paid to a foreign person on Form 1099. Under §1.1441–1(b), 80 percent of the interest is subject to 30 percent withholding, however, and the interest is reportable on Form 1042-S under §1.1461–1(c).

Example 14. (i) *Facts.* The facts are the same as in *Example 12,* except that P also makes a payment of foreign source interest to NQI.

(ii) *Analysis.* Under paragraph (d)(3)(ii)(A), P may treat the foreign source interest as paid to an exempt recipient as defined in §1.6049–4(c) and not subject to reporting on

Form 1099 even though some or all of the foreign source interest may in fact be owned by A, the U.S. person that is not exempt from reporting.

(e) *Determination of whether amounts are considered paid outside the United States*—(1) *In general.* For purposes of section 6049 and this section, an amount is considered to be paid by a payor or middleman outside the United States if the payor or middleman completes the acts necessary to effect payment outside the United States. See paragraphs (e)(2), (3), and (4) of this section for further clarification of where amounts are considered paid. A payment shall not be considered to be made within the United States for purposes of section 6049 merely by reason of the fact that it is made on a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account. However, without regard to the location of the account from which the amount is drawn, an amount that is described in paragraph (e)(1) (i) or (ii) of this section and paid by transfer to an account maintained by the payee in the United States or by mail to a United States address is not considered to be paid outside the United States.

(i) An amount is described in this paragraph (e)(1)(i) if it is paid by an issuer or the paying agent of the issuer and the obligation is either—

(A) Issued by a U.S. payor, as defined in paragraph (c)(5) of this section;

(B) Registered under the Securities Act of 1933 (15 U.S.C. 77a); or

(C) Listed on an exchange that is registered as a national securities exchange in the United States or included in an interdealer quotation system in the United States.

(ii) An amount is described in this paragraph (e)(1)(ii) if it is paid by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian, nominee, or other agent of a payee, collects the amount for or on behalf of the payee.

(2) *Amounts paid with respect to deposits or accounts with banks and other financial institutions.* Notwithstanding paragraph (e)(1) of this section, an amount paid by a bank or other financial institution with respect to a deposit or with respect to an account with the institution is considered paid at the branch or office at which the amount is credited unless the amount is collected by the financial institution as the agent of the payee. However, an amount will not be considered to be paid at the branch or office where the amount is considered to be credited unless the branch or office is a permanent place of business that is regularly maintained, occupied, and used to carry on a banking or similar financial business; the business is conducted by at least one employee of the branch or office who is regularly in attendance at such place of business during normal business hours; and the branch or office receives deposits and engages in one or more of the other activities described in §1.864–4(c)(5)(i). In addition, an amount paid by a bank or other financial institution with respect to a deposit or an account with the institution is not considered paid at a branch or office outside the United States if the customer has transmitted instructions to an agent, branch, or office of the institution from inside the United States by mail, telephone, electronic transmission, or otherwise concerning the deposit or account (unless the transmission from the United States has taken place in isolated and infrequent circumstances).

(3) *Coupon bonds and discount obligations in bearer form.* Notwithstanding paragraph (e)(1) of this section, an amount paid with respect to a bond with coupons attached (including a certificate of deposit with detachable interest coupons) or a discount obligation that is not in registered form (within the meaning of section 163(f) and the regulations thereunder) is considered to be paid where the coupon or the discount obligation is presented to the payor or its paying agent for payment. However, without regard to where the coupon or discount obligation is presented for payment, an amount paid with respect to either a bond with coupons attached or a discount obligation by transfer to an account maintained by the payee in the United States or by mail to the United States is considered paid in the United States if the payment is described in paragraphs (e)(3) (i) and (ii) of this section.

(i) The amount is paid by an issuer or the paying agent of the issuer and the obligation is either—

(A) Issued by a U.S. payor, as defined in paragraph (c)(5) of this section;

(B) Registered under the Securities Act of 1933 (15 U.S.C. 77a); or

(C) Listed on an exchange that is registered as a national securities exchange in the United States or included in an interdealer quotation system in the United States.

(ii) The amount is paid by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian, nominee, or other agent of payee, collects the amount for or on behalf of the payee.

(4) *Foreign-targeted registered obligations.* Notwithstanding paragraph (e)(1) of this section, where the payor is the issuer or the issuer's agent, an amount is considered paid outside the United States with respect to a foreign-targeted registered obligation, as described in §1.871–14(e)(2), if either the amount is paid by transfer to an account maintained by the registered owner outside the United States, or by mail to an address of the registered owner outside the United States, or by credit to an international account. For purposes of this paragraph (e)(4), the term *international account* means the book-entry account of a financial institution (within the meaning of section 871(h)(4)(B)) or of an international financial organization with the Federal Reserve Bank of New York for which the Federal Reserve Bank of New York maintains records that specifically identify an international financial organization or a financial institution (within the meaning of section 871(h)(4)(B)) as either a non-United States person or a foreign branch of a United States person as registered owner. An international financial organization is a central bank or monetary authority of a foreign government or a public international organization of which the United States is a member to the extent that such central bank, authority, or organization holds obligations solely for its own account and is exempt from tax under section 892 or 895.

(5) *Examples.* The application of the provisions of this paragraph (e) are illustrated by the following examples:

Example 1. FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in paragraph (c)(5) of this section. A holds FC coupon bonds that are not in registered form under section 163(f) and the regulations thereunder, that were issued by FC in a public offering outside the United States, that are not registered under the Securities Act of 1933 (15 U.S.C. 77a), and that are neither listed on an exchange that is registered as a national securities exchange in the United States nor included in an interdealer quotation system. DC, a U.S. corporation that is engaged in a commercial banking business, is the designated fiscal agent for FC. FB, a foreign branch of DC, is the designated paying agent with respect to the bonds issued by FC. A does not have an account with FB. A presents a coupon from a FC bond for payment to FB at its office outside the United States. FB pays A with a check drawn against a bank account maintained in the United States. For purposes of section 6049, the place of payment of interest on the FC bond by FB to A is considered to be outside the United States under paragraph (e)(3) of this section.

Example 2. The facts are the same as in *Example 1* except that A presents the coupon to FB at its office outside the United States with instructions to transfer funds in payment to a bank account maintained by A in the United States. FB transfers the funds in accordance with A's instructions. Even though the amount is credited to an account in the United States, the place of payment of interest on the FC bonds is considered to be outside the United States under paragraph (e)(3) of this section because the coupon is presented for payment outside the United States; because FC is a foreign person that is not a U.S. payor or U.S. middleman, as defined in paragraph (d)(1) of this section; because FB is not acting as A's agent; and because the obligation is not registered under the Securities Act of 1933 (15 U.S.C. 77a), listed on a securities exchange that is registered as a national securities exchange in the United States, or included in an interdealer quotation system.

Example 3. FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in paragraph (d)(1) of this section. B, a United States citizen, holds a bond issued by FC in registered form under section 163(f) and the regulations thereunder and registered under the Securities Act of 1933 (15 U.S.C. 77a). The bond is not a foreign-targeted registered obligation as defined in §1.871–14(e)(2). DB, a United States branch of a foreign corporation engaged in the commercial banking business, is the registrar of the bonds issued by FC. DB supplies FC with

a list of the holders of the FC bonds. Interest on the FC bonds is paid to B and other bondholders by checks prepared by FC at its principal office outside the United States, and B's check is mailed from there to his designated address in the United States. The bond is described in paragraph (e)(1)(i)(B) of this section. The place of payment to B by FC of the interest on the FC bonds is considered to be inside the United States under paragraph (e)(1) of this section.

Example 4. The facts are the same as in Example 3 except that the checks are prepared and mailed in the United States by DC, a U.S. corporation engaged in the commercial banking business that is the designated paying agent with respect to the bonds issued by FC, and B's check is mailed to his designated address outside the United States. For purposes of section 6049, the place of payment by DC of the interest on the FC bonds is considered to be within the United States under paragraph (e)(1) of this section.

Example 5. Individual C deposits funds in an account with FB, a foreign country X branch of DB, a U.S. corporation engaged in the commercial banking business. FB maintains an office and employees in foreign country X, accepts deposits, and conducts one or more of the other activities listed in §1.864–4(c)(5)(i). The terms of C's deposit provide that it will be payable in six months with accrued interest. On the day that the interest is credited to C's account with FB, C telephones DB from inside the United States and asks DB to direct FB to transfer the funds in his account with FB to an account C maintains in the United States with DB. Transmissions from the United States concerning this account have taken place in isolated and infrequent circumstances. Under paragraph (e)(2) of this section, FB is considered to have paid the interest on C's deposit outside the United States.

Example 6. The facts are the same as in *Example 5* except that C has placed his deposit with FB for an indefinite period of time. Interest will be credited to C's account daily. C has instructed FB to wire the interest at 90-day intervals to C's account with DB within the United States. FB is considered to have paid the interest credited to A's account within the United States under paragraph (e)(2) of this section because the regular crediting of the account disqualifies the transmission from being isolated or infrequent.

Example 7. DC, a U.S. corporation engaged in the commercial banking business, maintains FB, a branch in foreign country X. FB has an office and employees in foreign country X, accepts deposits, and engages in one or more of the other activities listed in §1.864–4(c)(5)(i). D, a United States citizen, purchases a certificate of deposit issued in 1980 by FB. The certificate of deposit has a maturity of 20 years and has detachable interest coupons payable at six-month intervals. D presents some of the coupons at the U.S. office of DC and receives payment in cash. Because the coupon is presented to DC for payment within the United States, DC is considered to have made the payment within the United States under paragraph (e)(3) of this section.

Example 8. FB is recognized by both foreign country X and by the Federal Reserve Bank as a foreign country X branch of DC, a U.S. corporation engaged in the commercial banking business. A local foreign country X bank serves as FB's resident agent in Country X. FB maintains no physical office or employees in foreign country X. All the records, accounts, and transactions of FB are handled at the United States office of DC. E deposits funds in an amount maintained with FB. Interest earned on the deposit is periodically credited to E's account with FB by employees of DC. For purposes of section 6049, the place of payment of the interest on E's deposit with FB is considered to be within the United States by reason of paragraphs (e)(1) and (2) of this section.

Example 9. DC is a U.S. corporation. A holds bonds that were issued by DC in registered form under section 163(f) and the regulations thereunder and that are foreign-targeted registered obligations as defined in §1.871–14(e)(2). DB, a commercial banking business, is the registrar of bonds issued by DC. Interest on the DC bonds is paid to A and other bondholders by check prepared by DB at its principal office inside the United States and mailed from there to A's address outside the United States. The check is drawn on a United States account maintained by DC with DB within the United States. The place of payment to A by DB of the interest on the DC bonds is considered to be outside the United States under paragraph (e)(4) of this section.

(f) *Original issue discount treated as payment of interest.* In determining whether an obligation is one which was issued at a discount and the amount of discount which is includible in income of the holder, a payor (other than the issuer of the obligation) may rely on the Internal Revenue Service's publication of publicly traded original issue discount obligations. In the case of an obligation as to which there is during any calendar year an amount of original issue discount includible in the gross income of any holder (as determined under sections 1232 and 1232A and the regulations thereunder), the issuer of the obligation or a middleman (as defined in §1.6049–4(f)(4)) shall be treated as having paid to such holder during such calendar year an amount

of interest equal to the amount of original issue discount so includible without regard to any reduction by reason of a purchase allowance under sections 1232(a)(2)(C)(ii), 1232A (a)(6) or (b)(4) or a purchase at a premium under 1232A(c)(4)(A) or paragraph (d)(2) of §1.1232–3. Thus, the determination of the amount of original issue discount includible in the gross income of any holder with respect to any obligation shall be determined as if any holder of the obligation were the original holder. In the case of (1) an obligation to which section 1232A does not apply (for example, a short-term government obligation as defined in section 1232(a)(3)) and (2) an obligation issued on or before December 31, 1982, in bearer form, the amount of original issue discount includible in gross income shall be treated as if paid in the calendar year in which the date of maturity occurs or in which the date of redemption occurs if redemption occurs before maturity. The amount subject to reporting on an obligation issued in bearer form with a maturity at the date of issue of more than 1 year (a long term obligation) is the amount of original issue discount includible in the gross income of the holder during the calendar year of maturity or redemption if redemption occurs before maturity. The amount of original issue discount subject to reporting on a long term obligation shall not be reduced to reflect any purchase allowance. Discount on short term government obligations as defined in section 1232(a)(3), such as Treasury bills, and discount on other obligations with a maturity at the date of issue of not more than 1 year (a short term obligation), including commercial paper, when paid at maturity or redemption if redemption occurs before maturity, shall constitute a payment of interest for purposes of section 6049. In general, the amount subject to reporting on short term obligations is the difference between the stated redemption price at maturity and the original issue price. The procedure set forth in section 3455(b)(2)(B) and §31.3455(b)–1(b)(3) for establishing the price at which a holder purchased an obligation subsequent to the date of original issue shall apply for purposes of section 6049. Original issue discount on an obligation (including an obligation with a maturity of not more than 6 months from the date of original issue) held by a nonresident alien individual or foreign corporation is interest described in paragraph (b)(1)(vi) (A) or (B) of this section and, therefore is not interest subject to reporting under section 6049 unless it is described in §1.6049–8(a) (relating to bank deposit interest paid to a Canadian nonresident alien individual).

(g) *Effective date*—(1) *General rule*. The provisions of paragraphs (b)(6) through (15), (c), (d), and (e) of this section apply to payments made after December 31, 2000.

(2) *Transition rules*. The validity of a withholding certificate (namely, Form W–8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such a withholding certificate remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a payor may choose not to take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, may require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised

April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

[T.D. 7881, 48 FR 12972, Mar. 28, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.6049–5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 1.6049–5T Reporting by brokers of interest and original issue discount on and after January 1, 1986 (temporary).

For purposes of § 1.6049–5 (c), relating to original issue discount treated as interest subject to reporting, on and after January 1, 1986, a payor who is a broker or middleman holding as a nominee—

(a) A bank certificate of deposit (without regard to whether the broker or middleman sold the certificate of deposit to the owner), or

(b) Any other original issue discount debt instrument that is specified by the Commissioner,

must determine whether that obligation is one that was issued at a discount and the amount of discount that is includible in the income of the owner. However, before January 1, 1987, reporting is required only with respect to certificates of deposit (or any such other obligations) held by a broker or middleman as a nominee on or after June 1, 1986, that were sold by the broker or middleman (whether for the broker's account or as an agent of the issuer) to the owner. The preceding two sentences do not apply to certificates of deposit (or any such other obligations) held on or after January 1, 1986, but disposed of before June 1, 1986; reporting requirements with respect to such certificates of deposit (or any other such obligations) shall be determined under the provisions of § 1.6049–5 (c) as in effect immediately prior to publication of this § 1.6049–5T.

[T.D. 8109, 51 FR 45106, Dec. 17, 1986]

§ 1.6049–6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

(a) *Requirement of furnishing statement to recipient*. Every person filing a Form 1099 under section 6049(a) and § 1.6049–4(e) shall furnish to the person whose identifying number is required to be shown on the form a written statement showing the information required by paragraph (b) of this section. With respect to interest other than interest reported on a transactional basis under § 1.6049–4(e), no statement is required to be furnished under section 6049(c) and this section if the aggregate of the payments for the calendar year is less than $10, unless such payment is subject to the tax imposed under section 3406. In the case of any payment that is subject to withholding under section 3406, a statement shall be furnished irrespective of the amount of the payment. With respect to payments which are reported on a transactional basis, no statement is required to be furnished under section 6049(c) and this section to a person if the payment of interest to (or received on behalf of) such person for the transaction is less than $10 unless the payment is subject to withholding under section 3406. Again, in the case of any payment that is subject to withholding under section 3406, a statement shall be furnished irrespective of the amount of the payment.

(b) *Form of statement*. The written statement required to be furnished to a person under paragraph (a) of this section shall show the following information:

(1) With respect to payments of interest (other than original issue discount) to any person during a calendar year, the statement shall show:

(i) The aggregate amount of payments shown on Form 1099 as having been made to (or received on behalf of) such person;

(ii) The amount of tax withheld under section 3406, if any;

(iii) The name and address of the person filing the form; and

(iv) A legend stating that such amount is being reported to the Internal Revenue Service.

(2) With respect to original issue discount includible in the gross income of

a holder of an obligation during a calendar year, the statement shall show:

(i) The aggregate amount of original issue discount includible in the gross income by (or on behalf of) such person for the calendar year with respect to the obligation (determined by applying the rules of paragraph (b)(2) of §1.6049–4);

(ii) The amount of tax withheld under section 3406, if any;

(iii) The account, serial, or other identifying number of each obligation with respect to which a return is being made;

(iv) All other items shown on Form 1099 for such calendar year; and

(v) A legend stating that such amount and such items are being reported to the Internal Revenue Service.

(c) *Time for furnishing statements.* Each statement required by this section to be furnished to any person for a calendar year with respect to a payment of interest (other than interest where a middleman or a Federal agency makes a return on a transactional basis (as described in paragraph (e) of §1.6049–4)) shall be furnished to such person after April 30 of the year of payment and on or before January 31 of the following year, but no statement may be furnished before the final interest payment for the calendar year. If a middleman or a Federal agency makes a return on a transactional basis, the statement shall be furnished at, or any time subsequent to, the time of payment, but in no event later than January 31 of the year following the calendar year of payment.

(d) *Special rule.* The requirements of this section for the furnishing of a statement to any person, including the legend requirement of paragraph (b)(1)(iv) and (2)(v) of this section, may be met by the furnishing to such person a copy of the Form 1099 filed pursuant to §1.6049–4, or an acceptable substitute, in respect of such person. However, in the case of Form 1099 with respect to original issue discount on obligations subject to section 1232A, a copy of the instructions must also be sent to such person. A statement shall be considered to be furnished to a person within the meaning of this section if it is mailed to such person at his last known address.

(e) *Statements to recipients*—(1) *Requirement.* A person required to make an information return under section 6049(a) and §1.6049–4 must furnish a statement to each recipient whose identifying number is required to be shown on the related information return for interest or original issue discount paid or accrued.

(2) *Form, manner, and time for providing statements to recipients.* The statement required by paragraph (e)(1) of this section must be either the official Form 1099 prescribed by the Internal Revenue Service for the respective calendar year or an acceptable substitute statement. The rules under §1.6042–4 (relating to statements with respect to dividends) apply comparably in determining the form of an acceptable substitute statement permitted by this paragraph (e). Those rules also apply for purposes of determining the manner of and time for providing the Form 1099 or its acceptable substitute to a recipient under paragraph (e)(1) of this section. However, with respect to original issue discount, the Form 1099 or acceptable substitute statement required by paragraph (e)(1) of this section must show the aggregate amount of original issue discount includible in the gross income by the recipient for the calendar year with respect to the obligation (determined by applying the rules of §1.6049–4(b)(2)), and the amount, serial number, or other identifying number of each obligation with respect to which a return is being made. With respect to interest or original issue discount, the Form 1099 or acceptable substitute statement required by paragraph (e)(1) of this section must be furnished to the recipient on or before January 31 of the year following the calendar year for which the return under section 6049(a)(1) was required to be made.

(3) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6049(c) and §1.6049–6(a), see §301.6722–1 of this chapter (Procedure and Administration Regulations). See §301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(4) *Special rule for amounts described in § 1.6049–8(a) paid after December 31, 1996.* In the case of amounts described in § 1.6049–8(a) (relating to payments of interest to Canadian nonresident alien individuals) paid after December 31, 1996, any person who makes a Form 1042–S under section 6049(a) and § 1.6049–4(b)(5) shall furnish a statement to the recipient. The statement shall include a copy of the Form 1042–S required to be prepared pursuant to § 1.6049–4(b)(5) and a statement to the effect that the information on the form is being furnished to the United States Internal Revenue Service and may be furnished to Canada.

(5) *Effective date.* This paragraph (e) is effective for payee statements due after December 31, 1995, without regard to extensions. For the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996, see Rev. Proc. 84–70 (1984–2 C.B. 716) (or successor revenue procedures). See § 601.601(d)(2) of this chapter.

[T.D. 7881, 48 FR 12976, Mar. 28, 1983, as amended by T.D. 8637, 60 FR 66111, Dec. 21, 1995; 61 FR 11307, Mar. 20, 1996; T.D. 8664, 61 FR 17574, Apr. 22, 1996; T.D. 8664, 61 FR 40993, Aug. 7, 1996; T.D. 8734, 62 FR 53491, Oct. 14, 1997]

§ 1.6049–7 Returns of information with respect to REMIC regular interests and collateralized debt obligations.

(a) *Definition of interest*—(1) *In general.* For purposes of section 6049(a), for taxable years beginning after December 31, 1986, the term *interest* includes:

(i) Interest actually paid with respect to a collateralized debt obligation (as defined in paragraph (d)(2) of this section),

(ii) Interest accrued with respect to a REMIC regular interest (as defined in section 860G(a)(1)), or

(iii) Original issue discount accrued with respect to a REMIC regular interest or a collateralized debt obligation.

(2) *Interest deemed paid.* For purposes of this section and in determining who must make an information return under section 6049(a), interest as defined in paragraphs (a)(1) (ii) and (iii) of this section is deemed paid when includible in gross income under section 860B (b) or section 1272.

(b) *Information required to be reported to the Internal Revenue Service*—(1) *Requirement of filing Form 8811 by REMICs and other issuers*—(i) *In general.* Except in the case of a REMIC all of whose regular interests are owned by one other REMIC, every REMIC and every issuer of a collateralized debt obligation (as defined in paragraph (d)(2) of this section) must make an information return on Form 8811, Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations. Form 8811 must be filed in the time and manner prescribed in paragraph (b)(1)(iii) of this section. The submission of Form 8811 to the Internal Revenue Service does not satisfy the election requirement specified in § 1.860D-1T(d) and does not require election of REMIC status.

(ii) *Information required to be reported.* The following information must be reported to the Internal Revenue Service on Form 8811—

(A) The name, address, and employer identification number of the REMIC or the issuer of a collateralized debt obligation (as defined in paragraph (d)(2) of this section);

(B) The name, title, and either the address or the address and telephone number of the official or representative of the REMIC or the issuer of a collateralized debt obligation who will provide to any person specified in paragraph (e)(4) of this section the interest and original issue discount information specified in paragraph (e)(2) of this section;

(C) The startup day (as defined in section 860G(a)(9)) of the REMIC or the issue date (as defined in section 1275(a)(2)) of the collateralized debt obligation;

(D) The Committee on Uniform Security Identification Procedure (CUSIP) number, aocount number, serial number, or other identifying number or information, of each class of REMIC regular interest or collateralized debt obligation;

(E) The name, title, address, and telephone number of the official or representative of the REMIC or the issuer of a collateralized debt obligation

whom the Internal Revenue Service may contact, and

(F) Any other information required by Form 8811.

(iii) *Time and manner of filing of information return*—

(A) *Manner of filing.* Form 8811 must be filed with the Internal Revenue Service at the address specified on the form. The information specified in paragraph (b(1)(ii) of this section must be provided on Form 8811 regardless of whether other information returns are filed by use of electronic media.

(B) *Time for filing.* Form 8811 must be filed by each REMIC or issuer of a collateralized debt obligation on or before the later of July 31, 1989, or the 30th day after—

(*1*) the startup day (as defined in section 860G(a)(9)) in the case of a REMIC, or

(*2*) the issue date (as defined in section 1275(a)(2)) in the case of a collateralized debt obligation.

Further, each REMIC or issuer of a collateralized debt obligation must file a new Form 8811 on or before the 30th day after any change in the information previously provided on Form 8811.

(2) *Requirement of reporting by REMICs, issuers, and nominees*—(i) *In general.* Every person described in paragraph (b)(2)(ii) of this section who pays to another person $10 or more of interest (as defined in paragraph (a) of this section) during any calendar year must file an information return on Form 1099, unless the interest is paid to a person specified in paragraph (c) of this section.

(ii) *Person required to make reports.* The persons required to make an information return under section 6049(a) and this section are—

(A) REMICs or issuers of collateralized debt obligations (as defined in paragraph (d)(2) of this section), and

(B) Any broker who holds as a nominee or middleman who holds as a nominee any REMIC regular interest or any collateralized debt obligation.

(iii) *Information to be reported*—(A) *REMIC regular interests and collateralized debt obligations not issued with original issue discount.* An information return on Form 1099 must be made for each holder of a REMIC regular interest or collateralized debt obligation not issued with original issue discount, but only if the holder has been paid interest (as defined in paragraph (a) of this section) of $10 or more for the calendar year. The information return must show—

(*1*) The name, address, and taxpayer identification number of the record holder,

(*2*) The CUSIP number, account number, serial number, or other identifying number or information, of each REMIC regular interest or collateralized debt obligation, with respect to which a return is being made,

(*3*) The aggregate amount of interest paid or deemed paid to the record holder for the period during the calendar year for which the return is made,

(*4*) The name, address, and taxpayer identification number of the person required to file this return, and

(*5*) Any other information required by the form.

(B) *REMIC regular interests and collateralized debt obligations issued with original issue discount.* An information return on Form 1099 must be made for each holder of a REMIC regular interest or a collateralized debt obligation issued with original issue discount, but only if the holder has been paid interest (as defined in paragraph (a) of this section) of $10 or more for the calendar year. The information return must show—

(*1*) The name, address, and taxpayer identification number of the record holder,

(*2*) The CUSIP number, account number, serial number, or other identifying number or information, of each REMIC regular interest or collateralized debt obligation, with respect to which a return is being made,

(*3*) The aggregate amount of original issue discount deemed paid to the record holder for the period during the calendar year for which the return is made,

(*4*) The aggregate amount of interest, other than original issue discount, paid or deemed paid to the record holder for the period during the calendar year for which the return is made,

(*5*) The name, address, and taxpayer identification number of the person required to file this return, and

(*6*) Any other information required by the form.

(C) *Cross-reference*. See § 1.67–3T(f)(3)(ii) for additional information required to be included on an information return on Form 1099 with respect to certain holders of regular interests in REMICs described in § 1.67–3T(a)(2)(ii).

(iv) *Time and place for filing a return with respect to amounts includible as interest*. The returns required under this paragraph (b)(2) for any calendar year must be filed after September 30 of that year, but not before the payor's final payment to the payee for the year, and on or before February 28 (March 31 if filed electronically) of the following year. These returns must be filed with the appropriate Internal Revenue Service Center, the address of which is listed in the instructions for Form 1099. For extensions of time for filing returns under this section, see § 1.6081–1. For magnetic media filing requirements, see § 301.6011–2 of this chapter.

(c) *Information returns not required*. An information return is not required under section 6049(a) and this section with respect to payments of interest on a REMIC regular interest or collateralized debt obligation, if the holder of the REMIC regular interest or the collateralized debt obligation is—

(1) An organization exempt from taxation under section 501(a) or an individual retirement plan;

(2) The United States or a State, the District of Columbia, a possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any one or more of the foregoing;

(3) A foreign government, a political subdivision thereof, or an international organization;

(4) A foreign central bank of issue (as defined in § 1.895–1(b)(1)) or the Bank for International Settlements;

(5) A trust described in section 4947(a)(1) (relating to certain charitable trusts);

(6) For calendar quarters and calendar years after 1988, a broker (as defined in section 6045(c) and § 1.6045–1(a)(1));

(7) For calendar quarters and calendar years after 1988, a person who holds the REMIC regular interest or collateralized debt obligation as a middleman (as defined in § 1.6049–4(f)(4));

(8) For calendar quarters and calendar years after 1988, a corporation (as defined in section 7701(a)(3)), whether domestic or foreign;

(9) For calendar quarters and calendar years after 1988, a dealer in securities or commodities required to register as such under the laws of the United States or a State;

(10) For calendar quarters and calendar years after 1988, a real estate investment trust (as defined in section 856);

(11) For calendar quarters and calendar years after 1988, an entity registered at all times during the taxable year under the Investment Company Act of 1940;

(12) For calendar quarters and calendar years after 1988, a common trust fund (as defined in section 584 (a));

(13) For calendar quarters and calendar years after 1988, a financial institution such as a mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization;

(14) For calendar quarters and calendar years after 1988, any trust which is exempt from tax under section 664(c) (*i.e.*, a charitable remainder annuity trust or a charitable remainder unitrust); and

(15) For calendar quarters and calendar years after 1988, a REMIC.

(d) *Special provisions and definitions*—(1) *Incorporation of referenced rules*. The special rules of § 1.6049–4(d) are incorporated in this section, as applicable, except that § 1.6049–4(d)(2) does not apply to any REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies. Further, § 1.6049–5(c) does not apply to any REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies.

(2) *Collateralized debt obligation*. For purposes of this section, the term ''collateralized debt obligation'' means any debt instrument (except a tax-exempt obligation) described in section

1272(a)(6)(C)(ii) that is issued after December 31, 1986.

(e) *Requirement of furnishing information to certain nominees, corporations, and other specified persons*—(1) *In general.* For calendar quarters and calendar years after 1988, each REMIC or issuer of a collateralized debt obligation (as defined in paragraph (d)(2) of this section) must provide the information specified in paragraph (e)(2) of this section in the time and manner prescribed in paragraph (e)(3) of this section to any persons specified in paragraph (e)(4) of this section who request the information.

(2) *Information required to be reported.* For each class of REMIC regular interest or collateralized debt obligation and for each calendar quarter specified by the person requesting the information, the REMIC or issuer of a collateralized debt obligation must provide the following information—

(i) The name, address and Employer Identification Number of the REMIC or issuer of a collateralized debt obligation;

(ii) The CUSIP number, account number, serial number, or other identifying number or information, of each specified class of REMIC regular interest or collateralized debt obligation and, for calendar quarters and calendar years after 1991, whether the information being reported is with respect to a REMIC regular interest or a collateralized debt obligation;

(iii) Interest paid on a collateralized debt obligation in the specified class for each calendar quarter, and the aggregate amount for the calendar year if the request is made for the last quarter of the calendar year;

(iv) Interest accrued on a REMIC regular interest in the specified class for each accrual period any day of which is in the specified calendar quarter, and the aggregate amount for the calendar year if the request is made for the last quarter of the calendar year;

(v) Original issue discount accrued on a collateralized debt obligation or REMIC regular interest in the specified class for each accrual period any day of which is in that calendar quarter, and the aggregate amount for the calendar year if the request is made for the last quarter of the calendar year;

(vi) The daily portion of original issue discount per $1,000 of original principal amount (or for calendar quarters prior to 1992, per other specified unit) as determined under section 1272(a)(6) and the regulations thereunder for each accrual period any day of which is in the specified calendar quarter;

(vii) The length of the accrual period;

(viii) The adjusted issue price (as defined in section 1275(a)(4)(B)(ii)) of the REMIC regular interest or the collateralized debt obligation at the beginning of each accrual period any day of which is in the specified calendar quarter;

(ix) The information required by paragraph (f)(3) of this section;

(x) Information required to compute the accrual of market discount including, for calendar years after 1989, the information required by paragraphs (f)(2)(i)(G) or (f)(2)(ii)(K) of this section; and

(xi) For calendar quarters and calendar years after 1991, if the REMIC is a single class REMIC (as described in §1.67–3T (a)(2)(ii)(B)), the information described in §1.67–3T (f)(1) and (f)(3)(ii) (A) and (B).

(3) *Time and manner for providing information*—(i) *Manner of providing information.* The information specified in paragraph (e)(2) of this section may be provided as follows—

(A) By telephone;

(B) By written statement sent by first class mail to the address provided by the requesting party;

(C) By causing it to be printed in a publication generally read by and available to persons specified in paragraph (e)(4) and by notifying the requesting persons in writing or by telephone of the publication in which it will appear, the date of its appearance, and, if possible, the page upon which it appears; or

(D) By any other method agreed to by the parties. If the information is published, then the publication should also specify the date and, if possible, the page on which corrections, if any, will be printed.

(ii) *Time for furnishing the information.* Each REMIC or issuer of a

collateralized debt obligation must furnish the information specified in paragraph (e)(2) of this section on or before the later of—

(A) The 30th day after the close of the calendar quarter for which the information was requested, or

(B) The day that is two weeks after the receipt of the request.

(4) *Persons entitled to request information.* The following persons may request the information specified in paragraph (e)(2) of this section with respect to a specified class of REMIC regular interests or collateralized debt obligations from a REMIC or issuer of a collateralized debt obligation in the manner prescribed in paragraph (e)(5) of this section—

(i) Any broker who holds on its own behalf or as a nominee any REMIC regular interest or collateralized debt obligation in the specified class,

(ii) Any middleman who is required to make an information return under section 6049 (a) and paragraph (b)(2) of this section and who holds as a nominee any REMIC regular interest or collateralized debt obligation in the specified class,

(iii) Any corporation or non-calendar year taxpayer who holds a REMIC regular interest or collateralized debt obligation in the specified class directly, rather than through a nominee,

(iv) Any other person specified in paragraphs (c)(9) through (15) of this section who holds a REMIC regular interest or collateralized debt obligation in the specified class directly, rather than through a nominee, or

(v) A representative or agent for a person specified in paragraphs (e)(4)(i), (ii), (iii) or (iv) of this section.

(5) *Manner of requesting information from the REMIC.* A requesting person specified in paragraph (e)(4) of this section should obtain Internal Revenue Service Publication 938, Real Estate Mortgage Investment Conduit (REMIC) and Collateralized Debt Obligation Reporting Information (or other guidance published by the Internal Revenue Service). This publication contains a directory of REMICs and issuers of collateralized debt obligations. The requesting person can locate the REMIC or issuer from whom information is needed and request the information from the official or representative of the REMIC or issuer in the manner specified in the publication. The publication will specify either an address or an address and telephone number. If the publication provides only an address, the request must be made in writing and mailed to the specified address. Further, the request must specify the calendar quarters (e.g., all calendar quarters in 1989) and the classes of REMIC regular interests or collateralized debt obligations for which information is needed.

(f) *Requirement of furnishing statement to recipient*—(1) *In general.* Every person filing a Form 1099 under section 6049 (a) and this section must furnish to the holder (the person whose identifying number is required to be shown on the form) a written statement showing the information required by paragraph (f)(2) of this section. The written statement provided by a REMIC must also contain the information specified in paragraph (f)(3) of this section.

(2) *Form of statement*—(i) *REMIC regular interests and collateralized debt obligations not issued with original issue discount.* For a REMIC regular interest or collateralized debt obligation issued without original issue discount, the written statement must specify for the calendar year the following information—

(A) The aggregate amount shown on Form 1099 to be included in income by that person for the calendar year;

(B) The name, address, and taxpayer identification number of the person required to furnish this statement;

(C) The name, address, and taxpayer identification number of the person who must include the amount of interest in gross income;

(D) A legend, including a statement that the amount is being reported to the Internal Revenue Service, that conforms to the legend on Form 1099, Copy B, For Recipient;

(E) The CUSIP number, account number, serial number, or other identifying number or information, of each REMIC regular interest or collateralized debt obligation, with respect to which a return is being made;

(F) All other items shown on Form 1099 for the calendar year; and

(G) Information necessary to compute accrual of market discount. For calendar years after 1989, this requirement is satisfied by furnishing to the holder for each accrual period during the year a fraction computed in the manner described in either paragraph (f)(2)(i)(G)(*1*) or (f)(2)(i)(G)(*2*) of this section. For calendar years after December 31, 1991, the REMIC or the issuer of the collateralized debt obligation must be consistent in the method used to compute this fraction.

(*1*) The numerator of the fraction equals the interest, other than original issue discount, allocable to the accrual period. The denominator of the fraction equals the interest, other than original issue discount, allocable to the accrual period plus the remaining interest, other than original issue discount, as of the end of that accrual period. The interest allocable to each accrual period and the remaining interest are calculated by taking into account events which have occurred before the close of the accrual period and the prepayment assumption, if any, determined as of the startup day (as defined in section 860G(a)(9)) of the REMIC or the issue date (as defined in section 1275(a)(2)) of the collateralized debt obligaiton that would be made in computing original issue discount if the debt instrument had been issued with original issue discount.

(*2*) If the REMIC regular interest or the collateralized debt obligation has de minimis original issue discount (as defined in section 1273(a)(3) and any regulations thereunder), then, at the option of the REMIC or the issuer of the collateralized debt obligation, the fraction may be computed in the manner specified in paragraph (f)(2)(ii)(K) of this section taking into account the de minimis original issue discount.

(ii) *REMIC regular interests and collateralized debt obligations issued with original issue discount.* For a REMIC regular interest or collateralized debt obligation issued with original issue discount, the written statement must specify for the calendar year the following information—

(A) The aggregate amount of original issue discount includible in the gross income of the holder for the calendar year with respect to the REMIC regular interest or the collateralized debt obligation;

(B) The aggregate amount of interest, other than original issue discount, includible in the gross income of the holder for the calendar year with respect to the REMIC regular interest or the collateralized debt obligation;

(C) The name, address, and taxpayer identification number of the person required to file this form;

(D) The name, address, and taxpayer identification number of the person who must include the amount of interest specified in paragraphs (f)(2)(ii) (A) and (B) of this section in gross income;

(E) For calendar years after 1987, the daily portion of original issue discount per $1,000 of original principal amount (or for calendar years prior to 1992, per other specified unit) as determined under section 1272(a)(6) and the regulations thereunder for each accrual period any day of which is in that calendar year;

(F) For calendar years after 1987, the length of the accrual period;

(G) All other items shown on Form 1099 for the calendar year;

(H) A legend, including a statement that the information required under paragraphs (f)(2)(ii) (A), (B), (C), (D) and (G) of this section is being reported to the Internal Revenue Service, that conforms to the legend on Form 1099, Copy B, For Recipient;

(I) For calendar years after 1987, the adjusted issue price (as defined in section 1275(a)(4)(B)(ii)) of the REMIC regular interest or the collateralized debt obligation at the beginning of each accrual period with respect to which interest income is required to be reported on Form 1099 for the calendar year;

(J) The CUSIP number, account number, serial number, or other identifying number or information, of each class of REMIC regular interest or collateralized debt obligation, with respect to which a return is being made; and

(K) Information necessary to compute accrual of market discount. For calendar years after 1989, this information includes:

(*1*) For each accrual period in the calendar year, a fraction, the numerator of which equals the original issue discount allocable to that accrual period,

and the denominator of which equals the original issue discount allocable to that accrual period plus the remaining original issue discount as of the end of that accrual period, and

(*2*) [Reserved]

The original issue discount allocable to each accrual period and the remaining original issue discount are calculated by taking into account events which have occurred before the close of the accrual period and the prepayment assumption determined as of the start-up day (as defined in section 860G (a)(9)) of the REMIC or the issue date (as defined in section 1275 (a)(2)) of the collateralized debt obligation.

(3) *Information with respect to REMIC assets*—(i) *95 percent asset test*. For calendar years after 1988, the written statement provided by a REMIC must also contain the following information for each calendar quarter—

(A) The percentage of REMIC assets that are qualifying real property loans under section 593,

(B) The percentage of REMIC assets that are assets described in section 7701 (a)(19), and

(C) The percentage of REMIC assets that are real estate assets defined in section 856 (c)(6)(B), computed by reference to the average adjusted basis (as defined in section 1011) of the REMIC assets during the calendar quarter (as described in §1.860F–4 (e)(1)(iii)). If for any calendar quarter the percentage of REMIC assets represented by a category is at least 95 percent, then the statement need only specify that the percentage for that category, for that calendar quarter, was at least 95 percent.

(ii) *Additional information required if the 95 percent test not met*. If, for any calendar quarter after 1988, less than 95 percent of the assets of the REMIC are real estate assets defined in section 856 (c)(6)(B), then, for that calendar quarter, the REMIC's written statement must also provide to any real estate investment trust (REIT) that holds a regular interest the following information—

(A) The percentage of REMIC assets described in section 856 (c)(5)(A), computed by reference to the average adjusted basis of the REMIC assets during the calendar quarter (as described in §1.860F–4 (e)(1)(iii)),

(B) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F (a)(2)) described in section 856 (c)(3)(A) through (E), computed as of the close of the calendar quarter, and

(C) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F (a)(2)) described in section 856 (c)(3)(F), computed as of the close of the calendar quarter. For purposes of this paragraph (f)(3)(ii)(C), the term ''foreclosure property'' contained in section 856 (c)(3)(F) shall have the meaning specified in section 860G (a)(8).

In determining whether a REIT satisfies the limitations of section 856 (c)(2), all REMIC gross income is deemed to be derived from a source specified in section 856 (c)(2).

(iii) *Calendar years 1988 and 1989*. For calendar years 1988 and 1989, the percentage of assets required in paragraphs (f)(3)(i) and (ii) of this section may be computed by reference to the average fair market value of the assets of the REMIC during the calendar quarter (as described in §1.860F–4 (e)(1)(iii)), instead of by reference to the average adjusted basis of the assets of the REMIC during the calendar quarter.

(4) *Cross-reference*. See §1.67–3T (f)(2)(ii) for additional information that may be separately stated on the statement required by this paragraph (f) with respect to certain holders of regular interests in REMICs described in §1.67–3T (a)(2)(ii).

(5) *Time for furnishing statements*—(i) *For calendar quarters and calendar years after 1988*. For calendar quarters and calendar years after 1988, each statement required under this paragraph (f) to be furnished to any person for a calendar year with respect to amounts includible as interest must be furnished to that person after April 30 of that year and on or before March 15 of the following year, but not before the final interest payment (if any) for the calendar year.

(ii) *For calendar quarters and calendar years prior to 1989*—(A) *In general*. For calendar quarters and calendar years

prior to 1989, each statement required under this paragraph (f) to be furnished to any person for a calendar year with respect to amounts includible as interest must be furnished to that person after April 30 of that year and on or before January 31 of the following year, but not before the final interest payment (if any) for the calendar year.

(B) *Nominee reporting*. For calendar quarters and calendar years prior to 1989, each statement required under this paragraph (f) to be furnished by a nominee must be furnished to the actual owner of a REMIC regular interest or a collateralized debt obligation to which section 1272 (a)(6) applies on or before the later of—

(*1*) The 30th day after the nominee receives such information, or

(*2*) January 31 of the year following the calendar year to which the statement relates.

(6) *Special rules*—(i) *Copy of Form 1099 permissible*. The requirements of this paragraph (f) for the furnishing of a statement to any person, including the legend requirement of paragraphs (f)(2)(i)(D) and (f)(2)(ii)(H) of this section, may be met by furnishing to that person—

(A) A copy of the Form 1099 filed pursuant to paragraph (b)(2) of this section in respect of that person, plus a separate statement (mailed with the Form 1099) that contains the information described in paragraphs (f)(2)(i)(E) and (G), (f)(2)(ii)(E), (F), (I), and (K), (f)(3), and (f)(4) of this section, if applicable, or

(B) A substitute form that contains all the information required under this paragraph (f) and that complies with any current revenue procedure concerning the reproduction of paper substitutes of Forms 1099 and the furnishing of substitute statements to forms recipients. The inclusion on the substitute form of the information specified in this paragraph (f) that is not required by the official Forms 1099 will not cause the substitute form to fail to meet any requirements that limit the information that may be provided with a substitute form.

(ii) *Statement furnished by mail*. A statement mailed to the last known address of any person shall be considered to be furnished to that person within the meaning of this section.

(7) *Requirement that nominees furnish information to corporations and certain other specified persons*—(i) *In general*. For calendar quarters and calendar years after 1988, every broker or middleman must provide in writing or by telephone the information specified in paragraph (e)(2) of this section to—

(A) A corporation,

(B) A non-calendar year taxpayer, or

(C) Any other person specified in paragraphs (c)(9) through (15) of this section

who requests the information and for whom the broker or middleman holds as a nominee a REMIC regular interest or a collateralized debt obligation. A corporation, non-calendar year taxpayer, or any other person specified in paragraphs (c)(9) through (15) of this section may request the information in writing or by telephone for any REMIC regular interest or collateralized debt obligation for calendar quarters any day of which the person held the interest or obligation.

(ii) *Time for furnishing information*. The statement required in paragraph (f)(7)(i) of this section must be furnished on or before the later of—

(A) The 45th day after receipt of the request,

(B) The 45th day after the close of the calendar quarter for which the information was requested, or

(C) If the request is made for the last calendar quarter in a year, March 15 of the year following the calendar quarter for which the information was requested.

[T.D. 8366, 56 FR 49518, Sept. 30, 1991; 57 FR 5054, Feb. 12, 1992, as amended by T.D. 8431, 57 FR 40322, Sept. 3, 1992; 57 FR 46243, Oct. 7, 1992; T.D. 8734, 62 FR 53491, Oct. 14, 1997; T.D. 8888, 65 FR 37702, June 16, 2000; T.D. 8895, 65 FR 50407, Aug. 18, 2000]

§ 1.6049–7T Market discount fraction reported with other financial information with respect to REMICs and collateralized debt obligations (temporary).

For purposes of § 1.6049–7(f)(2)(i)(G)(*1*) relating to the market discount fraction to be reported with other financial information with respect to REMICs

and other collateralized debt obligations, if the REMIC regular interest or the collateralized debt obligation has de minimis original issue discount (as defined in section 1273(a)(3) and any regulations thereunder), then, at the option of the REMIC or the issuer of the collateralized debt obligation, a fraction computed in the manner specified in paragraph (f)(2)(ii)(K) of this section taking into account the de minimis original issue discount may be reported instead of the fraction specified in §1.6049–7(f)(2)(i)(G)(*1*)(*i*). The REMIC or the issuer of the collateralized debt obligation, however, must be consistent in the method used to compute this fraction.

[T.D. 8366, 56 FR 49518, Sept. 30, 1991]

§1.6049–8 Interest and original issue discount paid to residents of Canada.

(a) *Interest subject to reporting requirement.* For purposes of §§1.6049–4, 1.6049–6 and this section and except as provided in paragraph (b) of this section, the term *interest* means interest paid to a Canadian nonresident alien individual after December 31, 1996, where the interest is described in section 871(i)(2)(A) with respect to a deposit maintained at an office within the United States. For purposes of the regulations under section 6049, a Canadian nonresident alien individual is an individual who resides in Canada and is not a United States citizen. The payor or middleman may rely upon the permanent residence address (as defined in section 1441 and the regulations under that section) as stated on the Form W–8 (described in section 6049 and the regulations under that section) in order to determine whether the payment is made to a Canadian nonresident alien individual. The payor or middleman may rely upon the permanent residence address (as defined in §1.1441–1(e)(2)(ii)) as stated on the Form W–8 described in §1.1441–1(e)(2)(i) in order to determine whether the payment is made to a Canadian nonresident alien individual. If the permanent residence address stated on the certificate is in Canada, or if the payor has actual knowledge of the individual's residence address in Canada, the payor must presume that the individual resides in Canada. Amounts described in this paragraph (a) are not subject to backup withholding under section 3406. See §31.3406(g)-1(d) of this chapter.

(b) *Interest excluded from reporting requirement.* The term *interest* does not include an amount that is paid by the issuer or its agent outside the United States with respect to an obligation that is described in paragraph (b) (1) or (2) of this section.

(1)(i) The obligation is not in registered form (within the meaning of section 163(f) and the regulations thereunder); is part of a larger single public offering of securities; and is described in section 163(f)(2)(B).

(ii) Unless it has actual knowledge to the contrary, a middleman may treat an obligation as if it is described in section 163(f)(2)(B) if the obligation or coupon therefrom, whichever is presented for payment, contains the statement described in section 163(f)(2)(B)(ii)(II) and the regulations thereunder.

(2)(i) The obligation has a face or principal amount of not less than $500,000, and satisfies the requirements described in paragraphs (b)(2)(i) (A), (B), and (C) of this section.

(A) The obligation satisfies the requirements of sections 163(f)(2)(B) (i) and (ii)(I) and the regulations thereunder (as if it were a registration-required obligation within the meaning of section 163(f)(2)(A)) and is issued in accordance with the procedures of §1.163–5(c)(2)(i)(D)).

(B) If the obligation is in registered form, it is registered in the name of an exempt recipient described in §1.6049–4(c)(1)(ii).

(C) The obligation has on its face and on any detachable coupons the following statement (or a similar statement having the same effect): ''By accepting this obligation or coupon, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in the regulations under section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in the regulations under section 6049(b)(4) of the Internal

Revenue Code and the regulations thereunder).''

(ii) Unless the middleman has actual knowledge to the contrary, it may treat an obligation as satisfying the requirements of sections 163(f)(2)(B) (i) and (ii)(I) and the regulations thereunder if the obligation or a coupon therefrom, whichever is presented for payment, contains the statement in paragraph (b)(2)(i)(C) of this section.

[T.D. 8664, 61 FR 17574, Apr. 22, 1996, as amended by T.D. 8734, 62 FR 53491, Oct. 14, 1997]

§ 1.6050A–1 Reporting requirements of certain fishing boat operators.

(a) *Requirement of reporting*. The operator of a boat on which one or more individuals during a calendar year performed services described in § 31.3121(b)(20)–1(a) shall make an information return on Form 1099–MISC for that calendar year. The return shall include the following information:

(1) The name and taxpayer identification number of each individual performing the services;

(2) The percentage of each individual's share of the catch of fish or other forms of aquatic life (hereinafter ''fish'');

(3) The percentage of the operator's share of the catch of fish;

(4) If the individual receives all or part of his share of the catch in kind, the type and weight of the share and, if it can be ascertained, the fair market value of his share;

(5) If the individual receives a share of the proceeds of the catch, the dollar amount received; and

(6) Any other information that is required by the form.

For purposes of this section, the term, ''boat operator'' means an employer (as defined in § 31.3121(d)–2) of an employee whose services are excepted from employment by section 3121(b)(20) and § 31.3121(b)(20)–1. The boat operator may make separate returns on Form 1099–MISC for each crew member for each voyage, or he may aggregate the information required by this paragraph for an individual for all or any part of a return period in which the type of catch (if required) and the percentage due the crew member remain the same.

(b) *Time and place for filing*. Returns required to be made under this section on Form 1099-MISC shall be filed with the Internal Revenue Service Center, designated in the instructions for Form 1099-MISC, on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the relevant services were performed.

(c) *Requirement of and time for furnishing statement*—(1) *requirement of furnishing statement*. Every person filing a Form 1099–MISC under this section shall furnish to the individual whose identifying number is (or should be) shown on the form a written statement showing the information required by paragraph (a) of this section. The requirement of the preceding sentence may be met by furnishing to the individual copy B of Form 1099–MISC or a reasonable facsimile of Form 1099–MISC that was filed pursuant to this section.

(2) *Time for furnishing statement*. Each statement required by this paragraph to be furnished to any individual for a calendar year shall be furnished on or before January 31 of the year following the calendar year for which the return was made.

(d) *Cross-reference to penalties*. For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6050A(a) and § 1.6050A–1(a), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6050A(b) and § 1.6050A–1(c), see § 301.6722–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

[T.D. 7716, 45 FR 57123, Aug. 27, 1980, as amended by T.D. 8734, 62 FR 53492, Oct. 14, 1997; T.D. 8895, 65 FR 50407, Aug. 18, 2000]

§ 1.6050B–1 Information returns by person making unemployment compensation payments.

For taxable years beginning after December 31, 1978, every person who makes payments of unemployment compensation (as defined in section 85

(c)) aggregating $10 or more to any individual during any calendar year shall file a Form 1099UC in accordance with the instructions to such form.

[T.D. 7705, 45 FR 46070, July 9, 1980]

§ 1.6050D–1 Information returns relating to energy grants and financing.

(a) *Requirement of reporting.* Every person who administers a Federal, State, or local program a principal purpose of which is to provide subsidized energy financing (as defined in section 23(c)(10)(C) and the regulations thereunder) or grants for projects designed to conserve or produce energy shall make an information return for each calendar year beginning after December 31, 1983. However, the preceding sentence shall not apply if none of the financing and grants provided under such program during the calendar year relate either to expenditures described in section 23(c)(1) or (2), relating to the residential energy credit, made by a taxpayer before January 1, 1986, with respect to a dwelling unit or to section 38 property (as defined in section 48 and the regulations thereunder). That return shall be made on Form 6497 or, in the case of taxable gants, on Form 1099-G. (The latter form is prescribed pursuant to section 6041 as well as section 6050D.) The return shall include the following information:

(1) The name, address, and taxpayer identification number of each taxpayer receiving financing or a grant made under such program during the calendar year with respect to either section 38 property or in the case of financing or a grant for energy conservation expenditures or renewable energy source expenditures made by the taxpayer before January 1, 1986, a dwelling unit that is located in the United States;

(2) The aggregate amount of financing and grants received by the taxpayer under the program during the calendar year,

(3) In the case of returns for financing or nontaxable grants, the name of the program under which the financing or grants are made; and

(4) Any other information that is required by the form.

For purposes of this section, the term ''person'' means the officer or employee having control of the program, or the person appropriately designated for purposes of section 6050D and this section.

(b) *Time and place for filing.* Returns required to be made under this section shall be filed with the Internal Revenue Service Center designated in the instructions for Form 6497 or 1099-G on or before the last day of February (March 31 if filed electronically) of the year following the calendar year for which the return is made.

(Secs. 6050D and 7805, Internal Revenue Code of 1954 (94 Stat. 259, 26 U.S.C. 6050D; 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 8018, 50 FR 12532, Mar. 29, 1985, as amended by T.D. 8146, 52 FR 26673, July 16, 1987; T.D. 8895, 65 FR 50407, Aug. 18, 2000]

§ 1.6050E–1 Reporting of State and local income tax refunds.

(a) *Applicability.* Section 6050E and this section apply to any refund officer who, with respect to an individual, makes payments of refunds of State or local income taxes or allows credits or offsets with respect to such taxes aggregating $10 or more for such individual in any calendar year.

(b) *Definitions.* For purposes of this section—

(1) The term *refund officer* means the officer or employee of a State or local taxing jurisdiction having control of payments of refunds or the allowance of credits or offsets, or the person approporiately designated for purposes of this section.

(2) The term *State* shall include the District of Columbia but shall not include the Commonwealth of Puerto Rico or any possession of the United States.

(3) The term *individual* shall not include an estate or trust.

(4) The term *credit or offset* means an overpayment of tax which, in lieu of being refunded to the taxpayer, is:

(i) Applied against an existing liability of the taxpayer,

(ii) Available for application against a future liability of the taxpayer, or

(iii) Otherwise used or available for use for the taxpayer's benefit.

(c) *Requirement of reporting.* Every refund officer described in paragraph (a)

of this section shall make an information return in accordance with this section for each calendar year. An information return must be made even if the refund officer is not required to furnish a statement to the applicable taxpayer under paragraph (k)(2) of this section.

(d) *Prescribed Form.* Except as otherwise provided in paragraph (i) of this section, the information return required by paragraph (c) of this section shall be made on Forms 1096 and 1099.

(e) *Refunds involving different taxable years.* In the case of refunds paid or credits or offsets allowed during a calendar year with respect to two or more taxable years of an individual, a separate Form 1099 shall be filed with respect to each taxable year of the individual. Thus, if during calendar year 1983 a refund officer pays to an individual a refund of $15 with respect to that individual's taxable year ending in 1982 and $20 with respect to that individual's taxable year ending in 1981, a separate Form 1099 shall be filed for each of the two payments. If, instead, the refund with respect to the individual's taxable year ending in 1982 were $5 instead of $15, no return would be required for the payment of $5.

(f) *Information required.* The information required to be reported on Forms 1096 and 1099 includes the aggregate amount of refunds, credits, and offsets made or allowed during the calendar year with respect to the taxable year of the individual covered by the return; the name, address and taxpayer identification number of the individual with respect to whom such payment, credit, or offset was made or allowed; the taxable year covered by the return; and such other information as may be required by the forms. In addition, the nature of the tax is required to be indicated on the Form 1099 in any case where the refund, credit or offset is made or allowed with respect to a payment attributable to an income tax that applies exclusively to income from a trade or business and is not a tax of general application.

(g) *When credit or offset deemed allowed.* For purposes of a return of information under this section, a credit or offset is deemed to be allowed when the liability to pay or credit such amount is admitted by the State or local taxing jurisdiction. Thus, if an amount with respect to a taxpayer's 1982 taxable year is credited in 1983 to reduce the liability of the taxpayer to make estimated tax payments in 1983, it is reportable as a credit allowed in 1983. It is not reportable in the taxable year that gives rise to the refund, credit or offset.

(h) *Time and place for filing.* The returns required under this section for any calendar year shall be filed after September 30 of that calendar year, but not before the refund officer's final payment (or allowance of credit or offset) for the year, and on or before February 28 (March 31 if filed electronically) of the following year. Returns shall be filed with the appropriate Internal Revenue Service Center, the addresses of which are listed in the instructions for Forms 1099. For extensions of time for filing returns under this section, see § 1.6081–1.

(i) *Use of magnetic media and substitute forms*—(1) *Magnetic media.* A refund officer may be required to file the Forms 1099 required by this section on magnetic media or machine-readable paper forms. See section 6011(e) and applicable regulations and revenue procedures thereunder. If a refund officer is not required to file the Forms 1099 required by this section on magnetic media, the refund officer may request permission under applicable regulations and revenue procedures to submit the information required by this section on magnetic media.

(2) *Substitute forms.* A refund officer may prepare and use a form which contains provisions identical with those of Form 1096 if the refund officer complies with all revenue procedures relating to substitute Form 1096 in effect at that time. In addition, if a refund officer is not required to file the Forms 1099 required by this section on magnetic media or machine-readable paper forms, the refund officer may prepare and use a form which contains provisions identical with those of Form 1099 if the refund officer complies with all revenue procedures relating to substitute Form 1099 in effect at that time.

(j) *Voluntary information exchange agreements*. The requirements of reporting information to the Internal Revenue Service under this section may be satisfied for any calendar year by submission of the information required under paragraph (f) of this section in accordance with the terms of a voluntary information exchange agreement between the State and the United States in effect during such year.

(k) *Requirement of furnishing statements to recipients*—(1) *In general*. Except as provided in paragraph (k)(2) of this section, every refund officer required to make a return of information under this section shall furnish to the individual whose identifying number is required to be shown on the return a written statement showing the aggregate amount shown on the information return of refunds, credits and offsets made or allowed to such individual with respect to each taxable year of the individual, the name of the State or local taxing jurisdiction paying such refund or allowing such credits or offsets, the taxable year giving rise to the refund, credit or offset and a legend stating that such amount is being reported to the Internal Revenue Service. The requirement of this paragraph may be met by furnishing to the individual a copy of the Form 1099 filed with respect to that individual provided that the form bears a legend stating that such amount is being reported to the Internal Revenue Service. For purposes of this paragraph, a statement shall be considered to be furnished to an individual if it is mailed to the individual at the individual's last known address.

(2) *Exception for nonitemizers*. A refund officer need not furnish a statement to an individual under paragraph (k)(1) of this section if the refund officer verifies that the individual did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit, or offset. This exception shall not apply, however, if the refund, credit, or offset is made or allowed with respect to a payment attributable to an income tax that applies exclusively to income from a trade or business and is not a tax of general application. For purposes of this paragraph (k)(2), verification shall be made solely from—

(i) The State or local income tax return, or

(ii) Information obtained through a voluntary information exchange agreement with the United States for the applicable taxable year.

(3) *Verification from the State or local income tax return*. A refund officer shall verify from the State or local income tax return that an individual did not claim itemized deductions for Federal income tax purposes for the applicable taxable year only if—

(i)(A) An individual who itemized deductions for Federal income tax purposes either must attach a copy of Schedule A of the individual's Federal income tax return to the State or local income tax return or must transcribe information from Schedule A of the individual's Federal income tax return on the State or local income tax return;

(B) The information contained on or transcribed from the Schedule A is required for the purpose of computing liability for the State or local income tax; and

(C) The omission of a copy of the Schedule A, or of the information required to be transcribed from the Schedule A, is consistent with the taxpayer's computation of tax on the State or local income tax return; or

(ii) Individuals are required to transcribe information from their Federal income tax return (other than from Schedule A) on the State or local income tax return for the purpose of computing liability for the State or local income tax and the information can be used to determine conclusively whether the taxpayer itemized deductions for Federal income tax purposes.

(4) *Example*. The provisions of paragraph (k)(3)(ii) of this section may be illustrated by the following example:

Example. State X asks for transcription of the following information on its 1983 income tax return from the taxpayer's 1983 Federal income tax return: Adjusted gross income; taxable income; and number of exemptions claimed. The amount of adjusted gross income and the number of exemptions claimed on the Federal income tax return are taken into account in computing the liability for income tax under the laws of State X. The amount of taxable income transcribed from

the Federal return, however, does not enter into the computation of liability for income tax under the laws of State X. Thus, this amount may not be taken into account by the refund officer of State X for purposes of verifying whether a taxpayer itemized deductions for Federal income tax purposes. Since the refund officer of State X will not be able to determine conclusively from the amount of adjusted gross income and the number of exemptions transcribed from the Federal return whether a taxpayer itemized deductions for Federal income tax purposes, the transcribed information does not meet the requirements of paragraph (k)(3)(ii) of this section.

(l) *Time for furnishing statements*—(1) *General rule.* The statement required under paragraph (k) of this section shall be furnished after December 31 of the year in which the refund is paid or credit or offset is allowed, and on or before January 31 of the following year.

(2) *Extensions of time.* For good cause shown upon written application of the refund officer, the service center director may grant an extension of time not exceeding 30 days in which to furnish statements under this paragraph. The application shall be addressed to the Service Center with which the Forms 1099 required under this section are required to be filed and shall contain a concise statement of the reasons for requesting the extension to aid the service center director in determining the period of the extension, if any, which will be granted. The application shall state at the top of the first page that it is made under this section and shall be signed by the refund officer. In general, the application shall be filed after September 30 of the year in which the refund is paid or credit or offset is allowed, and before January 15 of the following year.

(m) *Effective date.* This section applies to payments of refunds and credits and offsets allowed after December 31, 1982.

[T.D. 8052, 50 FR 37349, Sept. 13, 1985, as amended by T.D. 8895, 65 FR 50408, Aug. 18, 2000]

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[T.D. 8571, 59 FR 63250, Dec. 8, 1994]

§ 1.6050H–1 Information reporting of mortgage interest received in a trade or business from an individual.

(a) *Information reporting requirement*—(1) *Overview*. The information reporting requirements of section 6050H, this section, and § 1.6050H–2 apply to an interest recipient who receives at least $600 of interest on a qualified mortgage for a calendar year or who makes a reimbursement of interest described in § 1.6050H–2(a)(2)(iv). Paragraph (b) of this section defines qualified mortgage. Paragraph (c) of this section defines interest recipient. Paragraph (d) of this section contains additional rules relating to the reporting requirement for foreign persons, cooperative housing corporations, and nonresident alien individuals. Paragraph (e) of this section contains rules for determining the amount of interest received on a mortgage for a calendar year. Paragraph (f) of this section provides rules for determining when prepaid interest in the form of points is taken into account as interest for purposes of section 6050H, this section, and § 1.6050H–2.

(2) *Reporting requirement*. Except as otherwise provided in this section and § 1.6050H–2, an interest recipient that either receives at least $600 of interest on a qualified mortgage for a calendar year or makes reimbursements of interest described in § 1.6050H–2(a)(2)(iv) must, with respect to that interest—

(i) File an information return with the Internal Revenue Service; and

(ii) Furnish a statement to the payor of record on the mortgage.

(3) *Optional reporting*. An interest recipient may, but is not required to, report its receipt of less than $600 of interest on a qualified mortgage for a calendar year. Similarly, an interest recipient also may report reimbursements of interest on a qualified mortgage even if the reimbursements are not required to be reported by § 1.6050H–2(a)(2)(iv). An interest recipient that chooses, but is not required, to file a return as provided in this section and § 1.6050H–2(a) or to furnish a statement as provided in this section and § 1.6050H–2(b) is subject to the requirements of this section and § 1.6050H–2.

(b) *Qualified mortgage*—(1) *In general*. A mortgage is a qualified mortgage if the payor of record on the mortgage is an individual, including an individual acting in a capacity as a sole proprietor of a business. A mortgage is not a qualified mortgage if the payor of

record on the mortgage is not an individual (such as a trust, estate, partnership, association, company, or corporation), even though an individual is a co-borrower on the mortgage and all the trustees, beneficiaries, partners, members, or shareholders of the payor of record are individuals.

(2) *Mortgage*—(i) *In general*. Except as otherwise provided in paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, an obligation is a mortgage if real property (regardless of where located) secures all or part of the obligation. An interest recipient must determine whether real property secures an obligation at the time the obligation is created or, if security is added or removed at a later time, at that later time. Real property includes a manufactured home as defined in section 25(e)(10). An obligation includes a line of credit or a credit card obligation. For purposes of this section and § 1.6050H–2, a borrower incurs a line of credit or credit card obligation when the borrower first has the right to borrow against the line of credit or credit card, whether the borrower actually borrows an amount at that time. An obligation will not fail to be treated as a mortgage solely because, under an applicable State or local homestead law or other debtor protection law in effect on August 16, 1986, the security interest is ineffective or the enforceability of the security interest is restricted.

(ii) *Transitional rule for certain obligations existing on December 31, 1984*—(A) *In general*. An obligation that existed on December 31, 1984, is not a mortgage if, at the time the payor of record incurred the obligation, the interest recipient reasonably classified the obligation as other than a mortgage, real property loan, real estate loan, or other similar type of obligation. A reasonable classification of an obligation must be consistent with industry practices and determined according to the purpose of the obligation, the property securing the obligation, and any other reasonable factor. For purposes of this paragraph (b)(2)(ii)(A), an obligation was not reasonably classified as other than a mortgage, real property loan, real estate loan, or other similar type of obligation if, at the time the payor of record incurred the obligation, more than one-half of the obligations in the particular class in which the obligation was classified were secured primarily by real property.

(B) *Examples*. The following examples illustrate the rules of paragraph (b)(2)(ii)(A) of this section:

Example 1. B offers an unsecured line of credit and a line of credit secured by real property. B separately markets the two credit lines, and they are governed by different terms and conditions. For accounting purposes, B classifies the two types of loans as a single class. For purposes of paragraph (b)(2)(ii)(A) of this section, the two types of loans are different classes of obligations.

Example 2. B operates a program to make loans to small businesses. Depending on the amount of the loan and the credit history of the borrower, B may or may not require security for the loan. If B requires security, it may consist of real or personal property. For accounting purposes, B classifies all of the loans within this program as a single class. For purposes of paragraph (b)(2)(ii)(A) of this section, all of the loans within this program may be classified as belonging to a single class.

(iii) *Transitional rule for certain obligations existing on December 31, 1987*. An obligation that was incurred after December 31, 1984, and that existed on December 31, 1987, is not a mortgage if the obligation is not primarily secured by real property.

(3) *Payor of record*. A payor of record on a mortgage is the person carried on the books and records of the interest recipient as the principal borrower on the mortgage. If the books and records of the interest recipient do not indicate which borrower is the principal borrower, the interest recipient must designate a borrower as the principal borrower.

(4) *Lender of record*. The lender of record is the person who, at the time the loan is made, is named as the lender on the loan documents and whose right to receive payment from the payor of record is secured by the payor of record's principal residence. An intention by the lender of record to sell or otherwise transfer the loan to a third party subsequent to the close of the transaction will not affect the determination of who is the lender of record.

(c) *Interest recipient*—(1) *Trade or business requirement*. Except as provided in

paragraph (c)(4) of this section, an interest recipient is a person that is engaged in a trade or business (whether or not the trade or business of lending money) and that, in the course of the trade or business, either receives interest on a mortgage or makes a reimbursement of interest on a qualified mortgage described in §1.6050H–2(a)(3). For purposes of this paragraph (c)(1), if a person holds a mortgage which was originated or acquired in the course of a trade or business, the interest on the mortgage is considered to be received in the course of that trade or business. For example, if real estate developer A lends money to individual B to enable B to purchase a house in a subdivision owned and developed by A, and B gives a mortgage to A for the loan, A is an interest recipient for interest received on the mortgage. Alternatively, if C, a person engaged in the trade or business of being a physician, lends money to individual D to enable D to purchase C's home, and D gives a mortgage to C for the loan, C is not an interest recipient for interest received on the mortgage, because C will not receive the interest in the course of the trade or business of being a physician.

(2) *Interest received or collected on behalf of another person*—(i) *General rule.* Except as otherwise provided in paragraph (c)(2)(ii) or (3) of this section, a person that, in the course of its trade or business, receives or collects interest on a mortgage on behalf of another person (e.g., the lender of record) is the interest recipient (the initial recipient) for the mortgage. In this case, the reporting requirement of paragraph (a) of this section does not apply to the transfer of interest from the initial recipient to the person for which the initial recipient receives or collects the interest. For example, if financial institution A collects interest on behalf of financial institution B, A is the initial recipient for the mortgage and is subject to the reporting requirements of section 6050H, and B is not required to report the interest received on the mortgage from A.

(ii) *Exception*—(A) *Scope of exception.* Paragraph (c)(2)(i) of this section does not apply for any period for which—

(*1*) An initial recipient does not possess the information needed to comply with the reporting requirement of paragraph (a) of this section; and

(*2*) The person for which the interest is received or collected would receive the interest in the course of its trade or business if the interest were paid directly to that person. For purposes of this paragraph (c)(2)(ii)(A)(*2*), if interest is received or collected on behalf of a person other than an individual, that person is presumed to receive interest in a trade or business.

(B) *Application of exception.* If the exception provided by this paragraph (c)(2)(ii) applies, the person for which the interest is received or collected is the interest recipient with respect to interest received or collected on the mortgage during the period described in this paragraph (c)(2)(ii).

(3) *Interest received in the form of points.* For purposes of this section and §1.6050H–2, in the case of prepaid interest received in the form of points (as defined in paragraph (f) of this section):

(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, only the lender of record or a qualified person (as defined in §1.6050H–2(d)(2)) is treated as receiving the points. The lender of record or qualified person is treated as receiving all points paid directly by the payor of record in connection with the purchase of the principal residence.

(ii) *If designation agreement is in effect.* If a designation agreement is executed pursuant to §1.6050H–2(d) with respect to points, only the designated party under the agreement is treated as receiving points with respect to any mortgage to which the agreement applies. The designated party is treated as receiving all points with respect to any mortgage to which the agreement applies.

(4) *Governmental unit.* A governmental unit or an agency or instrumentality of a governmental unit that receives interest on a mortgage is an interest recipient without regard to the requirement of paragraph (c)(1) of

this section that the interest be received in the course of a trade or business. A governmental unit or an agency or instrumentality of a governmental unit that is an interest recipient must designate an officer or employee to satisfy the reporting requirements of paragraph (a) of this section.

(5) *Examples*. The following examples illustrate the rules of paragraph (c) of this section:

Example 1. Financial institution F collects mortgage interest on behalf of financial institution G and deposits the amount collected into G's account held with F. F possesses the information needed to comply with the reporting requirement of paragraph (a) of this section. F is the interest recipient for the mortgage. G is not required to report.

Example 2. The facts are the same as in example (1), except that F does not possess the information needed to comply with the reporting requirement. G, the person for which F collects the interest, is the interest recipient for the mortgage. F is not required to report.

Example 3. S, an individual, sells real property to another individual, P, and takes back a mortgage from P to finance the sale. S does not receive the interest in the course of a trade or business. B, a bank, collects P's payments of principal and interest on behalf of S and deposits that amount into an account held at the bank in S's name. B does not possess the information needed to comply with the reporting requirement of paragraph (a) of this section. B is the interest recipient for P's mortgage without regard to paragraph (c)(2)(ii) of this section, because S would not receive the interest in the course of a trade or business. S is not required to report.

Example 4. X collects mortgage interest on behalf of Y, who would receive the interest in the course of a trade or business. X possesses the information needed to comply with the reporting requirement of paragraph (a) of this section. On July 1, 1988, Z assumes X's interest collection responsibilities. Z does not possess the information needed to comply with the reporting requirement of paragraph (a) of this section. X is the interest recipient for interest received from January 1, 1988, through June 30, 1988. Because Z does not possess the requisite information and Y would receive the interest in the course of a trade or business, Y is the interest recipient for interest received from July 1, 1988, through December 31, 1988.

Example 5. On December 1, Borrower obtains from Lender funds with which to purchase an existing structure to be used as Borrower's principal residence. In connection with the mortgage, Lender charges Borrower $300 as points. Borrower pays this amount to Lender at closing using unborrowed funds. In addition, Lender receives from Borrower with respect to the mortgage $300 as interest (as determined under paragraph (e) of this section) other than points. Because Lender has received at least $600 in interest, including points, with respect to Borrower's mortgage during the calendar year, Lender must report the payments in accordance with paragraph (a) of this section and §1.6050H–2. Under those sections, Lender must separately state on the information return and the statement to Borrower the $300 received as interest (other than points) and the $300 received as points.

(d) *Additional rules*—(1) *Reporting by foreign person*. An interest recipient that is not a United States person (as defined in section 7701(a)(30)) must report interest received on a qualified mortgage only if it receives the interest—

(i) At a location in the United States, or

(ii) At a location outside the United States if the interest recipient is—

(A) A controlled foreign corporation (within the meaning of section 957(a)), or

(B) A person, 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of the taxable year preceding the receipt of interest (or for such part of the period as the person was in existence), was effectively connected with the conduct of a trade or business within the United States.

(2) *Reporting with respect to nonresident alien individual*—(i) *In general*. The reporting requirement of paragraph (a) of this section does not apply if—

(A) The payor of record is a nonresident alien individual, and

(B) Real property located in the United States does not secure the mortgage.

(ii) *Nonresident alien individual status*. For purposes of paragraph (d)(2)(i)(A) of this section, an interest recipient must apply the following documentary evidence rules to determine whether a payor of record is a nonresident alien individual:

(A) If interest is paid outside the United States, the interest recipient must satisfy the documentary evidence standard provided in §1.6049–5(c) with respect to the payor of record; and

(B) If interest is paid within the United States, the interest recipient must secure from the payor of record a Form W–8 or a substantially similar statement signed by the payor under penalty of perjury as described in §1.1441–1(e)(1).

For purposes of this paragraph (d)(2)(ii), the place of payment is the place where the payor of record completes the acts necessary to effect payment. An amount paid by transfer to an account maintained by an interest recipient in the United States or by mail to a United States address is considered to be paid within the United States.

(3) *Reporting by cooperative housing corporations.* For purposes of this section and §1.6050H–2, an amount received by a cooperative housing corporation from an individual tenant-stockholder that represents the tenant-stockholder's proportionate share of interest described in section 216(a)(2) is interest received on a qualified mortgage in the course of the cooperative housing corporation's trade or business. A cooperative housing corporation is an interest recipient with respect to each tenant-stockholder's proportionate share of interest and must report $600 or more of interest received from an individual tenant-stockholder. The terms ''cooperative housing corporation,'' ''tenant-stockholder,'' and ''tenant-stockholder's proportionate share'' are defined in section 216 and the regulations thereunder.

(e) *Amount of interest received on mortgage for calendar year*—(1) *In general.* For purposes of this section and §1.6050H–2, interest includes mortgage prepayment penalties and late charges other than late charges for a specific mortgage service. Interest also includes prepaid interest in the form of points (as defined in paragraph (f) of this section). Whether an interest recipient receives $600 or more of interest on a mortgage for a calendar year is determined on a mortgage-by-mortgage basis. An interest recipient need not aggregate interest received on all of the mortgages of a payor of record held by the interest recipient to determine whether the $600 threshold is met. Therefore, an interest recipient need not report interest of less than $600 received on a mortgage, even though it receives a total of $600 or more of interest on all of the mortgages of the payor of record for a calendar year.

(2) *Calendar year*—(i) *In general.* Except as otherwise provided in paragraph (e)(2)(ii) or (iii) of this section, the calendar year for which interest is received is the later of the calendar year in which the interest is received or the calendar year in which the interest properly accrues.

(ii) *De minimis rule.* An interest recipient may treat interest received during the current calendar year which properly accrues by January 15 of the subsequent calendar year as interest received for the current calendar year. For example, if an interest recipient receives a monthly interest payment on December 31, 1988, which includes interest accruing for the period December 5, 1988, to January 5, 1989, the interest recipient may treat the entire interest payment as received for 1988. If a portion of an interest payment received in a current calendar year accrues after January 15 of the subsequent calendar year, an interest recipient must report as interest received for the current calendar year only the portion that properly accrues by the end of the current calendar year. For example, if an interest recipient receives a monthly payment that includes interest accruing for the period December 20, 1988, through January 20, 1989, the interest recipient may not report as interest received for 1988 any interest accruing after December 31, 1988. The interest recipient must report the interest accruing after December 31, 1988, as received for calendar year 1989.

(iii) *Applicability to points.* Paragraphs (e)(2)(i) and (ii) of this section do not apply to prepaid interest in the form of points (as defined in paragraph (f) of this section). Points (as defined in paragraph (f) of this section) must be reported in the calendar year in which they are received.

(3) *Certain interest not received on mortgage*—(i) *Interest received from seller on payor of record's mortgage.* Interest received from a seller or a person related to a seller within the meaning of section 267(b) or section 707(b)(1) on a

payor of record's mortgage is not interest received on a mortgage. For example, interest is not received on a mortgage if a real estate developer deposits an amount in escrow with an interest recipient and advises it to draw on the account to pay interest on a payor of record's mortgage (e.g., a buy-down mortgage). Similarly, interest is not received on a mortgage if an interest recipient receives a lump sum from a real estatge developer for interest on a payor of record's mortgage.

(ii) *Interest received from governmental unit.* Interest received from a governmental unit or an agency or instrumentality of a governmental unit is not interest received on a mortgage. For example, interest is not received on a mortgage if received as a housing assistance payment from the Department of Housing and Urban Development on a mortgage insured under section 235 of the National Housing Act (12 U.S.C. 1701–1715z (1982 & Supp. 1983)). Except as otherwise provided in paragraph (e) (1) and (2) of this section, interest received on a mortgage is only the excess of interest received on the mortgage over interest received from a governmental unit or an agency or instrumentality of a governmental unit.

(4) *Interest calculated under Rule of 78s method of accounting.* An interest recipient permitted by Revenue Procedure 83–40, 1983–1, C.B. 774 (or other revenue procedure) to use the Rule of 78s method of accounting to calculate interest earned on a transaction may report as interest received on a mortgage interest earned on the transaction as calculated under the Rule of 78s method of accounting only if the interest recipient satisfies the notice requirement of § 1.6050H–2(c).

(f) *Points treated as interest*—(1) *General rule.* Subject to the limitations of paragraph (f)(2) of this section, an amount is deemed to be points paid in respect of indebtedness incurred in connection with the purchase of the payor of record's principal residence (points) for purposes of this section and § 1.6050H–2 to the extent that the amount—

(i) Is clearly designated on the Uniform Settlement Statement prescribed under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 *et seq.*, (e.g., the Form HUD–1) as points incurred in connection with the indebtedness, for example *as loan origination fees* (including amounts so designated on Veterans Affairs (VA) and Federal Housing Administration (FHA) loans), *loan discount, discount points,* or *points*;

(ii) Is computed as a percentage of the stated principal amount of the indebtedness incurred by the payor of record;

(iii) Conforms to an established practice of charging points in the area in which the loan is issued and does not exceed the amount generally charged in the area;

(iv) Is paid in connection with the acquisition by the payor of record of a residence that is the principal residence of the payor of record and that secures the loan. For this purpose, the lender of record may rely on a signed written statement of the payor of record that states whether the proceeds of the loan are for the purchase of the mortgagor's principal residence; and

(v) Is paid directly by the payor of record.

(2) *Limitations.* An amount is not points for purposes of this section to the extent that the amount is—

(i) Paid in connection with indebtedness incurred for the improvement of a principal residence;

(ii) Paid in connection with indebtedness incurred to purchase or improve a residence that is not the payor of record's principal residence, such as a second home, vacation property, investment property, or trade or business property;

(iii) Paid in connection with a home equity loan or a line of credit, even though the loan is secured by the payor of record's principal residence;

(iv) Paid in connection with a refinancing loan (except as provided by paragraph (f)(4) of this section), including a loan incurred to refinance indebtedness owed by the borrower under the terms of a land contract, a contract for deed, or similar forms of seller financing;

(v) Paid in lieu of amounts that ordinarily are stated separately on the Form HUD–1, such as appraisal fees, inspection fees, title fees, attorney fees, and property taxes; or

(vi) Paid in connection with the acquisition of a principal residence, to the extent that the amount is allocable to indebtedness in excess of the aggregate amount that may be treated as acquisition indebtedness under section 163(h)(3)(B)(ii).

(3) *Special rule*—(i) *Amounts paid directly by payor of record.* For purposes of this section, an amount is considered *paid directly* by the payor of record if it is—

(A) Provided by the payor of record from funds that have not been borrowed from the lender of record for this purpose as part of the overall transaction. The amount provided may include amounts designated as down payments, escrow deposits, earnest money applied at the closing, and other funds actually paid over by the payor of record at or before the time of closing; or

(B) Paid as points (within the meaning of this paragraph (f)) on behalf of the payor of record by the seller. For this purpose, an amount paid as points to an interest recipient by the seller on behalf of the payor of record is treated as paid to the payor of record and then paid directly by the payor of record to the interest recipient.

(ii) *Examples.* The provisions of this paragraph (f) are illustrated by the following examples:

Example 1. Financed payment of points. Buyer purchases a principal residence for $100,000. There is a total of $7,000 in closing costs (exclusive of down payment) charged in connection with the sale. Of this amount, $3,000 is charged as points (within the meaning of paragraph (f) of this section). At closing, Buyer makes a down payment of $20,000 and provides unborrowed funds in the amount of $4,000 for the payment of various closing costs other than points. Buyer finances payment of the points by increasing the principal amount of the loan by $3,000. Seller makes no payments on Buyer's behalf. Because Buyer has provided at closing funds that have not been borrowed from the lender of record for this purpose in an amount at least equal to the amount charged as points in the transaction, the lender of record (or a qualified person) must report $3,000 as points in accordance with this section and § 1.6050H–2.

Example 2. Seller-paid points. Buyer purchases a principal residence for $100,000. There is a total of $7,000 in closing costs (exclusive of down payment) charged in connection with the sale. Of this amount, $3,000 is charged as points (within the meaning of this paragraph (f)). Seller agrees to pay all closing costs on behalf of Buyer, including the amount charged as points. Accordingly, the amount paid by Seller as points is treated as paid directly by Buyer, and the lender of record (or a qualified person) must report the $3,000 as points in accordance with this section and § 1.6050H–2.

(4) *Construction loans*—(i) *In general.* An amount paid in connection with indebtedness incurred to construct a residence, or to refinance indebtedness incurred to construct a residence, is deemed to be points for purposes of this section to the extent the amount—

(A) Is clearly designated on the loan documents as points incurred in connection with the indebtedness, for example, as *loan origination fees, loan discount, discount points,* or *points;*

(B) Is computed as a percentage of the stated principal amount of the indebtedness incurred by the payor of record;

(C) Conforms to an established practice of charging points in the area in which the loan is issued and does not exceed the amount generally charged in the area;

(D) Is paid in connection with indebtedness incurred by the payor of record to construct (or to refinance construction of) a residence that is to be used, when completed, as the principal residence of the payor of record;

(E) Is paid directly by the payor of record; and

(F) Is not allocable to indebtedness in excess of the aggregate amount that may be treated as acquisition indebtedness under section 163(h)(3)(B)(ii).

(ii) *Limitation on refinancing of construction loans.* Amounts paid in connection with refinancing indebtedness incurred to construct a residence are not treated as points to the extent they are allocable to indebtedness that exceeds the indebtedness incurred to construct the residence.

(5) *Amounts paid to mortgage brokers.* Amounts received directly or indirectly by a mortgage broker are treated as points under this paragraph (f) to the same extent the amounts would be so treated if they were paid to and retained by the lender of record, and must be reported by the lender of record in accordance with this section and § 1.6050H–2.

(6) *Effect on deduction of points.* This section and § 1.6050H–2 address only the information reporting requirements of section 6050H and do not affect a payor of record's deduction for any amount in accordance with applicable provisions of the Internal Revenue Code.

(g) *Effective date*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section is effective for mortgage interest received after December 31, 1987. Section 1.6050H–1T contains rules for reporting mortgage interest received after December 31, 1984, and before January 1, 1988.

(2) *Points.* The reporting requirements of this section do not apply to prepaid interest received in the form of points before January 1, 1995. In addition, the inclusion of points in the determination of interest under paragraph (e)(1) of this section applies only to transactions occurring after December 31, 1994.

[T.D. 8191, 53 FR 12002, Apr. 12, 1988, as amended by T.D. 8571, 59 FR 63251, Dec. 8, 1994; T.D. 8734, 62 FR 53492, Oct. 14, 1997]

§ 1.6050H–1T Information reporting of mortgage interest received in a trade or business from individuals after 1985 and before 1988 (temporary).

The following questions and answers relate to the requirement of reporting mortgage interest under section 6050H of the Internal Revenue Code of 1954, as added by section 145 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 685):

REQUIREMENT OF REPORTING

In general

Q–1: What does section 6050H provide with respect to the reporting of mortgage interest?

A–1: In general, section 6050H provides that an information return must be made by any person who is engaged in a trade or business and who, in the course of such trade or business, receives from any individual $600 or more of interest on any mortgage in a calender year. For purposes of this section—

(a) Any person who is engaged in a trade or business and who, in the course of such trade or business, receives interest on any mortgage is referred to as an ''interest recipient''; and

(b) Any individual who pays interest on any mortgage is referred to as a ''payor''.

Interest Subject to Reporting

Q–2: Does the reporting requirement apply to all interest received by an interest recipient?

A–2: No. The reporting requirement applies only to interest received from a payor on a mortgage (as defined in A–4 and A–5 of this section). The reporting requirement does not apply to interest received from a trust, estate, partnership, association, company, or corporation.

Q–3: Does the reporting requirement apply to any amount of mortgage interest received from a payor?

A–3: No. The reporting requirement applies only if $600 or more of interest is received from a payor on any mortgage in a calendar year. The $600 threshold is determined on an obligation by obligation basis. Therefore, if the interest received from a payor on an obligation is less than $600, reporting with respect to that interest is not required even if the total interest received from the payor on all obligations held by the interest recipient exceeds $600 in a calendar year.

Q–4: What is a mortgage, for purposes of this section and section 6050H, with respect to obligations in existence on December 31, 1984?

A–4: An obligation in existence on December 31, 1984, that is secured primarily by real property (regardless of whether the property is located inside or outside the United States) is a mortgage unless, at the time the obligation was incurred, the interest recipient reasonably classified such obligation as other than a mortgage, real property loan, real estate loan, or other similar type of obligation. (See A–12 of this section for rules relating to interest received by foreign persons.) For example, if an obligation incurred in 1980 was secured primarily by real property, but the interest recipient reasonably classified the obligation as a commercial loan because the proceeds were used to finance the payor's trade or business, the obligation is not considered a mortgage for purposes of this section and section 6050H. If, however, a majority of the obligations in a particular class are primarily secured by real property, it is not reasonable to classify such obligations as other than mortgages, real property loans, real estate loans, or other similar types of obligations; such obligations are, therefore, mortgages for purposes of section 6050H and this section. For purposes of this definition, real property includes stock in a cooperative housing corporation. A mortgage does not include a credit card obligation that is secured primarily by real property or a line of credit that is secured primarily by real property.

Q–5: What is a mortgage, for purposes of this section and section 6050H, with respect to obligations incurred after December 31, 1984?

A–5: With respect to obligations incurred after December 31, 1984, a mortgage is any obligation that is secured primarily by real property, regardless of whether the property is located inside or outside the United States. (See A–12 of this section for rules relating to interest received by foreign persons.) For purposes of this definition, real property includes stock in a cooperative housing corporation. A mortgage does not include a credit card obligation that is secured primarily by real property or a line of credit that is secured primarily by real property. The determination of whether a particular obligation is a mortgage shall be made without regard to the interest recipient's classification of that obligation. For example, if an obligation is secured primarily by real property, but the interest recipient classifies the obligation as a commercial loan because the proceeds are to be used to finance the payor's trade or business, the obligation is nevertheless a mortgage for purposes of this section and section 6050H.

Q–6: If the amount of interest received on a mortgage in a calendar year is less than the amount of interest due on the mortgage, what amount of interest must be reported under this section?

A–6: The amount of interest received must be reported. For example, assume that $800 of interest is payable in a calendar year but only $600 of interest is received in the calendar year. The amount of interest received ($600) must be reported under this section. Similarly, assume that an interest recipient accrues $900 of interest on a mortgage in a calendar year but only $800 of interest is payable and is received in the calendar year (resulting in a $100 increase in the unpaid balance of the loan). The amount of interest received ($800) must be reported under this section.

Q–7: If a payor remits 13 payments of interest on any mortgage in a calendar year, but the interest recipient receives only 12 payments in the calendar year, what amount should the interest recipient report?

A–7: The interest recipient should report the interest actually received in the calendar year. For example, if a payor mails the 13th payment on December 31 or a calendar year, and the interest recipient does not receive it until the following calendar year, the interest recipient should report only the 12 payments received in the calendar year.

Trade or Business Requirement

Q–8: Must an interest recipient be engaged in the trade or business of lending money to be subject to the reporting requirement of this section?

A–8: No. An interest recipient (other than a governmental unit, or any agency or instrumentality thereof) is subject to this reporting requirement if the interest recipient is engaged in any trade or business and, in the course of such trade or business, receives from an individual $600 or more of interest on any mortgage in a calendar year. For example, if A, a real estate developer, provides financing to B, an individual, to enable B to purchase a house in a subdivision owner and developed by A, and that house is the primary security for the financing, A is subject to this reporting requirement. Alternatively, if C, a physician, who is not engaged in any other trade or business, lends money to D to enable D to purchase C's home, C is not subject to the reporting requirement of this section because C will not receive the interest in the course of his sole trade or business of being a physician.

Q–9: How does the trade or business requirement apply to a governmental unit?

A–9: A governmental unit (or any agency or instrumentality thereof) which receives from a payor $600 or more of interest on any mortgage in a calendar year is subject to the reporting requirement without regard to the requirement that the money be received in the course of a trade or business. A governmental unit (or any agency or instrumentality thereof) that is subject to the reporting requirement must designate an officer or employee to make the return. The designated officer or employee must make the return in the form and manner prescribed by this section.

Treatment of Cooperative Housing Corporations

Q–10: How does this reporting requirement apply in the case of cooperative housing corporation?

A–10: For purposes of section 6050H and this section, a cooperative housing corporation (as defined in section 216) is treated as a person who is engaged in a trade or business and who, in the course of such trade or business, receives interest from its tenant-stockholders on a mortgage. Therefore, a cooperative housing corporation is required to report under section 6050H and this section.

Interest Received on Behalf of Another

Q–11: If, in the course of a trade or business, a person receives (collects) interest on behalf of another, who is required to report?

A–11: The person first receiving (collecting) the interest is required to report. For example, a servicing bank that receives $600 or more of mortgage interest in a calendar year from a payor on behalf of a lender is required to report the interest received under this section. No reporting is required under this section upon the transfer of the interest from the servicing bank to the lender for whom the interest was received.

Interest Received by Foreign Persons

Q–12: Must an interest recipient that is a foreign person report under section 6050H and this section?

A–12: An interest recipient that is a foreign person must report with respect to mortgage interest that is received at a location within the United States. In the case of interest received at locations outside the United States, an interest recipient that is a foreign person must report—

(a) If the foreign person is a controlled foreign corporation within the meaning of section 957(a); or

(b) If the foreign person is a corporation any interest received from which would be considered to be from sources within the United States under section 861(a)(1)(C) (without regard to whether the interest is paid or credited by a domestic branch of a foreign corporation engaged in the commercial banking business).

Multiple Borrowers

Q–13: When there is more than one borrower on a mortgage, must the interest recipient report with respect to each borrower?

A–13: No. The interest recipient must report only with respect to the payor of record (as defined in A–14 of this section) on the mortgage. The amount of interest subject to reporting is the full amount received by the interest recipient with respect to the mortgage during the calendar year.

Q–14: Who is a payor of record?

A–14: For purposes of this section, the payor of record is the individual carried on the books and records of the interest recipient as the principal borrower or the individual designated by the interest recipient as the payor of record.

Interest Paid by Third Parties

Q–15: If an interest recipient receives interest on a mortgage from a person other than the borrower, must the interest recipient report this amount as received from the borrower?

A–15: In general, yes. Except as otherwise provided in this A–15 and A–15a of this section, an interest recipient must report all amounts received on a borrower's mortgage as received from the borrower under section 6050H and this section. For example, assume that N is the borrower on a mortgage and that interest is received on the mortgage from N's mother. The interest that is received from N's mother on N's mortgage is reportable under section 6050H and this section as received from N. However, interest that is paid by a seller on a purchaser's mortgage shall not be reported under section 6050H and this section as received from the purchaser. For example, if a real estate developer deposits an amount in escrow with the interest recipient and advises the interest recipient to draw on the account to pay interest on a purchaser's mortgage, this interest is not reportable under section 6050H and this section. Similarly, if a real estate developer pays a lump sum to the interest recipient for interest on a purchaser's mortgage, this interest is not reportable under section 6050H and this section. In addition, amounts received by the interest recipient as housing assistance payments from the Department of Housing and Urban Development (''HUD'') on a borrower's mortgage that is insured under section 235 of the National Housing Act (12 U.S.C. 1701–1715z (1982 and Supp. 1983)) shall not be reported as interest received from the borrower. In such a case, therefore, only the amount of interest received on the mortgage that exceeds the amount of housing assistance payments received from HUD shall be reported.

Q–15a: If an interest recipient receives, with respect to a borrower's mortgage, an amount from a governmental unit, or any agency or instrumentality thereof (other than an amount received from HUD as described in A–15 of this section), should the interest recipient report the amount as received from the borrower?

A–15a: If the interest is received after December 31, 1986, it must be reported in the same manner as interest on mortgages with respect to which housing assistance payments are received from HUD, as described in A–15 of this section. If the interest is received before January 1, 1987, it may, but need not, be reported.

FORM AND MANNER OF RETURN

Form of Return

Q–16: What form must be used to make a return required by section 6050H and this section?

A–16: An interest recipient must make the return on Form 1098 (with Form 1096 as the transmittal form). The interest recipient may, however, prepare and use a form that contains provisions substantially similar to those of Forms 1096 and 1098 if that person complies with any revenue procedures relating to substitute Forms 1096 and 1098 in effect at that time. A separate return must be made for each mortgage with respect to which $600 or more of interest is received for a calendar year.

Information Included on Return

Q–17: What information must an interest recipient include on Form 1098?

A–17: An interest recipient must include the following information on the Form 1098:

(a) The name, address, and TIN (as defined in section 7701(a)) of the payor or payor of record;

(b) The name and address of the interest recipient;

(c) The amount of interest (not including points and other prepaid interest) received on the mortgage in the calendar year; and

(d) Any other information as may be required by Form 1098 or its instructions.

Time for Filing

Q–18: When must an interest recipient file the return or returns required by section 6050H and this section?

A–18: An interest recipient must file the return or returns on or before February 28 of the year following the calendar year in which the mortgage interest is received.

Place for Filing

Q–19: Where must the return or returns required under section 6050H and this section be filed?

A–19: The return or returns must be filed with the same Internal Revenue Service Center where other returns of the interest recipient are filed.

Use of Magnetic Media

Q–20: What rules apply with respect to the use of magnetic media?

A–20: Any return required under section 6050H and this section must be filed on magnetic media to the extent required by section 6011(e) and the regulations thereunder. Any person not required by section 6011(e) to file returns on magnetic media may request permission to do so. See §1.9101 for rules relating to permission to submit information on magnetic tape or other media. If a person required to file returns on magnetic media fails to do so, the penalty under section 6652 (failure to file an information return) applies.

REQUIREMENT OF FURNISHING STATEMENTS TO PAYORS

In General

Q–21: What statements are required to be furnished to payors under section 6050H and this section?

A–21: Any interest recipient required to make an information return under section 6050H must also furnish a statement to the payor or, if applicable, payor of record (see A–13 and A–14 of this section). For the date when the statement must be furnished, see A–26 of this section.

Q–22: Is the statement considered to be furnished to the payor or payor of record if it is mailed to him at his last known address?

A–22: Yes.

Q–23: If an interest recipient furnishes a statement required under a Federal mortgage program will the requirements of A–21 of this section be met?

A–23: Yes, if the statement furnished contains all the information required under A–24 of this section and is furnished to the payors or payors of record by the date required under A–26 of this section.

Information Included on Statement

Q–24: What information must be included on the statement required to be furnished to payors or payors of record under section 6050H and this section?

A–24: The statement must include the following information:

(a) The information required under A–17 of this section;

(b) A legend stating that the information is being reported to the Internal Revenue Service; and

(c) A legend stating that the amount reported on the statement is deductible by the payor for Federal income tax purposes only to the extent the payor actually paid the amount and was not reimbursed by another person.

Copy of Form 1098 to Payors

Q–25: Can an interest recipient meet the requirement to furnish a statement to a payor or payor of record by furnishing a copy of the Form 1098 filed with respect to that payor or payor of record?

A–25: Yes. The requirement of furnishing a statement may be met by furnishing to the payor or payor of record a copy of the Form 1098 containing the same information filed with the Service with respect to such payor, or a form that contains provisions substantially similar to those of Form 1098, provided that the form bears the legends described in A–24 of this section.

Time for Furnishing Statement

Q–26: When is a statement required to be furnished by an interest recipient to the payor or payor of record?

A–26: A statement is required to be furnished by the interest recipient to the payor or payor of record on or before January 31 of the year following the calendar year in which the mortgage interest is received.

PENALTIES

In General

Q–27: Are there any penalties for failing to comply with the requirements of section 6050H and this section?

A–27: Yes. The penalty for failing to make an information return with respect to a payor or payor of record is provided in section 6652. The penalty for failing to furnish a statement to a payor or payor of record is provided in section 6678.

Q–28: Are there any penalties for failing to furnish a TIN upon request?

A–28: Yes. Any payor or payor of record is subject to a $50 penalty by the Internal Revenue Service if such payor fails to furnish his TIN upon the request of an interest recipient. For rules relating to the requesting of TINs by interest recipients, see A–30 and A–31 of this section.

Q–29: Is an interest recipient subject to any penalties for failing to furnish the TIN of a payor or payor of record?

A–29: Yes. In general, the penalties provided under section 6676 will be assessed against interest recipients who fail to furnish to the Internal Revenue Service the TIN of a payor or payor of record. With respect to mortgages in existence on December 31, 1984, however, the interest recipient will not be subject to the section 6676 penalties if the interest recipient followed the rules of A–30 and A–31 of this section for requesting TINs and properly processed the responses.

Requesting TINS

Q–30: What rules apply with respect to the requesting of TINs by interest recipients?

A–30: With respect to obligations incurred after December 31, 1984, the interest recipient must take all reasonable steps to obtain the TIN of the payor or payor of record at the time the obligation is incurred. With respect to any mortgage for which the interest recipient does not have the TIN of the payor or payor of record in its accounting system, the interest recipient must request, at least once a year, the TIN of such payor.

The request for a TIN need not be in a separate mailing. The request may be included, for example, in the interest recipient's regular mailings of payment coupon booklets or annual statements. However, if the interest recipient makes no other mailings to the payor or payor of record during 1985 (or during the year in which the obligation is incurred for obligations incurred after 1985), then the interest recipient must request the TIN in a separate mailing.

Q–31: What form must the interest recipient use to request the TIN of a payor or a payor of record?

A–31: No particular form must be used to request the TIN. However, the request must be made on a separate piece of paper and the request must clearly notify the payor that the Internal Revenue Service requires the payor to furnish his TIN in order to verify any deduction for mortgage interest. The interest recipient must also notify such payor that he is subject to a $50 penalty, imposed by the Internal Revenue Service, if he fails to furnish his TIN.

Effective Date

Q–32: When is this section effective?

A–32: This section generally is effective for mortgage interest received after December 31, 1984, and before January 1, 1988. However, Q/A–15a of this section is effective for mortgage interest received after December 31, 1986, and before January 1, 1988.

(26 U.S.C. 6050H)

[T.D. 8047, 50 FR 33530, Aug. 20, 1985, as amended by T.D. 8191, 53 FR 12002, Apr. 12, 1988]

§ 1.6050H–2 Time, form, and manner of reporting interest received on qualified mortgage.

(a) *Requirement to file return*—(1) *Form of return.* An interest recipient must file a return required by § 1.6050H–1(a) on Form 1098 (with Form 1096 as the transmittal form). An interest recipient may use forms containing provisions substantially similar to those in Forms 1098 and 1096 if it complies with applicable revenue procedures relating to substitute Forms 1098 and 1096. An interest recipient must file a separate return for each qualified mortgage for which it receives $600 or more of interest for a calendar year.

(2) *Information included on return.* An interest recipient must include on Form 1098:

(i) The name, address, and taxpayer identification number (TIN) (as defined in section 7701(a)(41)) of the payor of record;

(ii) The name, address, and TIN of the interest recipient;

(iii) The amount of interest (other than points) required to be reported with respect to the qualified mortgage for the calendar year;

(iv) With respect to reimbursements of interest on a qualified mortgage (as discussed in paragraph (a)(3) of this section) made to the payor of record in the calendar year—

(A) Reimbursements aggregating $600 or more; and

(B) Reimbursements aggregating less than $600, but only if $600 or more of interest on the qualified mortgage is received in the calendar year from the payor of record;

(v) The amount of points paid directly by the payor of record (within the meaning of § 1.6050H–1(f)(3)) required to be reported with respect to the qualified mortgage for the calendar year; and

(vi) Any other information required by Form 1098 or its instructions.

Section 1.6050H–1(e) contains rules to determine the amount of interest received on a mortgage for a calendar year.

(3) *Reimbursements of interest on a qualified mortgage.* For purposes of paragraph (a)(2)(iv) of this section, a reimbursement of interest on a qualified mortgage is a reimbursement of an

amount received in a prior year that was required to be reported for that prior year under paragraph (a)(2)(iii) of this section by any interest recipient. Only the interest recipient that makes the reimbursement is required to report the reimbursement under this section. Form 1098 and the statement furnished to the payor of record under paragraph (b) of this section must not include any amount that constitutes interest on the reimbursement paid to the payor of record. Rules relating to the requirement to report interest on a reimbursement are, in the case of a person carrying on the banking business (or a middleman, as defined in §1.6049–4(f)(4), of a person carrying on the banking business), provided in section 6049 and the regulations thereunder, and, for other persons, provided in section 6041 and the regulations thereunder. Reimbursements of interest on a qualified mortgage (as described in this section) made in 1993 and subsequent calendar years must be reported on Form 1098 and statements furnished to payors of record. Reimbursements made prior to 1993 are not required to be reported.

(4) *Time and place for filing return.* An interest recipient must file a return required by this paragraph (a) on or before February 28 (March 31 if filed electronically) of the year following the calendar year for which it receives the mortgage interest. If no interest is required to be reported for the calendar year, but a reimbursement of interest on a qualified mortgage is required to be reported for the calendar year, then a return required by this paragraph (a) must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the reimbursement was made. An interest recipient must file the return required by paragraph (a) of this section with the IRS office designated in the instructions for Form 1098.

(5) *Use of magnetic media.* An interest recipient must file the return required by paragraph (a) of this section on magnetic media only if required by section 6011(e) and the regulations thereunder. An interest recipient not required by section 6011(e) to file returns on magnetic media may request permission to do so. Section 301.6011–2 contains rules relating to the use of magnetic media. A failure to file on magnetic media when required constitutes a failure to file an information return under section 6721.

(b) *Requirement to furnish statement*—(1) *In general.* An interest recipient that must file a return under paragraph (a) of this section must furnish a statement to the payor of record.

(2) *Information included on statement.* An interest recipient must include on the statement that it must furnish to a payor of record:

(i) The information required under paragraph (a)(2) of this section;

(ii) A legend that—

(A) Identifies the statement as important tax information that is being furnished to the IRS; and

(B) Notifies the payor of record that if the payor of record is required to file a return, a negligence penalty or other sanction may be imposed on the payor of record if the IRS determines that an underpayment of tax results because the payor of record overstated a deduction for this mortgage interest (if any) or understated income from this mortgage interest reimbursement (if any) on the payor of record's return;

(iii) A legend stating that the payor of record may be unable to deduct the full amount of mortgage interest reported on the statement; that limitations based on the cost and value of the property securing the mortgage may apply; and that the payor of record may only deduct mortgage interest to the extent it was incurred, actually paid by the payor of record, and not reimbursed by another person; and

(iv) With respect to any information required to be reported under paragraph (a)(2)(iv) of this section, an instruction providing that the amount of the reimbursement is not to be deducted and that the amount must be included in the gross income of the payor of record if the reimbursed interest was deducted by the payor of record in a prior year so as to reduce income tax.

(3) *Statement furnished pursuant to Federal mortgage program.* An interest recipient that furnishes a statement to a payor of record under a Federal mortgage program will satisfy the requirement of paragraph (b)(1) of this section

if the statement contains all the information and legends required by paragraph (b)(2) of this section and is furnished by the time and at the place required by paragraph (b)(6) of this section.

(4) *Copy of Form 1098 to payor of record.* An interest recipient will satisfy the requirement of paragraph (b)(1) of this section by furnishing to a payor of record a copy of Form 1098 (or a substitute statement that complies with applicable revenue procedures) containing all the information filed with the Internal Revenue Service and all the legends required by paragraph (b)(2) of this section by the time and at the place required by paragraph (b)(6) of this section.

(5) *Furnishing statement with other information reports.* An interest recipient may transmit the statement required by paragraph (b)(1) of this section to the payor of record with other information, including other information returns, as permitted by applicable revenue procedures.

(6) *Time and place for furnishing statement.* An interest recipient must furnish a statement required by paragraph (b)(1) of this section to a payor of record on or before January 31 of the year following the calendar year for which it receives the mortgage interest. If no mortgage interest is required to be reported for the calendar year, but a reimbursement of interest on a qualified mortgage is required to be reported for the calendar year, then the statement required by paragraph (b)(1) of this section must be furnished on or before January 31 of the year following the calendar year in which the reimbursement was made. The interest recipient will be considered to have furnished the statement to the payor of record if it mails the statement to the payor of record's last known address.

(c) *Notice requirement for use of Rule of 78s method of accounting*—(1) *In general.* An interest recipient seeking to report interest received on a mortgage under the Rule of 78s method of accounting as permitted under § 1.6050H–1(e)(4) must notify the payor of record that the Rule of 78s method of accounting was used to calculate interest received on the mortgage and that the payor of record may not deduct as interest the amount calculated under the Rule of 78s method of accounting unless the payor of record properly uses that method to determine interest deductions. The notice must state that the payor of record may use the Rule of 78s method of accounting to determine interest paid for Federal income tax purposes only for a self-amortizing consumer loan requiring level payments at regular intervals (at least annually) over no longer than a five-year period, with no balloon payment at the end of the loan term, and only when the loan agreement provides for use of the Rule of 78s method of accounting to determine interest earned. See Rev. Proc. 83–40, 1983–1 C.B. 774; Rev. Rul. 83–84, 1983–1 C.B. 97.

(2) *Time and manner.* An interest recipient must provide notice required by paragraph (c)(1) of this section to a payor of record on or with the statement required by paragraph (b) of this section. An interest recipient may provide notice on a separate paper or on the statement required by paragraph (b) of this section.

(d) *Reporting under designation agreement*—(1) *In general.* An interest recipient that receives or collects interest (including points) on a mortgage may designate a qualified person to satisfy the reporting requirements of paragraphs (a), (b), and (c) of this section. If a designated qualified person reports as permitted under this paragraph (d), it will satisfy the requirement of paragraph (a)(2)(ii) of this section by including on Form 1098 (and Form 1096) the name, address, and TIN of the designated qualified person.

(2) *Qualified person.* A qualified person is either—

(i) A trade or business with respect to which the interest recipient is under common control within the meaning of § 1.414(c)–2; or

(ii) A person who is named as the designee by the lender of record or by a qualified person (under paragraph (d)(2) of this section) in a designation agreement entered into in accordance with paragraph (d)(3) of this section, and who either was involved in the original loan transaction or is a subsequent purchaser of the loan.

(3) *Designation agreement.* An interest recipient that designates a qualified

person to satisfy the reporting requirements described in paragraphs (a), (b), and (c) of this section must make that designation in a written designation agreement. The designation agreement must identify the mortgage(s) and calendar years for which the designated qualified person must report, and must be signed by both the designator and designee. A designee may report an amount as having been paid directly by the payor of record (for purposes of paragraph (a)(2)(v) of this section) only if the designation agreement contains the designator's representation that it did not lend such amount to the payor of record as part of the overall transaction. The designator must retain a copy of the designation agreement for four years following the close of the calendar year in which the loan is made. The designation agreement need not be filed with the Internal Revenue Service.

(4) *Penalties*. A designated qualified person is subject to any applicable penalties provided in part II of subchapter B of chapter 68 of the Internal Revenue Code as if it were an interest recipient. A designator is relieved from liability for applicable penalties by designating a qualified person under the provisions of paragraph (d)(3) of this section. Paragraph (e) of this section describes applicable penalties.

(e) *Penalty provisions*—(1) *Returns and statements the due date for which (determined without regard for extensions) is after December 31, 1987, and before December 31, 1989*. For purposes of this paragraph (e)(1) only, all references to sections of the Internal Revenue Code refer to sections of the Internal Revenue Code of 1986, as amended on or before December 31, 1987.

(i) *Failure to file return or to furnish statement*. The section 6721 penalty applies to an interest recipient that fails to file a return required by paragraph (a) of this section with respect to a payor of record. The section 6722 penalty applies to an interest recipient that fails to furnish a statement required by paragraph (b) of this section to a payor of record.

(ii) *Failure to furnish TIN*. The section 6676 penalty may apply to an interest recipient that fails to furnish the TIN of a payor of record on a return required by paragraph (a) of this section. The section 6676 penalty may apply to an interest recipient that fails to request and to obtain the TIN of a payor of record under paragraph (f) of this section.

(iii) *Failure to include correct information*. The section 6723 penalty may apply to an interest recipient that fails to include correct information on a return required by paragraph (a) of this section or on a statement required by paragraph (b) of this section to be furnished to a payor of record.

(2) *Returns and statements the due date for which (determined without regard for extensions) is after December 31, 1989*—(i) *Failure to file return or to furnish statement*. The section 6721 penalty applies to an interest recipient that fails to file a return required by paragraph (a) of this section with respect to a payor of record. The section 6722 penalty applies to an interest recipient that fails to furnish a statement required by paragraph (b) of this section to a payor of record.

(ii) *Failure to furnish TIN*. The section 6721 penalty may apply to an interest recipient that fails to furnish the TIN of a payor of record on a return required by paragraph (a) of this section. The section 6721 penalty may apply to an interest recipient that fails to request and to obtain the TIN of a payor of record under paragraph (f) of this section.

(iii) *Failure to include correct information*. The section 6721 penalty may apply to an interest recipient that fails to include correct information on a return required by paragraph (a) of this section. The section 6722 penalty may apply to an interest recipient that fails to include correct information on a statement required by paragraph (b) of this section to be furnished to a payor record.

(f) *Requirement to request and to obtain TIN*—(1) *In general*. For obligations incurred after December 31, 1987, an interest recipient must make all reasonable efforts to obtain the TIN of a payor of record when the payor of record incurs the obligation. For example, an interest recipient may require a borrower to furnish a TIN during the mortgage approval or application process. If an interest recipient does not

maintain the TIN of a payor of record on a mortgage, whenever incurred, it must request the TIN at least annually and must process responses properly and promptly.

(2) *Manner of requesting TIN.* An interest recipient need not separately mail a request for a TIN. An interest recipient may include a request in its regular mailing of payment coupon booklets or annual statements. If an interest recipient makes no mailing to a payor of record during the year in which the payor of record incurs the obligation, it must request the TIN in a separate mailing. No particular form is required to request a TIN. Nevertheless, an interest recipient must make the request on a separate paper and must clearly notify a payor of record that the Internal Revenue Service requires the payor of record to furnish a TIN in order to verify any mortgage interest deduction. An interest recipient must notify a payor of record that failure to furnish a TIN subjects the payor of record to a $50 penalty imposed by the Internal Revenue Service. A request for a TIN made on Form W–9 satisfies the requirement of this paragraph (f)(2).

(g) *Effective date*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section is effective for mortgage interest received after December 31, 1987. Section 1.6050H–1T contains rules for reporting mortgage interest received after December 31, 1984, and before January 1, 1988.

(2) *Points.* The reporting requirement of this section does not apply to prepaid interest in the form of points received before January 1, 1995.

[T.D. 8191, 53 FR 12005, Apr. 12, 1988, as amended by T.D. 8507, 58 FR 68753, Dec. 29, 1993; T.D. 8571, 59 FR 63253, Dec. 8, 1994; T.D. 8895, 65 FR 50408, Aug. 18, 2000]

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[T.D. 8652, 61 FR 7, Jan. 2, 1996, as amended by T.D. 8974, 66 FR 67687, Dec. 31, 2001]

§ 1.6050I–1 Returns relating to cash in excess of $10,000 received in a trade or business.

(a) *Reporting requirement*—(1) *Reportable transaction*—(i) *In general*. Any person (as defined in section 7701(a)(1)) who, in the course of a trade or business in which such person is engaged, receives cash in excess of $10,000 in 1 transaction (or 2 or more related transactions) shall, except as otherwise provided, make a return of information with respect to the receipt of cash.

(ii) *Certain financial transactions*. Section 6050I of title 26 of the United States Code requires persons to report information about financial transactions to the Internal Revenue Service, and section 5331 of title 31 of the United States Code requires persons to report similar information about certain transactions to the Financial Crimes Enforcement Network. This information shall be reported on the same form as prescribed by the Secretary.

(2) *Cash received for the account of another*. Cash in excess of $10,000 received by a person for the account of another must be reported under this section. Thus, for example, a person who collects delinquent accounts receivable for an automobile dealer must report with respect to the receipt of cash in excess of $10,000 from the collection of a particular account even though the proceeds of the collection are credited to the account of the automobile dealer (*i.e.*, where the rights to the proceeds from the account are retained by the automobile dealer and the collection is made on a fee-for-service basis).

(3) *Cash received by agents*—(i) *General rule*. Except as provided in paragraph (a)(3)(ii) of this section, a person who in the course of a trade or business acts as an agent (or in some other similar capacity) and receives cash in excess of $10,000 from a principal, must report the receipt of cash under this section.

(ii) *Exception*. An agent who receives cash from a principal and uses all of the cash within 15 days in a cash transaction (the ''second cash transaction'') which is reportable under section 6050I or 5312 of title 31 of the United States Code and the regulations thereunder (31 CFR Part 103), and who discloses the name, address, and taxpayer identification number of the principal to the recipient in the second cash transaction need not report the initial receipt of cash under this section. An agent will be deemed to have met the disclosure requirements of this paragraph (a)(3)(ii) if the agent discloses only the name of the principal and the agent knows that the recipient has the principal's address and taxpayer identification number.

(iii) *Example*. The following example illustrates the application of the rules in paragraphs (a)(3) (i) and (ii) of this section:

Example. B, the principal, gives D, an attorney, $75,000 in cash to purchase real property on behalf of B. Within 15 days D purchases real property for cash from E, a real estate developer, and discloses to E, B's name, address, and taxpayer identification number. Because the transaction qualifies for the exception provided in paragraph (a)(3)(ii) of this section, D need not report with respect to the initial receipt of cash under this section. The exception does not apply, however, if D pays E by means other than cash, or effects the purchase more than 15 days following receipt of the cash from B, or fails to disclose B's name, address, and taxpayer identification number (assuming D does not know that E already has B's address and taxpayer identification number), or purchases the property from a person whose sale of the property is not in the course of that person's trade or business. In any such case, D is required to report the receipt of cash from B under this section.

(b) *Multiple payments.* The receipt of multiple cash deposits or cash installment payments (or other similar payments or prepayments) on or after January 1, 1990, relating to a single transaction (or two or more related transactions), is reported as set forth in paragraphs (b)(1) through (b)(3) of this section.

(1) *Initial payment in excess of $10,000.* If the initial payment exceeds $10,000, the recipient must report the initial payment within 15 days of its receipt.

(2) *Initial payment of $10,000 or less.* If the initial payment does not exceed $10,000, the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until the aggregate amount exceeds $10,000, and report with respect to the aggregate amount within 15 days after receiving the payment that causes the aggregate amount to exceed $10,000.

(3) *Subsequent payments.* In addition to any other required report, a report must be made each time that previously unreportable payments made within a 12-month period with respect to a single transaction (or two or more related transactions), individually or in the aggregate, exceed $10,000. The report must be made within 15 days after receiving the payment in excess of $10,000 or the payment that causes the aggregate amount received in the 12-month period to exceed $10,000. (If more than one report would otherwise be required for multiple cash payments within a 15-day period that relate to a single transaction (or two or more related transactions), the recipient may make a single combined report with respect to the payments. The combined report must be made no later than the date by which the first of the separate reports would otherwise be required to be made.) A report with respect to payments of $10,000 or less that are reportable under this paragraph (b)(3) and are received after December 31, 1989, but before July 10, 1990, is due July 24, 1990.

(4) *Example.* The following example illustrates the application of the rules in paragraphs (b)(1) through (b)(3) of this section:

Example. On January 10, 1991, M receives an initial cash payment of $11,000 with respect to a transaction. M receives subsequent cash payments with respect to the same transaction of $4,000 on February 15, 1991, $6,000 on March 20, 1991, and $12,000 on May 15, 1991. M must make a report with respect to the payment received on January 10, 1991, by January 25, 1991. M must also make a report with respect to the payments totalling $22,000 received from February 15, 1991, through May 15, 1991. This report must be made by May 30, 1991, that is, within 15 days of the date that the subsequent payments, all of which were received within a 12-month period, exceeded $10,000.

(c) *Meaning of terms.* The following definitions apply for purposes of this section—

(1) *Cash*—(i) *Amounts received prior to February 3, 1992.* For amounts received prior to February 3, 1992, the term *cash* means the coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued.

(ii) *Amounts received on or after February 3, 1992.* For amounts received on or after February 3, 1992, the term *cash* means—

(A) The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued; and

(B) A cashier's check (by whatever name called, including ''treasurer's check'' and ''bank check''), bank draft, traveler's check, or money order having a face amount of not more than $10,000—

(*1*) Received in a designated reporting transaction as defined in paragraph (c)(1)(iii) of this section (except as provided in paragraphs (c)(1)(iv), (v), and (vi) of this section), or

(*2*) Received in any transaction in which the recipient knows that such instrument is being used in an attempt to avoid the reporting of the transaction under section 6050I and this section.

(iii) *Designated reporting transaction.* A designated reporting transaction is a retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of—

(A) A consumer durable,

(B) A collectible, or

(C) A travel or entertainment activity.

(iv) *Exception for certain loans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as cash pursuant to paragraph (c)(l)(ii)(B)(*1*) of this section if the instrument constitutes the proceeds of a loan from a bank (as that term is defined in 31 CFR part 103). The recipient may rely on a copy of the loan document, a written statement from the bank, or similar documentation (such as a written lien instruction from the issuer of the instrument) to substantiate that the instrument constitutes loan proceeds.

(v) *Exception for certain installment sales.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as cash pursuant to paragraph (c)(1)(ii)(B)(*1*) of this section if the instrument is received in payment on a promissory note or an installment sales contract (including a lease that is considered to be a sale for Federal income tax purposes). However, the preceding sentence applies only if—

(A) Promissory notes or installment sales contracts with the same or substantially similar terms are used in the ordinary course of the recipient's trade or business in connection with sales to ultimate consumers; and

(B) The total amount of payments with respect to the sale that are received on or before the 60th day after the date of the sale does not exceed 50 percent of the purchase price of the sale.

(vi) *Exception for certain down payment plans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as cash pursuant to paragraph (c)(1)(ii)(B)(*1*) of this section is the instrument is received pursuant to a payment plan requiring one or more down payments and the payment of the balance of the purchase price by a date no later than the date of the sale (in the case of an item of travel or entertainment, a date no later than the earliest date that any item of travel or entertainment pertaining to the same trip or event is furnished). However, the preceding sentence applies only if—

(A) The recipient uses payment plans with the same or substantially similar terms in the ordinary course of its trade or business in connection with sales to ultimate consumers; and

(B) The instrument is received more than 60 days prior to the date of the sale (in the case of an item of travel or entertainment, the date on which the final payment is due).

(vii) *Examples.* The following examples illustrate the definition of ''cash'' set forth in paragraphs (c)(l)(ii) through (vi) of this section.

Example 1. D, an individual, purchases gold coins from M, a coin dealer, for $13,200. D tenders to M in payment United States currency in the amount of $6,200 and a cashier's check in the face amount of $7,000 which D had purchased. Because the sale is a designated reporting transaction, the cashier's check is treated as cash for purposes of section 6050I and this section. Therefore, because M has received more than $10,000 in cash with respect to the transaction, M must make the report required by section 6050I and this section.

Example 2. E, an individual, purchases an automobile from Q, an automobile dealer, for $11,500. E tenders to Q in payment United States currency in the amount of $2,000 and a cashier's check payable to E and Q in the amount of $9,500. The cashier's check constitutes the proceeds of a loan from the bank issuing the check. The origin of the proceeds is evident from provisions inserted by the bank on the check that instruct the dealer to cause a lien to be placed on the vehicle as security for the loan. The sale of the automobile is a designated reporting transaction. However, under paragraph (c)(1)(iv) of this section, because E has furnished Q documentary information establishing that the cashier's check constitutes the proceeds of a loan from the bank issuing the check, the cashier's check is not treated as cash pursuant to paragraph (c)(1)(ii)(B)(*1*) of this section.

Example 3. F, an individual, purchases an item of jewelry from S, a retail jeweler, for $12,000. F gives S traveler's checks totalling $2,400 and pays the balance with a personal check payable to S in the amount of $9,600. Because the sale is a designated reporting transaction, the traveler's checks are treated as cash for purposes of section 6050I and this section. However, because the personal check is not treated as cash for purposes of section 6050I and this section, S has not received more than $10,000 in cash in the transaction and no report is required to be filed under section 6050I and this section.

Example 4. G, an individual, purchases a boat from T, a boat dealer, for $16,500. G pays T with a cashier's check payable to T in the

amount of $16,500. The cashier's check is not treated as cash because the face amount of the check is more than $10,000. Thus, no report is required to be made by T under section 6050I and this section.

Example 5. H, an individual, arranges with W, a travel agent, for the chartering of a passenger aircraft to transport a group of individuals to a sports event in another city. H also arranges with W for hotel accommodations for the group and for admission tickets to the sports event. In payment, H tenders to W money orders which H had previously purchased. The total amount of the money orders, none of which individually exceeds $10,000 in face amount, exceeds $10,000. Because the transaction is a designated reporting transaction, the money orders are treated as cash for purposes of section 6050I and this section. Therefore, because W has received more than $10,000 in cash with respect to the transaction, W must make the report required by section 6050I and this section.

(2) *Consumer durable.* The term *consumer durable* means an item of tangible personal property of a type that is suitable under ordinary usage for personal consumption or use, that can reasonably be expected to be useful for at least 1 year under ordinary usage, and that has a sales price of more than $10,000. Thus, for example, a $20,000 automobile is a consumer durable (whether or not it is sold for business use), but a $20,000 dump truck or a $20,000 factory machine is not.

(3) *Collectible.* The term *collectible* means an item described in paragraphs (A) through (D) of section 408(m)(2) (determined without regard to section 408(m)(3)).

(4) *Travel or entertainment activity.* The term *travel or entertainment activity* means an item of travel or entertainment (within the meaning of §1.274–2(b)(1)) pertaining to a single trip or event where the aggregate sales price of the item and all other items pertaining to the same trip or event that are sold in the same transaction (or related transactions) exceeds $10,000.

(5) *Retail sale.* The term *retail sale* means any sale (whether for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers.

(6) *Trade or business.* The term *trade or business* has the same meaning as under section 162 of the Internal Revenue Code of 1954.

(7) *Transaction*—(i) The term *transaction* means the underlying event precipitating the payer's transfer of cash to the recipient. Transactions include (but are not limited to) a sale of goods or services; a sale of real property; a sale of intangible property; a rental of real or personal property; an exchange of cash for other cash; the establishment or maintenance of or contribution to a custodial, trust, or escrow arrangement; a payment of a preexisting debt; a conversion of cash to a negotiable instrument; a reimbursement for expenses paid; or the making or repayment of a loan. A transaction may not be divided into multiple transactions in order to avoid reporting under this section.

(ii) The term *related transactions* means any transaction conducted between a payer (or its agent) and a recipient of cash in a 24-hour period. Additionally, transactions conducted between a payer (or its agent) and a cash recipient during a period of more than 24 hours are related if the recipient knows or has reason to know that each transaction is one of a series of connected transactions.

(iii) The following examples illustrate the definition of paragraphs (c)(7)(i) and (ii).

Example 1. A person has a tacit agreement with a gold dealer to purchase $36,000 in gold bullion. The $36,000 purchase represents a single transaction under paragraph (c)(7)(i) of this section and the reporting requirements of this section cannot be avoided by recasting the single sales transaction into 4 separate $9,000 sales transactions.

Example 2. An attorney agrees to represent a client in a criminal case with the attorney's fee to be determined on an hourly basis. In the first month in which the attorney represents the client, the bill for the attorney's services comes to $8,000 which the client pays in cash. In the second month in which the attorney represents the client, the bill for the attorney's services comes to $4,000, which the client again pays in cash. The aggregate amount of cash paid ($12,000) relates to a single transaction as defined in paragraph (c)(7)(i) of this section, the sale of legal services relating to the criminal case, and the receipt of cash must be reported under this section.

Example 3. A person intends to contribute a total of $45,000 to a trust fund, and the trustee of the fund knows or has reason to know of that intention. The $45,000 contribution is a single transaction under paragraph (c)(7)(i)

of this section and the reporting requirement of this section cannot be avoided by the grantor's making five separate $9,000 cash contributions to a single fund or by making five $9,000 cash contributions to five separate funds administered by a common trustee.

Example 4. K, an individual, attends a one day auction and purchases for cash two items, at a cost of $9,240 and $1,732.50 respectively (tax and buyer's premium included). Because the transactions are related transactions as defined in paragraph (c)(7)(ii) of this section, the auction house is required to report the aggregate amount of cash received from the related sales ($10,972.50), even though the auction house accounts separately on its books for each item sold and presents the purchaser with separate bills for each item purchased.

Example 5. F, a coin dealer, sells for cash $9,000 worth of gold coins to an individual on three successive days. Under paragraph (c)(7)(ii) of this section the three $9,000 transactions are related transactions aggregating $27,000 if F knows, or has reason to know, that each transaction is one of a series of connected transactions.

(8) *Recipient.* (i) The term *recipient* means the person receiving the cash. Except as provided in paragraph (c)(8)(ii) of this section, each store, division, branch, department, headquarters, or office (''branch'') (regardless of physical location) comprising a portion of a person's trade or business shall for purposes of this section be deemed a separate recipient.

(ii) A branch that receives cash payments will not be deemed a separate recipient if the branch (or a central unit linking such branch with other branches) would in the ordinary course of business have reason to know the identity of payers making cash payments to other branches of such person.

(iii) *Examples.* The following examples illustrate the application of the rules in paragraphs (c)(8)(i) and (ii) of this section:

Example 1. N, an individual, purchases regulated futures contracts at a cost of $7,500 and $5,000, respectively, through two different branches of Commodities Broker X on the same day. N pays for each purchase with cash. Each branch of Commodities Broker X transmits the sales information regarding each of N's purchases to a central unit of Commodities Broker X (which settles the transactions against N's account). Under paragraph (c)(8)(ii) of this section the separate branches of Commodities Broker X are not deemed to be separate recipients; therefore. Commodities Broker X must report with respect to the two related regulated futures contracts sales in accordance with this section.

Example 2. P, a corporation, owns and operates a racetrack. P's racetrack contains 100 betting windows at which pari-mutuel wagers may be made. R, an individual, places cash wagers of $3,000 each at five separate betting windows. Assuming that in the ordinary course of business each betting window (or a central unit linking windows) does not have reason to know the identity of persons making wagers at other betting windows, each betting window would be deemed to be a separate cash recipient under paragraph (c)(8)(i) of this section. As no individual recipient received cash in excess of $10,000, no report need be made by P under this section.

(d) *Exceptions to the reporting requirements of section 6050I*—(1) *Receipt of cash by certain financial institutions.* A financial institution as defined in subparagraphs (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of section 5312 (a)(2) of Title 31, United States Code is not required to report the receipt of cash exceeding $10,000 under section 6050I.

(2) *Receipt of cash by certain casinos having gross annual gaming revenue in excess of $1,000,000*—(i) *In general.* If a casino receives cash in excess of $10,000 and is required to report the receipt of such cash directly to the Treasury Department under 31 CFR 103.22(a)(2) and 103.25 and is subject to the recordkeeping requirements of 31 CFR 103.36, then the casino is not required to make a return with respect to the receipt of such cash under section 6050I and these regulations.

(ii) *Casinos exempt under 31 CFR 103.45(c).* Under the authority of section 6050I(c)(1)(A), the Secretary may exempt from the reporting requirements of section 6050I casinos with gross annual gaming revenue in excess of $1,000,000 that are exempt under 31 CFR 103.45(c) from reporting certain cash transactions to the Treasury Department under 31 CFR 103.22(a)(2) and 103.25. The determination whether a casino which is granted an exemption under 31 CFR 103.45(c) will be required to report under section 6050I will be made on a case by case basis, concurrently with the granting of such an exemption.

(iii) *Reporting of cash received in a nongaming business.* Nongaming businesses (such as shops, restaurants, entertainment, and hotels) at casino hotels and resorts are separate trades or businesses in which the receipt of cash in excess of $10,000 is reportable under section 6050I and these regulations. Thus, a casino exempt under paragraph (d)(2) (i) or (ii) of this section must report with respect to cash in excess of $10,000 received in its nongaming businesses.

(iv) *Example.* The following example illustrates the application of the rules in paragraphs (d)(2) (i) and (iii) of this section:

Example. A and B are casinos having gross annual gaming revenue in excess of $1,000,000. C is a casino with gross annual gaming revenue of less than $1,000,000. Casino A receives $15,000 in cash from a customer with respect to a gaming transaction which the casino reports to the Treasury Department under 31 CFR 103.22(a)(2) and 103.25. Casino B receives $15,000 in cash from a customer in payment for accommodations provided to that customer at Casino B's hotel. Casino C receives $15,000 in cash from a customer with respect to a gaming transaction. Casino A is not required to report the transaction under section 6050I or these regulations because the exception for certain casinos provided in paragraph (d)(2)(i) (''the casino exception'') applies. Casino B is required to report under section 6050I and these regulations because the casino exception does not apply to the receipt of cash from a nongaming activity. Casino C is required to report under section 6050I and these regulations because the casino exception does not apply to casinos having gross annual gaming revenue of $1,000,000 or less which do not have to report to the Treasury Department under 31 CFR 103.22(a)(2) and 103.25.

(3) *Receipt of cash not in the course of the recipient's trade or business.* The receipt of cash in excess of $10,000 by a person other than in the course of the person's trade or business is not reportable under section 6050I. Thus, for example, F, an individual in the trade or business of selling real estate, sells a motorboat for $12,000, the purchase price of which is paid in cash. F did not use the motorboat in any trade or business in which F was engaged. F is not required to report under section 6050I or these regulations because the exception provided in this paragraph (d)(3) applies.

(4) *Receipt is made with respect to a foreign cash transaction*—(i) *In general.* Generally, there is no requirement to report with respect to a cash transaction if the entire transaction occurs outside the United States (the fifty states and the District of Columbia). An entire transaction consists of both the transaction as defined in paragraph (c)(7)(i) of this section and the receipt of cash by the recipient. If, however, any part of an entire transaction occurs in the Commonwealth of Puerto Rico or a possession or territory of the United States and the recipient of cash in that transaction is subject to the general jurisdiction of the Internal Revenue Service under title 26 of the United States Code, the recipient is required to report the transaction under this section.

(ii) *Example.* The following example illustrates the application of the rules in paragraph (d)(4)(i) of this section:

Example. W, an individual engaged in the trade or business of selling aircraft, reaches an agreement to sell an airplane to a U.S. citizen living in Mexico. The agreement, no portion of which is formulated in the United States, calls for a purchase price of $125,000 and requires delivery of and payment for the airplane to be made in Mexico. Upon delivery of the airplane in Mexico, W receives $125,000 in cash. W is not required to report under section 6050I or these regulations because the exception provided in paragraph (d)(4)(i) of this section (''foreign transaction exception'') applies. If, however, any part of the agreement to sell had been formulated in the United States, the foreign transaction exception would not apply and W would be required to report the receipt of cash under section 6050I and these regulations.

(e) *Time, manner, and form of reporting*—(1) *Time of reporting.* The reports required by this section must be filed with the Internal Revenue Service by the 15th day after the date the cash is received. However, in the case of multiple payments relating to a single transaction (or two or more related transactions), see paragraph (b) of this section.

(2) *Form of reporting.* A report required by paragraph (a) of this section must be made on Form 8300. A return of information made in compliance with this paragraph must contain the name, address, and taxpayer identification number of the person from whom

the cash was received; the name, address, and taxpayer identification number of the person on whose behalf the transaction was conducted (if the recipient knows or has reason to know that the person from whom the cash was received conducted the transaction as an agent for another person); the amount of cash received; the date and nature of the transaction; and any other information required by Form 8300. Form 8300 can be obtained from any Internal Revenue Service Forms Distribution Center.

(3) *Manner of reporting*—(i) *Where to file.* A person making a return of information under this section must file Form 8300 by mailing it to the address shown in the instructions to the form.

(ii) *Verification.* A person making a return of information under this section must verify the identity of the person from whom the reportable cash is received. Verification of the identity of a person who purports to be an alien must be made by examination of such person's passport, alien identification card, or other official document evidencing nationality or residence. Verification of the identity of any other person may be made by examination of a document normally acceptable as a means of identification when cashing or accepting checks (for example, a driver's license or a credit card). In addition, a return will be considered incomplete if the person required to make a return knows (or has reason to know) that an agent is conducting the transaction for a principal, and the return does not identify both the principal and the agent.

(iii) *Retention of returns.* A person required to make an information return under this section must keep a copy of each return filed for five years from the date of filing.

(f) *Requirement of furnishing statements*—(1) *In general.* Any person required to make an information return under this section must furnish a single, annual, written statement to each person whose name is set forth in a return (''identified person'') filed with the Internal Revenue Service.

(2) *Form of statement.* The statement required by the preceding paragraph need not follow any particular format, but it must contain the following information:

(i) The name and address of the person making the return;

(ii) The aggregate amount of reportable cash received by the person who made the information return required by this section during the calendar year in all cash transactions relating to the identified person; and

(iii) A legend stating that the information contained in the statement is being reported to the Internal Revenue Service.

(3) *When statement is to be furnished.* Statements required under this paragraph (f) must be furnished to an identified person on or before January 31 of the year following the calendar year in which the cash is received. A statement shall be considered to be furnished to an identified person if it is mailed to the identified person at the identified person's last known address.

(g) *Cross-reference to penalty provisions*—(1) *Failure to file correct information return.* See section 6721 for civil penalties relating to the failure to file a correct return under section 6050I(a) and paragraph (a) of this section.

(2) *Failure to furnish correct statement.* See section 6722 for civil penalties relating to the failure to furnish a correct statement to identified persons under section 6050I(e) and paragraph (f) of this section.

(3) *Criminal penalties.* Any person who willfully fails to make a return or makes a false return under section 6050I and this section may be subject to criminal prosecution.

[T.D. 8098, 51 FR 31611, Sept. 4, 1986; 51 FR 33033, Sept. 18, 1986, as amended by T.D. 8373, 56 FR 57976, 57977, Nov. 15, 1991; 58 FR 16496, Mar. 29, 1993; T.D. 8479, 58 FR 33764, June 21, 1993; T.D. 8974, 66 FR 67687, Dec. 31, 2001]

§ 1.6050I–2 Returns relating to cash in excess of $10,000 received as bail by court clerks.

(a) *Reporting requirement.* Any clerk of a Federal or State court who receives more than $10,000 in cash as bail for any individual charged with a specified criminal offense must make a return of information with respect to that cash receipt. For purposes of this section, a clerk is the clerk's office or the office, department, division,

branch, or unit of the court that is authorized to receive bail. If someone other than a clerk receives bail on behalf of a clerk, the clerk is treated as receiving the bail for purposes of this paragraph (a).

(b) *Meaning of terms.* The following definitions apply for purposes of this section—

Cash means—

(1) The coin and currency of the United States, or of any other country, that circulate in and are customarily used and accepted as money in the country in which issued; and

(2) A cashier's check (by whatever name called, including treasurer's check and bank check), bank draft, traveler's check, or money order having a face amount of not more than $10,000.

Specified criminal offense means—

(1) A Federal criminal offense involving a controlled substance (as defined in section 802 of title 21 of the United States Code), provided the offense is described in Part D of Subchapter I or Subchapter II of title 21 of the United States Code;

(2) Racketeering (as defined in section 1951, 1952, or 1955 of title 18 of the United States Code);

(3) Money laundering (as defined in section 1956 or 1957 of title 18 of the United States Code); and

(4) Any State criminal offense substantially similar to an offense described in this paragraph (b).

(c) *Time, form, and manner of reporting*—(1) *Time of reporting*—(i) *In general.* The information return required by this section must be filed with the Internal Revenue Service by the 15th day after the date the cash bail is received.

(ii) *Multiple payments.* If multiple payments are made to satisfy bail reportable under this section and the initial payment does not exceed $10,000, the initial payment and subsequent payments must be aggregated and the information return required by this section must be filed with the Internal Revenue Service by the 15th day after receipt of the payment that causes the aggregate amount to exceed $10,000. However, if payments are made to satisfy separate bail requirements, no aggregation is required. Thus, if in Month 1 a clerk receives $6,000 in bail for an individual charged with a specified criminal offense and later, in Month 2, receives $7,000 in bail for that same individual charged with another specified criminal offense, no aggregation is required.

(2) *Form of reporting.* The return of information required by paragraph (a) of this section must be made on Form 8300 and must contain the following information—

(i) The name, address, and taxpayer identification number (TIN) of the individual charged with the specified criminal offense;

(ii) The name, address, and TIN of each person posting the bail (payor of bail), other than a person posting bail who is licensed as a bail bondsman in the jurisdiction in which the bail is received;

(iii) The amount of cash received;

(iv) The date the cash was received; and

(v) Any other information required by Form 8300 or its instructions.

(3) *Manner of reporting*—(i) *Where to file.* Returns required by this section must be filed with the Internal Revenue Service office designated in the instructions for Form 8300. A copy of the information return required to be filed under this section must be retained for five years from the date of filing.

(ii) *Verification of identity.* A clerk required to make an information return under this section must, in accordance with §1.6050I–1(e)(3)(ii), verify the identity of each payor of bail listed in the return.

(d) *Requirement to furnish statements*—(1) *Information to Federal prosecutors*—(i) *In general.* A clerk required to make an information return under this section must furnish a written statement to the United States Attorney for the jurisdiction in which the individual charged with the specified crime resides and the United States Attorney for the jurisdiction in which the specified criminal offense occurred (applicable United States Attorney(s)). The written statement must be filed with the applicable United States Attorney(s) by the 15th day after the date the cash bail is received.

(ii) *Form of statement.* The written statement must include the information required by paragraph (c)(2) of this section. The requirement of this paragraph (d)(1)(ii) will be satisfied if the clerk provides to the applicable United States Attorney(s) a copy of the Form 8300 that is filed with the Internal Revenue Service pursuant to this section.

(2) *Information to payors of bail*—(i) *In general.* A clerk required to make an information return under this section must furnish a written statement to each payor of bail whose name is set forth in a return required by this section. A statement required under this paragraph (d)(2) must be furnished to a payor of bail on or before January 31 of the year following the calendar year in which the cash is received. A statement will be considered furnished to a payor of bail if it is mailed to the payor's last known address.

(ii) *Form of statement.* The statement required by this paragraph (d)(2) need not follow any particular format, but must contain the following information—

(A) The name and address of the clerk's office making the return;

(B) The aggregate amount of reportable cash received during the calendar year by the clerk who made the information return required by this section in all cash transactions relating to the payor of bail; and

(C) A legend stating that the information contained in the statement has been reported to the Internal Revenue Service and the applicable United States Attorney(s).

(iii) *Aggregate amount.* The requirement of furnishing the aggregate amount in paragraph (d)(2)(ii)(B) of this section will be satisfied if the clerk provides to the payor of bail either a single written statement listing the aggregate amount, or a copy of each Form 8300 relating to that payor of bail.

(e) *Cross-reference to penalty provisions.* See sections 6721 through 6724 for penalties relating to the failure to comply with the provisions of this section.

(f) *Effective date.* This section applies to cash received by court clerks on or after February 13, 1995.

[T.D. 8652, 61 FR 7, Jan. 2, 1996]

§ 1.6050J–1T Questions and answers concerning information returns relating to foreclosures and abandonments of security (temporary).

The following questions and answers relate to the requirement of reporting foreclosures and abandonments of security under section 6050J of the Internal Revenue Code Act of 1954, as added by section 148 of the Tax Reform Act of 1984 (98 Stat. 687).

REQUIREMENT OF REPORTING

In General

Q–1: What does section 6050J provide with respect to the reporting of acquisitions and abandonments of property that secures indebtedness?

A–1: Section 6050J provides that an information return must be made by any person who, in connection with a trade or business conducted by the person (except as provided in A–13), lends money and, in full or partial satisfaction of the debt, acquires an interest in any property that is security for the debt, or has reason to know that the property has been abandoned. For purposes of these questions and answers, a person who lends money in connection with a trade or business is referred to as a ''lender''.

Trade or Business Requirement

Q–2: Must a person be in the trade or business of lending money in order to be subject to the reporting requirement of this section?

A–2: No. A person does not have to be in the trade or business of lending money to be subject to this reporting requirement. Thus, if L sells automobiles and lends money to B to enable B to purchase an automobile from L for use in B's trade or business, and that automobile is security for the loan, L would be subject to this reporting requirement. Similarly, if P promotes interests in an oil well, and lends money to I to enable I to invest in the oil well which is security for the loan, P would be subject to this reporting requirement.

Q–3: How does the reporting requirement apply in the case of pools, fixed investment trusts, or other similar arrangements through which undivided beneficial interests or participations in indebtedness are offered?

A–3: In these cases, the owners of the undivided beneficial interests or participations are not subject to this reporting requirement. Instead, the trustee, record owner, or person acting in a similar capacity is treated as the lender for purposes of this reporting requirement and is the party required to report. For purposes of both section 6050J and the applicable penalty provisions, only one return and one statement must be filed with

respect to each loan or other evidence of indebtedness. For situations when more than one return or statement must be filed, see A–29, A–31, and A–41. The trustee, record owner, or person acting in a similar capacity, rather than the owners of beneficial interests or participations, is subject to the applicable penalty provisions (see A–43).

Q–4: How does the reporting requirement apply in the case of corporate, tax-exempt, or other bond issues?

A–4: In these cases, the owners or holders of a bond issue are not required to report. Instead, the trustee or person acting in a similar capacity is treated as the lender for purposes of this reporting requirement and is the party required to report. For purposes of both section 6050J and the applicable penalty provisions, only one return and one statement must be filed with respect to a bond issue. For situations when more than one return or statement must be filed, see A–29, A–31, and A–41. The trustee or person acting in a similar capacity, rather than the owners or holders of a bond issue, is subject to the applicable penalty provisions (see A–43).

Property Subject to Reporting

Q–5: Does the reporting requirement apply to all types of property securing indebtedness?

A–5: No. The reporting requirement does not apply to any loan made to an individual and secured by an interest in tangible personal property which is neither held for investment nor used in a trade or business. For rules governing when the reporting requirment applies to tangible personal property of a type ordinarily used for personal purposes, see A–8.

Q–6: Does the reporting requirement apply when property securing indebtedness is held both for personal use and for use in a trade or business?

A–6: Yes. The reporting requirement applies when property securing indebtedness is held both for personal use and for use in a trade or business. Similarly, the reporting requirement applies when the borrower holds such property both for personal use and for investment purposes.

Q–7: Does the reporting requirement apply to indebtedness secured by a personal residence?

A–7: Yes. A lender is subject to the reporting requirement if the property that is security for the loan is real property, including a personal residence, whether or not held for investment or used in a trade or business.

Q–8: In the case of a loan made to an individual and secured by personal property of a type that is ordinarily used for personal purposes, how does a lender know whether such property is used in a trade or business or held for investment purposes?

A–8: In the case of a loan made to an individual and secured by personal property of a type that is ordinarily used for personal purposes, such as an automobile, computer, or boat, the lender is subject to the reporting requirement if the lender knows that the property will be used in a trade or business or held for investment purposes. For this purpose, a lender knows information if the information is included on the books and records of the lender or its agents pertaining to the loan, or is known by the lender or agent's officers, partners, principals or employees, but only if such information was acquired in the course of their ordinary business activities on behalf of the lender. For example, if a borrower indicates on the loan agreement or disclosure statement that the borrower intends to use the property securing the loan in the borrower's trade or business, the lender is subject to this reporting requirement. Similarly, if the borrower notifies the lender that the borrower intends to convert the property from personal use to use in a trade or business, the lender is subject to the reporting requirement.

Q–9: If a lender maintains a system under which the lender classifies loans according to the use of property that secures the loan (such as use in a trade or business or personal use), may the lender rely on this system in determining whether the reporting requirement applies?

A–9: Yes. A lender may rely on the classification system to determine whether the reporting requirement applies, provided that the classification system is designed and reasonably maintained to ensure accuracy in identifying the use of property.

Acquisition of an Interest

Q–10: For purposes of the reporting requirement, when is a lender treated as acquiring an interest in property that is security for indebtedness?

A–10: In general, an interest in property is acquired on the earlier of the date title is transferred to the lender or the date possession and the burdens and benefits of ownership are transferred to the lender. If State or other applicable law provides for an objection period within which the borrower and other appropriate parties may object to the lender's proposal to retain the property in satisfaction of the indebtedness, a lender is treated as acquiring an interest in the property on the date this objection period expires. If the lender purchases the property at a sale held to satisfy the indebtedness, such as at a foreclosure or execution sale, the lender is treated as acquiring an interest in the property on the later of the date of the sale or the date the borrower's right of redemption, if any, expires. See 4A–15 for rules governing reporting when a party other than the lender acquires property securing indebtedness at a foreclosure, execution or similar sale.

Q–11: If a lender takes possession of property that is security for a loan for a limited purpose, such as completing construction on or improvement to the property, is the lender treated as having acquired an interest in the property at that point?

A–11: No. The lender in these circumstances is not treated as acquiring an interest in the property. However, the lender must report if he later acquires an interest in the property in full or partial satisfaction of the indebtedness (see A–10 or A–15).

Indirect Acquisition

Q–12: If a lender acquires an interest in a partnership, trust, or other entity in full or partial satisfaction of a loan that is secured by the assets or property owned by the partnership, trust, or other entity, is the lender treated as acquiring an interest in the property securing the loan?

A–12: Yes. A lender in this case acquires an interest in the underlying assets or property and the reporting requirements of this section apply to the acquisition of that interest in a partnership, trust, or other entity.

Treatment of Governmental Units

Q–13: How does the reporting requirement apply to a governmental unit?

A–13: A governmental unit (or any agency or instrumentality thereof) which lends money secured by property is subject to the reporting requirement without regard to the requirement that the money be lent in connection with a trade or business. A governmental unit (or any agency or instrumentality thereof) subject to the reporting requirement must designate an officer or employee to make the return. The officer or employee appropriately designated must make the return in the form and manner prescribed by this section.

Notification of Sale Under Section 7425(b)

Q–14: Does a return filed as required under this section constitute a notification of sale under section 7425(b)?

A–14: No. A return filed under this section is not considered a notification of sale under section 7425(b).

Sale to Third Party

Q–15: If a party other than the lender purchases property securing a loan at a foreclosure, execution, or similar sale, must the lender report under this section?

A–15: Yes. The lender must report if a party other than the lender purchases property securing the lender's loan at a foreclosure, execution, or similar sale. If the proceeds of that sale are applied to satisfy all or any portion of the lender's loan, the lender must treat the property as having been abandoned. The lender will be treated as having reason to know that the property has been abandoned as of the date of the sale (see A–19). If no proceeds of such a sale are made available to satisfy any portion of the lender's loan but the lender's security interest foreclosed upon is terminated, reduced, or otherwise impaired by reason of the sale, the lender will be treated as having reason to know that the property has been abandoned as of the date of the sale (see A–19).

Treatment of Foreign Borrowers

Q–16: How does the reporting requirement apply in the case of foreign borrowers where the property securing the loan is located outside the United States?

A–16: No reporting is required where both of the following requirements are met: (a) The property securing the loan is located outside the United States, and (b) at any time before the lender is required to report, the borrower furnishes the lender with a statement, signed upon penalty of perjury, that he is an exempt foreign person (unless an employee or other agent of the lender who is responsible for receiving or reviewing these statements has actual knowledge that the statement is incorrect). For purposes of this section, the borrower is an exempt foreign person if he:

(1) Is not a citizen of the United States, a resident of the United States, a person treated as a resident of the United States by reason of an election under section 6013 (g) or (h) or a United States corporation or other United States entity;

(2) Is not subject to the provisions of section 877; and

(3) At the time the statement is furnished, is not, or reasonably expects not to be, engaged in a trade or business in the United States during the current year in connection with the loan or property securing the loan.

If, after providing the statement, the borrower ceases to be an exempt foreign person, he must so notify the lender in writing within 30 days of this change in status. If the lender is so notified, this exemption from the reporting requirement no longer applies.

Abandonments

Q–17: For purposes of this reporting requirement, when has an abandonment occurred?

A–17: An abandonment has occurred when the objective facts and circumstances indicate that the borrower intended to and has permanently discarded the property from use.

Q–18: Does the fact that a lender knows or has reason to know of an abandonment of property securing a loan mean that the borrower is entitled to an abandonment loss?

A–18: No. The definition of an abandonment of property securing a loan in A–17 applies only for purposes of this reporting requirement and is not intended to apply for

other purposes, such as determining whether a borrower would be entitled to an abandonment loss.

Q–19: Under what circumstances will a lender be considered to have reason to know that property which is security for a loan has been abandoned?

A–19: Whether a lender has reason to know that property which is security for a loan has been abandoned is to be determined with reference to all the facts and circumstances concerning the status of the property. When the lender in the ordinary course of business becomes aware or should become aware of circumstances indicating that the property has been abandoned, the lender will be deemed to know all the information that would have been discovered through a reasonable inquiry. For example, if a borrower has failed (without adequate explanation) to make payments on the loan for a substantial period, the lender must make a reasonable inquiry to determine whether there has been an abandonment. If a reasonable inquiry would reveal objective facts and circumstances indicating that the borrower intended to and has permanently discarded the property from use, then the lender has reason to know that the property has been abandoned. If a lender knows or has reason to know that the property has been abandoned and reasonably expects to commence foreclosure, execution sale, or similar proceedings, see A–20.

Q–20: If a lender has reason to know that property that is security for a loan has been abandoned and reasonably expects to commence within three months foreclosure, execution sale, or similar proceedings, is reporting of the abandonment required?

A–20: In these circumstances, the lender need not report as of the date he knows or has reason to know that the property has been abandoned. Instead, the lender must report as of the date he acquires an interest in the property or a third party purchases the property at a foreclosure, execution or similar sale (see A–10 and A–15). In any other case, the lender must report as of the date the lender knows or has reason to know that the property has been abandoned (see A–18).

Q–21: If a lender has reason to know that property that is security for a loan has been abandoned and reasonably expects to commence within three months foreclosure, execution sale or similar proceedings but in fact does not commence such proceedings within the three month period, must the lender report?

A–21: Yes. In these circumstances, the lender's obligation to report the abandonment arises at the close of the three month period. For example, if on December 31, 1985, a lender first has reason to know that property securing his loan has been abandoned and reasonably expects to commence foreclosure proceedings within three months, the lender is not required to report as of December 31, 1985 (see A–20). However, if the lender does not in fact commence foreclosure proceedings by March 31, 1986, the lender's obligation to report arises on this date. The lender must provide information on the abandonment under A–27 as of the date the lender first had reason to know of the abandonment (December 31, 1985). The lender must file the return required under this section with the Internal Revenue Service on or before February 28, 1987, and furnish a statement to the borrower on or before January 31, 1987 (see A–33 and A–40).

Subsequent Holder of a Loan

Q–22: To whom does the reporting requirement apply when a person lends money secured by property and subsequently transfers his interest in the indebtedness to another person?

A–22: The subsequent holder of a loan is treated as the lender for purposes of this reporting requirement and is the party required to report with respect to events occurring after the date he acquires the loan. This rule applies to all subsequent holders of a secured loan, including governmental units or any agencies or instrumentalities thereof. For example, if the Federal National Mortgage Association purchases real property loans from a lender, it would be subject to the reporting requirement.

Multiple Lenders

Q–23: If more than one person lends money secured by the same property, and one lender forecloses upon or otherwise acquires an interest in the property, must the other lenders report under this section?

A–23: Yes. In these circumstances, other lenders must report if they know or have reason to know that the property securing their loans is foreclosed upon or otherwise acquired by another lender and the sale or other acquisition terminates, reduces, or otherwise impairs their security interests in the property (see A–15). For example, if there is a first and second mortgage on a building, and the second mortgagee knows or has reason to know that the first mortgagee has foreclosed upon the building, the second mortgagee is subject to the reporting requirement even if no part of the indebtedness owed to him is satisfied by the proceeds of the foreclosure sale. For a description of the reporting requirement applicable to the first mortgagee, see A–10 and A–15.

Q–24: If more than one person lends money secured by property, and one lender knows or has reason to know that the property has been abandoned, must each lender report under this section?

A–24: No. Each lender is required to report only when he knows or has reason to know that property has been abandoned (see A–19).

FORM AND MANNER OF RETURN

Form of Return

Q–25: What form shall be used to make a return required by section 6050J?

A–25: Except as provided in A–35, the return must be made on Forms 1096 and 1099. The person required to make the return, however, may prepare and use a form which contains provisions substantially similar with those of Forms 1096 and 1099 if the person complies with any revenue procedures relating to substitute Forms 1096 and 1099 in effect at that time.

Information Included on Return

Q–26: What information must be included on a return required by reason of an acquisition of an interest in property that is security for a loan?

A–26: The following information must be included on the return:

(a) The name and address of the borrower with respect to the secured indebtedness;

(b) The borrower's TIN, as defined in Section 7701(a);

(c) A general description of the property in which an interest is acquired;

(d) Whether the borrower is personally liable for repayment of the indebtedness;

(e) The date on which the person acquired an interest in the property (see A–10 or A–15);

(f) The amount of the indebtedness outstanding at the time the interest in property is acquired;

(g) If the borrower is personally liable for repayment of the indebtedness, the fair market value of the property at the time the interest is acquired;

(h) The amount of the indebtedness satisfied by the acquisition; and

(i) Any other information as may be required by Forms 1096 and 1099.

Q–27: What information must be included on a return required because a person knows or has reason to know that property which is security for a loan has been abandoned?

A–27: The following information must be included on the return:

(a) The information required in A–26 (a), (b), and (d);

(b) A general description of the property abandoned;

(c) The date on which the person first knows or has reason to know that the property has been abandoned;

(d) The amount of the indebtedness outstanding as of the date on which the person first knows or has reason to know that the property has been abandoned;

(e) If the borrower is personally liable for repayment of the indebtedness, the fair market value of the property at the time of abandonment; and

(f) Any other information as may be required by Forms 1096 and 1099.

Partnership Borrower

Q–28: If a borrower is a partnership, must the TIN of each partner be reported?

A–28: No. If a borrower is a partnership, only the TIN of the partnership must be reported.

Multiple Borrowers

Q–29: If there is more than one borrower on a single secured loan, must a person required to report under this section make a return with respect to each borrower on the loan?

A–29: Yes. Generally, a separate return must be made with respect to each borrower on a secured loan. However, only one report is required if the lender knows that the borrowers hold property as tenants by the entirety or that the property is held as community property.

General Description of Property

Q–30: What type of information constitutes a general description of the property?

A–30: A general description of the property consists of information that sufficiently identifies the property. In the case of real property, a general description consists of the property's address unless this information is not available or would not sufficiently identify the property, in which case a legal description (*i.e.*, section, lot, block) must be provided instead. A general description of personal property consists of the type, make and model (where applicable) of the property. For example, an automobile would be described as ''Car—1983 Pontiac Firebird.'' However, in the case of a single loan secured by more than one piece of personal property, a general description consists of the type or category of the pieces acquired or abandoned. For example, if the security for a single loan is six desks and seven typewriters, a general description of the property would be ''Office Equipment.''

Multiple Acquisitions and Abandonments

Q–31: Must each acquisition and abandonment that occurs in a taxable year be reported on a separate return?

A–31: Generally, each acquisition and abandonment required to be reported by a person for a taxable year must be reported on a separate return. However, in the case of a single loan secured by more than one piece of property, separate returns will not be required when a person acquires an interest in, or knows or has reason to know of the abandonment of, more than one piece of property that is security for the single loan in a taxable year. Instead, the person shall make one return for all of the acquisitions and one return for all of the abandonments of property that are security for the loan for a taxable year.

Fair Market Value

Q–32: In the case of a foreclosure, execution, or similar sale, what is the fair market value of the property for purposes of the reporting requirement?

A–32: In general, in the absence of clear and convincing evidence to the contrary, the proceeds of the foreclosure, execution, or similar sale will be considered the fair market value of the property for purposes of this reporting requirement.

Time for Filing

Q–33: When must a person file the return or returns required by section 6050J with the Internal Revenue Service?

A–33: The return or returns must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of an interest in the property occurs or in which the lender knows or has reason to know of the abandonment of the property.

Place for Filing

Q–34: Where must the return or returns be filed?

A–34: The return or returns must be filed with the appropriate Internal Revenue Service Center, the addresses of which are listed in the instructions for the Form 1099 series.

Use of Magnetic Media

Q–35: What rules apply with respect to the use of magnetic media?

A–35: Any return required under section 6050J must be filed on magnetic media to the extent required by section 6011(e). Any person not required by section 6011(e) to file returns under section 6050J on magnetic media may request permission to do so. See §1.9101 for rules relating to permission to submit information on magnetic tape or other media. If a person required to file returns on magnetic media fails to do so, the penalty under section 6652 (failure to file an information return) applies.

REQUIREMENT OF FURNISHING STATEMENTS TO BORROWERS

In General

Q–36: What statements must be furnished to borrowers?

A–36: Any person required to make an information return under section 6050J must furnish a statement to each borrower whose name is required to be set forth in a return filed with the Internal Revenue Service. For the date when the statement must be furnished, see A–40.

Q–37: Is the statement considered to be furnished to the borrower if it is mailed to the borrower at the borrower's last known address?

A–37: Yes.

Information Included on Statement

Q–38: What information must be included on the statement?

A–38: The statement must include the following information:

(a) Except in the case where the return is made on behalf of a governmental unit (or any agency or instrumentality thereof), the name and address of the person required to make the information return;

(b) In the case where the return is made on behalf of a governmental unit or any agency or instrumentality thereof, the name and address of such unit, agency or instrumentality;

(c) The information required under A–26 or A–27, whichever is applicable; and

(d) A legend stating that the information is being reported to the Internal Revenue Service.

Copy of Form 1099 to Borrowers

Q–39: May the requirement of furnishing a statement be met by furnishing a copy of the Form 1099 filed with respect to that borrower?

A–39: Yes. The requirement of furnishing a statement may be met by furnishing to the borrower a copy of the Form 1099 containing the same information filed with the Service with respect to that borrower, or a reasonable facsimile thereof, provided that the form or the reasonable facsimile bears a legend stating that the information is being reported to the Internal Revenue Service.

Time of Furnishing Statement

Q–40: When is a statement required to be furnished to the borrower?

A–40: A statement is required to be furnished to the borrower on or before January 31 of the year following the calendar year in which the acquisition or abandonment of property occurs.

Multiple Borrowers

Q–41: If a person required to report under this section must make an information return with respect to more than one borrower on a single loan, of an interest in the property occurs or in which the lender knows or has reason to know of the abandonment of the property.

A–41: Yes. A separate statement must be furnished to each borrower with respect to which a separate return is required under section 6050J.

Extensions of Time

Q–42: Are there any circumstances under which an extension of time may be granted with respect to the requirement of furnishing statements to borrowers?

A–42: Yes. Upon written application of the person required to report, the service center

director may, for good cause shown, grant that person an additional period (not to exceed 30 days) in which to furnish statements under section 6050J with respect to any calendar year. The application for an extension must be addressed to the director of the service center with which the returns must be filed. The application must contain a concise statement of the reasons for requesting the extension in order to aid the service center director in determining the period of extension, if any, to be granted. The application must state at the top of the first page that it is made under section 1.6050J–1T and must be signed by the person required to report under section 6050J. In general, the application should be filed not earlier than September 30 of the year in which the acquisition of an interest in the property occurs or in which the lender knows or has reason to know of the abandonment of the property, and not later than January 15 of the following year.

PENALTIES

Q–43: Are there penalties for failing to comply with the requirements of section 6050J and the regulations thereunder?

A–43: Yes. The penalty for failing to make any information return with respect to any borrower under section 6050J is provided in section 6652. The penalty for failing to furnish a statement to any borrower is provided in section 6678.

EFFECTIVE DATE

Q–44: When is section 6050J effective?

A–44: Section 6050J is effective for acquisitions and abandonments of property after December 31, 1984.

(Approved by the Office of Management and Budget under control number 1545–0877)

(Secs. 6050J and 7805 of the Internal Revenue Code of 1954 (98 Stat. 687, 68A Stat. 917, 26 U.S.C. 6050J, 7805 respectively)

[T.D. 7971, 49 FR 34460, Aug. 31, 1984, as amended by T.D. 8895, 65 FR 50408, Aug. 18, 2000]

§ 1.6050K–1 Returns relating to sales or exchanges of certain partnership interests.

(a) *Partnership return required*—(1) *In general*. Except as otherwise provided in this paragraph (a), a partnership shall make a separate return on Form 8308 with respect to each section 751(a) exchange (as defined in paragraph (a)(4)(i) of this section) of an interest in such partnership which occurs after December 31, 1984. A partnership that is in doubt as to whether partnership property constitutes section 751 property to any extent or as to whether a transfer of a partnership interest constitutes a section 751(a) exchange may file Form 8308 in order to avoid the risk of incurring a penalty under section 6721. The penalty under section 6721 will generally apply, however, to partnerships that do not file Form 8308 where in fact a section 751(a) exchange occurred, except as provided in paragraphs (a)(2) and (e) of this section.

(2) *Return required under section 6045*. No return shall be required under section 6050K(a) and paragraph (a)(1) of this section with respect to the sale or exchange of a partnership interest if a return is required to be filed under section 6045 with respect to such sale or exchange.

(3) *Single or composite documents*. The Commissioner may authorize the use, at the option of the partnership, of a single document which includes all of the partnership's returns for a calendar year in the case of partnerships required under paragraph (a)(1) of this section to make 25 or more returns on Form 8308 for any calendar year. In addition, the Commissioner may authorize the use for this purpose, also at the option of such a partnership, of a composite document. These authorizations shall be subject to such conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate. Such composite document shall consist of a form prescribed by the Commissioner and an attachment or attachments of magnetic tape or other approved media. To the extent that the use of a single or composite document has been authorized by the Commissioner, references in this section to Form 8303 shall be deemed to refer also to returns included in a single or composite document under this paragraph (a)(3). Any single or composite document so authorized shall include the information required to be provided on Form 8308 under paragraph (b) of this section with respect to each section 751(a) exchange.

(4) *Definitions*. For purposes of section 6050K of the Code and this section—

(i) *Section 751(a) exchange*. The term *section 751(a) exchange* means any sale

or exchange of a partnership interest (or portion thereof) in which any portion of any money or other property received by a transferor partner in exchange for all or a part of his or her interest in the partnership is attributable to section 751 property. The term does not include a distribution which is treated as a sale or exchange between the distributee and the partnership under section 751(b) of the Code.

(ii) *Section 751 property*. The term *section 751 property* means unrealized receivables, as defined in section 751(c) of the Code, and inventory items which have appreciated substantially in value (''substantially appreciated inventory items''), as defined in section 751(d) of the Code.

(iii) *Transferor and transferee*. The term *transferor* means the beneficial owner of a partnership interest immediately before the transfer of that interest. The term ''transferee'' means the beneficial owner of a partnership interest immediately after the transfer of that interest. However, if a partnership does not know the identity of the beneficial owner of an interest in the partnership, the record holder of such interest shall be treated as the transferor or transferee (as the case may be) for purposes of paragraphs (b) and (c) of this section.

(b) *Contents of return*. The return on Form 8308 shall include the following information:

(1) The names, addresses, and taxpayer identification numbers of the transferee and transferor in the exchange and of the partnership filing the return;

(2) The date of the exchange; and

(3) Such other information as may be required by Form 8308 or its instructions.

(c) *Statement to be furnished to transferor and transferee*. Every partnership required to file a return under paragraph (a) of this section must furnish to each person whose name is required to be set forth in such return a written statement on or before January 31 of the calendar year following the calendar year in which the section 751(a) exchange occurred to which the return under paragraph (a) relates (or, if later, 30 days after the partnership is notified of the exchange as defined in paragraph (e) of this section). The partnership shall use a copy of the completed Form 8308 as a statement unless the Form 8308 contains information with respect to more than one section 751(a) exchange (see paragraph (a)(3) of this section). If the partnership does not use a copy of Form 8308 as a statement, the statement shall include the information required to be shown on Form 8308 with respect to the section 751(a) exchange to which the person to whom the statement is furnished is a party. In addition, it shall state that—

(1) The information shown on the statement has been supplied to the Internal Revenue Service,

(2) A transferor of a partnership interest in a sale or exchange described in section 751(a) of the Internal Revenue Code is required to treat a portion of any gain or loss resulting from the sale or exchange as ordinary income or loss, and

(3) The transferor in a section 751(a) sale or exchange is required under paragraph (a)(3) of §1.751–1 to attach a statement relating to the sale or exchange to his or her income tax return for the taxable year in which the sale or exchange occurred.

(d) *Requirement that transferor notify partnership*—(1) *In general*. The transferor of any partnership interest in a section 751(a) exchange shall notify the partnership of such exchange in writing within 30 days of the exchange (or, if earlier, January 15 of the calendar year following the calendar year in which the exchange occurred). The written notification from the transferor shall include the following information:

(i) The names and addresses of the transferor and transferee in the section 751(a) exchange;

(ii) The taxpayer identification numbers of the transferor and, if known, of the transferee; and

(iii) The date of the exchange.

Any transferor who notified a partnership under section 6050K(c)(1) prior to January 22, 1986 by a notification that does not meet the requirements of this paragraph (d) shall furnish such partnership with the written notification described in this paragraph (d) on or before February 21, 1986.

(2) *Return required under section 6045.* No transferor shall be required to notify a partnership of the sale or exchange of a partnership interest under section 6050K(c)(1) or paragraph (d)(1) of this section if a return is required to be filed under section 6045 with respect to such sale or exchange.

(e) *Partnership not required to make a return or furnish statements under this section until it has notice of the exchange.* A partnership shall not be required to make a return or furnish statements under section 6050K and this section with respect to any section 751(a) exchange until it has been notified of the exchange. For purposes of section 6050K(c)(2) and this section, a partnership is notified of a section 751(a) exchange when either:

(1) The partnership receives the written notification from the transferor required under paragraph (d) of this section; or

(2) The partnership has knowledge that there has been a transfer of a partnership interest or any portion thereof, and, at the time of the transfer, the partnership had any section 751 property. However, no return or statements are required under section 6050K if the transfer was not a section 751(a) exchange (e.g., a transfer which in its entirety constitutes a gift for federal income tax purposes). For purposes of this paragraph (e)(2), the partnership may rely on a written statement from the transferor that the transfer was not a section 751(a) exchange in the absence of knowledge to the contrary. For rules applicable where the partnership is in doubt as to whether partnership property constitutes section 751 property to any extent or as to whether a transfer of a partnership interest constitutes a section 751(a) exchange, see paragraph (a)(1) of this section.

(f) *Partnership return is to be attached to Form 1065*—(1) *In general.* Any partnership return on Form 8308 required under this section shall be filed as an attachment to the partnership's Form 1065 for its taxable year in which the calendar year in which the section 751(a) exchange occurred ends and shall be filed at the time (determined with regard to any extension of time for filing) and place prescribed for filing of the partnership's Form 1065 for that taxable year (see paragraph (e) of § 1.6031–1 for the time and place for filing Form 1065).

(2) *Notification after Form 1065 is filed.* If a partnership is notified of an exchange (as defined in paragraph (e) of this section) after the partnership has filed Form 1065 for the taxable year with respect to which the exchange should have been reported, Form 8308 shall be filed with the service center or other Internal Revenue office with which the partnership's Form 1065 was filed, on or before the thirtieth day after the partnership is notified of the exchange.

(g) *Penalties.* For penalties for failure of:

(1) Transferors to furnish the notification required by paragraph (d) of this section see section 6722 (b);

(2) Partnerships to furnish any statement required under paragraph (c) of this section see section 6722 (a); and

(3) Partnerships to file the return on Form 8308 as required by paragraph (a) of this section see section 6721.

[T.D. 8119, 52 FR 41, Jan. 2, 1987]

§ 1.6050L–1 Information return by donees relating to certain dispositions of donated property.

(a) *Information returns*—(1) *Disposition of charitable deduction property.* If a donee of any charitable deduction property (as defined in paragraph (e) of this section), sells, exchanges, consumes, or otherwise disposes of (with or without consideration) such property (or any portion thereof) within 2 years after the date of the donor's contribution of such property, the donee shall make an information return on the form prescribed by the Internal Revenue Service. For special rules with respect to successor donees, see paragraph (c) of this section.

(2) *Disposition of items appraised for $500 or less*—(i) *In general.* Paragraph (a)(1) of this section shall not apply with respect to an item of charitable deduction property disposed of by sale if the appraisal summary (as defined in § 1.170A–13(c)(4)) signed by the donee with respect to the item contains, at the time of the donee's signature, a statement signed by the donor that the appraised value of the item does not exceed $500. In the case of an appraisal

summary that describes more than one item, this exception shall apply only with respect to an item clearly identified as having an appraised value of $500 or less. For purposes of this paragraph (a)(2)(i), items that form a set (such as, for example, a collection of books written by the same author, components of a stereo system, or a group of place settings of a pattern of silverware) are considered one item. In addition, all nonpublicly traded stock is considered one item as are all nonpublicly traded securities other than nonpublicly traded stock.

(ii) *Transitional rule.* Paragraph (a)(2)(i) of this section is satisfied with respect to an appraisal summary submitted to the donee on or before January 31, 1986, if such donee obtained the required statement from the donor on or before March 31, 1986, on either an amended appraisal summary or an attachment to the original appraisal summary.

(3) *Consumption for distribution of exempt purpose.* Paragraph (a)(1) of this section shall not apply with respect to an item of charitable deduction property consumed or distributed by a donee without consideration if the consumption or distribution is in furtherance of a purpose or function constituting a basis for such donee's exemption under section 501 of the Code. For example, no reporting is required with respect to medical supplies consumed or distributed by a tax-exempt relief organization in aiding disaster victims.

(b) *Information required to be provided on return.* The information return required by paragraph (a)(1) of this section shall include the following:

(1) The name, address, and employer identification number of the donee making the information return;

(2) A description of the property (or portion disposed of) in sufficient detail to identify the charitable deduction property received by such donee;

(3) The name and taxpayer identification number of the donor (social security number if the donor is an individual or employer identification number if the donor is a corporation or partnership);

(4) The date of the contribution to such donee;

(5) Any amount received by such donee with respect to the disposition;

(6) The date of the disposition by such donee; and

(7) Such other information as may be specified by the form or its instructions.

(c) *Successor donees*—(1) *In general.* Section 6050L and this section shall apply to successor donees that receive charitable deduction property (as defined in paragraph (e) of this section) that was transferred by the original donee after July 5, 1988, (whether the successor donee received the property from the original donee or another successor donee). For definitions of the terms ''donor,'' ''donee,'' ''original donee,'' and ''successor donee,'' see §1.170A–13(c)(7)(iv)–(vii).

(2) *Information required to be provided on return.* With respect to charitable deduction property that is transferred to one or more successor donees to which this section applies, the information return required by paragraph (a)(1) of this section shall include, in addition to the information described in paragraph (b) of this section, the following:

(i) The name, address, and employer identification number of the immediately succeeding successor donee (if any) and the immediately preceding successor donee (if any);

(ii) The name, address, and employer identification number of the original donee if different from the information required by paragraph (b)(1) of this section;

(iii) The date of contribution to the original donee; and

(iv) Such other information as may be specified by the form or its instructions.

(3) *Information to be provided to transferor.* Every successor donee to which this section applies that receives any charitable deduction property within the 2-year period described in paragraph (a)(1) of this section shall provide its name, address, and employer identification number to that preceding donee on or before the 15th day after the later of—

(i) The date of transfer to such successor donee, or

(ii) The date such successor donee receives a copy of the appraisal summary from the preceding donee.

(4) *Donees that transfer property to successor donees.* In addition to complying with the requirements of paragraph (a)(1) of this section, every donee that transfers any charitable deduction property to a successor donee to which this section applies within the 2-year period described in paragraph (a)(1) of this section—

(i) Shall provide its name, address, and employer identification number and a copy of the appraisal summary (as described in §1.170A–13(c)(4)) relating to the transferred property to the successor donee on or before the 15th day after the latest of—

(A) The date of such transfer, or

(B) The date the original donee signs the appraisal summary, or

(C) In a case in which the transferring donee is a successor donee, the date such donee receives a copy of the appraisal summary from such donee's transferor, and

(ii) Shall provide a copy of its information return required by paragraph (a)(1) this section to the successor donee on or before the 15th day after the transferring donee files the information return pursuant to paragraph (e)(2) of this section.

(5) *Donee.* In the case of charitable deduction property that is transferred to a successor donee to which this section applies, the term *donee* as used in paragraph (a)(2) and (e) of this section means only the original donee.

(d) *Special rules*—(1) *Statement to be furnished to donors.* Every donee making a return under section 6050L and this section with respect to the disposition of charitable deduction property shall furnish a copy of the return to the donor of the property.

(2) *Retention of appraisal summary.* Every donee shall retain the appraisal summary described in §1.170A–13(c)(4) in the donee's records for so long as it may be relevant in the administration of any internal revenue law.

(e) *Charitable deduction property.* For purposes of this section, the term *charitable deduction property* means any property (other than money and publicly traded securities to which §1.170A–13(c)(7)(xi)(B) does not apply) contributed after December 31, 1984, with respect to which the donee signs (or is presented with for signature in cases described in §1.170A–13(c)(4)(iv)(C)(*2*)) an appraisal summary (as required by §1.170A–13(c)(4)(i)(B)). For purposes of this section, if such donee signs (or is presented with for signature in cases described in §1.170A–13(c)(4)(iv)(C)(*2*)) the appraisal summary after the date of contribution of the property, the property is deemed to be charitable deduction property from the date of contribution.

(f) *Place and time for filing information returns*—(1) *Place for filing.* The donee information return required by section 6050L and this section shall be filed with the Internal Revenue Service center listed on the return form or its instructions.

(2) *Time for filing*—(i) *In general.* Except as provided in paragraph (f)(2)(ii) of this section, the donee information return shall be filed on or before the 125th day after a donee sells, exchanges, consumes or otherwise disposes of the charitable deduction property. A donee information return filed pursuant to this paragraph (f)(2)(i) does not have to include the information required by paragraphs (b) (3), (4), (5), or (6), or (c)(2)(i)–(iii) of this section if such information is not available to the donee by the due date of the return.

(ii) *Exception.* Notwithstanding paragraph (f)(2)(i) of this section, in the case of a donee who, on the date of receipt of the transferred property, had no reason to believe that the substantiation requirements of §1.170A–13(c) apply with respect to the property, the donee information return is not required to be filed until the 60th day after the later of May 5, 1988, or the date on which such donee has reason to believe that the substantiation requirements of §1.170A–13(c) apply with respect to the property. A donee information return filed pursuant to this paragraph (f)(2)(ii) does not have to include the information required by paragraph (b) (3), (4), (5), or (6), or (c)(2)(i)–(iii) of this section if such information is not available to the donee by the due date of the return.

(g) *Penalties.* For penalties for failure to compy with the requirements of this section, see sections 6676, 6721, and 6723.

[T.D. 8199, 53 FR 16085, May 5, 1988; T.D. 8199, 53 FR 18372, May 23, 1988]

§ 1.6050L–2 Information returns by donees relating to qualified intellectual property contributions.

(a) *In general.* Each donee organization described in section 170(c), except a private foundation (as defined in section 509(a)), other than a private foundation described in section 170(b)(1)(F), that receives or accrues net income during a taxable year from any qualified intellectual property contribution (as defined in section 170(m)(8)) must make an annual information return on the form prescribed by the IRS. The information return is required for any taxable year of the donee that includes any portion of the 10-year period beginning on the date of the contribution, but not for taxable years beginning after the expiration of the legal life of the qualified intellectual property.

(b) *Information required to be provided on return.* The information return required by section 6050L and paragraph (a) of this section shall include the following—

(1) The name, address, taxable year, and employer identification number of the donee making the information return;

(2) The name, address, and taxpayer identification number of the donor;

(3) A description of the qualified intellectual property in sufficient detail to identify the qualified intellectual property received by such donee;

(4) The date of the contribution to the donee;

(5) The amount of net income of the donee for the taxable year that is properly allocable to the qualified intellectual property (determined without regard to paragraph (10)(B) of section 170(m) and with the modifications described in paragraphs (5) and (6) of such section); and

(6) Such other information as may be specified by the form or its instructions.

(c) *Special rule—statement to be furnished to donors.* Every donee making an information return under section 6050L and this section with respect to a qualified intellectual property contribution shall furnish a copy of the information return to the donor of the property. The information return required by section 6050L and this section shall be furnished to the donor on or before the date the donee is required to file the return with the IRS.

(d) *Place and time for filing information return*—(1) *Place for filing.* The information return required by section 6050L and this section shall be filed with the IRS location listed on the prescribed form or in its instructions.

(2) *Time for filing.* A donee is required to file the return required by section 6050L and this section on or before the last day of the first full month following the close of the donee's taxable year to which net income from the qualified intellectual property is properly allocable.

(e) *Penalties.* For penalties for failure to comply with the requirements of this section, see sections 6721 through 6724.

(f) *Effective/applicability date.* The rules of this section apply to qualified intellectual property contributions made after June 3, 2004.

[T.D. 9392, 73 FR 18709, Apr. 7, 2008]

§ 1.6050M–1 Information returns relating to persons receiving contracts from certain Federal executive agencies.

(a) *General rule.* Except as otherwise provided in paragraph (c) of this section, the head of every Federal executive agency or his or her delegate shall make an information return to the Internal Revenue Service reporting the following information with respect to each contract entered into by that Federal executive agency—

(1) Name and address of the contractor;

(2) Contractor's TIN and, if the contractor is a member of an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, the name and TIN of the common parent of the affiliated group;

(3) The date of the contract action;

(4) The expected date of completion of the contract as determined under any reasonable method, such as the expected contract delivery date under the contract schedule;

(5) The total amount obligated under the contract action; and

(6) Any other information required by Forms 8596 and 8596A and their instructions, or by any other administrative guidance issued by the Internal Revenue Service (such as a revenue procedure).

See paragraph (e) of this section relating to the manner in which to report increases in amounts obligated under existing contracts. See paragraph (d)(5) of this section for special rules for agencies that submit contract information to the Federal Procurement Data Center. For provisions concerning the requesting and furnishing of identifying numbers, see section 6109 and the regulations thereunder.

(b) *Definitions.* The following definitions apply for purposes of this section—

(1) *Federal executive agency.* The term ''Federal executive agency'' means—

(i) Any executive agency (as defined in 5 U.S.C. 105) other than the General Accounting Office;

(ii) Any military department (as defined in 5 U.S.C. 102); and

(iii) The United States Postal Service and the Postal Rate Commission.

(2) *Contract*—(i) *General rule.* The term ''contract'' means an obligation of a Federal executive agency to make payment of money (or other property) to a person in return for the sale of property, the rendering of services, or other consideration. The term ''contract'' includes, for example, such an obligation arising from a written agreement executed by the agency and the contractor, an award or notice of award, a job order or task letter issued under a basic ordering agreement, a letter contract, an order that becomes effective only upon written acceptance or performance, or an action described in paragraph (e) of this section.

(ii) *Exceptions.* For purposes of this section, the term ''contract'' does not include—

(A) A license granted by a Federal executive agency;

(B) An obligation of a contractor (other than a Federal executive agency) to a subcontractor;

(C) A debt instrument of the United States Government or a Federal agency, such as a Treasury note, Treasury bond, Treasury bill, savings bond, or similar instrument; or

(D) An obligation of a Federal executive agency to lend money, lease property to a lessee, or sell property.

(iii) *Special rule for certain contracts of the Small Business Administration.* Any subcontract entered into by the Small Business Administration (SBA) under a prime contract between the SBA and a procuring Federal executive agency pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) shall not be treated as a contract of the SBA but shall be treated as a contract of the procuring agency for purposes of this section.

(iv) *Certain schedule contracts.* For purposes of this section, any of the following contracts entered into on behalf of one or more Federal executive agencies is not a ''contract'' to be reported by the General Services Administration or the Department of Veteran's Affairs at the time of execution:

(A) A Federal Supply Schedule Contract entered into by the General Services Administration,

(B) An Automated Data Processing Schedule Contract entered into by the General Services Administration, or

(C) A schedule contract entered into by the Department of Veteran's Affairs.

Instead, an order placed by a Federal executive agency, including the General Services Administration or the Department of Veteran's Affairs, under such a schedule contract is a ''contract'' for purposes of this section.

(v) *Blanket purchase agreements.* For purposes of this section, the term *contract* does not include a blanket purchase agreement between one or more Federal executive agencies and one or more contractors. Instead, an order placed by a Federal executive agency under the terms of a blanket purchase agreement is a ''contract'' for purposes of this section.

(vi) *Contracts entered into using nonappropriated funds.* [Reserved]

(3) *Contractor.* The term *contractor* means any person who enters into a contract with a Federal executive agency.

(4) *Person and TIN.* The terms *person* and *TIN* are defined in sections 7701(a)(1) and (41), respectively.

(c) *Exceptions to information reporting requirement*—(1) *General exceptions.* The following do not need to be reported pursuant to this section:

(i) Any contract or contract action for which the amount obligated is $25,000 or less;

(ii) Any contract with a contractor who, in making the agreement, is acting in his or her capacity as an employee of a Federal executive agency (e.g., any contract of employment under which the employee is paid wages subject to the withholding provisions contained in chapter 24 of subtitle C);

(iii) Any contract between a Federal executive agency and another Federal governmental unit (or any agency or instrumentality thereof);

(iv) Any contract with a foreign government (or any agency or instrumentality thereof);

(v) Any contract with a state or local governmental unit (or any agency or instrumentality thereof);

(vi) Any contract with a person who is not required to have a TIN (see, for example, § 301.6109–1(g));

(vii) Any contract the terms of which provide that all amounts payable under the contract by any Federal executive agency will be paid on or before the 120th day following the date of the contract action, and for which it is reasonable to except that all amounts will be so paid.

(viii) Any contract under which all money (or other property) that will be received by the contractor after the 120th day after the date of the contract action will come from persons other than a Federal executive agency or an agent of such an agency (e.g., a contract under which the contractor will collect amounts owed to a Federal executive agency by the agency's debtor and will remit to the agency the money collected less an amount that serves as the contractor's consideration under the contract).

(ix) Any contract for which the Commissioner determines that the information described in paragraph (a) of this section will not facilitate the collection of Federal tax liabilities because of the manner, method, or timing of payment by the agency under that contract.

(2) *Special rule for certain classified or confidential contracts.* Contracts described in section 6050M(e)(3), relating to certain classified or confidential contracts, are to be reported only in accordance with section 6050M(e)(2).

(d) *Filing requirements*—(1) *Frequency and time for filing.* The information returns required by this section with respect to contracts of a Federal executive agency entered into on or after January 1, 1989, must be filed on a quarterly basis for the calendar quarters ending on the last day of March, June, September, and December. Except as provided in paragraph (d)(5) of this section, the returns for contracts entered into during a calendar quarter must be filed on or before the last day of the month following that quarter. Notwithstanding the preceding sentence, returns filed before May 7, 1990, will be considered timely filed.

(2) *Form of reporting*—(i) *General rule concerning magnetic media.* The information returns required by this section with respect to contracts of a Federal executive agency for each calendar quarter shall be made in one submission (or in multiple submissions if permitted by paragraph (d)(4) of this section). Except as provided in paragraph (d)(2)(ii) of this section, the required returns shall be made on magnetic media (within the meaning of § 301.6011–2(a)(1)) in accordance with any applicable revenue procedure or other guidance promulgated by the Internal Revenue Service for the filing of such returns under section 6050M.

(ii) *Magnetic media exception for low-volume filers.* Any Federal executive agency that on any October 1 has a reasonable expectation of entering into, during the one year period beginning on that date, fewer than 250 contracts that are subject to the reporting requirements under this section may make the information returns required by this section for each quarter of that one year period on the prescribed paper Form 8596 in accordance with the instructions accompanying such form.

(3) *Place of filing*—(i) *Returns on magnetic media.* Information returns made under this section on magnetic media

shall be filed with the Internal Revenue Service at the Martinsburg Computing Center, Martinsburg, West Virginia 25401–1359, in accordance with any applicable revenue procedure or other guidance promulgated by the Internal Revenue Service relating to the filing of returns under section 6050M.

(ii) *Form 8596*. Information returns made on Form 8596 shall be filed with the Ifternal Revenue Service at the location specified in the instructions for that form.

(4) *Special rule concerning multiple returns*. To the extent permitted in any revenue procedure or other guidance relating to the filing of information returns under this section, a Federal executive agency which files information returns under this section on magnetic media may make more than one magnetic media submission for any quarter, if each submission for that quarter contains all of the information required by paragraph (a) of this section with respect to contracts entered into by one or more departments, branches, bureaus, agencies, or other readily identifiable operating functions (such as a geographic region) of the Federal executive agency.

(5) *Special rules for agencies reporting to the Federal Procurement Data Center*—(i) *Election to have the Director of the Federal Procurement Data Center make returns on behalf of agency*. If, in complying with the requirements of the Federal Procurement Data System (FPDS) (as established under the authority of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 401 *et seq.*), a Federal executive agency is required to submit to the Federal Procurement Data Center (FPDC) all the information with respect to one or more contracts required to be reported by paragraph (a) of this section, that Federal executive agency may, in lieu of making returns directly to the Internal Revenue Service with respect to those contracts, elect to have the Director of the FPDC (or his or her delegate) make the required returns with respect to all of those contracts on its behalf. In order to make this election for such contracts entered into during a calendar quarter, the head of a Federal executive agency (or his or her delegate) shall attach to its submission to the FPDC for that quarter a signed statement to the effect that:

(A) The Director of the FPDC (or his or her delegate) is authorized, in accordance with an election made under 26 CFR 1.6050M–1(d)(5) to make, on the agency's behalf, the required returns for such contracts for that quarter, and

(B) Under the penalties of perjury, such official has examined the information to be submitted by the agency to the FPDC for making those returns and certifies that information to be, to the best of such official's knowledge and belief, a compilation of agency records maintained in the normal course of business for the purpose of providing the information necessary for making true, correct, and complete returns as required by section 6050M.

If the election is made, the Director of the FPDC (or his or her delegate) shall, on the electing agency's behalf, make the returns required by paragraph (a) of this section with respect to the contracts to which the election applies.

(ii) *Time, manner, and place of filing*. The Director of the FPDC (or his or her delegate) must—

(A) Make the required returns for a quarter on or before the earlier of;

(*1*) 45 days following the date that the contract information is required to be submitted to the FPDC, or

(*2*) 90 days following the end of the calendar quarter for which the election is made, except that, if that calendar quarter ends September 30, 105 days following the end of that quarter, and

(B) Comply with paragraph (d)(2)(i) and (3)(i) of this section, relating to form and place of filing.

Notwithstanding the preceding sentence, returns made before May 7, 1990, will be considered timely filed.

(iii) *Contracts reported directly to the Internal Revenue Service*. Even if the election is made, all information with respect to any particular contract required to be reported under paragraph (a) of this section must be reported directly to the Internal Revenue Service by the electing agency if the FPDS does not require that information to be submitted to the FPDC. An electing agency shall not, however, make direct

returns to the Internal Revenue Service of contract information that is subject to the election.

(6) *Certification of return*—(i) *Returns made directly with the Internal Revenue Service*. Each return made under this section by a Federal executive agency directly with the Internal Revenue Service on magnetic media or on Forms 8596 and 8596–A shall be signed by the head of the Federal executive agency (or his or her delegate) under the penalties of perjury, certifying that such official has examined the return, that it is prepared pursuant to the requirements of section 6050M and that, to the best of such official's knowledge and belief, it is compiled from agency records maintained in the normal course of business for the purpose of making a true, correct, and complete return as required by section 6050M.

(ii) *Returns made by Director of FPDC on agency's behalf*. Each return made under this section by the Director of the FPDC on behalf of a Federal executive agency shall be signed by the Director of the FPDC (or his or her delegate) under the penalties of perjury, certifying that such official has examined the return, that it is prepared pursuant to the requirements of section 6050M and that, to the best of such official's knowledge and belief, it is compiled from information submitted by the Federal executive agency to the FPDC pursuant to §1.6050M–1(d)(5)(i) for the purpose of making a true, correct, and complete return as required by section 6050M.

(e) *Special rules relating to increases in amount obligated*. If, through the exercise of an option contained in a basic or initial contract or under any other rule of contract law, express or implied, the amount of money or other property obligated under the contract is increased by more than $25,000 in one contract action, then that action shall be treated as the entering into of a new contract with respect to which the information required by paragraph (a) of this section is to be reported to the Internal Revenue Service for the calendar quarter in which the increase occurs.

(f) *Effective date*—(1) *Contracts required to be reported*. Except as otherwise provided in this paragraph (f), this section applies to each Federal executive agency with respect to its contracts entered into on or after January 1, 1989 (including any increase in amount obligated on or after January 1, 1989, that is treated as a new contract under paragraph (e) of this section).

(2) *Contracts not required to be reported*. A Federal executive agency is not required to report—

(i) Any basic or initial contract entered into before January 1, 1989,

(ii) Any increase contract action occurring before January 1, 1989, that is treated as a new contract under paragraph (e) of this section, or

(iii) Any increase contract action that is treated as a new contract under paragraph (e) of this section if the basic or initial contract to which that contract action relates was entered into before January 1, 1989, and—

(A) The increase occurs before April 1, 1990, or

(B) The amount of the increase does not exceed $50,000.

(3) *Illustration*—(i) If Federal executive agency enters into an initial contract on December 1, 1988, and the amount of money obligated under the contract is increased by $55,000 on April 15, 1990, then (A) there is no reporting requirement with respect to the contract when entered into on December 1, 1988, and (B) the April 15, 1990, increase, which is treated as a new contract under paragraph (e) of this section, is subject to the reporting requirements of this section because it is considered to be a new contract entered into on April 15, 1990.

(ii) If the $55,000 increase had occurred before April 1, 1990, there would have been no reporting requirement with respect to that increase.

[T.D. 8275, 54 FR 50369, Dec. 6, 1989; 55 FR 13522, Apr. 11, 1990]

§ 1.6050N–1 Statements to recipients of royalties paid after December 31, 1986.

(a) *Requirement*. A person required to make an information return under section 6050N(a) must furnish a statement to each recipient whose name is required to be shown on the related information return for royalties paid.

(b) *Form, manner, and time for providing statements to recipients.* The statement required by paragraph (a) of this section must be either the official Form 1099 prescribed by the Internal Revenue Service for the respective calendar year or an acceptable substitute statement. The rules under § 1.6042–4 (relating to statements with respect to dividends) apply comparably in determining the form of the acceptable substitute statement permitted by this section. Those rules also apply for purposes of determining the manner of and time for providing the Form 1099 or its acceptable substitute statement to a recipient under this section.

(c) *Exempted foreign-related items*—(1) *In general.* No return shall be required under paragraph (a) of this section for payments of the items described in paragraphs (c)(1)(i) through (iv) of this section.

(i) Returns of information are not required for payments of royalties that a payor can, prior to payment, associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049-5(d)(2), (3), (4), or (5). However, such payments may be reportable under § 1.1461–1(b) and (c).

For purposes of this paragraph (c)(1)(i), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. See § 1.1441–1(b)(3)(iii)(B) and (C) for special payee rules regarding scholarships, grants, pensions, annuities, etc. The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code.

(ii) Returns of information are not required for payments of royalties from sources outside the United States (determined under Part I of subchapter N and the regulations under these provisions) made outside the United States by a non-U.S. payor or non-U.S. middleman. For a definition of non-U.S. payor or non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see § 1.6049–5(e).

(iii) Returns of information are not required for payments made by a foreign intermediary described in § 1.1441–1(e)(3)(i) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in § 1.1441–1(b)(2)(iv) that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported and were not so reported.

(2) *Definitions*—(i) *Payor.* For purposes of this section, the term *payor* shall have the meaning ascribed to it under § 1.6049–4(a).

(ii) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (c) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)-1 through 31.3406(d)-5 of this chapter, or with documentation described in paragraph (c)(1)(i) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (c)(2)(ii), the grace period described in § 1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(d) *Cross-reference to penalties.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6050N(a), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to

furnish timely a correct payee statement required under section 6050N(b) and § 1.6050N–1(a), see § 301.6722–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(e) *Effective date*—This section, except paragraph (c), applies to payee statements due after December 31, 1995, without regard to extensions. For further guidance regarding the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996 (see Rev. Proc. 84–70 (1984–2 C.B. 716) and § 601.601(d)(2) of this chapter). The provisions of paragraph (c) of this section apply to payments made after December 31, 2000.

[T.D. 8637, 60 FR 66111, Dec. 21, 1995, as amended by T.D. 8734, 62 FR 53492, Oct. 14, 1997; T.D. 8804, 63 FR 72188, Dec. 31, 1998; T.D. 8856, 64 FR 73412, Dec. 30, 1999]

§ 1.6050N–2 Coordination with reporting rules for widely held fixed investment trusts under § 1.671–5.

See § 1.671–5 for the reporting rules for widely held fixed investment trusts (as defined under that section).

[T.D. 9241, 71 FR 4025, Jan. 24, 2006]

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[T.D. 8654, 61 FR 268, Jan. 4, 1996, as amended by T.D. 9160, 69 FR 62185, Oct. 25, 2004; T.D. 9430, 73 FR 66540, Nov. 10, 2008]

§ 1.6050P–1 Information reporting for discharges of indebtedness by certain entities.

(a) *Reporting requirement*—(1) *In general*. Except as provided in paragraph (d) of this section, any applicable entity (as defined in section 6050P(c)(1)) that discharges an indebtedness of any person (within the meaning of section 7701(a)(1)) of at least $600 during a calendar year must file an information return on Form 1099–C with the Internal Revenue Service. Solely for purposes of the reporting requirements of section 6050P and this section, a discharge of indebtedness is deemed to have occurred, except as provided in paragraph (b)(3) of this section, if and only if there has occurred an identifiable event described in paragraph (b)(2) of this section, whether or not an actual discharge of indebtedness has occurred on or before the date on which the identifiable event has occurred. The return must include the following information—

(i) The name, address, and taxpayer identification number (TIN), as defined in section 7701(a)(41), of each person for which there was an identifiable event during the calendar year;

(ii) The date on which the identifiable event occurred, as described in paragraph (b) of this section;

(iii) The amount of indebtedness discharged, as described in paragraph (c) of this section;

(iv) An indication whether the identifiable event was a discharge of indebtedness in a bankruptcy, if known; and

(v) Any other information required by Form 1099–C or its instructions, or current revenue procedures.

(2) *No aggregation*. For purposes of reporting under this section, multiple discharges of indebtedness of less than $600 are not required to be aggregated unless such separate discharges are pursuant to a plan to evade the reporting requirements of this section.

(3) *Amounts not includible in income*. Except as otherwise provided in this section, discharged indebtedness must be reported regardless of whether the debtor is subject to tax on the discharged debt under sections 61 and 108 or otherwise by applicable law.

(4) *Time and place for reporting*— (i) *In general*. Except as provided in paragraph (a)(4)(ii) of this section, returns required by this section must be filed with the Internal Revenue Service office designated in the instructions for Form 1099-C on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the identifiable event occurs.

(ii) *Indebtedness discharged in bankruptcy*. Indebtedness discharged in bankruptcy that is required to be reported under this section must be reported for the later of the calendar year in which the amount of discharged indebtedness first becomes ascertainable, or the calendar year in which the identifiable event occurs.

(b) *Date of discharge*—(1) *In general*. Solely for purposes of this section, except as provided in paragraph (b)(3) of this section, indebtedness is discharged on the date of the occurrence of an identifiable event specified in paragraph (b)(2) of this section.

(2) *Identifiable events*—(i) *In general*. An identifiable event is—

(A) A discharge of indebtedness under title 11 of the United States Code (bankruptcy);

(B) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable in a receivership, foreclosure, or similar proceeding in a federal or State court, as described in section 368(a)(3)(A)(ii) (other than a discharge described in paragraph (b)(2)(i)(A) of this section);

(C) A cancellation or extinguishment of an indebtedness upon the expiration of the statute of limitations for collection of an indebtedness, subject to the limitations described in paragraph (b)(2)(ii) of this section, or upon the expiration of a statutory period for filing a claim or commencing a deficiency judgment proceeding;

(D) A cancellation or extinguishment of an indebtedness pursuant to an election of foreclosure remedies by a creditor that statutorily extinguishes or bars the creditor's right to pursue collection of the indebtedness;

(E) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable pursuant to a probate or similar proceeding;

(F) A discharge of indebtedness pursuant to an agreement between an applicable entity and a debtor to discharge indebtedness at less than full consideration;

(G) A discharge of indebtedness pursuant to a decision by the creditor, or the application of a defined policy of the creditor, to discontinue collection activity and discharge debt; or

(H) [Reserved] For further guidance, see § 1.6050P–1T(b)(2)(i)(H).

(ii) *Statute of limitations*. In the case of an expiration of the statute of limitations for collection of an indebtedness, an identifiable event occurs under paragraph (b)(2)(i)(C) of this section only if, and at such time as, a debtor's affirmative statute of limitations defense is upheld in a final judgment or decision of a judicial proceeding, and the period for appealing the judgment or decision has expired.

(iii) *Decision to discontinue collection activity; creditor's defined policy*. For purposes of the identifiable event described in paragraph (b)(2)(i)(G) of this section, a creditor's defined policy includes both a written policy of the creditor and the creditor's established business practice. Thus, for example, a creditor's established practice to discontinue collection activity and abandon debts upon expiration of a particular non-payment period is considered a defined policy for purposes of paragraph (b)(2)(i)(G) of this section.

(iv) *Expiration of non-payment testing period*. There is a rebuttable presumption that an identifiable event under paragraph (b)(2)(i)(H) of this section has occurred during a calendar year if a creditor has not received a payment on an indebtedness at any time during a testing period (as defined in this paragraph (b)(2)(iv)) ending at the close of the year. The testing period is a 36-month period increased by the number of calendar months during all or part of which the creditor was precluded from engaging in collection activity by a stay in bankruptcy or similar bar under state or local law. The presumption that an identifiable event has occurred may be rebutted by the creditor if the creditor (or a third-party collection agency on behalf of the creditor) has engaged in significant, bona fide collection activity at any time during the 12-month period ending at the close of the calendar year, or if facts and circumstances existing as of January 31 of the calendar year following expiration of the 36-month period indicate that the indebtedness has not been discharged. For purposes of this paragraph (b)(2)(iv)—

(A) Significant, bona fide collection activity does not include merely nominal or ministerial collection action, such as an automated mailing;

(B) Facts and circumstances indicating that an indebtedness has not been discharged include the existence of a lien relating to the indebtedness against the debtor (to the extent of the value of the security), or the sale or packaging for sale of the indebtedness by the creditor; and

(C) In no event will an identifiable event described in paragraph (b)(2)(i)(H) of this section occur prior to December 31, 1997.

(v) [Reserved] For further guidance, see § 1.6050P–1T(b)(2)(v).

(3) *Permitted reporting*. If a discharge of indebtedness occurs before the date on which an identifiable event occurs, the discharge may, at the creditor's discretion, be reported under this section.

(c) *Indebtedness*. For purposes of this section and § 1.6050P–2, indebtedness means any amount owed to an applicable entity, including stated principal, fees, stated interest, penalties, administrative costs and fines. The amount of indebtedness discharged may represent all, or only a part, of the total amount owed to the applicable entity.

(d) *Exceptions from reporting requirement*—(1) *Certain bankruptcy discharges*—(i) *In general*. Reporting is required under this section in the case of a discharge of indebtedness in bankruptcy only if the creditor knows from information included in the reporting entity's books and records pertaining

to the indebtedness that the debt was incurred for business or investment purposes as defined in paragraph (d)(1)(ii) of this section.

(ii) *Business or investment debt.* Indebtedness is considered incurred for business purposes if it is incurred in connection with the conduct of any trade or business other than the trade or business of performing services as an employee. Indebtedness is considered incurred for investment purposes if it is incurred to purchase property held for investment, as defined in section 163(d)(5).

(2) *Interest.* The discharge of an amount of indebtedness that is interest is not required to be reported under this section.

(3) *Non-principal amounts in lending transactions.* In the case of a lending transaction, the discharge of an amount other than stated principal is not required to be reported under this section. For this purpose, a lending transaction is any transaction in which a lender loans money to, or makes advances on behalf of, a borrower (including revolving credits and lines of credit).

(4) *Indebtedness of foreign debtors held by foreign branches of U.S. financial institutions*—(i) *Reporting requirements.* [Reserved]

(ii) *Definition.* An indebtedness held by a foreign branch of a U.S. financial institution is described in this paragraph (d)(4) only if—

(A) The financial institution is engaged through a branch or office in the active conduct of a banking or similar business outside the United States;

(B) The branch or office is a permanent place of business that is regularly maintained, occupied, and used to carry on a banking or similar financial business;

(C) The business is conducted by at least one employee of the branch or office who is regularly in attendance at such place of business during normal working hours;

(D) The indebtedness is extended outside of the United States by the branch or office in connection with that trade or business; and

(E) The financial institution does not know or have reason to know that the debtor is a United States person.

(5) *Acquisition of indebtedness by related party.* No reporting is required under this section in the case of a deemed discharge of indebtedness under section 108(e)(4) (relating to the acquisition of an indebtedness by a person related to the debtor), unless the disposition of the indebtedness by the creditor was made with a view to avoiding the reporting requirements of this section.

(6) *Releases.* The release of a co-obligor is not required to be reported under this section if the remaining debtors remain liable for the full amount of any unpaid indebtedness.

(7) *Guarantors and sureties.* Solely for purposes of the reporting requirements of this section, a guarantor is not a debtor. Thus, in the case of guaranteed indebtedness, reporting under this section is not required with respect to a guarantor, whether or not there has been a default and demand for payment made upon the guarantor.

(e) *Additional rules*—(1) *Multiple debtors*—(i) *In general.* In the case of indebtedness of $10,000 or more incurred on or after January 1, 1995, that involves more than one debtor, a reporting entity is subject to the requirements of paragraph (a) of this section for each debtor discharged from such indebtedness. In the case of indebtedness incurred prior to January 1, 1995, and indebtedness of less than $10,000 incurred on or after January 1, 1995, involving multiple debtors, reporting under this section is required only with respect to the primary (or first-named) debtor. Additionally, only one return of information is required under this section if the reporting entity knows, or has reason to know, that co-obligors were husband and wife living at the same address when an indebtedness was incurred, and does not know or have reason to know that such circumstances have changed at the date of a discharge of the indebtedness. This paragraph (e)(1) applies to discharges of indebtedness after December 31, 1994.

(ii) *Amount to be reported.* In the case of multiple debtors jointly and severally liable on an indebtedness, the amount of discharged indebtedness required to be reported under this section with respect to each debtor is the total amount of indebtedness discharged.

For this purpose, multiple debtors are presumed to be jointly and severally liable on an indebtedness in the absence of clear and convincing evidence to the contrary.

(2) *Multiple creditors*—(i) *In general.* Except as otherwise provided in this paragraph (e)(2), if indebtedness is owned (or treated as owned for federal income tax purposes) by more than one creditor, each creditor that is an applicable entity must comply with the reporting requirements of this section with respect to any discharge of indebtedness of $600 or more allocable to such creditor. A creditor will be considered to have complied with the requirements of this section if a lead bank, fund administrator, or other designee of the creditor complies on its behalf in any reasonable manner, such as by filing a single return reporting the aggregate amount of indebtedness discharged, or by filing a return with respect to the portion of the discharged indebtedness allocable to the creditor. For purposes of this paragraph (e)(2)(i), any reasonable method may be used to determine the portion of discharged indebtedness allocable to each creditor.

(ii) *Partnerships.* For purposes of paragraph (e)(2)(i) of this section, indebtedness owned by a partnership is treated as owned by the partners.

(iii) *Pass-through securitized indebtedness arrangement*—(A) *Reporting requirements.* [Reserved]

(B) *Definition.* For purposes of this paragraph (e)(2)(iii), a pass-through securitized indebtedness arrangement is any arrangement whereby one or more debt obligations are pooled and held for twenty or more persons whose interests in the debt obligations are undivided co-ownership interests that are freely transferrable. Co-ownership interests that are actively traded personal property (as defined in § 1.1092(d)–1) are presumed to be freely transferrable and held by twenty or more persons.

(iv) *REMICs.* [Reserved]

(v) *No double reporting.* If multiple creditors are considered to hold interests in an indebtedness for purposes of this paragraph (e)(2) by virtue of holding ownership interests in an entity, and the entity is required to report a discharge of that indebtedness under paragraph (e)(5) of this section, then the multiple creditors are not required to report the discharge of indebtedness.

(3) *Coordination with reporting under section 6050J.* If, in the same calendar year, a discharge of indebtedness reportable under section 6050P occurs in connection with a transaction also reportable under section 6050J (relating to foreclosures and abandonments of secured property), an applicable entity need not file both a Form 1099–A and a Form 1099–C with respect to the same debtor. The filing requirements of section 6050J will be satisfied with respect to a borrower if, in lieu of filing Form 1099–A, a Form 1099–C is filed in accordance with the instructions for the filing of that form. This paragraph (e)(3) applies to discharges of indebtedness after December 31, 1994.

(4) *Direct or indirect subsidiary.* For purposes of section 6050P(c)(2)(C), the term direct or indirect subsidiary means a corporation in a chain of corporations beginning with an entity described in section 6050P(c)(2)(A), if at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of all classes of stock, of such corporation is directly owned by the entity described in section 6050P(c)(2)(A), or by one or more other corporations in the chain.

(5) *Entity formed or availed of to hold indebtedness.* Notwithstanding § 1.6050P–2(b)(3), if an entity (the transferee entity) is formed or availed of by an applicable entity (within the meaning of section 6050P(c)(1)) for the principal purpose of holding indebtedness acquired (including originated) by the applicable entity, then, for purposes of section 6050P(c)(2)(D), the transferee entity has a significant trade or business of lending money.

(6) *Use of magnetic media.* Any return required under this section must be filed on magnetic media to the extent required by section 6011(e) and the regulations thereunder. A failure to file on magnetic media when required constitutes a failure to file an information return under section 6721. Any person not required by section 6011(e) to file

returns on magnetic media may request permission to do so under applicable regulations and revenue procedures.

(7) *TIN solicitation requirement*—(i) *In general*. For purposes of reporting under this section, a reasonable effort must be made to obtain the correct name/taxpayer identification number (TIN) combination of a person whose indebtedness is discharged. A TIN obtained at the time an indebtedness is incurred satisfies the requirement of this section, unless the entity required to file knows that such TIN is incorrect. If the TIN is not obtained prior to the occurrence of an identifiable event, it must be requested of the debtor for purposes of satisfying the requirement of this paragraph (e)(7).

(ii) *Manner of soliciting TIN*. Solicitations made in the manner described in § 301.6724–1(e)(1)(i) and (2) of this chapter will be deemed to have satisfied the reasonable effort requirement set forth in paragraph (e)(7)(i) of this section. A TIN solicitation made after the occurrence of an identifiable event must clearly notify the debtor that the Internal Revenue Service requires the debtor to furnish its TIN, and that failure to furnish such TIN may subject the debtor to a $50 penalty imposed by the Internal Revenue Service. A TIN provided under this section is not required to be certified under penalties of perjury.

(8) *Recordkeeping requirements*. Any applicable entity required to file a return with the Internal Revenue Service under this section must also retain a copy of the return, or have the ability to reconstruct the data required to be included on the return under paragraph (a)(1) of this section, for at least four years from the date such return is required to be filed under paragraph (a)(4) of this section.

(9) *No multiple reporting*. If discharged indebtedness is reported under this section, no further reporting under this section is required for the amount so reported, notwithstanding that a subsequent identifiable event occurs with respect to the same amount. Further, no additional reporting or Form 1099–C correction is required if a creditor receives a payment of all or a portion of a discharged indebtedness reported under this section for a prior calendar year.

(f) *Requirement to furnish statement*—(1) *In general*. Any applicable entity required to file a return under this section must furnish to each person whose name is shown on such return a written statement that includes the following information—

(i) The information required by paragraph (a)(1) of this section;

(ii) The name, address, and TIN of the applicable entity required to file a return under paragraph (a) of this section;

(iii) A legend identifying the statement as important tax information that is being furnished to the Internal Revenue Service; and

(iv) Any other information required by Form 1099–C or its instructions, or current revenue procedures.

(2) *Furnishing copy of Form 1099–C*. The requirement to provide a statement to the debtor will be satisfied if the applicable entity furnishes copy B of the Form 1099–C or a substitute statement that complies with the requirements of the current revenue procedure for substitute Forms 1099.

(3) *Time and place for furnishing statement*. The statement required by this paragraph (f) must be furnished to the debtor on or before January 31 of the year following the calendar year in which the identifiable event occurs. The statement will be considered furnished to the debtor if it is mailed to the debtor's last known address.

(g) *Penalties*. For penalties for failure to comply with the requirements of this section, see sections 6721 through 6724.

(h) *Effective/applicability date*—(1) *In general*. The rules in this section apply to discharges of indebtedness after December 21, 1996, except paragraphs (e)(1) and (e)(3) of this section, which apply to discharges of indebtedness after December 31, 1994 and, except paragraph (e)(5) of this section, which applies to discharges of indebtedness occurring after December 31, 2004.

(2) *Earlier application*. Notwithstanding the provisions of paragraph (h)(1) of this section, an applicable financial entity may, at its discretion, apply any of the provisions of this section to any discharge of indebtedness

occurring on or after January 1, 1996, and before December 22, 1996.

[T.D. 8654, 61 FR 268, Jan. 4, 1996, as amended by T.D. 8895, 65 FR 50408, Aug. 18, 2000; T.D. 9160, 69 FR 62186, Oct. 25, 2004; T.D. 9430, 73 FR 66540, Nov. 10, 2008]

§ 1.6050P–1T Information reporting for discharges of indebtedness by certain entities (temporary).

(a) Through (b)(2)(i)(G) [Reserved] For further guidance, see § 1.6050P–1(a) through (b)(2)(i)(G).

(H) In the case of an entity described in section 6050P(c)(2)(A) through (C), the expiration of the non-payment testing period, as described in § 1.6050P–1(b)(2)(iv).

(b)(2)(ii) through (iv) [Reserved] For further guidance, see § 1.6050P–1(b)(2)(ii) through (iv).

(v) *Special rule for certain entities required to file in a year prior to 2008.* In the case of an entity described in section 6050P(c)(1)(A) or (c)(2)(D) required to file an information return in a tax year prior to 2008 due to an identifiable event described in paragraph (b)(2)(i)(H), and who failed to so file, the date of discharge is the first event, if any, described in paragraphs (b)(2)(i)(A) through (G) of this section that occurs after 2007.

(b)(3) through (g) [Reserved] For further guidance see § 1.6050P–1(b)(3) through (g).

(h) *Effective/applicability date*—(1) *In general.* The rules in this section apply to discharges of indebtedness after December 21, 1996, except paragraphs (e)(1) and (e)(3) of this section, which apply to discharges of indebtedness after December 31, 1994, except paragraph (e)(5) of this section, which applies to discharges of indebtedness occurring after December 31, 2004, and except paragraphs (b)(2)(i)(H) and (b)(2)(v) of this section, which apply to discharges of indebtedness occurring after November 10, 2008.

(2) [Reserved] For further guidance, see § 1.6050P–1(h)(2).

(i) *Expiration date.* The applicability of this section will expire on or before November 7, 2011.

[T.D. 9430, 73 FR 66540, Nov. 10, 2008, as amended at 73 FR 75325, Dec. 11, 2008]

§ 1.6050P–2 Organization a significant trade or business of which is the lending of money.

(a) *In general.* For purposes of section 6050P(c)(2)(D), the lending of money is a significant trade or business of an organization in a calendar year if the organization lends money on a regular and continuing basis during the calendar year.

(b) *Safe harbors*—(1) *Organizations not subject to section 6050P in the previous calendar year.* For an organization that was not required to report under section 6050P in the previous calendar year, the lending of money is not treated as a significant trade or business for the calendar year in which the lending occurs if gross income from lending money (as described in paragraph (d) of this section) in the organization's most recent test year (as defined in paragraph (f) of this section) is both less than $5 million and less than 15 percent of the organization's gross income for that test year.

(2) *Organizations that were subject to section 6050P in the previous calendar year.* For an organization that was required to report under section 6050P for the previous calendar year, the lending of money is not treated as a significant trade or business for the calendar year in which the lending occurs if gross income from lending money (as described in paragraph (d) of this section) in each of the organization's three most recent test years is both less than $3 million and less than 10 percent of the organization's gross income for that test year.

(3) *No test year.* The lending of money is not treated as a significant trade or business for an organization for the calendar year in which the lending occurs if the organization does not have a test year for that calendar year.

(c) *Seller financing.* If the principal trade or business of an organization is selling nonfinancial goods or providing nonfinancial services and if the organization extends credit to the purchasers of those goods or services to finance the purchases, then, for purposes of section 6050P(c)(2)(D), these extensions of credit are not a significant trade or business of lending money.

(d) *Gross income from lending of money*. For purposes of this section, gross income from lending of money includes—

(1) Income from interest, including qualified stated interest, original issue discount, and market discount;

(2) Gains arising from the sale or other disposition of indebtedness;

(3) Penalties with respect to indebtedness (whether or not the penalty is interest for Federal tax purposes); and

(4) Fees with respect to indebtedness, including merchant discount or interchange (whether or not the fee is interest for Federal tax purposes).

(e) *Acquisition of an indebtedness from a person other than the debtor included in lending money*. For purposes of this section, lending money includes acquiring an indebtedness not only from the debtor at origination but also from a prior holder of the indebtedness. Gross income arising from indebtedness is gross income from the lending of money without regard to who originated the indebtedness. If an organization acquires an indebtedness, the organization is required to report any cancellation of the indebtedness if the organization is engaged in a significant trade or business of lending money.

(f) *Test year*. For any calendar year, a *test year* is a taxable year of the organization that ends before July 1 of the previous calendar year.

(g) *Predecessor organization*. If an organization acquires substantially all of the property that was used in a trade or business of some other organization (the predecessor) (including when two or more corporations are parties to a merger agreement under which the surviving corporation becomes the owner of the assets and assumes the liabilities of the absorbed corporation(s)) or was used in a separate unit of the predecessor, then whether the organization at issue qualifies for one of the safe harbors in paragraph (b) of this section is determined by also taking into account the test years, reporting obligations, and gross income of the predecessor.

(h) *Examples*. The rules of this section are illustrated by the following examples:

Example 1. (i) *Facts*. Finance Company A, a calendar year taxpayer, was formed in Year 1 as a non-bank subsidiary of Manufacturing Company and has no predecessor. A lends money to purchasers of Manufacturing Company's products on a regular and continuing basis to finance the purchase of those products. A's gross income from stated interest in Year 1 is $4.7 million. In Year 1, A's gross income from fees and penalties with respect to the indebtedness is $0.5 million, and A has no other gross income from lending money within the meaning of paragraph (d) of this section.

(ii) *Results*. Section 6050P does not require A to report discharges of indebtedness occurring in Years 1 or 2, because A has no test year for those years. Notwithstanding that A lends money in those years on a regular and continuing basis, under paragraph (b)(3) of this section, A does not have a significant trade or business of lending money in those years for purposes of section 6050P(c)(2)(D). However, for Year 3, A's test year is Year 1. A's gross income from lending in Year 1 is not less than $5 million for purposes of the applicable safe harbor of paragraph (b)(1) of this section. Because A lends money on a regular and continuing basis and does not meet the applicable safe harbor, section 6050P requires A to report discharges of indebtedness occurring in Year 3.

Example 2. (i) *Facts*. The facts are the same as in *Example 1*, except that A is a division of Manufacturing Company, rather than a separate subsidiary. Manufacturing Company's principal activity is the manufacture and sale of non-financial products, and, other than financing the purchase of those products, Manufacturing Company does not extend credit or otherwise lend money.

(ii) *Results*. Under paragraph (c) of this section, that financing activity is not a significant trade or business of lending money for purposes of section 6050P(c)(2)(D), and section 6050P does not require Manufacturing Company to report discharges of indebtedness.

Example 3. (i) *Facts*. Company B, a calendar year taxpayer, is formed in Year 1. B has no predecessor and a part of its activities consists of the lending of money. B packages and sells part of the indebtedness it originates and holds the remainder. B is engaged in these activities on a regular and continuing basis. For Year 1, the sum of B's gross income from sales of the indebtedness, plus other income described in paragraph (d) of this section, is only $4.8 million, but it is 16% of B's gross income in Year 1.

(ii) *Results*. Because B lends money on a regular and continuing basis and does not meet the applicable safe harbor of paragraph (b)(1) of this section, section 6050P requires B to report discharges of indebtedness occurring in Year 3. B is not required to report discharges of indebtedness in Years 1 and 2 because B has no test year for Years 1 and 2.

Example 4. (i) *Facts*. The facts are the same as in *Example 3*. In addition, in each of Years

2, 3, and 4, the sum of B's gross income from sales of the indebtedness, plus other income described in paragraph (d) of this section, is less than both $3 million and 10% of B's gross income.

(ii) *Results*. (A) Because B was required to report under section 6050P for Year 3, the applicable safe harbor for Year 4 is paragraph (b)(2) of this section, which is satisfied only if B's gross income from lending activities for each of the three most recent test years is less than both $3 million and 10% of B's gross income. For Year 4, even though B has only two test years, B's gross income in one of those test years, Year 1, causes B to fail to meet this safe harbor. Accordingly, B is required to report discharges of indebtedness under section 6050P in Year 4. For Year 5, B's three most recent test years are Years 1, 2, and 3. However, B's gross income from lending activities in Year 1 is not less than $3 million and 10% of B's gross income. Accordingly, section 6050P requires B to report discharges of indebtedness in Year 5.

(B) For Year 6, B satisfies the applicable safe harbor requirements of paragraph (b)(2) of this section for each of the three most recent test years (Years 2, 3, and 4). Therefore, section 6050P does not require B to report discharges of indebtedness in Year 6. Because B is not required to report for Year 6, the applicable safe harbor for Year 7 is the one contained in paragraph (b)(1) of this section, and thus the only relevant test year is Year 5.

Example 5. (i) *Facts*. (A) Company C, a calendar year taxpayer, was formed in Year 1 and, on a regular and continuing basis, enters into the following transactions with its clients, all of whom are unrelated parties to C. C does not have any other income.

(B) C's clients sell goods to customers, frequently accepting as payment accounts receivable that are due in 30 to 90 days. Under a contract with each client, C investigates the creditworthiness of the client's customers with respect to the prospective sales, and, for each customer, C determines whether, and to what extent, C is willing to assume the risk of loss on accounts receivable to be issued by the customer. C's decision whether to assume risk of loss may be based on an evaluation of the credit quality of particular customers or on the aggregate credit quality of all of the client's prospective customers. If C is unwilling to assume the risk, the client either may refuse to extend any credit to the customer or may accept the account receivable and bear the risk of loss.

(C) Pursuant to some contracts between C's clients and C, C's clients assign legal title to the accounts receivable to C when the accounts receivable are issued by the customers. For these accounts receivable, C agrees to undertake collections and to remit the amounts collected to the client, less a fee of 0.70 percent of the face value of the accounts receivable. Pursuant to other contracts between C's clients and C, C's clients retain legal title to the accounts receivable and retain the initial collection responsibility. For these accounts receivable, C's fee is reduced to 0.35 percent. Both groups of accounts receivable include accounts receivable for which C has assumed the risk of loss and accounts receivable for which C has not assumed the risk of loss.

(D) Based on all the facts and circumstances, C acquires ownership for Federal tax purposes of some, but not all, of the accounts receivable that it has agreed to collect and of some, but not all, of the accounts receivable for which the client has retained collection responsibility.

(E) In Year 1, C's total fee income with respect to accounts receivable of which it acquired tax ownership was $2 million. C's fee income in Year 1 from accounts receivable of which it did not acquire tax ownership was $700,000. C does not have any other income for Year 1.

(F) In Year 3, there were discharges of $950,000, representing $100,000 of customer defaults on those accounts receivable of which C was the owner for Federal tax purposes at the time of the identifiable event marking the discharge and $850,000 of customer defaults on the accounts receivable of which the clients, and not C, were the owner. Whenever C determined the uncollectibility of an account receivable for which it had not assumed the risk of loss, C reassigned title to the account receivable to the appropriate client. Each defaulting customer defaulted on an account receivable with an outstanding balance of at least $600.

(ii) *Results*. (A) For Year 3, C's test year is Year 1. Under paragraph (e) of this section, C's $2 million fee income from the accounts receivable of which it acquired tax ownership is ''gross income from lending money'' for purposes of paragraph (b) of this section, because C was the owner of the accounts for Federal tax purposes. Under paragraph (e) of this section, C's $700,000 fee income from the accounts receivable of which it did not acquire tax ownership is not ''gross income from lending money'' for purposes of paragraph (b) of this section, because C was not the owner of the accounts receivable for Federal tax purposes. In Year 1, therefore, C's gross income from lending money is less than $5 million but is not less than 15% of C's gross income. Because C lends money on a regular and continuing basis and does not meet the applicable safe harbor, section 6050P requires C to report discharges of indebtedness occurring in Year 3.

(B) In Year 3, section 6050P requires C to report the $100,000 of discharges of the accounts receivable of which C was the owner for Federal tax purposes at the time of the identifiable event marking the discharge.

Unless an exception to reporting under paragraph (b) or (c) of this section applies, section 6050P requires C's clients to report the $850,000 of discharges of the accounts receivable of which C did not become the owner.

(i) *Effective date.* This section applies to discharges of indebtedness occurring on or after January 1, 2005.

[T.D. 9160, 69 FR 62186, Oct. 25, 2004]

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[T.D. 8992, 67 FR 20904, Apr. 29, 2002, as amended by T.D. 9029, 67 FR 77681, Dec. 19, 2002]

§ 1.6050S–1 Information reporting for qualified tuition and related expenses.

(a) *Information reporting requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, any eligible educational institution (as defined in section 25A(f)(2) and the regulations thereunder) (an institution) that enrolls (as determined under paragraph (d)(1) of this section) any individual for any academic period (as defined in the regulations under section 25A), and any person that is engaged in a trade or business of making payments under an insurance arrangement as reimbursements or refunds (or other similar amounts) of qualified tuition and related expenses (as defined in section 25A(f)(1) and the regulations thereunder) (an insurer) must—

(i) File an information return, as described in paragraph (b) of this section, with the Internal Revenue Service (IRS) with respect to each individual described in paragraph (b) of this section; and

(ii) Furnish a statement, as described in paragraph (c) of this section, to each individual described in paragraph (c) of this section.

(2) *Exceptions*—(i) *No reporting by institution or insurer for nonresident alien individuals.* The information reporting requirements of this section do not apply with respect to any individual who is a nonresident alien (as defined in section 7701(b) and § 301.7701(b)–3 of this chapter) during the calendar year, unless the individual requests the institution or insurer to report. If a nonresident alien individual requests an institution or insurer to report, the institution or insurer must comply with the requirements of this section for the

calendar year with respect to which the request is made.

(ii) *No reporting by institutions for non-credit courses*—(A) *In general*. The information reporting requirements of this section do not apply with respect to any course for which no academic credit is offered by the institution.

(B) *Academic credit defined*. *Academic credit* means credit offered by an institution for the completion of course work leading toward a post-secondary degree, certificate, or other recognized post-secondary educational credential.

(C) *Example*. The following example illustrates the rules of this paragraph (a)(2)(ii):

Example. Student A, a medical doctor, takes a course at University X's medical school. Student A takes the course to fulfill State Y's licensing requirement that medical doctors attend continuing medical education courses each year. Student A is not enrolled in a degree program at University X and takes the medical course through University X's continuing professional education division. University X does not offer credit toward a post-secondary degree on an academic transcript for the completion of the course but gives Student A a certificate of attendance upon completion. Under this paragraph (a)(2)(ii), University X is not subject to the information reporting requirements of section 6050S and this section for the medical education course taken by Student A.

(iii) *No reporting by institutions for individuals whose qualified tuition and related expenses are waived or are paid with scholarships*. The information reporting requirements of this section do not apply with respect to any individual whose qualified tuition and related expenses are waived in their entirety or are paid entirely with scholarships.

(iv) *No reporting by institutions for individuals whose qualified tuition and related expenses are covered by a formal billing arrangement*—(A) *In general*. The information reporting requirements of this section do not apply with respect to any individual whose qualified tuition and related expenses are covered by a formal billing arrangement as defined in paragraph (a)(2)(iv)(B) of this section.

(B) *Formal billing arrangement defined*. A *formal billing arrangement* means—

(*1*) An arrangement in which the institution bills only an employer for education furnished by the institution to an individual who is the employer's employee and does not maintain a separate financial account for that individual;

(*2*) An arrangement in which the institution bills only a governmental entity for education furnished by the institution to an individual and does not maintain a separate financial account for that individual; or

(*3*) Any other similar arrangement in which the institution bills only an institutional third party for education furnished to an individual and does not maintain a separate financial account for that individual, but only if designated as a formal billing arrangement by the Commissioner in published guidance of general applicability or in guidance directed to participants in specific arrangements.

(b) *Requirement to file return*—(1) *In general*. Institutions may elect to report either the information described in paragraph (b)(2) of this section, or the information described in paragraph (b)(3) of this section. Once an institution elects to report under either paragraph (b)(2) or (3) of this section, the institution must use the same reporting method for all calendar years in which it is required to file returns, unless permission is granted to change reporting methods. Paragraph (b)(2) of this section requires institutions to report, among other information, the amount of payments received during the calendar year for qualified tuition and related expenses. Institutions must report separately adjustments made during the calendar year that relate to payments received for qualified tuition and related expenses that were reported for a prior calendar year. For purposes of paragraph (b)(2) of this section, an adjustment made to payments received means a reimbursement or refund. Paragraph (b)(3) requires institutions to report, among other information, the amounts billed during the calendar year for qualified tuition and related expenses. Institutions must report separately adjustments made during the calendar year that relate to amounts billed for qualified tuition and related expenses that were reported for a prior calendar year. For

purposes of paragraph (b)(3) of this section, an adjustment made to amounts billed means a reduction in charges. Insurers must report the information described in paragraph (b)(4) of this section.

(2) *Information reporting requirements for institutions that elect to report payments received for qualified tuition and related expenses*—(i) *In general*. Except as provided in paragraph (a)(2) of this section, an institution reporting payments received for qualified tuition and related expenses must file an information return with the IRS on Form 1098–T, ''Tuition Statement,'' with respect to each individual enrolled (as determined in paragraph (d)(1) of this section) for an academic period beginning during the calendar year or during a prior calendar year and for whom a transaction described in paragraphs (b)(2)(ii)(C), (E), (F) or (G) of this section is made during the calendar year. An institution may use a substitute Form 1098–T if the substitute form complies with applicable revenue procedures relating to substitute forms (*see* § 601.601(d)(2) of this chapter).

(ii) *Information included on return*. An institution reporting payments received for qualified tuition and related expenses must include on Form 1098–T—

(A) The name, address, and taxpayer identification number (TIN)(as defined in section 7701(a)(41)) of the institution;

(B) The name, address, and TIN of the individual who is, or has been, enrolled by the institution;

(C) The amount of payments of qualified tuition and related expenses that the institution received from any source with respect to the individual during the calendar year;

(D) An indication by the institution whether any payments received for qualified tuition and related expenses reported for the calendar year relate to an academic period that begins during the first three months of the next calendar year;

(E) The amount of any scholarships or grants for the payment of the individual's costs of attendance that the institution administered and processed during the calendar year;

(F) The amount of any reimbursements or refunds of qualified tuition and related expenses made during the calendar year with respect to the individual that relate to payments of qualified tuition and related expenses that were reported by the institution for a prior calendar year;

(G) The amount of any reductions to the amount of scholarships or grants for the payment of the individual's costs of attendance that were reported by the institution with respect to the individual for a prior calendar year;

(H) A statement or other indication showing whether the individual was enrolled for at least half of the normal full-time work load for the course of study the individual is pursuing for at least one academic period that begins during the calendar year (see section 25A and the regulations thereunder);

(I) A statement or other indication showing whether the individual was enrolled in a program leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential; and

(J) Any other information required by Form 1098–T and its instructions.

(iii) *Reportable amount of payments received for qualified tuition and related expenses during calendar year determined*. The amount of payments received for qualified tuition and related expenses with respect to an individual during the calendar year that is reportable on Form 1098–T is determined by netting the amount of payments received (as defined in paragraph (b)(2)(v) of this section) for qualified tuition and related expenses during the calendar year against any reimbursements or refunds (as defined in paragraph (b)(2)(vi) of this section) made during the calendar year that relate to payments received for qualified tuition and related expenses during the same calendar year.

(iv) *Separate reporting of reimbursements or refunds of payments of qualified tuition and related expenses that were reported for a prior calendar year*. An institution must separately report on Form 1098–T any reimbursements or refunds (as defined in paragraph (b)(2)(vi) of this section) made during the current calendar year that relate to payments of qualified tuition and related expenses that were reported by the institution for a prior calendar year. Such reimbursements or refunds shall

not be netted against the payments received for qualified tuition and related expenses during the current calendar year.

(v) *Payments received for qualified tuition and related expenses determined.* For purposes of determining the amount of payments received for qualified tuition and related expenses during a calendar year, payments received with respect to an individual during the calendar year from any source (except for any scholarship or grant that, by its terms, must be applied to expenses other than qualified tuition and related expenses, such as room and board) are treated as payments of qualified tuition and related expenses up to the total amount billed by the institution for such expenses. For purposes of this section, a payment includes any positive account balance (such as any reimbursement or refund credited to an individual's account) that an institution applies toward current charges.

(vi) *Reimbursements or refunds of payments for qualified tuition and related expenses determined.* For purposes of determining the amount of reimbursements or refunds made of payments received for qualified tuition and related expenses, any reimbursement or refund made with respect to an individual during a calendar year (except for any refund of a scholarship or grant that, by its terms, was required to be applied to expenses other than qualified tuition and related expenses, such as room and board) is treated as a reimbursement or refund of payments for qualified tuition and related expenses up to the amount of any reduction in charges for such expenses. For purposes of this section, a reimbursement or refund includes amounts that an institution credits to an individual's account, as well as amounts disbursed to, or on behalf of, the individual.

(vii) *Examples.* The following examples illustrate the rules in this paragraph (b)(2):

Example 1. (i) In early August 2003, University X bills enrolled Student A $10,000 for qualified tuition and related expenses and $6,000 for room and board for the 2003 Fall semester. In late August 2003, Student A pays $11,000 to University X. In early September 2003, Student A drops to half-time enrollment for the 2003 Fall semester. In late September 2003, University X credits $5,000 to Student A's account, reflecting a $5,000 reduction in charges for qualified tuition and related expenses. In late September 2003, University X applies the $5,000 positive account balance toward current charges.

(ii) Under paragraph (b)(2)(v) of this section, the $11,000 payment is treated as a payment of qualified tuition and related expenses up to the $10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the $5,000 credited to the student's account is treated as a reimbursement or refund of payments for qualified tuition and related expenses, because the current year charges for qualified tuition and related expenses were reduced by $5,000. Under paragraph (b)(2)(iii) of this section, University X is required to net the $10,000 payment received for qualified tuition and related expenses during 2003 against the $5,000 reimbursement or refund of payments received for qualified tuition and related expenses during 2003. Therefore, Institution X is required to report $5,000 of payments received for qualified tuition and related expenses during 2003.

Example 2. (i) The facts are the same as in Example 1, except that Student A pays the full $16,000 in late August 2003. In late September 2003, University X reduces the tuition charges by $5,000 and issues a $5,000 refund to Student A.

(ii) Under paragraph (b)(2)(v) of this section, the $16,000 payment is treated as a payment of qualified tuition and related expenses up to the $10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the $5,000 refund is treated as reimbursement or refund of payments for qualified tuition and related expenses, because the current year charges for qualified tuition and related expenses were reduced by $5,000. Under paragraph (b)(2)(iii) of this section, University X is required to net the $10,000 payment received for qualified tuition and related expenses during 2003 against the $5,000 reimbursement or refund of payments received for qualified tuition and related expenses during 2003. Therefore, Institution X is required to report $5,000 of payments received for qualified tuition and related expenses during 2003.

Example 3. (i) The facts are the same as in *Example 1,* except that Student A is enrolled full-time, and, in early September 2003, Student A decides to live at home with her parents. In late September 2003, University X adjusts Student A's account to eliminate room and board charges and issues a $1,000 refund to Student A.

(ii) Under paragraph (b)(2)(v) of this section, the $11,000 payment is treated as a payment of qualified tuition and related expenses up to the $10,000 billed for qualified

tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the $1,000 refund is not treated as reimbursement or refund of payments for qualified tuition and related expenses, because there is no reduction in charges for qualified tuition and related expenses. Therefore, under paragraph (b)(2)(iii) of this section, University X is required to report $10,000 of payments received for qualified tuition and related expenses during 2003.

Example 4. (i) In early December 2003, College Y bills enrolled Student B $10,000 for qualified tuition and related expenses and $6,000 for room and board for the 2004 Spring semester. In late December 2003, Student B pays $16,000. In mid-January 2004, after the 2004 Spring semester classes begin, Student B drops to half-time enrollment. In mid-January 2004, College Y credits Student B's account with $5,000, reflecting a $5,000 reduction in charges for qualified tuition and related expenses, but does not issue a refund to Student B. In early August 2004, College Y bills Student B $10,000 for qualified tuition and related expenses and $6,000 for room and board for the 2004 Fall semester. In early September 2004, College Y applies the $5,000 positive account balance toward Student B's $16,000 bill for the 2004 Fall semester. In late September 2004, Student B pays $6,000 towards the charges.

(ii) In the reporting for calendar year 2003, under paragraph (b)(2)(v) of this section, the $16,000 payment in December 2003 is treated as a payment of qualified tuition and related expenses up to the $10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(iii) of this section, College Y is required to report $10,000 of payments received for qualified tuition and related expenses during 2003. In addition, College Y is required to indicate that the payments reported for 2003 relate to an academic period that begins during the first three months of the next calendar year.

(iii) In the reporting for calendar year 2004, under paragraph (b)(2)(vi) of this section, the $5,000 credited to Student B's account is treated as a reimbursement or refund of qualified tuition and related expenses, because the charges for qualified tuition and related expenses were reduced by $5,000. Under paragraph (b)(2)(iv) of this section, the $5,000 reimbursement or refund of qualified tuition and related expenses must be separately reported on Form 1098–T because it relates to payments of qualified tuition and related expenses reported by College Y for 2003. Under paragraph (b)(2)(v) of this section, the $5,000 positive account balance that is applied toward charges for the 2004 Fall semester is treated as a payment. Therefore, College Y received total payments of $11,000 during 2004 (the $5,000 credit plus the $6,000 payment). Under paragraph (b)(2)(v) of this section, the $11,000 of total payments are treated as a payment of qualified tuition and related expenses up to the $10,000 billed for such expenses. Therefore, for 2004, College Y is required to report $10,000 of payments received for qualified tuition and related expenses during 2004 and a $5,000 refund of payments of qualified tuition and related expenses reported for 2003.

(3) *Information reporting requirements for institutions that elect to report amounts billed for qualified tuition and related expenses*—(i) *In general.* Except as provided in paragraph (a)(2) of this section, an institution reporting amounts billed for qualified tuition and related expenses must file an information return on Form 1098–T with respect to each individual enrolled (as determined in paragraph (d)(1) of this section) for an academic period beginning during the calendar year or during a prior calendar year and for whom a transaction described in paragraphs (b)(3)(ii)(C), (E), (F) or (G) of this section is made during the calendar year. An institution may use a substitute Form 1098–T if the substitute form complies with applicable revenue procedures relating to substitute forms (*see* § 601.601(d)(2) of this chapter).

(ii) *Information included on return.* An institution reporting amounts billed for qualified tuition and related expenses must include on Form 1098–T—

(A) The name, address, and taxpayer identification number (TIN)(as defined in section 7701(a)(41)) of the institution;

(B) The name, address, and TIN of the individual who is, or has been, enrolled by the institution;

(C) The amount billed for qualified tuition and related expenses with respect to the individual during the calendar year;

(D) An indication by the institution whether any amounts billed for qualified tuition and related expenses reported for the calendar year relate to an academic period that begins during the first three months of the next calendar year;

(E) The amount of any scholarships or grants for the payment of the individual's costs of attendance that the institution administered and processed during the calendar year;

(F) The amount of any reductions in charges made during the calendar year

with respect to the individual that relate to amounts billed for qualified tuition and related expenses that were reported by the institution for a prior calendar year;

(G) The amount of any reductions to the amount of scholarships or grants for the payment of the individual's costs of attendance that were reported by the institution with respect to the individual for a prior calendar year;

(H) A statement or other indication showing whether the individual was enrolled for at least half of the normal full-time work load for the course of study the individual is pursuing for at least one academic period that begins during the calendar year (see section 25A and the regulations thereunder);

(I) A statement or other indication showing whether the individual was enrolled in a program leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential; and

(J) Any other information required by Form 1098–T and its instructions.

(iii) *Reportable amounts billed for qualified tuition and related expenses during calendar year determined*. The amount billed for qualified tuition and related expenses with respect to an individual during the calendar year that is reportable on Form 1098–T is determined by netting the amounts billed for qualified tuition and related expenses during the calendar year against any reductions in charges for qualified tuition and related expenses made during the calendar year that relate to amounts billed for qualified tuition and related expenses during the same calendar year.

(iv) *Separate reporting of reductions made to amounts billed for qualified tuition and related expenses that were reported for a prior calendar year*. An institution must separately report on Form 1098–T any reductions in charges made during the current calendar year that relate to amounts billed for qualified tuition and related expenses that were reported by the institution for a prior calendar year. Such reductions shall not be netted against amounts billed for qualified tuition and related expenses during the current calendar year.

(v) *Examples*. The following examples illustrate the rules in this paragraph (b)(3):

Example 1. (i) In early August 2003, University X bills enrolled Student A $10,000 for qualified tuition and related expenses and $6,000 for room and board for the 2003 Fall semester. In late August 2003, Student A pays $11,000 to University X. In early September 2003, Student A drops to half-time enrollment for the 2003 Fall semester. In late September 2003, University X adjusts Student A's account and reduces the charges for qualified tuition and related expenses by $5,000 to reflect half-time enrollment. In late September 2003, University X applies the $5,000 account balance toward current charges.

(ii) Under paragraph (b)(3)(iii) of this section, University X is required to net the $10,000 amount of qualified tuition and related expenses billed during 2003 against the $5,000 reduction in charges for qualified tuition and related expenses during 2003. Therefore, Institution X is required to report $5,000 in amounts billed for qualified tuition and related expenses during 2003.

Example 2. (i) The facts are the same as in Example 1, except that, in addition, in early December 2003, College X bills Student A $10,000 for qualified tuition and related expenses and $6,000 for room and board for the 2004 Spring semester. In early January 2004, Student A pays $16,000. In mid-January 2004, after the 2004 Spring semester classes begin, Student A drops to half-time enrollment. In mid-January 2004, College X credits $5,000 to Student A's account, reflecting a $5,000 reduction in charges for qualified tuition and related expenses, but does not issue a refund check to Student A. In early August 2004, College X bills Student A $10,000 for qualified tuition and related expenses and $6,000 for room and board for the 2004 Fall semester. In early September 2004, College X applies the $5,000 positive account balance toward Student A's $16,000 bill for the 2004 Fall semester. In late September 2004, Student A pays $6,000 toward the charges.

(ii) In the reporting for calendar year 2003, under paragraph (b)(3)(iii) of this section, College X is required to report $15,000 amounts billed for qualified tuition and related expenses during 2003 ($5,000 for the 2003 Fall semester and $10,000 for the 2004 Spring semester). In addition, College X is required to indicate that some of the amounts billed for qualified tuition and related expenses reported for 2003 relate to an academic period that begins during the first three months of the next calendar year.

(iii) In the reporting for calendar year 2004, under paragraph (b)(3)(iv) of this section, the $5,000 reduction in charges for qualified tuition and related expenses must be separately reported on Form 1098–T because it relates to

amounts billed for qualified tuition and related expenses that were reported by College X for 2003. Under paragraph (b)(3)(iii) of this section, College X is required to report $10,000 in amounts billed for qualified tuition and related expenses during 2004.

(4) *Requirements for insurers*—(i) *In general.* Except as otherwise provided in this section, an insurer must file an information return for each individual with respect to whom reimbursements or refunds of qualified tuition and related expenses are made during the calendar year on Form 1098–T. An insurer may use a substitute Form 1098–T if the substitute form complies with applicable revenue procedures relating to substitute forms (*see* § 601.601(d)(2) of this chapter).

(ii) *Information included on return.* An insurer must include on Form 1098–T—

(A) The name, address, and taxpayer identification number (TIN) (as defined in section 7701(a)(41)) of the insurer;

(B) The name, address, and TIN of the individual with respect to whom reimbursements or refunds of qualified tuition and related expenses were made;

(C) The aggregate amount of reimbursements or refunds of qualified tuition and related expenses that the insurer made with respect to the individual during the calendar year; and

(D) Any other information required by Form 1098–T and its instructions.

(5) *Time and place for filing return*—(i) *In general.* Except as provided in paragraphs (b)(5)(ii) and (iii) of this section, Form 1098–T must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which payments were received, or amounts were billed, for qualified tuition or related expenses, or reimbursements, refunds, or reductions of such amounts were made. An institution or insurer must file Form 1098–T with the IRS according to the instructions to Form 1098–T.

(ii) *Return for nonresident alien individual.* In general, an institution or insurer is not required to file a return on behalf of a nonresident alien individual. However, if a nonresident alien individual requests an institution or insurer to report, the institution or insurer must file a return described in paragraph (b) of this section with the IRS on or before the date prescribed in paragraph (b)(5)(i) of this section, or on or before the thirtieth day after the request, whichever is later.

(iii) *Extensions of time.* The IRS may grant an institution or insurer an extension of time to file returns required in this section upon a showing of good cause. See General Instructions for Forms 1099 series, 1098 series, 5498 series, and W-2G, ''Certain Gambling Winnings,'' and applicable revenue procedures for rules relating to extensions of time to file (*see* § 601.601(d)(2) of this chapter).

(6) *Use of magnetic media. See* section 6011(e) and § 301.6011–2 of this chapter for rules relating to the requirement to file Forms 1098–T on magnetic media.

(c) *Requirement to furnish statement*—(1) *In general.* An institution or insurer must furnish a statement to each individual for whom it is required to file a Form 1098–T. The statement must include—

(i) The information required under paragraph (b) of this section;

(ii) A legend that identifies the statement as important tax information that is being furnished to the IRS;

(iii) Instructions that—

(A) State that the statement reports either total payments received by the institution for qualified tuition and related expenses during the calendar year, or total amounts billed by the institution for qualified tuition and related expenses during the calendar year, or the total reimbursements or refunds made by the insurer;

(B) State that, under section 25A and the regulations thereunder, the taxpayer may claim an education tax credit only with respect to qualified tuition and related expenses actually paid during the calendar year; and that the taxpayer may not be able to claim an education tax credit with respect to the entire amount of payments received, or amounts billed, for qualified tuition and related expenses reported for the calendar year;

(C) State that the amount of any scholarships or grants reported for the calendar year and other similar amounts not reported (because they are not administered and processed by the institution) may reduce the

amount of any allowable education tax credit for the taxable year;

(D) State that the amount of any reimbursements or refunds of payments received, or reductions in charges, for qualified tuition and related expenses, or any reductions to the amount of scholarships or grants, reported by the institution with respect to the individual for a prior calendar year may affect the amount of any allowable education tax credit for the prior calendar year (and may result in an increase in tax liability for the year of the refund);

(E) State that the amount of any reimbursements or refunds of qualified tuition and related expenses reported by an insurer may reduce the amount of an allowable education tax credit for a taxable year (and may result in an increase in tax liability for the year of the refund);

(F) State that the taxpayer should refer to relevant IRS forms and publications, and should not refer to the institution or the insurer, for explanations relating to the eligibility requirements for, and calculation of, any allowable education tax credit; and

(G) Include the name, address, and phone number of the information contact of the institution or insurer that filed the Form 1098–T.

(2) *Time and manner for furnishing statement*—(i) *In general*. Except as provided in paragraphs (c)(2)(ii) and (iii) of this section, an institution or insurer must furnish the statement described in paragraph (c)(1) of this section to each individual for whom it is required to file a return, on or before January 31 of the year following the calendar year in which payments were received, or amounts were billed, for qualified tuition and related expenses, or reimbursements, refunds, or reductions of such amounts were made. If mailed, the statement must be sent to the individual's permanent address, or the individual's temporary address if the institution or insurer does not know the individual's permanent address. If furnished electronically, the statement must be furnished in accordance with the applicable regulations.

(ii) *Statement to nonresident alien individual*. If an information return is filed for a nonresident alien individual, the institution or insurer must furnish a statement described in paragraph (c)(1) of this section to the individual in the manner prescribed in paragraph (c)(2)(i) of this section. The statement must be furnished on or before the later of the date prescribed in paragraph (c)(2)(i) of this section or the thirtieth day after the nonresident alien's request to report.

(iii) *Extensions of time*. The IRS may grant an institution or insurer an extension of time to furnish the statements required in this section upon a showing of good cause. *See* General Instructions for Forms 1099 series, 1098 series, 5498 series, and W-2G, ''Certain Gambling Winnings,'' and applicable revenue procedures for rules relating to extensions of time to furnish statements (*see* § 601.601(d)(2) of this chapter).

(3) Copy of Form 1098–T. An institution or insurer may satisfy the requirement of this paragraph (c) by furnishing either a copy of Form 1098–T and its instructions or another document that contains all of the information filed with the IRS and the information required by paragraph (c)(1) of this section if the document complies with applicable revenue procedures relating to substitute statements (*see* § 601.601(d)(2) of this chapter).

(d) *Special rules*—(1) *Enrollment determined*. An institution may determine its enrollment for each academic period under its own rules and policies for determining enrollment or as of any of the following dates—

(i) 30 days after the first day of the academic period;

(ii) A date during the academic period on which enrollment data must be collected for purposes of the Integrated Post Secondary Education Data System administered by the Department of Education; or

(iii) A date during the academic period on which the institution must report enrollment data to the State, the institution's governing body, or some other external governing body.

(2) *Payments of qualified tuition and related expenses received or collected by one or more persons*—(i) *In general*. Except as otherwise provided in paragraph (d)(2)(ii) of this section, if a person collects or receives payments of qualified tuition and related expenses on behalf

of another person (e.g., an institution), the person collecting or receiving payments must satisfy the requirements of paragraphs (b) and (c) of this section. In this case, those requirements do not apply to the transfer of the payments to the institution.

(ii) *Exception*. If the person collecting or receiving payments of qualified tuition and related expenses on behalf of another person (e.g., an institution) does not possess the information needed to comply with the requirements of paragraphs (b) and (c) of this section, the other person must satisfy those requirements.

(3) *Governmental units*. An institution or insurer that is a governmental unit, or an agency or instrumentality of a governmental unit, is subject to the requirements of paragraphs (b) and (c) of this section and an appropriately designated officer or employee of the governmental entity must satisfy those requirements.

(e) *Penalty provisions*—(1) *Failure to file correct returns*. The section 6721 penalty may apply to an institution or insurer that fails to file information returns required by section 6050S and this section on or before the required filing date; that fails to include all of the required information on the return; or that includes incorrect information on the return. *See* section 6721, and the regulations thereunder, for rules relating to penalties for failure to file correct returns. *See* section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(2) *Failure to furnish correct information statements*. The section 6722 penalty may apply to an institution or insurer that fails to furnish statements required by section 6050S and this section on or before the prescribed date; that fails to include all the required information on the statement; or that includes incorrect information on the statement. *See* section 6722, and the regulations thereunder, for rules relating to penalties for failure to furnish correct statements. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(3) *Waiver of penalties for failures to include a correct TIN*—(i) *In general*. In the case of a failure to include a correct TIN on Form 1098-T or a related information statement, penalties may be waived if the failure is due to reasonable cause. Reasonable cause may be established if the failure arose from events beyond the institution's or insurer's control, such as a failure of the individual to furnish a correct TIN. However, the institution or insurer must establish that it acted in a responsible manner both before and after the failure.

(ii) *Acting in a responsible manner*. An institution or insurer must request the TIN of each individual for whom it is required to file a return if it does not already have a record of the individual's correct TIN. If the institution or insurer does not have a record of the individual's correct TIN, then it must solicit the TIN in the manner described in paragraph (e)(3)(iii) of this section on or before December 31 of each year during which it receives payments, or bills amounts, for qualified tuition and related expenses or makes reimbursements, refunds, or reductions of such amounts with respect to the individual. If an individual refuses to provide his or her TIN upon request, the institution or insurer must file the return and furnish the statement required by this section without the individual's TIN, but with all other required information. The specific solicitation requirements of paragraph (e)(3)(iii) of this section apply in lieu of the solicitation requirements of § 301.6724–1(e) and (f) of this chapter for the purpose of determining whether an institution or insurer acted in a responsible manner in attempting to obtain a correct TIN. An institution or insurer that complies with the requirements of this paragraph (e)(3) will be considered to have acted in a responsible manner within the meaning of § 301.6724–1(d) of this chapter with respect to any failure to include the correct TIN of an individual on a return or statement required by section 6050S and this section.

(iii) *Manner of soliciting TIN*. An institution or insurer must request the individual's TIN in writing and must clearly notify the individual that the

law requires the individual to furnish a TIN so that it may be included on an information return filed by the institution or insurer. A request for a TIN made on Form W–9S, ''Request for Student's or Borrower's Taxpayer Identification Number and Certification,'' satisfies the requirements of this paragraph (e)(3)(iii). An institution or insurer may establish a system for individuals to submit Forms W–9S electronically as described in applicable forms and instructions. An institution or insurer may also develop a separate form to request the individual's TIN or incorporate the request into other forms customarily used by the institution or insurer, such as admission or enrollment forms or financial aid applications.

(4) *Failure to furnish TIN*. The section 6723 penalty may apply to any individual who is required (but fails) to furnish his or her TIN to an institution or insurer. *See* section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(f) *Effective date*. The rules in this section apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003.

[T.D. 9029, 67 FR 77682, Dec. 19, 2002; 68 FR 6350, Feb. 7, 2003]

§ 1.6050S–2 Information reporting for payments and reimbursements or refunds of qualified tuition and related expenses.

(a) *Electronic furnishing of statements*—(1) *In general*. A person required by section 6050S(d) to furnish a written statement regarding payments and reimbursements or refunds of qualified tuition and related expenses (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the statement in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the required statement.

(2) *Consent*—(i) *In general*. The recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) *Withdrawal of consent*. The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) *Change in hardware or software requirements*. If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iv) *Examples*. The following examples illustrate the rules of this paragraph (a)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive statements required by section 6050S(d) electronically on a Web site instead of in a paper format. The letter contains instructions explaining how to consent to receive the statements electronically by accessing the Web site, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the Web site uses the same electronic format that F will use for the electronically furnished statements. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the

manner described in paragraph (a)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive statements required by section 6050S(d) electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statements electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its Web site stating that Recipient R may receive statements required by section 6050S(d) electronically instead of in a paper format. The Web site contains instructions on how R may access a secure Web page and consent to receive the statements electronically. By accessing the secure Web page and giving consent, R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general.* Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) *Paper statement.* The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent.* The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section or only to the statement required to be furnished on or before the January 31 immediately following the date on which the consent is given.

(iv) *Post-consent request for a paper statement.* The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (a)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent.* The recipient must be informed that—

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination.* The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient.

(vii) *Updating information.* The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) *Hardware and software requirements.* The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the Web site.

(4) *Format.* The electronic version of the statement must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Notice*—(i) *In general.* If the statement is furnished on a Web site, the furnisher must notify the recipient that the statement is posted on a Web site. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, ''IMPORTANT TAX RETURN DOCUMENT AVAILABLE.'' If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address.* If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statements.* If the furnisher has corrected a recipient's statement that was furnished electronically, the furnisher must furnish the corrected statement to the recipient electronically. If the recipient's statement was furnished through a Web site posting and the furnisher has corrected the statement, the furnisher must notify the recipient that it has posted the corrected statement on the Web site within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the Web site posting of an original statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) *Access period.* Statements furnished on a Web site must be retained on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later.

(b) *Paper statements after withdrawal of consent.* If a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished electronically, a paper statement must be furnished. A paper statement furnished after the statement due date under this paragraph (b) will be considered timely if furnished within 30 days after the date the withdrawal of consent is received by the furnisher.

(c) *Effective date.* This section applies to statements required to be furnished after February 13, 2004. Paragraph (a)(6) of this section also applies to statements required to be furnished after December 31, 2004.

[T.D. 9114, 69 FR 7570, Feb. 18, 2004]

§ 1.6050S–3 Information reporting for payments of interest on qualified education loans.

(a) *Information reporting requirement in general.* Except as otherwise provided in this section, any person engaged in a trade or business that, in the course of that trade or business, receives from any payor (as defined in paragraph (b)(2) of this section) interest payments that aggregate $600 or more for any calendar year on one or more qualified education loans (as defined in section 221(e)(1) and the regulations thereunder) (a payee) must—

(1) File an information return, as described in paragraph (c) of this section, with the Internal Revenue Service with respect to the payor; and

(2) Furnish a statement, as described in paragraph (d) of this section, to the payor.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Interest. Interest* includes stated interest, loan origination fees (other than fees for services), and capitalized interest as described in the regulations under section 221. See paragraph (e)(1) of this section for a special transitional rule relating to reporting of loan origination fees and capitalized interest.

(2) *Payor. Payor* means the individual who is carried on the books and records of the payee as the borrower on a qualified education loan. If there are multiple borrowers, the principal borrower on the payee's books and records is treated as the payor for purposes of section 6050S and this section.

(c) *Requirement to file return*—(1) *Form of return.* A payee must file an information return for the payor on Form 1098–E, ''Student Loan Interest Statement.'' A payee may use a substitute for Form 1098–E if the substitute form complies with the applicable revenue procedures relating to substitute forms.

(2) *Information included on return.* A payee must include on Form 1098–E—

(i) The name, address, and taxpayer identification number (TIN) (as defined in section 7701(a)(41)) of the payee;

(ii) The name, address, and TIN of the payor;

(iii) The aggregate amount of interest payments received during the calendar year from the payor; and

(iv) Any other information required by Form 1098–E and its instructions.

(3) *Time and place for filing return*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, the Form 1098–E must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which interest payments were received. A payee must file Form 1098–E with the Internal Revenue Service according to the instructions to Form 1098–E.

(ii) *Extensions of time.* The Internal Revenue Service may grant a payee an extension of time to file returns required in this section upon a showing of good cause. See the instructions to Form 1098–E and applicable revenue procedures for rules relating to extensions of time to file.

(4) *Use of magnetic media.* See section 6011(e) and § 301.6011–2 of this chapter for rules relating to the requirement to file Forms 1098–E on magnetic media.

(d) *Requirement to furnish statement*—(1) *In general.* A payee must furnish a statement to each payor for whom it is required to file a Form 1098–E. The statement must include—

(i) The information required under paragraph (c)(2) of this section;

(ii) A legend that identifies the statement as important tax information that is being furnished to the Internal Revenue Service;

(iii) Instructions that—

(A) State that, under section 221 and the regulations thereunder, the payor may not be able to deduct the full amount of interest reported on the statement;

(B) In the case of qualified education loans made before September 1, 2004, for which the payee does not report payments of interest other than stated interest, state that the payor may be able to deduct additional amounts (such as certain loan origination fees and capitalized interest) not reported on the statement;

(C) State that the payor should refer to relevant Internal Revenue Service forms and publications, and should not refer to the payee, for explanations relating to the eligibility requirements for, and calculation of, any allowable deduction for interest paid on a qualified education loan; and

(D) Include the name, address, and phone number of the office or department of the payee that is the information contact for the payee that filed the Form 1098–E.

(2) *Time and manner for furnishing statement*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, a payee must furnish the statement described in paragraph (d)(1) of this section to the payor on or before January 31 of the year following the calendar year in which payments of interest on a qualified education loan were received. If mailed, the statement must be sent to the payor's last known address. If furnished electronically, the statement must be furnished in accordance with the applicable regulations.

(ii) *Extensions of time.* The Internal Revenue Service may grant a payee an extension of time to furnish statements required in this section upon a showing of good cause. See the instructions to Form 1098–E and applicable revenue procedures for rules relating to extensions of time to furnish statements.

(3) *Copy of Form 1098–E.* A payee may satisfy the requirement of this paragraph (d) by furnishing either a copy of Form 1098–E and its instructions or another document that contains all the information filed with the Internal Revenue Service and the information required by paragraph (d)(1) of this section if the document complies with applicable revenue procedures relating to substitute statements.

(e) *Special rules*—(1) *Transitional rule for reporting of loan origination fees and capitalized interest*—(i) *Loans made before September 1, 2004.* For qualified education loans made before September 1, 2004, a payee is not required to report payments of loan origination fees or capitalized interest or to take such payments into account in determining

the $600 amount for purposes of paragraph (a)(1) of this section.

(ii) *Loans made on or after September 1, 2004.* For qualified education loans made on or after September 1, 2004, a payee is required to report payments of interest as described in §1.221–1(f). Under §1.221–1(f), interest includes loan origination fees that represent charges for the use or forbearance of money and capitalized interest. Under this paragraph (e)(1)(ii), a payee shall take such payments of interest into account in determining the $600 amount for purposes of paragraph (a)(1) of this section. For purposes of this section and section 6050S, interest (including capitalized interest and loan origination fees) is treated as received, and is reportable, in the year the interest is treated as paid under the allocation rules in §1.221–1(f)(3). See §1.221–1(f) for rules relating to capitalized interest, and §1.221–1(f)(2)(ii) for rules relating to loan origination fees, on qualified education loans.

(2) *Qualified education loan certification.* If a loan is not subsidized, guaranteed, financed, or is not otherwise treated as a student loan under a program of the Federal, state, or local government or an eligible educational institution, a payee must request a certification from the payor that the loan will be used solely to pay for qualified higher education expenses. A payee may use Form W–9S, ''Request for Student's or Borrower's Social Security Number and Certification,'' to obtain the certification. A payee may establish an electronic system for payors to submit Forms W–9S electronically as described in applicable forms and instructions. A payee may also develop a separate form to obtain the payor certification or may incorporate the certification into other forms customarily used by the payee, such as loan applications, provided the certification is clearly set forth. If the certification is not received, the loan is not a qualified education loan for purposes of section 6050S and this section.

(3) *Payments of interest received or collected by one or more persons*—(i) *In general.* Except as otherwise provided in paragraph (e)(3)(ii) of this section, if a person collects or receives payments of interest on a qualified education loan on behalf of another person (e.g., a lender), the person collecting or receiving the interest must satisfy the information reporting requirements of this section. In this case, the reporting requirements do not apply to the transfer of interest to the other person.

(ii) *Exception.* If the person collecting or receiving payments of interest on a qualified education loan on behalf of another person (e.g., a lender) does not possess the information needed to comply with the information reporting requirements of this section, the other person must satisfy the information reporting requirements of this section.

(4) *Reporting by foreign persons.* A payee that is not a United States person (as defined in section 7701(a)(30)) must report payments of interest it receives on a qualified education loan only if it receives the payment—

(i) At a location in the United States; or

(ii) At a location outside the United States if the payee is—

(A) A controlled foreign corporation (within the meaning of section 957(a)); or

(B) A person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of the taxable year preceding the taxable year in which interest payments were received (or for such part of the period as the person was in existence), was effectively connected with the conduct of a trade or business within the United States.

(5) *Governmental units.* A governmental unit, or an agency or instrumentality of a governmental unit, that receives from any payor interest payments that aggregate $600 or more for any calendar year on one or more qualified education loans is a payee, without regard to the requirement of paragraph (a) of this section that the interest be received in the course of a trade or business.

(f) *Penalty provisions*—(1) *Failure to file correct returns.* The section 6721 penalty may apply to a payee that fails to file information returns required by section 6050S and this section on or before the required filing date; that fails to include all of the required information on the return; or that includes incorrect information on the return. See

section 6721, and the regulations thereunder, for rules relating to penalties for failure to file correct returns. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(2) *Failure to furnish correct information statements*. The section 6722 penalty may apply to a payee that fails to furnish statements required by section 6050S and this section on or before the prescribed date; that fails to include all the required information on the statement; or that includes incorrect information on the statement. See section 6722, and the regulations thereunder, for rules relating to penalties for failure to furnish correct statements. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(3) *Waiver of penalties for failures to include a correct TIN*—(i) *In general*. In the case of a failure to include a correct TIN on Form 1098–E or a related information statement, penalties may be waived if the failure is due to reasonable cause. Reasonable cause may be established if the failure arose from events beyond the payee's control, such as a failure of the payor to furnish a correct TIN. However, the payee must establish that it acted in a responsible manner both before and after the failure.

(ii) *Acting in a responsible manner*. A payee must request the TIN of each payor if it does not already have a record of the payor's correct TIN. If the payee does not have a record of the payor's correct TIN, then it must solicit the TIN in the manner described in paragraph (f)(3)(iii) of this section on or before December 31 of each year during which it receives payments of interest. If a payor refuses to provide his or her TIN upon request, the payee must file the return and furnish the statement required by this section without the payor's TIN, but with all other required information. The specific solicitation requirements of paragraph (f)(3)(iii) of this section apply in lieu of the solicitation requirements of § 301.6724–1(e) and (f) of this chapter for the purpose of determining whether a payee acted in a responsible manner in attempting to obtain a correct TIN. A payee that complies with the requirements of this paragraph (f)(3) will be considered to have acted in a responsible manner within the meaning of § 301.6724–1(d) of this chapter with respect to any failure to include the correct TIN of a payor on a return or statement required by section 6050S and this section.

(iii) *Manner of soliciting TIN*. A payee must request the payor's TIN in writing and must clearly notify the payor that the law requires the payor to furnish a TIN so that it may be included on an information return filed by the payee. A request for a TIN made on Form W–9S, ''Request for Student's or Borrower's Social Security Number and Certification,'' satisfies the requirements of this paragraph (f)(3)(iii). A payee may establish a system for payors to submit Forms W–9S electronically as described in applicable forms and instructions. A payee may also develop a separate form to request the payor's TIN or incorporate the request into other forms customarily used by the payee, such as loan applications.

(4) *Failure to furnish TIN*. The section 6723 penalty may apply to any payor who is required (but fails) to furnish his or her TIN to a payee. See section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(g) *Effective date*. The rules in this section apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003.

[T.D. 8992, 67 FR 20904, Apr. 29, 2002, as amended by T.D. 9125, 69 FR 25499, May 7, 2004]

§ 1.6050S–4 Information reporting for payments of interest on qualified education loans.

(a) *Electronic furnishing of statements*—(1) *In general*. A person required by section 6050S(d) to furnish a written statement regarding payments of interest on qualified education loans (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the statement in an electronic format in lieu of a paper format.

A furnisher who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the required statement.

(2) *Consent*—(i) *In general.* The recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) *Withdrawal of consent.* The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) *Change in hardware or software requirements.* If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (a)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive statements required by section 6050S(d) electronically on a Web site instead of in a paper format. The letter contains instructions explaining how to consent to receive the statements electronically by accessing the Web site, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the Web site uses the same electronic format that F will use for the electronically furnished statements. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive statements required by section 6050S(d) electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statements electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its Web site stating that Recipient R may receive statements required by section 6050S(d) electronically instead of in a paper format. The Web site contains instructions on how R may access a secure Web page and consent to receive the statements electronically. By accessing the secure Web page and giving consent, R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general.* Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) *Paper statement.* The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent.* The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section or only to the statement required to be furnished

on or before the January 31 immediately following the date on which the consent is given.

(iv) *Post-consent request for a paper statement*. The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (a)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent*. The recipient must be informed that—

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination*. The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient.

(vii) *Updating information*. The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) *Hardware and software requirements*. The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the Web site.

(4) *Format*. The electronic version of the statement must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Notice*—(i) *In general*. If the statement is furnished on a Web site, the furnisher must notify the recipient that the statement is posted on a Web site. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, ''IMPORTANT TAX RETURN DOCUMENT AVAILABLE.'' If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address*. If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statements*. If the furnisher has corrected a recipient's statement that was furnished electronically, the furnisher must furnish the corrected statement to the recipient electronically. If the recipient's statement was furnished though a Web site posting and the furnisher has corrected the statement, the furnisher must notify the recipient that it has posted the corrected statement on the Web site within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the Web site posting of an original statement or the corrected statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) *Access period*. Statements furnished on a Web site must be retained on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90

days after the corrected statements are posted, whichever is later.

(b) *Effective date*. This section applies to statements required to be furnished after February 13, 2004. Paragraph (a)(6) of this section also applies to statements required to be furnished after December 31, 2003.

[T.D. 9114, 69 FR 7570, Feb. 18, 2004]

§ 1.6052–1 Information returns regarding payment of wages in the form of group-term life insurance.

(a) *Requirement of reporting*—(1) *In general*. Every employer, who during any calendar year provides any one of his employees remuneration for services in the form of group-term life insurance on the life of such employee any part of the cost of which is to be included in such employee's gross income as provided in section 79(a), shall make a separate return on Form W-2 with respect to each such employee for such year which includes the following information:

(i) Name, address, and identifying number of the employer;

(ii) Name, address, and social security number of the employee; and

(iii) Total amount includible in the employee's gross income by reason of the provisions of section 79(a), computed as if each employee reported his income on the basis of a calendar year (determined as if the employer making such return is the only employer paying the employee remuneration in the form of group-term life insurance on his life which is includible in his gross income under section 79(a)).

Returns on Form W-2 required to be filed pursuant to the provisions of this section shall be transmitted by Form W-3. In a case where, with respect to the same employee, an employer must make a return on Form W-2 under this section and also under § 31.6011(a)–4 or § 31.6011(a)–5 of this chapter (Employment Tax Regulations), or under § 1.6041–2 (relating to return of information as to payments to employees), such employer may make such returns on the same Form W-2 or on separate Forms W-2. In a case where an employer must file a Form W-3 under this section and also under § 31.6011(a)–4 or § 31.6011(a)–5 of this chapter (Employment Tax Regulations), the Form W-3 filed under such § 31.6011(a)–4 or § 31.6011(a)–5 shall also be used as the transmittal form for a return on Form W-2 made pursuant to the provisions of this section.

(2) *Definitions*. Terms used in subparagraph (a)(1) of this section and in section 79 and the regulations thereunder have the meaning ascribed to them in section 79 and the regulations thereunder.

(b) *Time and place for filing*—(1) *Time for filing*—(i) *General rule*. In a case where an employer must file Forms W-3 and W-2 under this section and also under § 31.6011(a)–4 or § 31.6011(a)–5 of this chapter (Employment Tax Regulations), the time for filing such forms under this section shall be the same as the time (including extensions thereof) for filing such forms under § 31.6011(a)–4 or § 31.6011(a)–5.

(ii) *Exception*. In a case where an employer is not required to file Forms W-3 and W-2 under § 31.6011(a)–4 or § 31.6011(a)–5 of this chapter, returns on Forms W-3 and W-2 required under paragraph (a) of this section for any calendar year shall be filed on or before February 28 (March 31 if filed electronically) of the following year.

(iii) *Cross reference*. For extensions of time for filing returns, see section 6081 and the regulations thereunder.

(2) *Place for filing*. The returns on Forms W-3 and W-2 required under paragraph (a) of this section shall be filed pursuant to the rules contained in § 31.6091–1 of this chapter (Employment Tax Regulations), relating to the place for filing certain returns.

(c) *Special rule for calendar years before 1972*. For calendar years before 1972, the provisions of this section will be deemed to have been complied with if the returns for such years were filed in accordance with the provisions of this section in effect prior to August 3, 1973, or with the instructions applicable to the appropriate forms.

(d) *Last day for filing return*. For provisions relating to the time for performance of an act when the last day prescribed for performance falls on Saturday, Sunday, or a legal holiday, see § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

(e) *Penalty*. For provisions relating to the penalty provided for failure to file the information returns required by this section, see section 6652 and the regulations thereunder.

[T.D. 6888, 31 FR 9205, July 6, 1966, as amended by T.D. 7284, 38 FR 20828, Aug. 3, 1973; T.D. 7580, 43 FR 60160, Dec. 26, 1978; T.D. 7623, 44 FR 28800, May 17, 1979; T.D. 8895, 65 FR 50408, Aug. 18, 2000]

§ 1.6052–2 Statements to be furnished employees with respect to wages paid in the form of group-term life insurance.

(a) *Requirement*. Every employer filing a return under section 6052(a) and § 1.6052–1 with respect to group-term life insurance on the life of an employee shall furnish to the employee whose name is set forth in such return a written statement showing the information required by paragraph (b) of this section.

(b) *Form of statement*. The written statement required to be furnished to an employee under paragraph (a) of this section shall show:

(1) The total amount includible in the employee's gross income by reason of the provisions of section 79(a), but determined as if the employer furnishing such statement is the only employer paying the employee remuneration in the form of group-term life insurance on his life which is includible in his gross income under section 79(a).

(2) The name, address, and identifying number of the employer filing the statement.

The requirement of this section for the furnishing of a statement to an employee may be satisfied by the furnishing to such employee of a copy of the return filed pursuant to § 1.6052–1 in respect of such employee. A statement shall be considered to be furnished to a person within the meaning of this section if it is mailed to such person at his last known address.

(c) *Time for furnishing statements*—(1) *In general*. Each statement required by this section to be furnished to any employee for a calendar year shall be furnished to such person after the close of that year and on or before January 31 of the following year.

(2) *Extensions of time*. For good cause shown upon written application of the employer required to furnish statements under this section, the district director may grant an extension of time not exceeding 30 days in which to furnish such statements. The application shall be addressed to the district director with whom the income tax returns of the applicant are filed and shall contain a full recital of the reasons for requesting the extension to aid the district director in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to the district director signed by the applicant will suffice as an application. The application shall be filed on or before the date prescribed in subparagraph (1) of this paragraph for furnishing the statements required by this section.

(3) *Last day for furnishing statement*. For provisions relating to the time for performance of an act when the last day prescribed for performance falls on Saturday, Sunday, or a legal holiday, see § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

(d) *Special rule where Form W-2 is used*. The provisions of this paragraph shall apply notwithstanding anything to the contrary in paragraph (b) or (c) of this section. The requirement of this section for the furnishing of a statement to an employee may be satisfied by furnishing to such employee the employee's copy of Form W-2 filed pursuant to § 1.6052–1 in respect of such employee. In a case where the statement furnished by an employer to an employee for purposes of complying with this section is the employee's copy of a Form W-2, then the rules in § 31.6051–1 of this chapter (Employment Tax Regulations) shall apply with respect to the means and time (including extensions thereof) for furnishing such statements to the employee and making corrections on such form.

(e) *Definitions*. Terms used in this section and in section 79 and the regulations thereunder have the meaning ascribed to them in section 79 and the regulations thereunder.

(f) *Penalty*. For provisions relating to the penalty provided for failure to furnish a statement under this section, see section 6678 and the regulations thereunder.

(g) *Special rule for calendar years before 1972.* For calendar years before 1972, the provisions of this section will be deemed to have been complied with if the statements for such years were furnished in accordance with the provisions of this section in effect prior to August 3, 1973, or with the instructions applicable to the appropriate forms.

[T.D. 6888, 31 FR 9205, July 6, 1966, as amended by T.D. 7284, 38 FR 20828, Aug. 3, 1973; T.D. 7580, 43 FR 60160, Dec. 26, 1978; T.D. 7623, 44 FR 28800, May 17, 1979]

§ 1.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* (1) Each person who employs one or more signing tax return preparers to prepare any return of tax or claim for refund of tax, other than for the person, at any time during a return period shall satisfy the requirements of section 6060 of the Internal Revenue Code by—

(i) Retaining a record of the name, taxpayer identification number, and principal place of work during the return period of each tax return preparer employed by the person at any time during that period; and

(ii) Making that record available for inspection upon request by the Commissioner.

(2) The record described in this paragraph (a) must be retained and kept available for inspection for the 3-year period following the close of the return period to which that record relates.

(3) The person may choose any form of documentation to be used under this section as a record of the signing tax return preparers employed during a return period. The record, however, must disclose on its face which individuals were employed as tax return preparers during that period.

(4) For the definition of the term ''signing tax return preparer'', see § 301.7701–15(b)(1) of this chapter. For the definition of the term ''return period'', see paragraph (b) of this section.

(5)(i) For purposes of this section, any individual who, in acting as a signing tax return preparer, is not employed by another tax return preparer shall be treated as his or her own employer. Thus, a sole proprietor shall retain and make available a record with respect to himself (or herself) as provided in this section.

(ii) A partnership shall, for purposes of this section, be treated as the employer of the partners of the partnership and shall retain and make available a record with respect to the partners and others employed by the partnership as provided in this section.

(b) *Return period defined.* For purposes of this section, the term *return period* means the 12-month period beginning on July 1 of each year.

(c) *Penalty.* For the civil penalty for failure to retain and make available a record of the tax return preparers employed during a return period as required under this section, or for failure to include an item in the record required to be retained and made available under this section, see § 1.6695–1(e).

(d) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

[T.D. 7640, 44 FR 49451, Aug. 23, 1979, as amended by T.D. 9436, 73 FR 78437, Dec. 22, 2008]

SIGNING AND VERIFYING OF RETURNS AND OTHER DOCUMENTS

§ 1.6061–1 Signing of returns and other documents by individuals.

(a) *Requirement.* Each individual (including a fiduciary) shall sign the income tax return required to be made by him, except that the return may be signed for the taxpayer by an agent who is duly authorized in accordance with paragraph (a)(5) or (b) of § 1.6012–1 to make such return. Other returns, statements, or documents required under the provisions of subtitle A or F of the Code or of the regulations thereunder to be made by any person with respect to any tax imposed by subtitle A of the Code shall be signed in accordance with any regulations contained in this chapter, or any instructions, issued with respect to such returns, statements, or other documents.

(b) *Cross references.* For provisions relating to the signing of returns, statements, or other documents required to be made by corporations and partnerships with respect to any tax imposed by subtitle A of the Code, see §§ 1.6062–

1 and 1.6063–1, respectively. For provisions relating to the making of returns by agents, see paragraphs (a)(5) and (b) of § 1.6012–1; and to the making of returns for minors and persons under a disability, see paragraph (a)(4) of § 1.6012–1 and paragraph (b) of § 1.6012–3.

[T.D. 7332, 39 FR 44232, Dec. 23, 1974]

§ 1.6062–1 Signing of returns, statements, and other documents made by corporations.

(a) *Returns*—(1) *In general*. Returns required to be made by corporations under the provisions of subtitle A or F of the Code, or the regulations thereunder, with respect to any tax imposed by subtitle A of the Code, shall be signed for the corporation by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to sign such returns. It is not necessary that the corporate seal be affixed to the return. Spaces provided on return forms for affixing the corporate seal are for the convenience of corporations required by charter, or by law of the jurisdiction in which they are incorporated, to affix their corporate seals in the execution of instruments.

(2) *By fiduciaries*. A return with respect to income required to be made for a corporation by a fiduciary, pursuant to the provisions of section 6012(b)(3), shall be signed by such fiduciary. See paragraph (b)(4) of § 1.6012–3.

(3) *By agents*. A return with respect to income required to be made by an agent for a foreign corporation shall be signed by such agent. See paragraph (g) of § 1.6012–2.

(b) *Statements and other documents*. Statements and other documents required to be made by or for corporations under the provisions of subtitle A or F of the Code, or the regulations thereunder, with respect to any tax imposed by subtitle A, shall be signed in accordance with the regulations contained in this chapter, or the forms and instructions, issued with respect to such statements or other documents.

(c) *Evidence of authority to sign*. An individual's signature on a return, statement, or other document made by or for a corporation shall be prima facie evidence that such individual is authorized to sign such return, statement, or other document.

(d) *Related provisions*. For the rules realating to the verification of returns, see § 1.6065–1.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 7293, 38 FR 32804, Nov. 28, 1973]

§ 1.6063–1 Signing of returns, statements, and other documents made by partnerships.

(a) *In general*. Returns, statements, and other documents required to be made by partnerships under the provisions of subtitle A or F of the Code, or the regulations thereunder, with respect to any tax imposed by subtitle A of the Code shall be signed by any one of the partners. However, with respect to the signing of powers of attorney, see paragraph (a)(2) of § 601.504 of this chapter (Statement of Procedural Rules).

(b) *Evidence of authority to sign*. A partner's signature on a return, statement, or other document made by or for a partnership of which he is a member shall be prima facie evidence that such partner is authorized to sign such return, statement, or other document.

(c) *Certain partnership elections*—(1) *In general*. For rules regarding the authority of a partner to sign a partnership return filed solely for the purpose of making certain partnership level elections, see § 1.6031(a)–1(b)(5)(ii).

(2) *Effective date*. Paragraph (c) of this section applies to taxable years of a partnership beginning after December 31, 1999.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 8841, 64 FR 61502, Nov. 12, 1999]

§ 1.6065–1 Verification of returns.

(a) *Persons signing returns*. If a return, declaration, statement, or other document made under the provisions of subtitle A or F of the Code, or the regulation thereunder, with respect to any tax imposed by subtitle A of the Code is required by the regulations contained in this chapter, or the form and instructions, issued with respect to such return, declaration, statement, or other document, to contain or be verified by a written declaration that

it is made under the penalties of perjury, such return, declaration, statement, or other document shall be so verified by the person signing it.

(b) *Persons preparing returns*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, if a return, declaration, statement, or other document is prepared for a taxpayer by another person for compensation or as an incident to the performance of other services for which such person receives compensation, and the return, declaration, statement, or other document requires that it shall contain or be verified by a written declaration that it is prepared under the penalties of perjury, the preparer must so verify the return, declaration, statement, or other document. A person who renders mere mechanical assistance in the preparation of a return, declaration, statement, or other document as, for example, a stenographer or typist, is not considered as preparing the return, declaration, statement, or other document.

(2) *Exception.* The verification required by subparagraph (1) of this paragraph is not required on returns, declarations, statements, or other documents which are prepared:

(i) For an employee either by his employer or by an employee designated for such purpose by the employer, or

(ii) For an employer as a usual incident of the employment of one regularly or continuously employed by such employer.

[T.D. 6364, 24 FR 1196, Feb. 17, 1959]

TIME FOR FILING RETURNS AND OTHER DOCUMENTS

§ 1.6071–1 Time for filing returns and other documents.

(a) *In general.* Whenever a return, statement, or other document is required to be made under the provisions of subtitle A or F of the Code, or the regulations thereunder, with respect to any tax imposed by subtitle A of the Code, and the time for filing such return, statement, or other document is not provided for by the Code, it shall be filed at the time prescribed by the regulations contained in this chapter with respect to such return, statement, or other document.

(b) *Return for a short period.* In the case of a return with respect to tax under subtitle A of the Code for a short period (as defined in section 443), the district director or director of the Internal Revenue Service Center may, upon a showing by the taxpayer of unusual circumstances, prescribe a time for filing the return for such period later than the time when such return would otherwise be due. However, the district director or director of the Internal Revenue Service Center may not extend the time when the return for a DISC (as defined in section 992(a)(1)) must be filed, as specified in section 6072(b).

(c) *Time for filing certain information returns.* (1) For provisions relating to the time for filing returns of partnership income, see paragraph (e)(2) of § 1.6031–1.

(2) For provisions relating to the time for filing information returns by banks with respect to common trust funds, see § 1.6032–1.

(3) For provisions relating to the time for filing information returns by certain organizations exempt from taxation under section 501(a), see paragraph (e) of § 1.6033–1.

(4) For provisions relating to the time for filing returns by trusts claiming charitable deductions under section 642(c), see paragraph (c) of § 1.6034–1.

(5) For provisions relating to the time for filing information returns by officers, directors, and shareholders of foreign personal holding companies, see §§ 1.6035–1 and 1.6035–2.

(6) For provisions relating to the time for filing information returns with respect to certain stock option transactions, see paragraph (c) of § 1.6039–1.

(7) For provisions relating to the time for filing information returns by persons making certain payments, see § 1.6041–2(a)(3) and § 1.6041–6.

(8) For provisions relating to the time for filing information returns regarding payments of dividends, see § 1.6042–2(c).

(9) For provisions relating to the time for filing information returns by corporations with respect to contemplated dissolution or liquidations, see paragraph (a) of § 1.6043–1.

(10) For provisions relating to the time for filing information returns by corporations with respect to distributions in liquidation, see paragraph (a) of § 1.6043–2.

(11) For provisions relating to the time for filing information returns with respect to payments of patronage dividends, see § 1.6044–2(d).

(12) For provisions relating to the time for filing information returns with respect to formation or reorganization of foreign corporations, see § 1.6046–1.

(13) For provisions relating to the time for filing information returns regarding certain payments of interest, see § 1.6049–4(g).

(14) For provisions relating to the time for filing information returns with respect to payment of wages in the form of group-term life insurance, see paragraph (b) of § 1.6052–1.

(15) For provisions relating to the time for filing an annual information return on Form 1042–S, ''Foreign Person's U.S. Source Income subject to Withholding,'' or Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' for any tax withheld under chapter 3 of the Internal Revenue Code (relating to withholding of tax on nonresident aliens and foreign corporations and tax-free covenant bonds), see § 1.1461–1(c) and § 1.1446–3(d).

(16) For provisions relating to the time for filing the annual information return on Form 1042S of the tax withheld under chapter 3 of the Code (relating to withholding of tax on nonresident aliens and foreign corporations and tax-free covenant bonds), see paragraph (c) of § 1.1461–2.

(d) *Effective/Applicability date.* The references to Form 8805 and § 1.1446–3(d) in paragraph (c)(15) of this section shall apply to partnership taxable years beginning after *April 29, 2008.*

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6887, 31 FR 8814, June 24, 1966; T.D. 6908, 31 FR 16775, Dec. 31, 1966; T.D. 7284, 38 FR 20829, Aug. 3, 1973; T.D. 7533, 43 FR 6604, Feb. 15, 1978; T.D. 8734, 62 FR 53492, Oct. 14, 1997; T.D. 9394, 73 FR 23085, Apr. 29, 2008]

§ 1.6072–1 Time for filing returns of individuals, estates, and trusts.

(a) *In general*—(1) *Returns of income for individuals, estates and trusts.* Except as provided in paragraphs (b) and (c) of this section, returns of income required under sections 6012, 6013, 6014, and 6017 of individuals, estates, domestic trusts, and foreign trusts having an office or place of business in the United States (including unrelated business tax returns of such trusts referred to in section 511(b)(2)) shall be filed on or before the fifteenth day of the fourth month following the close of the taxable year.

(2) *Return of trust, or portion of a trust, treated as owned by a decedent*—(i) *In general.* In the case of a return of a trust, or portion of a trust, that was treated as owned by a decedent under subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code as of the date of the decedent's death that is filed in accordance with § 1.671–4(a) for the fractional part of the year ending with the date of the decedent's death, the due date of such return shall be the fifteenth day of the fourth month following the close of the 12-month period which began with the first day of the decedent's taxable year.

(ii) *Effective date.* This paragraph (a)(2) applies to taxable years ending on or after December 24, 2002.

(b) *Decedents.* In the case of a final return of a decedent for a fractional part of a year, the due date of such return shall be the fifteenth day of the fourth month following the close of the 12-month period which began with the first day of such fractional part of the year.

(c) *Nonresident alien individuals and foreign trusts.* The income tax return of a nonresident alien individual (other than one treated as a resident under section 6013 (g) or (h)) and of a foreign trust which does not have an office or place of business in the United States (including unrelated business tax returns of such trusts referred to in section 511(b)(2)0 shall be filed on or before the fifteenth day of the sixth month following the close of the taxable year. However, a nonresident alien individual who for the taxable year has wages subject to withholding under

chapter 24 of the Code shall file his income tax return on or before the fifteenth day of the fourth month following the close of the taxable year.

(d) *Last day for filing return.* For provisions relating to the time for filing a return where the last day for filing falls on Saturday, Sunday, or a legal holiday, see section 7503 and § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 7426, 41 FR 33263, Aug. 9, 1976; T.D. 7670, 45 FR 6931, Jan. 31, 1980; T.D. 9032, 67 FR 78382, Dec. 24, 2002]

§ 1.6072–2 Time for filing returns of corporations.

(a) *Domestic and certain foreign corporations.* The income tax return required under section 6012 of a domestic corporation or of a foreign corporation having an office or place of business in the United States shall be filed on or before the fifteenth day of the third month following the close of the taxable year.

(b) *Foreign corporations not having an office or place of business in the United States.* The income tax return of a foreign corporation which does not have an office or place of business in the United States shall be filed on or before the fifteenth day of the sixth month following the close of the taxable year.

(c) *Exempt organizations.* For taxable years beginning after November 10, 1978, the income tax return required under section 6012 and § 1.6012–2(e) of an organization exempt from taxation under section 501(a) (other than an employee's trust under section 401(a)) shall be filed on or before the fifteenth day of the fifth month following the close of the organization's taxable year.

(d) *Cooperative organizations.* The income tax return of the following cooperative organizations shall be filed on or before the fifteenth day of the ninth month following the close of the taxable year:

(1) A farmers', fruit growers', or like association, organized and operated in compliance with the requirements of section 521 and § 1.521–1; and

(2) For a taxable year beginning after December 31, 1962, a corporation described in section 1381(a)(2), which is under a valid enforceable written obligation to pay patronage dividends (as defined in section 1388(a) and paragraph (a) of § 1.1388–1) in an amount equal to at least 50 percent of its net earnings from business done with or for its patrons, or which paid patronage dividends in such an amount out of the net earnings from business done with or for patrons during the most recent taxable year for which it had such net earnings. Net earnings for this purpose shall not be reduced by any taxes imposed by Subtitle A of the Code and shall not be reduced by dividends paid on capital stock or other proprietary interest.

(e) *DISC's and former DISC's.* The return required under section 6011(c)(2) of a corporation which is a DISC (as defined in section 992(a) shall be filed on or before the 15th day of the 9th month following the close of the taxable year. For the rule that a DISC may not have an extension of time in which to file such return, see §§ 1.6071–1(b), 1.6081–1(a), and 1.6081–3(e). The return required under § 1.6011–2(b)(1) by a former DISC shall be filed at the time it is required to file its income tax return.

(f) *Cross references.* For provisions relating to the time for filing a return where the last day for filing falls on Saturday, Sunday, or a legal holiday, see section 7503 and § 301.7503–1 of this chapter (Regulations on Procedure and Administration). For provisions relating to the fixing of a later time for filing in the case of a return for a short period, see paragraph (b) of § 1.6071–1. For provisions relating to time for filing consolidated returns and separate returns for short periods not included in consolidated returns, see §§ 1.1502–75 and 1.1502–76.

[T.D. 6500, 25 FR 12133, Nov. 26, 1960, as amended by T.D. 6643, 28 FR 3163, Apr. 2, 1963; T.D. 7244, 37 FR 28897, Dec. 30, 1972; T.D. 7533, 43 FR 6604, Feb. 15, 1978; T.D. 7896, 48 FR 23818, May 27, 1983]

§ 1.6072–3 Income tax due dates postponed in case of China Trade Act corporations.

(a) With respect to a taxable year beginning after December 31, 1948, and

ending before October 1, 1956, the income tax return of any corporation organized under the China Trade Act of 1922 (15 U.S.C. ch. 4), as amended, shall not become due until December 31, 1956, provided that during any such taxable year conditions in China have been generally so unsettled as to militate against the normal commercial operations and corporate activities of such corporation. However, the postponement of the due date shall not apply to an income tax return for any such taxable year if:

(1) The books of account and business records are available so as to permit the filing of a proper return, and the corporation has otherwise been in a position to carry on its commercial operations and corporate activities and to make a proper distribution of its earnings or profits, if any, so as to permit the certification required by section 941(b); or

(2) All the commercial operations and corporate activities of such corporation have been carried on in Hong Kong, Macao, or Taiwan (Formosa).

(b) Notwithstanding the provisions of paragraph (a) (1) or (2) of this section, the postponed due date referred to in this section will apply if a corporation satisfies the Commissioner that special circumstances exist, related to the unsettled conditions in China, which warrant such postponement.

(c) The postponed due date provided for in this section is expressly subject to the power of the Commissioner to extend, as in other cases, the time for filing the income tax return. See section 6081 and the regulations thereunder.

§ 1.6072–4 Time for filing other returns of income.

(a) *Reports for recovery of excessive profits on Government contracts.* For the time for filing annual reports by persons completing Government contracts, see 26 CFR (1939) 17.16 (Treasury Decision 4906, approved June 23, 1939), and 26 CFR (1939) 16.15 (Treasury Decision 4909, approved June 28, 1939), as made applicable to section 1471 of the Internal Revenue Code of 1954 by Treasury Decision 6091, approved August 16, 1954 (19 FR 5167, C.B. 1954–2, 47).

(b) *Returns of tax on transfers to avoid income tax.* For the time for filing returns of tax under Chapter 5 of the Code, see § 1.1494–1.

[T.D. 6908, 31 FR 16775, Dec. 31, 1966]

§ 1.6073–1 Time and place for filing declarations of estimated income tax by individuals.

(a) *Individuals other than farmers or fishermen.* Declarations of estimated tax for the calendar year shall be made on or before April 15th of such calendar year by every individual whose anticipated income for the year meets the requirements of section 6015(a). If, however, the requirements necessitating the filing of the declaration are first met, in the case of an individual on the calendar year basis, after April 1st, but before June 2d of the calendar year, the declaration must be filed on or before June 15th; if such requirements are first met after June 1st and before September 2d, the declaration must be filed on or before September 15th; and if such requirements are first met after September 1st, the declaration must be filed on or before January 15th of the succeeding calendar year. In the case of an individual on the fiscal year basis, see § 1.6073–2. A special rule applies to nonresident aliens who do not have wages subject to withholding under Chapter 24 of the code and are not treated as residents under section 6013 (g) or (h) of the code. For taxable years beginning after December 31, 1976, these aliens are not required to file a declaration of estimated tax before June 15th.

(b) *Farmers or fishermen*—(1) *In general.* In the case of an individual on a calendar year basis:

(i) If at least two-thirds of the individual's total estimated gross income from all sources for the calendar year is from farming or fishing (including oyster farming), or

(ii) If at least two-thirds of the individual's total gross income from all sources shown on the return for the preceding taxable year was from farming or fishing (including oyster farming) (with respect to declarations of estimated tax for taxable years beginning after November 10, 1978),

He may file a declaration of estimated tax on or before the 15th day of January of the succeeeding calendar year in lieu of the time prescribed in paragraph (a) of this section. For the filing of a return in lieu of a declaration, see paragraph (a) of § 1.6015–1.

(2) *Farmers*. The estimated gross income from farming is the estimated income resulting from oyster farming, the cultivation of the soil, the raising or harvesting of any agricultural or horticultural commodities, and the raising of livestock, bees, or poultry. In other words, the requisite gross income must be derived from the operations of a stock, dairy, poultry, fruit, or truck farm, or plantation, ranch, nursery, range, orchard, or oyster bed. If an individual receives for the use of his land income in the form of a share of the crops produced thereon such income is from farming. As to determination of income of farmers, see sections 61 and 162 and the regulations thereunder.

(3) *Fishermen*. The estimated gross income from fishing is the estimated income resulting from the catching, taking, harvesting, cultivating or farming of any kind of fish, shellfish (for example, clams and mussels), crustacea (for example, lobsters, crabs, and shrimps), sponges, seaweeds, or other aquatic forms of animal and vegetable life. The estimated gross income from fishing includes the income expected to be received by an officer or member of the crew of a vessel while the vessel is engaged in any such activity, whether or not the officer or member of the crew is himself so engaged, and, in the case of an individual who is engaged in any such activity in the employ of any person, the income expected to be received by such individual from such employment. In addition, income expected to be received for services performed as an ordinary incident to any such activity is estimated gross income from fishing. Similarly, for example, the estimated gross income from fishing includes income expected to be received from the shore services of an officer or member of the crew of a vessel engaged in any such activity, if such services are an ordinary incident to any such activity. Services performed as an ordinary incident to such activities include, for example, services performed in such cleaning, icing, and packing of fish as are necessary for the immediate preservation of the catch.

(c) *Nonresident aliens*. Notwithstanding the provisions of paragraph (a) of this section, for taxable years beginning after December 31, 1976, in the case of a nonresident alien described in section 6072(c) (relating to returns of nonresident aliens whose wages are not subject to withholding) whose estimated gross income for the calendar year meets the requirements of section 6015(a), a declaration of estimated tax for the calendar year need not be made before June 15th of such calendar year.

(d) *Place for filing declaration*. Except as provided in paragraph (b) of § 301.6091–1 (relating to hand-carried documents), the declaration of estimated tax shall be filed at the place prescribed by the instructions applicable to such declaration. For example, if the instructions applicable to a declaration provide that the declaration of a taxpayer located in North Carolina be filed with the Director, Internal Revenue Service Center, Chamblee, Ga., such declaration shall be filed with the service center.

(e) *Amendment of declaration*. An amended declaration of estimated tax may be filed during any interval between installment dates prescribed for the taxable year. However, no amended declaration may be filed until after the installment date on or before which the original declaration was filed and only one amended declaration may be filed during each interval between installment dates. Except as provided in paragraph (b) of § 301.6091–1 (relating to hand-carried documents), an amended declaration shall be filed with the internal revenue officer with whom the original declaration was filed.

[T.D. 6678, 28 FR 10516, Oct. 1, 1963, as amended by T.D. 6950, 33 FR 5355, Apr. 4, 1968; T.D. 7670, 45 FR 6931, Jan. 31, 1980; T.D. 7719, 45 FR 60902, Sept. 15, 1980]

§ 1.6073–2 Fiscal years.

(a) *Individuals other than farmers or fishermen*. In the case of an individual on the fiscal year basis, the declaration must be filed on or before the 15th day of the 4th month of the taxable year. If, however, the requirements of section 6015(a) are first met after the 1st

day of the 4th month and before the 2d day of the 6th month, the declaration must be filed on or before the 15th day of the 6th month of the taxable year. If such requirements are first met after the 1st day of the 6th month, and before the 2d day of the 9th month, the declaration must be filed on or before the 15th day of the 9th month of the taxable year. If such requirements are first met after the 1st day of the 9th month, the declaration must be filed on or before the 15th day of the 1st month of the succeeding fiscal year. Thus, if an individual taxpayer has a fiscal year ending on June 30, 1956, his declaration must be filed on or before October 15, 1955, if the requirements of section 6015(a) are met on or before October 1, 1955. If, however, such requirements are not met until after October 1, 1955, and before December 2, 1955, the declaration need not be filed until December 15, 1955.

(b) *Farmers or fishermen*. In the case of an individual on a fiscal year basis:

(1) If at least two-thirds of the individual's total estimated gross income from all sources for the fiscal year is from farming or fishing (including oyster farming), or

(2) If at least two-thirds of the individual's total gross income from all sources shown on the return for the preceding taxable year was from farming or fishing (including oyster farming) (with respect to declarations of estimated tax for taxable years beginning after November 10, 1978),

he may file a declaration on or before the 15th day of the month immediately following the close of his taxable year, in lieu of the time prescribed in paragraph (a) of this section.

(c) *Nonresident aliens*. Notwithstanding the provisions of paragraph (a) of this section, in the case of a nonresident alien described in section 6072(c) (relating to returns of nonresident aliens whose wages are not subject to withholding) whose anticipated income for the fiscal year meets the requirements of section 6015(a), § 1.6015(a)–1, and § 1.6015(i)–1, the declaration of estimated tax for the fiscal year need not be filed before the 15th day of the 6th month of such fiscal year.

[T.D. 6678, 28 FR 10516, Oct. 1, 1963, as amended by T.D. 7719, 45 FR 60903, Sept. 15, 1980]

§ 1.6073–3 Short taxable years.

(a) *Individuals other than farmers or fishermen*. In the case of short taxable years the declaration shall be filed on or before the 15th day of the 4th month of such taxable year if the requirements of section 6015(a) are met on or before the 1st day of the 4th month of such year. If such requirements are first met after the 1st day of the 4th month but before the 2d day of the 6th month, the declaration must be filed on or before the 15th day of the 6th month. If such requirements are first met after the 1st day of the 6th month but before the 2d day of the 9th month, the declaration must be filed on or before the 15th day of the 9th month. If, however, the period for which the declaration is filed is one of 4 months, or one of 6 months and the requirements of section 6015(a) are not met until after the 1st day of the 4th month, or one of 9 months and such requirements are not met until after the 1st day of the 6th month, the declaration may be filed on or before the 15th day of the succeeding taxable year.

(b) *Farmers or fishermen*. In the case of an individual:

(1) Whose current taxable year is a short taxable year and whose estimated gross income from farming or fishing (including oyster farming) is at least two-thirds of his total estimated gross income from all sources for such current taxable year, or

(2) Whose taxable year preceding the current taxable year was a short taxable year and whose gross income from farming or fishing (including oyster farming) was at least two-thirds of the total gross income from all sources shown on the return for such preceding short taxable year (with respect to declarations of estimated tax for taxable years beginning after November 10, 1978),

he may file a declaration of estimated tax on or before the 15th day of the month immediately following the close of the current taxable year, in lieu of

the time prescribed in paragraph (a) of this section.

(c) *Nonresident aliens.* Notwithstanding the provisions of paragraph (a) of this section, in the case of a short taxable year, a nonresident alien described in section 6072(c) (relating to returns of nonresident aliens whose wages are not subject to withholding) whose anticipated income for the short taxable year meets the requirements of section 6015(a). Sections 1.6015(a)–1, 1.6015(g)–1, and 1.6015(i)–1 on or before the 1st day of the 6th month following the beginning of such year need not file a declaration of estimated tax before the 15th day of the 6th month following the beginning of such year.

[T.D. 6678, 28 FR 10516, Oct. 1, 1963, as amended by T.D. 7719, 45 FR 60903, Sept. 15, 1980]

§ 1.6073–4 Extension of time for filing declarations by individuals.

(a) *In general.* District directors and directors of service centers are authorized to grant a reasonable extension of time for filing a declaration or an amended declaration. Except as provided in paragraph (b) of § 301.6091–1 (relating to hand-carried documents), an application for an extension of time for filing such a declaration shall be addressed to the internal revenue officer with whom the taxpayer is required to file his declaration, and must contain a full recital of the causes for the delay. Except in the case of taxpayers who are abroad, no extension for filing declarations may be granted for more than 6 months.

(b) *Citizens outside of the United States.* In the case of a United States citizen outside the United States and Puerto Rico on the 15th day of the 4th month of his taxable year, an extension of time for filing his declaration of estimated tax otherwise due on or before the 15th day of the 4th month of the taxable year is granted to and including the 15th day of the 6th month of the taxable year. For purposes of applying this paragraph to taxable years beginning prior to January 1, 1964, Alaska shall be considered outside the United States.

(c) *Residents outside the United States.* In the case of a U.S. resident living or traveling outside the United States and Puerto Rico on the 15th day of the 4th month of a taxable year beginning after December 31, 1978, an extension of time for filing the declaration of estimated tax otherwise due on or before the 15th day of the 4th month of the taxable year is granted to and including the 15th day of the 6th month of the taxable year.

(d) *Addition to tax applicable.* An extension of time for filing the declaration of estimated tax automatically extends the time for paying the estimated tax (without interest) for the same period. However, such extension does not relieve the taxpayer from the addition to the tax imposed by section 6654, and the period of the underpayment will be determined under section 6654(c) without regard to such extension.

[T.D. 6500, 25 FR 12008, Nov. 26, 1960, as amended by T.D. 6638, 28 FR 1765, Feb. 26, 1963; T.D. 6950, 33 FR 5355, Apr. 4, 1968; T.D. 7736, 45 FR 76143, Nov. 18, 1980]

§ 1.6074–1 Time and place for filing declarations of estimated income tax by corporations.

(a) *Taxable years beginning on or before December 31, 1963.* For taxable years ending on or after December 31, 1955, and beginning on or before December 31, 1963, declarations of estimated tax for the taxable year shall be filed on or before the 15th day of the 9th month of such year by every corporation whose then anticipated income tax liability under section 11 or 1201(a), or subchapter L, chapter 1 of the Code, for the year meets the requirements of section 6016(a). If, however, the requirements necessitating the filing of a declaration are first met after the last day of the 8th month and before the first day of the 12th month of the taxable year the declaration shall be filed on or before the 15th day of the 12th month of the taxable year. If, however, the requirements of section 6016(a) are not met before the first day of the 12th month of the taxable year, no declaration need be filed for such year.

(b) *Taxable years beginning after December 31, 1963.* A declaration of estimated tax for a taxable year beginning after December 31, 1963, required of a corporation by section 6016 shall be filed as follows:

If the requirements of section 6016 are first met—	The declaration shall be filed on or before—
before the 1st day of the 4th month of the taxable year.	the 15th day of the 4th month of the taxable year
after the last day of the 3d month and before the 1st day of the 6th month of the taxable year.	the 15th day of the 67th month of the taxable year
after the last day of the 5th month and before the 1st day of the 9th month of the taxable year.	the 15th day of the 9th month of the taxable year
after the last day of the 8th month and before the 1st day of the 12th month of the taxable year.	the 15th day of the 12th month of the taxable year

(c) *Place for filing declaration.* Except as provided in paragraph (b) of § 301.6091–1 (relating to hand-carried documents), the declaration of estimated tax shall be filed at the place prescribed by the instructions applicable to such declaration. For example, if the instructions applicable to a declaration provide that the declaration of a corporation located in North Carolina be filed with the Director, Internal Revenue Service Center, Chamblee, Ga., such declaration shall be filed with the service center.

(d) *Amendment of declaration*—(1) *Taxable years beginning on or before December 31, 1963.* A declaration of estimated tax for a taxable year beginning on or before December 31, 1963, which is filed by a corporation prior to the 15th day of the 12th month of the taxable year may be amended in the manner prescribed in § 1.6016–3, at any time on or before such 15th day. An amended declaration shall be filed with the internal revenue officer with whom the original declaration was filed.

(2) *Taxable years beginning after December 31, 1963.* In any case where a declaration of estimated tax for a taxable year beginning after December 31, 1963, has been filed, an amended declaration of estimated tax may be filed during any interval between installment dates prescribed for the taxable year. However, no amended declaration may be filed until after the installment date on or before which the original declaration was filed and only one amended declaration may be filed during each interval between installment dates. See § 1.6016–3 for the manner of making an amended declaration. Except as provided in paragraph (b) of § 301.6091–1 (relating to hand-carried documents), an amended declaration shall be filed with the internal revenue officer with whom the original declaration was filed.

[T.D. 6768, 29 FR 14922, Nov. 4, 1964, as amended by T.D. 6950, 33 FR 5355, Apr. 4, 1968]

§ 1.6074–2 Time for filing declarations by corporations in case of a short taxable year.

(a) *Taxable years beginning on or before December 31, 1963*—(1) *In general.* In the case of a short taxable year of 9 months or more beginning on or before December 31, 1963, where the requirements of section 6016(a) are met before the 1st day of the 9th month of the short taxable year, the declaration shall be filed on or before the 15th day of the 9th month of such short year. In the case of a short taxable year of more than 9 months, where the requirements of section 6016(a) are first met after the last day of the 8th month, but before the 1st day of the last month of the short taxable year, the declaration shall be filed on or before the 15th day of the last month of such short year. See § 1.6016–4, relating to the requirement of a declaration in the case of a short taxable year, and paragraph (a) of § 1.6154–2, relating to the time for payment of the estimated tax in case of a short taxable year.

(2) *Example.* The application of the provisions of this paragraph may be illustrated by the following example:

Example. A corporation which changes from a calendar year basis to a fiscal year basis beginning November 1, 1960, will have a short taxable year beginning January 1, 1960, and ending October 31, 1960. If the requirements of section 6016(a) are met before September 1, 1960 (the 1st day of the 9th month), the corporation is required to file its declaration on or before September 15, 1960 (the 15th day of the 9th month). However, if the requirements of section 6016(a) are first met after August 31, 1960 (the last day of the 8th month), but before October 1, 1960 (the 1st day of the last month of the short year), the corporation is required to file its declaration on or before October 15, 1960 (the 15th day of the last month of the short year).

(b) *Taxable years beginning after December 31, 1963*—(1) *In general.* In the case of a short taxable year of 4 or more months which begins after December 31, 1963, the declaration shall be filed on or before the applicable date specified in paragraph (b) of § 1.6074–1,

except that in the case of a short taxable year ending after November 30, 1964, the declaration shall be filed on or before the 15th day of the last month of the short taxable year if the requirements of section 6016(a) are first met before the first day of such last month and the date specified in such paragraph (b) as applicable is not within the short taxable year. See § 1.6016–4, relating to the requirement of a declaration in the case of a short taxable year, and paragraph (b) of § 1.6154–2, relating to the time for payment of the estimated tax in case of a short taxable year.

(2) *Examples.* The application of the provisions of this paragraph may be illustrated by the following examples:

Example 1. A corporation filing on a calendar year basis which changes to a fiscal year beginning September 1, 1965, will have a short taxable year beginning January 1, 1965, and ending August 31, 1965. If the requirements of section 6016(a) are met before April 1, 1965 (the 1st day of the 4th month), the declaration of estimated tax must be filed on or before April 15, 1965 (the 15th day of the 4th month).

Example 2. If, in the first example, the corporation first meets the requirements of section 6016(a) during July 1965, then the requirements of section 6016(a) were met before the first day of the last month of the short taxable year, and a declaration of estimated tax is required to be filed on or before August 15, 1965, for the short taxable year. However, if the corporation does not meet the requirements of section 6016(a) until August 1, 1965, then the requirements of section 6016(a) were not met before the first day of the last month of the short taxable year, and no declaration of estimated tax is required to be filed for the short taxable year.

(c) *Amendment of declaration*—(1) *Taxable years beginning on or before December 31, 1963.* Where a declaration of estimated tax for a short taxable year of more than 9 months beginning on or before December 31, 1963, is filed before the 15th day of the last month of the short taxable year, an amended declaration may be filed any time on or before such 15th day.

(2) *Taxable years beginning after December 31, 1963.* Where a declaration of estimated tax for a short taxable year beginning after December 31, 1963, has been filed, an amended declaration may be filed during any interval between installment dates. However, no amended declaration for a short taxable year may be filed until after the installment date on or before which the original declaration was filed and only one amended declaration may be filed during each interval between installment dates. For purposes of this subparagraph the term ''installment date'' includes the 15th day of the last month of a short taxable year if such 15th day does not fall on a prescribed installment date.

[T.D. 6768, 29 FR 14923, Nov. 4, 1964]

§ 1.6074–3 Extension of time for filing declarations by corporations.

(a) *In general.* District directors and directors of service centers are authorized to grant a reasonable extension of time for filing a declaration or an amended declaration. Except as provided in paragraph (b) of § 301.6091–1 (relating to hand-carried documents), an application by a corporation for an extension of time for filing such a declaration shall be addressed to the internal revenue officer with whom the corporation is required to file its declaration and must contain a full recital of the causes for the delay.

(b) *Addition to tax applicable.* An extension of time granted to a corporation for filing a declaration of estimated tax automatically extends the time for paying the estimated tax (without interest) for the same period. However, such extension does not relieve the corporation from the addition to the tax imposed by section 6655, and the period of the underpayment will be determined under section 6655(c) without regard to such extension.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6950, 33 FR 5355, Apr. 4, 1968]

EXTENSION OF TIME FOR FILING RETURNS

§ 1.6081–1 Extension of time for filing returns.

(a) *In general.* The Commissioner is authorized to grant a reasonable extension of time for filing any return, declaration, statement, or other document which relates to any tax imposed by subtitle A of the Code and which is required under the provisions of subtitle A or F of the Code or the regulations thereunder. However, other than in the

case of taxpayers who are abroad, such extensions of time shall not be granted for more than 6 months, and the extension of time for filing the return of a DISC (as defined in section 992(a)), as specified in section 6072(b), shall not be granted. Except in the case of an extension of time pursuant to § 1.6081–5, an extension of time for filing an income tax return shall not operate to extend the time for the payment of the tax unless specified to the contrary in the extension. For rules relating to extensions of time for paying tax, see § 1.6161–1.

(b) *Application for extension of time*—(1) *In general*. Under other sections in this chapter, certain taxpayers may request an automatic extension of time to file certain returns. Except in undue hardship cases, no extension of time to file a return will be allowed under this section until an automatic extension of time to file the return has been allowed under the applicable section. No extension of time to file a return will be granted under this section for a period of time greater than that provided for by automatic extension. A taxpayer desiring an extension of the time for filing a return, statement, or other document shall submit an application for extension on or before the due date of such return, statement, or other document. If a form exists for the application for an extension, the taxpayer should use the form; however, taxpayers may apply for an extension in a letter that includes the information required by this paragraph. Except as provided in § 301.6091–1(b) of this chapter (relating to hand-carried documents), the taxpayer should make the application for extension to the Internal Revenue Service office where such return, statement, or other document is required to be filed. Except for requests for automatic extensions of time to file certain returns provided for elsewhere in this chapter, the application must be in writing, signed by the taxpayer or his duly authorized agent, and must clearly set forth—

(i) The particular tax return, information return, statement, or other document, including the taxable year or period thereof, for which the taxpayer requests an extension; and

(ii) An explanation of the reasons for requesting the extension to aid the internal revenue officer in determining whether to grant the request.

(2) *Taxpayer unable to sign*. In any case in which a taxpayer is unable, by reason of illness, absence, or other good cause, to sign a request for an extension, any person standing in close personal or business relationship to the taxpayer may sign the request on his behalf, and shall be considered as a duly authorized agent for this purpose, provided the request sets forth the reasons for a signature other than the taxpayer's and the relationship existing between the taxpayer and the signer.

(c) *Effective/applicability dates*. This section applies to requests for extension of time filed after July 1, 2008.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6581, 26 FR 11678, Dec. 6, 1961; T.D. 6950, 33 FR 5355, Apr. 4, 1968; T.D. 7260, 38 FR 4258, Feb. 12, 1973; T.D. 7533, 43 FR 6604, Feb. 15, 1978; T.D. 7651, 44 FR 61597, Oct. 26, 1979; T.D. 8241, 54 FR 7762, Feb. 23, 1989; T.D. 9163, 69 FR 70548, Dec. 7, 2004; T.D. 9407, 73 FR 37365, July 1, 2008]

§ 1.6081–2T Automatic extension of time to file certain returns filed by partnerships (temporary).

(a) *In general*. (1) Except as provided in paragraph (h) of this section, a partnership required to file Form 1065, ''U.S. Partnership Return of Income,'' or Form 8804, ''Annual Return for Partnership Withholding Tax,'' for any taxable year will be allowed an automatic 5-month extension of time to file the return after the date prescribed for filing the return if the partnership files an application under this section in accordance with paragraph (b) of this section. No additional extension will be allowed pursuant to § 1.6081–1(b) beyond the automatic 5-month extension provided by this section. In the case of a partnership described in § 1.6081–5(a)(1), the automatic extension of time to file allowed under this section runs concurrently with an extension of time to file granted pursuant to § 1.6081–5.

(2) An electing large partnership (ELP) required to file Form 1065–B, ''U.S. Return of Income for Electing Large Partnerships,'' for any taxable year will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing

the return if the partnership files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements*. To satisfy this paragraph (b), the partnership must—

(1) Submit a complete application on Form 7004, ''Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns,'' or in any other manner prescribed by the Commissioner;

(2) File the application on or before the later of—

(i) The date prescribed for filing the return of the partnership; or

(ii) The expiration of any extension of time to file granted under § 1.6081–5(a); and

(3) File the application with the Internal Revenue Service office designated in the application's instructions.

(c) *Payment of section 7519 amount*. An automatic extension of time for filing a partnership return of income granted under paragraph (a) of this section does not extend the time for payment of any amount due under section 7519, relating to required payments for entities electing not to have a required taxable year.

(d) *Section 444 election*. An automatic extension of time for filing a partnership return of income will run concurrently with any extension of time for filing a return allowed because of section 444, relating to the election of a taxable year other than a required taxable year.

(e) *Effect of extension on partner*. An automatic extension of time for filing a partnership return of income under this section does not extend the time for filing a partner's income tax return or the time for the payment of any tax due on a partner's income tax return.

(f) *Termination of automatic extension*. The Commissioner may terminate an automatic extension at any time by mailing to the partnership a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the partnership's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(g) *Penalties*. See section 6698 for failure to file a partnership return.

(h) *Special rule for applications for extensions of time to file returns due on or after July 1, 2008 and before January 1, 2009*. A partnership required to file Form 1065, ''U.S. Partnership Return of Income,'' or Form 8804, ''Annual Return for Partnership Withholding Tax,'' on or after July 1, 2008 and before January 1, 2009, will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the partnership files an application under this section in accordance with paragraph (b) of this section.

(i) *Effective/applicability dates*. This section applies to applications for an automatic extension of time to file the partnership returns listed in paragraph (a) of this section filed on or after July 1, 2008.

(j) *Expiration date*. The applicability of this section expires on or before June 30, 2011.

[T.D. 9407, 73 FR 37365, July 1, 2008]

§ 1.6081–3 Automatic extension of time for filing corporation income tax returns.

(a) *In general*. A corporation or an affiliated group of corporations filing a consolidated return will be allowed an automatic 6-month extension of time to file its income tax return after the date prescribed for filing the return if the following requirements are met:

(1) An application must be submitted on Form 7004, ''Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns,'' or in any other manner prescribed by the Commissioner.

(2) The application must be filed on or before the date prescribed for the filing of the return of the corporation (or the consolidated return of the affiliated group of corporations) with the Internal Revenue Service office designated in the application's instructions.

(3) The corporation (or affiliated group of corporations filing a consolidated return) must remit the amount of the properly estimated unpaid tax liability on or before the date prescribed for payment.

(4) The application must include a statement listing the name and address of each member of the affiliated group if the affiliated group will file a consolidated return. Upon the timely filing of Form 7004, the 6-month extension of time to file shall be considered as granted to the affiliated group for the filing of its consolidated return or for the filing of each member's separate return.

(b) *No extension of time for the payment of tax*. Any automatic extension of time for filing a corporation income tax return granted under paragraph (a) of this section shall not operate to extend the time for payment of any tax due on such return.

(c) *Termination of automatic extension*. The Commissioner may terminate an automatic extension at any time by mailing a notice of termination to the corporation (parent corporation in the case of an affiliated group of corporations filing a consolidated return). The notice shall be mailed at least 10 days prior to the termination date designated in such notice. The notice of termination shall be sufficient for all purposes when mailed to the corporation at the address shown on Form 7004 or to the corporation's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(d) *No extension for DISCs*. Paragraphs (a) through (c) of this section shall not apply to returns filed by a DISC pursuant to section 6011(c)(2).

(e) *Effective/applicability dates*. This section applies to requests for extension of time to file corporation income tax returns filed after July 1, 2008.

[T.D. 9163, 69 FR 70548, Dec. 7, 2004, as amended by T.D. 9229, 70 FR 67359, Nov. 7, 2005; T.D. 9407, 73 FR 37366, July 1, 2008]

§ 1.6081–4 Automatic extension of time for filing individual income tax return.

(a) *In general*. An individual who is required to file an individual income tax return will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the individual files an application under this section in accordance with paragraph (b) of this section. In the case of an individual described in § 1.6081–5(a)(5) or (6), the automatic 6-month extension will run concurrently with the extension of time to file granted pursuant to § 1.6081–5.

(b) *Requirements*. To satisfy this paragraph (b), an individual must—

(1) Submit a complete application on Form 4868, ''Application for Automatic Extension of Time To File U.S. Individual Income Tax Return,'' or in any other manner prescribed by the Commissioner;

(2) File the application on or before the later of—

(i) The date prescribed for filing the return; or

(ii) The expiration of any extension of time to file granted pursuant to § 1.6081–5;

(3) File the application with the Internal Revenue Service office designated in the application's instructions; and

(4) Show the full amount properly estimated as tax for the taxable year.

(c) *No extension of time for the payment of tax*. An automatic extension of time for filing a return granted under paragraph (a) of this section will not extend the time for payment of any tax due on such return.

(d) *Termination of automatic extension*. The Commissioner may terminate an automatic extension at any time by mailing to the individual a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 4868 or to the individual's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(e) *Penalties*. See section 6651 for failure to file an individual income tax return or failure to pay the amount shown as tax on the return. In particular, see § 301.6651–1(c)(3) of this chapter (relating to a presumption of reasonable cause in certain circumstances involving an automatic extension of time for filing an individual income tax return).

(f) *Effective/applicability dates*. This section is applicable for applications for an automatic extension of time to

file an individual income tax return filed after July 1, 2008.

[T.D. 9407, 73 FR 37366, July 1, 2008]

§ 1.6081–5 Extensions of time in the case of certain partnerships, corporations and U.S. citizens and residents.

(a) An extension of time for filing returns of income and for paying any tax shown on the return is hereby granted to and including the fifteenth day of the sixth month following the close of the taxable year in the case of—

(1) Partnerships which are required under section 6072(a) to file returns on the fifteenth day of the fourth month following the close of the taxable year of the partnership, and which keep their records and books of account outside the United States and Puerto Rico;

(2) Domestic corporations which transact their business and keep their records and books of account outside the United States and Puerto Rico;

(3) Foreign corporations which maintain an office or place of business within the United States;

(4) Domestic corporations whose principal income is from sources within the possessions of the United States;

(5) United States citizens or residents whose tax homes and abodes, in a real and substantial sense, are outside the United States and Puerto Rico; and

(6) United States citizens and residents in military or naval service on duty, including non-permanent or short term duty, outside the United States and Puerto Rico.

(b) In order to qualify for the extension under this section—

(1) A statement must be attached to the return showing that the person for whom the return is made is a person described in paragraph (a) of this section; or

(2) If a person described in paragraph (a) of this section requests additional time to file, the person must request the extension on or before the fifteenth day of the sixth month following the close of the taxable year and check the appropriate box on Form 4868, ''Application for Automatic Extension of Time To File a U.S. Individual Income Tax Return,'' or Form 7004, ''Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns,'' whichever is applicable, or in any other manner prescribed by the Commissioner.

(c) For purposes of paragraph (a)(5) of this section, whether a person is a United States resident will be determined in accordance with section 7701(b) of the Code. The term ''tax home,'' as used in paragraph (a)(5), will have the same meaning which it has for purposes of section 162(a)(2) (relating to travel expenses away from home). If a person does not have a regular or principal place of business, that person's tax home will be considered to be his regular place of abode in a real and substantial sense.

(d) In order to qualify for the extension under paragraph (a)(6), the assigned tour of duty outside the United States and Puerto Rico must be for a period that includes the entire due date of the return.

(e) A person otherwise qualifying for the extension under paragraph (a)(5) or paragraph (a)(6) shall not be disqualified because he is physically present in the United States or Puerto Rico at any time, including the due date of the return.

(f) *Effective/applicability date.* This section is applicable for returns of income due after July 1, 2008.

[T.D. 8312, 55 FR 37227, Sept. 10, 1990; 55 FR 41310, Oct. 10, 1990, as amended by T.D. 9163, 69 FR 70550, Dec. 7, 2004; T.D. 9229, 70 FR 67359, Nov. 7, 2005; T.D. 9407, 73 FR 37366, July 1, 2008]

§ 1.6081–6T Automatic extension of time to file estate or trust income tax return (temporary).

(a) *In general.* (1) Except as provided in paragraph (g) of this section, an estate or trust required to file an income tax return on Form 1041, ''U.S. Income Tax Return for Estates and Trusts,'' will be allowed an automatic 5-month extension of time to file the return after the date prescribed for filing the return if the estate or trust files an application under this section in accordance with paragraph (b) of this section. No additional extension will be allowed pursuant to § 1.6081–1(b) beyond the automatic 5-month extension provided by this section.

(2) An estate or trust required to file an income tax return on Form 1041–N, ''U.S. Income Tax Return for Electing Alaska Native Settlement,'' or Form 1041–QFT, ''U.S. Income Tax Return for Qualified Funeral Trusts'' for any taxable year will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the estate or trust files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements*. To satisfy this paragraph (b), an estate or trust must—

(1) Submit a complete application on Form 7004, ''Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns,'' or in any other manner prescribed by the Commissioner;

(2) File the application on or before the date prescribed for filing the return with the Internal Revenue Service office designated in the application's instructions; and

(3) Show the amount properly estimated as tax for the estate or trust for the taxable year.

(c) *No extension of time for the payment of tax*. An automatic extension of time for filing a return granted under paragraph (a) of this section will not extend the time for payment of any tax due on such return.

(d) *Effect of extension on beneficiary*. An automatic extension of time to file an estate or trust income tax return under this section will not extend the time for filing the income tax return of a beneficiary of the estate or trust or the time for the payment of any tax due on the beneficiary's income tax return.

(e) *Termination of automatic extension*. The Commissioner may terminate an automatic extension at any time by mailing to the estate or trust a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the estate or trust's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(f) *Penalties*. See section 6651 for failure to file an estate or trust income tax return or failure to pay the amount shown as tax on the return.

(g) *Special rule for applications for extensions of time to file returns due on or after* July 1, 2008 *and before January 1, 2009*. An estate or trust required to file an income tax return on Form 1041, ''U.S. Income Tax Return for Estates and Trusts,'' on or after July 1, 2008 and before January 1, 2009, will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the estate or trust files an application under this section in accordance with paragraph (b) of this section.

(h) Effective/applicability dates. This section applies to applications for an automatic extension of time to file an estate or trust income tax return filed on or after July 1, 2008.

(i) *Expiration date*. The applicability of this section expires on or before June 30, 2011.

[T.D. 9407, 73 FR 37367, July 1, 2008]

§ 1.6081–7 Automatic extension of time to file Real Estate Mortgage Investment Conduit (REMIC) income tax return.

(a) *In general*. A Real Estate Mortgage Investment Conduit (REMIC) required to file an income tax return on Form 1066, ''U.S. Real Estate Mortgage Investment Conduit Income Tax Return,'' or Form 8831, ''Excise Tax on Excess Inclusions of REMIC Residual Interests,'' for any taxable year will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the REMIC files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements*. To satisfy this paragraph (b), a REMIC must—

(1) Submit a complete application on Form 7004, ''Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns,'' or in any other manner prescribed by the Commissioner;

(2) File the application on or before the date prescribed for filing the return with the Internal Revenue Service office designated in the application's instructions; and

(3) Show the full amount properly estimated as tax for the REMIC for the taxable year.

(c) *No extension of time for the payment of tax.* An automatic extension of time for filing a return granted under paragraph (a) of this section will not extend the time for payment of any tax due on such return.

(d) *Effect of extension on residual or regular interest holders.* An automatic extension of time to file a REMIC income tax return under this section will not extend the time for filing the income tax return of a residual or regular interest holder of the REMIC or the time for the payment of any tax due on the residual or regular interest holder's income tax return. An automatic extension will also not extend the time for payment of any excise tax on excess inclusions of REMIC residual interests.

(e) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the REMIC a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the REMIC's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(f) *Penalties.* See sections 6698 and 6651 for failure to file a REMIC income tax return or failure to pay an amount shown as tax on the return.

(g) *Effective/applicability dates.* This section applies to applications for an automatic extension of time to file REMIC income and excise tax returns listed in paragraph (a) of this section filed after July 1, 2008.

[T.D. 9407, 73 FR 37367, July 1, 2008]

§ 1.6081–8 Automatic extension of time to file certain information returns.

(a) *In general.* Except as provided in paragraph (f) of this section, a person required to file an information return (the filer) on Form W-2 series, W-2G, 1042–S, 1098 series, 1099 series, 5498 series, or 8027 will be allowed one automatic 30-day extension of time to file the return after the date prescribed for filing the return if the filer or the person transmitting the return for the filer (the transmitter) files an application in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), an application must—

(1) Be submitted on Form 8809, ''Request for Extension of Time To File Information Returns,'' or in any other manner as may be prescribed by the Commissioner; and

(2) Be filed with the Internal Revenue Service office designated in the application's instructions on or before the date prescribed for filing the information return.

(c) *Penalties.* See sections 6652, 6693, 6721, 6722, and 6723 for failure to file an information return.

(d) *Additional 30-day extension of time to file*—(1) *In general.* This paragraph (d) provides procedures for obtaining an additional extension of time for filing an information return on a form listed in paragraph (a) of this section. No extension of time will be granted under this paragraph (d) unless the filer or transmitter has first obtained an automatic extension under this section.

(2) *Procedures.* In the case of an information return on a form listed in paragraph (a) of this section, one additional 30-day extension of time to file the return may be allowed if the filer or transmitter submits a request for the additional extension before the expiration of the automatic 30-day extension. The request must—

(i) Be submitted on Form 8809 or in any other manner as may be prescribed by the Commissioner;

(ii) Explain in detail why the additional time is needed;

(iii) Be signed by the filer or transmitter; and

(iv) Otherwise satisfy the requirements of § 1.6081–1.

(e) *No effect on time to provide statement to recipients.* An extension under this section of time to file an information return does not extend the due date for providing a statement to the person with respect to whom the information is required to be reported.

(f) *Form W-2 filed on expedited basis.* This section does not apply to a return on Form W-2 (series) if the procedures authorized in § 31.6081(a)–1(a)(2)(ii) of

this chapter allow an automatic extension of time to file the return.

(g) *Effective date.* This section applies to requests for extension of time to file information returns due after December 7, 2004.

[T.D. 9163, 69 FR 70549, Dec. 7, 2004]

§ 1.6081–9 Automatic extension of time to file exempt organization returns.

(a) *In general.* A corporation required to file a return on Form 990–T will be allowed an automatic six-month extension of time to file the return after the date prescribed for filing if the corporation files an application in accordance with paragraph (b) of this section. In any other case, an exempt organization required to file a return on Form 990 (series, except for Form 990–C), 1041–A, 4720, 5227, 6069, or 8870 will be allowed an automatic three-month extension of time to file the return after the date prescribed for filing if the exempt organization files an application in accordance with paragraph (b) of this section. For guidance on extensions of time for an exempt organization to file Form 990–C, ''Farmer's Cooperative Association Income Tax Return,'' or Form 1120–POL, ''U.S. Income Tax Return for Certain Political Organizations,'' see § 1.6081–3.

(b) *Requirements.* To satisfy this paragraph (b), an application for an automatic extension under this section must—

(1) Be submitted on Form 8868, ''Application for Extension of Time To File an Exempt Organization Return,'' or in any other manner as may be prescribed by the Commissioner;

(2) Be filed with the Internal Revenue Service office designated in the application's instructions on or before the date prescribed for filing the return;

(3) Show the full amount properly estimated as tentative tax for the exempt organization for the taxable year; and

(4) Be accompanied by the full remittance of the amount properly estimated as tentative tax which is unpaid as of the date prescribed for the filing of the return.

(c) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the exempt organization a notice of termination. The notice must be mailed at least 10 days prior to the termination date designated in such notice. The notice of termination must be mailed to the address shown on the application for extension or to the exempt organization's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(d) *Penalties.* See sections 6651 and 6652(c) for failure to file an exempt organization return or failure to pay the amount shown as tax on the return.

(e) *Coordination with § 1.6081–1.* No extension of time will be granted under § 1.6081–1 for filing an exempt organization return listed in paragraph (a) of this section until an automatic extension has been allowed pursuant to this section.

(f) *Effective date.* This section applies to requests for extensions of time to file an exempt organization return due after December 7, 2004.

[T.D. 9163, 69 FR 70549, Dec. 7, 2004]

§ 1.6081–10 Automatic extension of time to file withholding tax return for U.S. source income of foreign persons.

(a) *In general.* A withholding agent or intermediary required to file a return on Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' for any taxable year will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the withholding agent or intermediary files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), a withholding agent or intermediary must—

(1) Submit a complete application on Form 7004, ''Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns,'' or in any other manner prescribed by the Commissioner;

(2) File the application on or before the date prescribed for filing the return with the Internal Revenue Service office designated in the application's instructions; and

(3) Remit the amount of the properly estimated unpaid tax liability on or before the date prescribed for payment.

(c) *No extension of time for the payment of tax.* An automatic extension of time for filing a return granted under paragraph (a) of this section will not extend the time for payment of any tax due on such return.

(d) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the withholding agent or intermediary a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the withholding agent or intermediary's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(e) *Penalties.* See section 6651 for failure to file a return or failure to pay an amount shown as tax on the return.

(f) *Effective/applicability dates.* This section is applicable for applications for an automatic extension of time to file the withholding tax return for U.S. source income of foreign persons return filed after July 1, 2008.

[T.D. 9407, 73 FR 37367, July 1, 2008]

§ 1.6081–11 Automatic extension of time for filing certain employee plan returns.

(a) *In general.* An administrator or sponsor of an employee benefit plan required to file a return under the provisions of chapter 61 or the regulations under that chapter on Form 5500 (series), ''Annual Return/Report of Employee Benefit Plan,'' will be allowed an automatic extension of time to file the return until the 15th day of the third month following the date prescribed for filing the return if the administrator or sponsor files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), an administrator or sponsor must—

(1) Submit a complete application on Form 5558, ''Application for Extension of Time To File Certain Employee Plan Returns,'' or in any other manner as may be prescribed by the Commissioner; and

(2) File the application with the Internal Revenue Service office designated in the application's instructions on or before the date prescribed for filing the information return.

(c) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the administrator or sponsor a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 5558 or to the administrator or sponsor's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(d) *Penalties.* See sections 6652, 6692, and the Employee Retirement Income Security Act of 1974 for penalties for failure to file a timely and complete Form 5500.

(e) *Effective/applicability dates.* This section is applicable for applications for an automatic extension of time to file Forms 5500 for plan years ending after July 1, 2008.

[T.D. 9407, 73 FR 37368, July 1, 2008]

PLACE FOR FILING RETURNS OR OTHER DOCUMENTS

§ 1.6091–1 Place for filing returns or other documents.

(a) *In general.* Except as provided in § 1.6091–4, whenever a return, statement, or other document is required to be made under the provisions of subtitle A or F of the Code, or the regulations thereunder, with respect to any tax imposed by subtitle A of the Code, and the place for filing such return, statement, or other document is not provided for by the Code, it shall be filed at the place prescribed by the regulations contained in this chapter.

(b) *Place for filing certain information returns.* (1) For the place for filing returns of partnership income, see paragraph (e)(1) of § 1.6031(a)–1.

(2) For the place for filing information returns by banks with respect to common trust funds, see § 1.6032–1.

(3) For the place for filing information returns by certain organizations

exempt from taxation under section 501(a), see paragraph (e) of § 1.6033–1.

(4) For the place for filing information returns by trusts claiming charitable deductions under section 642(c), see paragraph (c) of § 1.6034–1.

(5) For the place for filing information returns by officers, directors, and shareholders of foreign personal holding companies, see § 1.6035–1.

(6) For the place for filing information returns relating to certain stock option transactions, see paragraph (c) of § 1.6039–1.

(7) For the place for filing returns of information reporting certain payments, see paragraph (a)(5) of § 1.6041–2 and § 1.6041–6.

(8) For the place for filing returns of information regarding payments of dividends, see paragraph (c) of § 1.6042–2 (relating to returns for calendar years after 1962).

(9) For the place for filing information returns by corporations relating to contemplated dissolution or liquidation, see paragraph (a) of § 1.6043–1.

(10) For the place for filing information returns by corporations relating to distributions in liquidation, see paragraph (a) of § 1.6043–2.

(11) For the place for filing returns of information regarding payments of patronage dividends, see paragraph (d) of § 1.6044–2.

(12) For the place for filing information returns relating to formation or reorganization of foreign corporations, see paragraph (j)(2) of § 1.6046–1.

(13) For the place for filing information returns regarding certain payments of interest, see paragraph (c) of § 1.6049–1.

(14) For the place for filing information returns with respect to payment of wages in the form of group-term life insurance, see paragraph (b) of § 1.6052–1.

(15) For the place for filing information returns on Forms 1042–S with respect to certain amounts paid to foreign persons, see instructions to the form.

(16) For the place for filing information returns on Form 5074 with respect to the allocation of individual income tax to Guam, see paragraph (b)(3) of § 1.935–1 and paragraph (d) of § 301.7654–1 of this chapter (Regulations on Procedure and Administration).

(17) For the place for filing information returns on Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' with respect to certain amounts paid on behalf of foreign partners, see the instructions to the form.

(c) *Effective/Applicability date.* Paragraph (b)(17) of this section shall apply to partnership taxable years beginning after *April 29, 2008.*

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6887, 31 FR 8814, June 24, 1966; T.D. 6922, 32 FR 8713, June 17, 1967; T.D. 7284, 38 FR 20829, Aug. 3, 1973; T.D. 7385, 40 FR 50264, Oct. 29, 1975; T.D. 8734, 62 FR 53493, Oct. 14, 1997; T.D. 9156, 69 FR 55744, Sept. 16, 2004; T.D. 9394, 73 FR 23085, Apr. 29, 2008]

§ 1.6091–2 Place for filing income tax returns.

Except as provided in § 1.6091–3 (relating to certain international income tax returns) and § 1.6091–4 (relating to exceptional cases):

(a) *Individuals, estates, and trusts.* (1) Except as provided in paragraph (c) of this section, income tax returns of individuals, estates, and trusts shall be filed with any person assigned the responsibility to receive returns at the local Internal Revenue Service office that serves the legal residence or principal place of business of the person required to make the return.

(2) An individual employed on a salary or commission basis who is not also engaged in conducting a commercial or professional enterprise for profit on his own account does not have a ''principal place of business'' within the meaning of this section.

(b) *Corporations.* Except as provided in paragraph (c) of this section, income tax returns of corporations shall be filed with any person assigned the responsibility to receive returns in the local Internal Revenue Service office that serves the principal place of business or principal office or agency of the corporation.

(c) *Returns filed with service centers.* Notwithstanding paragraphs (a) and (b) of this section, whenever instructions applicable to income tax returns provide that the returns be filed with a service center, the returns must be so

filed in accordance with the instructions.

(d) *Hand-carried returns.* Notwithstanding paragraphs (1) and (2) of section 6091(b) and paragraph (c) of this section:

(1) *Persons other than corporations.* Returns of persons other than corporations which are filed by hand carrying shall be filed with any person assigned the responsibility to receive hand-carried returns in the local Internal Revenue Service office as provided in paragraph (a) of this section.

(2) *Corporations.* Returns of corporations which are filed by hand carrying shall be filed with any person assigned the responsibility to receive hand-carried returns in the local Internal Revenue Service office as provided in paragraph (b) of this section.

See § 301.6091–1 of this chapter (Regulations on Procedure and Administration) for provisions relating to the definition of hand carried.

(e) *Amended returns.* In the case of amended returns filed after April 14, 1968, except as provided in paragraph (d) of this section:

(1) *Persons other than corporations.* Amended returns of persons other than corporations shall be filed with the service center serving the legal residence or principal place of business of the person required to make the return.

(2) *Corporations.* Amended returns of corporations shall be filed with the service center serving the principal place of business or principal office or agency of the corporation.

(f) *Returns of persons subject to a termination assessment.* Notwithstanding paragraph (c) of this section:

(1) *Persons other than corporations.* Returns of persons other than corporations with respect to whom an assessment was made under section 6851(a) with respect to the taxable year shall be filed with any person assigned the responsibility to receive returns in the local Internal Revenue Service office as provided in paragraph (a) of this section.

(2) *Corporations.* Returns of corporations with respect to whom an assessment was made under section 6851(a) with respect to the taxable year shall be filed with any person assigned the responsibility to receive returns in the local Internal Revenue Service office as provided in paragraph (b) of this section.

(g) *Returns of persons subject to a termination assessment.* Notwithstanding paragraph (c) of this section, income tax returns of persons with respect to whom an income tax assessment was made under section 6852(a) with respect to the taxable year must be filed with any person assigned the responsibility to receive returns in the local Internal Revenue Service office as provided in paragraphs (a) and (b) of this section.

[T.D. 6950, 33 FR 5356, Apr. 4, 1968, as amended by T.D. 7012, 34 FR 7690, May 15, 1969; T.D. 7495, 42 FR 33726, July 1, 1977; T.D. 7575, 43 FR 58816, Dec. 18, 1978; T.D. 8628, 60 FR 62210, Dec. 5, 1995; T.D. 9156, 69 FR 55744, Sept. 16, 2004; 69 FR 60222, Oct. 7, 2004]

§ 1.6091–3 Filing certain international income tax returns.

The following income tax returns shall be filed as directed in the applicable forms and instructions:

(a) Income tax returns on which all, or a portion, of the tax is to be paid in foreign currency. See §§ 301.6316–1 to 301.6316–6 inclusive, and §§ 301.6316–8 and 301.6316–9 of this chapter (Regulations on Procedure and Administration).

(b) Income tax returns on an individual citizen of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States. A taxpayer's principal place of abode will be considered to be outside the United States if his legal residence is outside the United States or if his return bears a foreign address.

(c) Income tax returns of an individual citizen of a possession of the United States (whether or not a citizen of the United States) who has no legal residence or principal place of business in any internal revenue district in the United States.

(d) Except in the case of any departing alien return under section 6851 and § 1.6851–2, the income tax return of any nonresident alien (other than one treated as a resident under section 6013 (g) or (h)).

(e) The income tax return of an estate or trust the fiduciary of which is outside the United States and has no

legal residence or principal place of business in any internal revenue district in the United States.

(f) Income tax returns of foreign corporations.

(g) The return by a withholding agent of the income tax required to be withheld at source under chapter 3 of the Code on nonresident aliens and foreign corporations and tax-free covenant bonds, as provided in § 1.1461–2.

(h) Income tax returns of persons who claim the benefits of section 911 (relating to earned income from sources without the United States).

(i) Income tax returns of corporations which claim the benefits of section 922 (relating to special deduction for Western Hemisphere trade corporations) except in the case of consolidated returns filed pursuant to the regulations under section 1502.

(j) Income tax returns of persons who claim the benefits of section 931 (relating to income from sources within possessions of the United States).

(k) Income tax returns of persons who claim the benefits of section 933 (relating to income from sources within Puerto Rico).

(l) Income tax returns of corporations which claim the benefits of section 941 (relating to the special deduction for China Trade Act corporations).

[T.D. 6950, 33 FR 5357, Apr. 4, 1968, as amended by T.D. 7012, 34 FR 7690, May 15, 1969; T.D. 7670, 45 FR 6931, Jan. 31, 1980; T.D. 9156, 69 FR 55744, Sept. 16, 2004]

§ 1.6091–4 Exceptional cases.

(a) *Permission to file in office other than required office.* (1) The Commissioner may permit the filing of any income tax return required to be made under the provisions of subtitle A or F of the Code, or the regulations in this part, in any Internal Revenue Service office, notwithstanding the provisions of paragraphs (1) and (2) of section 6091(b) and §§ 1.6091–1 to 1.6091–3, inclusive.

(2) In cases where the Commissioner authorizes (for all purposes except venue) an internal revenue service center to receive returns, such returns pursuant to instructions issued with respect thereto, may be sent directly to that service center and are thereby filed there for all purposes except as a factor in determining venue. However, after initial processing all such returns shall be forwarded by the service center to the office with which such returns are, without regard to this subparagraph, required to be filed. For the sole purpose of determining venue, such returns are filed only with such office.

(3) Notwithstanding the provisions of other sections of this chapter or any rule issued under this chapter:

(i) In cases where, in accordance with subparagraph (2) of this paragraph, a return is filed with a service center, the authority of the members of the office with whom such return would, without regard to such subparagraph, be required to be filed shall remain the same as if the return had been so filed;

(ii) Unless a return or other document is a proper attachment to, or is, a return which the service center is expressly authorized to receive, such return or other document shall be filed as if all returns sent directly to the service centers, in accordance with subparagraph (2) of this paragraph, were filed in the office where such returns are, without regard to such subparagraph, required to be filed; and

(iii) Unless the performance of an act is directly related to the sending of a return directly to the service center, such act shall be performed as if all returns sent directly to the service centers, in accordance with subparagraph (2) of this paragraph, were filed in the office where such returns are, without regard to such subparagraph, required to be filed.

(4) The application of paragraphs (a)(2) and (3) of this section may be illustrated by the following example:

Example. The Commissioner has authorized the Internal Revenue Service Center, Philadelphia, Pennsylvania (for all purposes except venue), to receive Form 1120. Except for that authorization, A, a corporation with its principal place of business in Greensboro, North Carolina, is required to file its Form 1120 for Year X with the Internal Revenue Service Center, Atlanta, Georgia. In addition, A may file an election to defer development expenditures paid or incurred in Year X. Under § 1.616–2(e)(2) and applicable published guidance (in this case Notice 2003–19 (2003–1 C.B. 703)) that statement of election must be filed with the service center that serves A's principal place of business where A filed its income tax return. A may make

that election on its income tax return or by filing it separately. Under paragraph (a)(2) of this section, A may send its Form 1120 to either the Internal Revenue Service Center, Philadelphia, Pennsylvania, or to the Internal Revenue Service Center, Atlanta, Georgia. If A files its statement of election separately from its income tax return for Year X, then the statement of election is not a proper attachment to A's income tax return and A should send the statement of election to the Internal Revenue Service Center, Atlanta, Georgia (with which A must, without regard to paragraph (a)(2) of this section, file its income tax return), no later than the time prescribed for filing Form 1120 for Year X (including extensions).

(b) *Returns of officers and employees of the Internal Revenue Service.* The Commissioner may require any officer or employee of the Internal Revenue Service to file his income tax return in any Internal Revenue Service office selected by the Commissioner.

(c) *Residents of Guam.* Income tax returns of an individual citizen of the United States who is a resident of Guam shall be filed with Guam, as provided in paragraph (b)(1) of § 1.935–1.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6793, 30 FR 704, Jan. 22, 1965; T.D. 7385, 40 FR 50264, Oct. 29, 1975; T.D. 9156, 69 FR 55744, Sept. 16, 2004]

MISCELLANEOUS PROVISIONS

§ 1.6102–1 Computations on returns or other documents.

For provisions with respect to the rounding off to whole-dollar amounts of money items on returns and accompanying schedules, see § 301.6102–1 of this chapter (Regulations on Procedure and Administration).

[T.D. 6500, 25 FR 12137, Nov. 26, 1960]

§ 1.6107–1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.

(a) *Furnishing copy to taxpayer*—(1) A person who is a signing tax return preparer of any return of tax or claim for refund of tax under the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer (or nontaxable entity) not later than the time the return or claim for refund is presented for the signature of the taxpayer (or nontaxable entity). The signing tax return preparer may, at its option, request a receipt or other evidence from the taxpayer (or nontaxable entity) sufficient to show satisfaction of the requirement of this paragraph (a).

(2) The tax return preparer must provide a complete copy of the return or claim for refund filed with the IRS to the taxpayer in any media, including electronic media, that is acceptable to both the taxpayer and the tax return preparer. In the case of an electronically filed return, a complete copy of a taxpayer's return or claim for refund consists of the electronic portion of the return or claim for refund, including all schedules, forms, pdf attachments, and jurats, that was filed with the IRS. The copy provided to the taxpayer must include all information submitted to the IRS to enable the taxpayer to determine what schedules, forms, electronic files, and other supporting materials have been filed with the return. The copy, however, need not contain the identification number of the paid tax return preparer. The electronic portion of the return or claim for refund may be contained on a replica of an official form or on an unofficial form. On an unofficial form, however, data entries must reference the line numbers or descriptions on an official form.

(3) For electronically filed Forms 1040EZ, ''Income Tax Return for Single Filers and Joint Filers With No Dependents,'' and Form 1040A, ''U.S. Individual Income Tax Return,'' filed for the 2009, 2010 and 2011 taxable years, the information may be provided on a replica of a Form 1040, ''U.S. Individual Income Tax Return'', that provides all of the information. For other electronically filed returns, the information may be provided on a replica of an official form that provides all of the information.

(b) *Copy or record to be retained.* (1) A person who is a signing tax return preparer of any return or claim for refund shall—

(i)(A) Retain a completed copy of the return or claim for refund; or

(B) Retain a record, by list, card file, or otherwise of the name, taxpayer identification number, and taxable year of the taxpayer (or nontaxable entity) for whom the return or claim for

refund was prepared, and the type of return or claim for refund prepared;

(ii) Retain a record, by retention of a copy of the return or claim for refund, maintenance of a list, card file, or otherwise, for each return or claim for refund presented to the taxpayer (or nontaxable entity), of the name of the individual tax return preparer required to sign the return or claim for refund pursuant to § 1.6695–1(b); and

(iii) Make the copy or record of returns and claims for refund and record of the individuals required to sign available for inspection upon request by the Commissioner.

(2) The material described in this paragraph (b) shall be retained and kept available for inspection for the 3-year period following the close of the return period during which the return or claim for refund was presented for signature to the taxpayer (or nontaxable entity). In the case of a return that becomes due (with extensions, if any) during a return period following the return period during which the return was presented for signature, the material shall be retained and kept available for inspection for the 3-year period following the close of the later return period in which the return became due. For the definition of ''return period,'' see section 6060(c). If the person subject to the record retention requirement of this paragraph (b) is a corporation or a partnership that is dissolved before completion of the 3-year period, then all persons who are responsible for the winding up of the affairs of the corporation or partnership under state law shall be subject, on behalf of the corporation or partnership, to these record retention requirements until completion of the 3-year period. If state law does not specify any person or persons as responsible for winding up, then, collectively, the directors or general partners shall be subject, on behalf of the corporation or partnership, to the record retention requirements of this paragraph (b). For purposes of the penalty imposed by section 6695(d), such designated persons shall be deemed to be the tax return preparer and will be jointly and severally liable for each failure.

(c) *Tax return preparer*. For the definition of ''signing tax return preparer,'' see § 301.7701–15(b)(1) of this chapter. For purposes of applying this section, a corporation, partnership or other organization that employs a signing tax return preparer to prepare for compensation (or in which a signing tax return preparer is compensated as a partner or member to prepare) a return of tax or claim for refund shall be treated as the sole signing tax return preparer.

(d) *Penalties*. (1) For the civil penalty for failure to furnish a copy of the return or claim for refund to the taxpayers (or nontaxable entity) as required under paragraph (a) of this section, see section 6695(a) and § 1.6695–1(a).

(2) For the civil penalty for failure to retain a copy of the return or claim for refund, or to retain a record as required under paragraph (b) of this section, see section 6695(d) and § 1.6695–1(d).

(e) *Effective/applicability date*. This section is applicable to returns and claims for refund filed after December 31, 2008.

[T.D. 9436, 73 FR 78438, Dec. 22, 2008, as amended at 74 FR 5104, Jan. 29, 2009]

§ 1.6107–2 Form and manner of furnishing copy of return and retaining copy or record.

(a) *In general*. The Commissioner may prescribe the form and manner of satisfying the requirements imposed by section 6107(a) and (b) and § 1.6107–1(a) and (b) in forms, instructions, or other appropriate guidance (*see* § 601.601(d)(2) of this chapter).

(b) *Effective date*. To the extent this section relates to section 6107(a) and § 1.6107–1(a), it applies to income tax returns and claims for refund presented to a taxpayer for signature after December 31, 2002. To the extent this section relates to section 6107(b) and § 1.6107–1(b), it applies after December 31, 2002, to returns and claims for refund for which the 3-year period described in section 6107(b) expires after December 31, 2002.

[T.D. 9119, 69 FR 15249, Mar. 25, 2004]

§ 1.6109–1 Identifying numbers.

(a) *Information to be furnished after April 15, 1974*. For provisions concerning

the requesting and furnishing of identifying numbers with respect to returns, statements, and other documents which must be filed after April 15, 1974, see § 301.6109–1 of this chapter (Regulations on Procedure and Administration).

(b) *Information to be furnished before April 15, 1974.* For provisions concerning the requesting and furnishing of identifying numbers with respect to returns, statements, and other documents which must be filed before April 16, 1974, see 26 CFR § 1.6109–1 (revised as of April 1, 1973).

[T.D. 7306, 39 FR 9946, Mar. 15, 1974; 39 FR 11080, Mar. 25, 1974]

§ 1.6109–2 Tax return preparers furnishing identifying numbers for returns or claims for refund filed after December 31, 2008.

(a) *Furnishing identifying number.* (1) Each filed return of tax or claim for refund of tax under the Internal Revenue Code prepared by one or more tax return preparers must include the identifying number of the tax return preparer required by § 1.6695–1(b) to sign the return or claim for refund. In addition, if there is an employment arrangement or association between the individual tax return preparer and another person (except to the extent the return prepared is for the person), the identifying number of the other person must also appear on the filed return or claim for refund. For the definition of the term ''tax return preparer,'' see section 7701(a)(36) and § 301.7701–15 of this chapter.

(2) The identifying number of an individual tax return preparer is that individual's social security account number or such alternative number as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(3) The identifying number of a person (whether an individual or entity) who employs or associates with an individual tax return preparer described in paragraph (a)(2) of this section to prepare the return or claim for refund (other than a return prepared for the person) is the person's employer identification number.

(b) and (c) [Reserved]. For further guidance, see § 1.6109–2A(b) and (c).

(d) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008. For returns or claims for refund filed before January 1, 2000, see § 1.6109–2A(a).

[T.D. 9014, 67 FR 52863, Aug. 14, 2002, as amended by T.D. 9436, 73 FR 78439, Dec. 22, 2008]

§ 1.6115–1 Disclosure requirements for quid pro quo contributions.

(a) *Good faith estimate defined*—(1) *In general.* A good faith estimate of the value of goods or services provided by an organization described in section 170(c) in consideration for a taxpayer's payment to that organization is an estimate of the fair market value, within the meaning of § 1.170A–1(c)(2), of the goods or services. The organization may use any reasonable methodology in making a good faith estimate, provided it applies the methodology in good faith. If the organization fails to apply the methodology in good faith, the organization will be treated as not having met the requirements of section 6115. See section 6714 for the penalties that apply for failure to meet the requirements of section 6115.

(2) *Good faith estimate for goods or services that are not commercially available.* A good faith estimate of the value of goods or services that are not generally available in a commercial transaction may be determined by reference to the fair market value of similar or comparable goods or services. Goods or services may be similar or comparable even though they do not have the unique qualities of the goods or services that are being valued.

(3) *Examples.* The following examples illustrate the rules of this paragraph (a).

Example 1. Facility not available on a commercial basis. Museum *M*, an organization described in section 170(c), is located in Community *N*. In return for a payment of $50,000 or more, *M* allows a donor to hold a private event in a room located in *M*. Private events other than those held by such donors are not permitted to be held in *M*. In Community *N*, there are four hotels, *O*, *P*, *Q*, and *R*, that have ballrooms with the same capacity as the room in *M*. Of these hotels, only *O* and *P* have ballrooms that offer amenities and atmosphere that are similar to the amenities and atmosphere of the room in *M* (although

O and *P* lack the unique collection of art that is displayed in the room in *M*). Because the capacity, amenities, and atmosphere of ballrooms in *O* and *P* are comparable to the capacity, amenities, and atmosphere of the room in *M*, a good faith estimate of the benefits received from *M* may be determined by reference to the cost of renting either the ballroom in *O* or the ballroom in *P*. The cost of renting the ballroom in *O* is $2500 and, therefore, a good faith estimate of the fair market value of the right to host a private event in the room at *M* is $2500. In this example, the ballrooms in *O* and *P* are considered similar and comparable facilities to the room in *M* for valuation purposes, notwithstanding the fact that the room in *M* displays a unique collection of art.

Example 2. Services available on a commercial basis. Charity *S* is an organization described in section 170(c). *S* offers to provide a one-hour tennis lesson with Tennis Professional *T* in return for the first payment of $500 or more that it receives. *T* provides one-hour tennis lessons on a commercial basis for $100. Taxpayer pays $500 to *S* and in return receives the tennis lesson with *T*. A good faith estimate of the fair market value of the lesson provided in exchange for Taxpayer's payment is $100.

Example 3. Celebrity presence. Charity *U* is an organization described in section 170(c). In return for the first payment of $1000 or more that it receives, *U* will provide a dinner for two followed by an evening tour of Museum *V* conducted by Artist *W*, whose most recent works are on display at *V*. *W* does not provide tours of *V* on a commercial basis. Typically, tours of *V* are free to the public. Taxpayer pays $1000 to *U* and in return receives a dinner valued at $100 and an evening tour of *V* conducted by *W*. Because tours of *V* are typically free to the public, a good faith estimate of the value of the evening tour conducted by *W* is $0. In this example, the fact that Taxpayer's tour of *V* is conducted by *W* rather than *V*'s regular tour guides does not render the tours dissimilar or incomparable for valuation purposes.

(b) *Certain goods or services disregarded.* For purposes of section 6115, an organization described in section 170(c) may disregard goods or services described in § 1.170A–13(f)(8)(i).

(c) *Value of the right to purchase tickets to college or university athletic events.* For purposes of section 6115, the right to purchase tickets for seating at an athletic event in exchange for a payment described in section 170(l) is treated as having a value equal to twenty percent of such payment.

(d) *Goods or services provided to employees or partners of donors*—(1) *Certain goods or services disregarded.* For purposes of section 6115, goods or services provided by an organization described in section 170(c) to employees of a donor or to partners of a partnership that is a donor in return for a payment to the donee organization may be disregarded to the extent that the goods or services provided to each employee or partner are the same as those described in § 1.170A–13(f)(8)(i).

(2) *Description permitted in lieu of good faith estimate for other goods or services.* The written disclosure statement required by section 6115 may include a description of goods or services, in lieu of a good faith estimate of their value, if the donor is—

(i) An employer and, in return for the donor's quid pro quo contribution, an organization described in section 170(c) provides the donor's employees with goods or services other than those described in paragraph (d)(1) of this section; or

(ii) A partnership and, in return for its quid pro quo contribution, the organization provides partners in the partnership with goods or services other than those described in paragraph (d)(1) of this section.

(e) *Effective date.* This section applies to contributions made on or after December 16, 1996. However, taxpayers may rely on the rules of this section for contributions made on or after January 1, 1994.

[T.D. 8690, 61 FR 65954, Dec. 16, 1996]

REGULATIONS APPLICABLE TO RETURNS OR CLAIMS FOR REFUND FILED PRIOR TO JANUARY 1, 2000

§ 1.6109–2A Furnishing identifying number of income tax return preparer.

(a) *Furnishing identifying number.* For returns or claims for refund filed prior to January 1, 2000, each return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code prepared by one or more income tax return preparers must bear the identifying number of the preparer required by § 1.6695–1(b) to sign the return or claim for refund. In addition, it there is a partnership or employment

arrangement between two or more preparers, the identifying number of the partnership or the person who employs (or engages) one or more other persons to prepare for compensation the return or claim for refund shall also appear on the return or claim for refund. If the preparer is:

(1) An individual (not described in subparagraph (2) of this paragraph (a) who is a citizen or resident of the United States such preparer's social security account number shall be affixed; and

(2) A person (whether an individual, corporation, or partnership) who employs (or engages) one or more persons to prepare the return or claim for refund (other than for the person), or who is not a citizen or resident of the United States and also is not employed or engaged by another preparer, such preparer's employer identification number shall be affixed.

For the definition of the term ''income tax return preparer'' (or ''preparer'') see section 7701(a)(36) and § 301.7701–15.

(b) *Furnishing address.* (1) Each return or claim for refund which is prepared by one or more income tax return preparers shall bear the street address, city, State, and postal ZIP code of that preparer's place of business where the preparation of the return or claim for refund was completed. However, if this place of business is not maintained on a year-round basis, the return or claim for refund shall bear the street address, city, State, and postal ZIP code of such preparer's principal office or business location which is maintained on a yearround basis, or it none, that preparer's residence.

(2) For purposes of satisfying the requirement of the first sentence of paragraph (b)(1) of this section, and income tax return preparer, may, on returns and claims for refund, disclose only the postal ZIP code of the described place of business as a satisfactory address, but only if the preparer first by written notice advises each affected Internal Revenue Service Center that he intends to follow this practice.

(c) *Penalty.* For the civil penalty for failure to furnish an identifying number as required under paragraph (a) of this section, see section 6695(c) and § 1.6695–1(c).

(d) *Effective date.* Paragraph (a) of this section and this paragraph (d) apply to returns or claims for refund filed prior to January 1, 2000. For returns or claims for refund filed after December 31, 1999, see § 1.6109–2(a).

[T.D. 7519, 42 FR 59967, Nov. 23, 1977, as amended by T.D. 8835, 64 FR 43911, Aug. 12, 1999. Redesignated and amended by T.D. 9014, 67 FR 52863, Aug. 14, 2002]

TIME AND PLACE FOR PAYING TAX

PLACE AND DUE DATE FOR PAYMENT OF TAX

§ 1.6151–1 Time and place for paying tax shown on returns.

(a) *In general.* Except as provided in section 6152 and paragraph (b) of this section, the tax shown on any income tax return shall, without assessment or notice and demand, be paid to the internal revenue officer with whom the return is filed at the time fixed for filing the return (determined without regard to any extension of time for filing the return). For provisions relating to the time for filing income tax returns, see section 6072 and §§ 1.6072–1 to 1.6072–4, inclusive. For provisions relating to the place for filing income tax returns, see section 6091 and §§ 1.6091–1 to 1.6091–4, inclusive.

(b)(1) *Returns on which tax is not shown.* If a taxpayer files a return and in accordance with section 6014 and the regulations thereunder, elects not to show the tax on the return, the amount of tax determined to be due shall be paid within 30 days after the date of mailing to the taxpayer a notice stating the amount payable and making demand upon the taxpayer therefor. However, if the notice is mailed to the taxpayer more than 30 days before the due date of the return, payment of the tax shall not be required prior to such due date.

(2) *Where tax is shown on the return.* In any case in which a taxpayer files a return on Form 1040A pursuant to paragraph (a)(7) of § 1.6012–1 and shows the amount of tax on the return, the unpaid balance of the tax shall, without assessment or notice and demand, be paid not later than the date fixed for filing the return.

(c) *Date fixed for payment of tax.* In any case in which a tax imposed by

subtitle A of the Code is required to be paid on or before a certain date, or within a certain period, any reference in subtitle A or F of the Code to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

(d) *Use of Government depositaries*. (1) For provisions relating to the use of authorized financial institutions in depositing income and estimated income taxes of certain corporations, see § 1.6302–1.

(2) For provisions relating to the use of such financial institutions for the deposit of taxes required to be withheld under chapter 3 of the Code on nonresident aliens and foreign corporations and tax-free covenant bonds, see § 1.6302–2. With respect to section 1446, the previous sentence shall apply only to a publicly traded partnership described in § 1.1446–4.

(e) *Effective/Applicability date*. Paragraph (d)(2) of this section shall apply to publicly traded partnerships described in § 1.1446–4 for partnership taxable years taxable years beginning after *April 29, 2008*.

(Approved by the Office of Management and Budget under control number 1545–0257)

[T.D. 6500, 25 FR 12137, Nov. 26, 1960, as amended by T.D. 6922, 32 FR 8713, June 17, 1967; T.D. 6950, 33 FR 5357, Apr. 4, 1968; T.D. 7102, 36 FR 5498, Mar. 24, 1971; T.D. 7953, 49 FR 19644, May 9, 1984; T.D. 8952, 66 FR 33831, June 26, 2001; T.D. 9394, 73 FR 23085, Apr. 29, 2008]

§ 1.6153–1 Payment of estimated tax by individuals.

(a) *In general*. (1) The time for payment of the estimated tax by individuals for calendar years shall be as follows:

Date of filing declaration	Dates of payment of estimated tax
(i) On or before April 15	In 4 equal installments—one at time of filing declaration, one on or before June 15, one on or before September 15, and one on or before January 15 of the succeeding taxable year
(ii) After April 15 and before June 16 if not required to be filed on or before April 15.	In 3 equal installments—one at time of filing declaration, one on or before September 15, and one on or before January 15 of the succeeding taxable year
(iii) After June 15 and before September 16 if not required to be filed on or before June 15.	In 2 equal installments—one at time of filing declaration, and the other on or before January 15 of the succeeding taxable year
(iv) After September 15 if not required to be filed on or before September 15.	In full at time of filing declaration

(2) If, for example, due to the nature and amount of his gross income for 1955, the taxpayer is not required to file his declaration as of April 15, but is required to file the declaration on or before June 15, 1955, the case comes within the scope of subparagraph (1)(ii) of this paragraph and the estimated tax is payable in 3 equal installments, the 1st on the date of filing, the 2d on or before September 15, 1955, and the 3d installment on or before January 15, 1956.

(3) If a declaration is filed after the time prescribed in section 6073(a) (including any extension of time granted for filing the declaration), there shall be paid at such time all installments of the estimated tax which would have been payable on or before such date of filing if the declaration had been timely filed in accordance with the provisions of section 6073(a). The remaining installments shall be paid at the times and in the amounts in which they would have been payable if the declaration had been timely filed. Thus, for example, B, a single man who makes his return on the calendar year basis, was employed from the beginning of 1955 and for several years prior thereto at an annual salary of $6,000, thus meeting the requirements of section 6015(a). B filed his declaration for 1955 on September 16, 1955. In such case, B should have filed a declaration on or before April 15, 1955, and at the time of filing his declaration he was delinquent in the payment of three installments of his estimated tax for the taxable year 1955. Hence, upon his filing the declaration on September 16, 1955, three-fourths of the estimated tax shown thereon must be paid.

(4) In the case of a decedent, payments of estimated tax are not required subsequent to the date of death. See, however, paragraph (c) of § 1.6015(b)–1, relating to the making of

an amended declaration by a surviving spouse if a joint declaration was made before the death of the decedent.

(5) The payment of any installment of the estimated tax shall be considered payment on account of the tax for such taxable year. Hence, upon the return for such taxable year, the aggregate amount of the payments of estimated tax should be entered as payments to be applied against the tax shown on such return.

(b) *Farmers or fishermen.* Special provisions are made with respect to the filing of the declaration and the payment of the tax by an individual whose estimated gross income from farming or, with respect to taxable years beginning after December 31, 1962, from fishing is at least two-thirds of his total gross income from all sources for the taxable year. As to what constitutes income from farming or fishing within the meaning of this paragraph, see paragraph (b) of § 1.6073–1. The declaration of such an individual may be filed on or before January 15 of the succeeding taxable year in lieu of the time prescribed for individuals generally. Where such an individual makes a declaration of estimated tax after September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(c) *Amendment of declaration.* If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease in the estimated tax by reason of the amendment. If any amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making the amendment.

(d) *Installments paid in advance.* At the election of the taxpayer any installment of the estimated tax may be paid prior to the date prescribed for its payment.

[T.D. 6500, 25 FR 12139, Nov. 26, 1960, as amended by T.D. 6678, 28 FR 10517, Oct. 1, 1963]

§ 1.6153–2 Fiscal years.

In the case of an individual on the fiscal year basis, the dates prescribed for payment of the estimated tax shall be the 15th day of the 4th month, the 15th day of the 6th month, and the 15th day of the 9th month of the taxable year and the 15th day of the 1st month of the succeeding taxable year. For example, if an individual having a fiscal year ending on June 30, 1956, first meets the requirements of section 6015(a) on January 15, 1956, and the declaration is filed on or before March 15, 1956, the estimated tax shall be paid in 2 equal installments, one at the time of filing of such declaration and the other on or before July 15, 1956.

[T.D. 6500, 25 FR 12139, Nov. 26, 1960]

§ 1.6153–3 Short taxable years.

In the case of a short taxable year of an individual for which a declaration is required to be filed the estimated tax shall be paid in equal installments, one at the time of filing the declaration, one on the 15th day of the 6th month of the taxable year and another on the 15th day of the 9th month of such year unless the short taxable year closed during or prior to such 6th or 9th month, and one on the 15th day of the 1st month of the succeeding taxable year. For example, if the short taxable year is the period of 10 months from January 1, 1955, to October 31, 1955, and the declaration is required to be filed on or before April 15, 1955, the estimated tax is payable in 4 equal installments, one on the date of filing the declaration, and one each on June 15, September 15, and November 15, 1955. If in such case the declaration is required to be filed after April 15 but on or before June 15, the tax will be payable in 3 equal installments, one on the date of filing the declaration, and one each on September 15, and November 15, 1955. The provisions of paragraph (a)(3) of § 1.6153–1, relating to payment of estimated tax in any case in which the declaration is filed after the time prescribed in section 6073 and §§ 1.6073–1 to 1.6073–4, inclusive, are equally applicable to the payment of the estimated tax for short taxable years.

[T.D. 6500, 25 FR 12139, Nov. 26, 1960]

§ 1.6153–4 Extension of time for paying the estimated tax.

An extension of time granted an individual under section 6081 for filing the

declaration of estimated tax automatically extends the time for paying the estimated tax (without interest) for the same period. See § 1.6073–4 for rules relating to extensions of time for filing declarations of estimated tax by individuals. Except as provided in paragraph (b) of § 301.6091–1 (relating to hand-carried documents), an application for an extension of time for paying a particular installment of the estimated tax shall be addressed to the internal revenue officer with whom the taxpayer files his declaration. Each application must contain a full recital of the causes for the delay. Such extension may be for a reasonable period not to exceed 6 months from the date fixed for payment thereof except in the case of a taxpayer who is abroad. Such extension does not relieve the taxpayer from the addition to the tax imposed by section 6654, and the period of the underpayment will be determined under section 6654(c) without regard to such extension.

[T.D. 6950, 33 FR 5357, Apr. 4, 1968]

EXTENSIONS OF TIME FOR PAYMENT

SOURCE: Sections 1.6161–1 through 1.6165–1 contained in T.D. 6500, 25 FR 12140, Nov. 26, 1960, unless otherwise noted.

§ 1.6161–1 Extension of time for paying tax or deficiency.

(a) *In general*—(1) *Tax shown or required to be shown on return*. A reasonable extension of the time for payment of the amount of any tax imposed by subtitle A of the Code and shown or required to be shown on any return, or for payment of the amount of any installment of such tax, may be granted by the district directors (including the Director of International Operations) at the request of the taxpayer. The period of such extension shall not be in excess of six months from the date fixed for payment of such tax or installment, except that if the taxpayer is abroad the period of the extension may be in excess of six months.

(2) *Deficiency*. The time for payment of any amount determined as a deficiency in respect of tax imposed by chapter 1 of the Code, or for the payment of any part thereof, may, at the request of the taxpayer, be extended by the internal revenue officer to whom the tax is required to be paid for a period not to exceed 18 months from the date fixed for payment of the deficiency, as shown on the notice and demand, and, in exceptional cases, for a further period not in excess of 12 months. No extension of the time for payment of a deficiency shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(b) *Undue hardship required for extension*. An extension of the time for payment shall be granted only upon a satisfactory showing that payment on the due date of the amount with respect to which the extension is desired will result in an undue hardship. The extension will not be granted upon a general statement of hardship. The term ''undue hardship'' means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, loss due to the sale of property at a sacrifice price, will result to the taxpayer for making payment on the due date of the amount with respect to which the extension is desired. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

(c) *Application for extension*. An application for an extension of the time for payment of the tax shown or required to be shown on any return, or for the payment of any installment thereof, or for the payment of any amount determined as a deficiency shall be made on Form 1127 and shall be accompanied by evidence showing the undue hardship that would result to the taxpayer if the extension were refused. Such application shall also be accompanied by a statement of the assets and liabilities of the taxpayer and an itemized statement showing all receipts and disbursements for each of the 3 months immediately preceding the due date of the amount to which the application relates. The application, with supporting documents, must be filed on or before the date prescribed for payment of the amount with respect to which the extension is desired. If the tax is required to be paid to the Director of International Operations, such application

must be filed with him, otherwise, the application must be filed with the applicable district director referred to in paragraph (a) or (b) of § 1.6091–2, regardless of whether the return is to be filed with, or tax is to be paid to, such district director. The application will be examined, and within 30 days, if possible, will be denied, granted, or tentatively granted subject to certain conditions of which the taxpayer will be notified. If an additional extension is desired, the request therefor must be made on or before the expiration of the period for which the prior extension is granted.

(d) *Payment pursuant to extension.* If an extension of time for payment is granted, the amount the time for payment of which is so extended shall be paid on or before the expiration of the period of the extension without the necessity of notice and demand. The granting of an extension of the time for payment of the tax or deficiency does not relieve the taxpayer from liability for the payment of interest thereon during the period of the extension. See section 6601 and § 301.6601–1 of this chapter (Regulations on Procedure and Administration). Further, the granting of an extension of the time for payment of one installment of the tax does not extend the time for payment of subsequent installments.

(e) *Cross reference.* For extensions of time for payment of estimated tax, see §§ 1.6073–4 and 1.6074–3.

[T.D. 6500, 25 FR 12140, Nov. 26, 1960, as amended by T.D. 6950, 33 FR 5357, Apr. 4, 1968; T.D. 7260, 38 FR 4259, Feb. 12, 1973]

§ 1.6162–1 Extension of time for payment of tax on gain attributable to liquidation of personal holding companies.

(a) *In general.* (1) If it is shown to the satisfaction of the district director that undue hardship to the taxpayer will result from the payment of such portion of the amount determined as the tax under chapter 1 of the Code by the taxpayer as is attributable to the short-term or long-term capital gain derived by the taxpayer from the receipt by him of property other than money on a complete liquidation of a corporation to which section 331(a)(1) or 342 applies, the district director may grant an extension of time for the payment of such portion of the tax. For the meaning of the term ''undue hardship'', see paragraph (b) of § 1.6161–1.

(2) The extension of time for payment shall be for a period not in excess of five years. The extension shall only be granted for a taxable year beginning before January 1, 1956, and shall apply only if the corporation, for its taxable year preceding the year in which occurred the complete liquidation (or the first of the series of distributions in complete liquidation), was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company.

(b) *Requirement of bond.* As a condition to the granting of an extension of time for payment, the taxpayer will usually be required by the district director to furnish a bond as provided in section 6165 and the regulations thereunder. For other provisions with respect to bonds, see section 7101 and the regulations in part 301 of this chapter (Regulations on Procedure and Administration).

§ 1.6164–1 Extensions of time for payment of taxes by corporations expecting carrybacks.

(a) *In general.* If a corporation in any taxable year files a statement with respect to an expected net operating loss carryback from such taxable year, such corporation may extend the time for the payment of all or part of any tax imposed by subtitle A of the Code for the taxable year immediately preceding such taxable year to the extent and subject to the limitations provided in section 6164. A corporation may extend the time for payment with respect to only such taxes as meet the following requirements:

(1) The tax must be one imposed by subtitle A of the Code;

(2) The tax must be for the taxable year immediately preceding the taxable year of the expected net operating loss;

(3) The tax must be shown on the return or must be assessed within the taxable year of the expected net operating loss; and

(4) The tax must not have been paid or required to have been paid prior to the filing of the statement.

(b) *Statement for purpose of extending time for payment.* (1) The time for payment of the tax is automatically extended upon the filing of a statement on Form 1138 by the corporation with the district director for the district where the tax is payable. The statement on Form 1138 must be filled out in accordance with the instructions accompanying the form, and all information required by the form and the instructions must be furnished by the taxpayer. The district director, upon request, will furnish a receipt for any statement filed. Such receipt will show the date the statement was filed.

(2) The period of extension is that provided in section 6164(d) and § 1.6164–5 unless sooner terminated by action of either the district director or the corporation.

§ 1.6164–2 Amount of tax the time for payment of which may be extended.

(a) *Total amount to which extension may relate.* The total amount of tax the time for payment of which may be extended under section 6164 may not exceed the amount of the reduction of the taxes previously determined attributable to the expected carryback.

(b) *Amount of tax to which extension may relate.* (1) The taxpayer shall specify on Form 1138 the kind of tax and the amount thereof the time for payment of which is to be extended. The amount of tax to which an extension may relate shall not exceed the amount of such tax shown on the return as filed, increased by any amount assessed as a deficiency (or as interest or addition to the tax) prior to the date of filing the statement and decreased by any amount paid or required to be paid prior to such date. In determining the amount of tax required to be paid prior to the date of filing the statement, only the following amounts shall be taken into consideration:

(i) The amount of the tax shown on the return as filed; and

(ii) Any amount assessed as a deficiency (or as interest or addition to the tax) if the tenth day after notice and demand for its payment occurs prior to the date of the filing of the statement.

(2) Delinquent installments are to be considered amounts required to be paid prior to the date of filing the statement. In the case of any authorized extension of time under sections 6161 and 6162, the amount of tax the time for payment of which is so extended is not to be considered required to be paid prior to the end of such extension. Similarly, any amount assessed as a deficiency (or as interest or addition to the tax) is not to be considered required to be paid prior to the date of the filing of the statement unless the tenth day after notice and demand for its payment falls prior to the date of the filing of the statement.

(3) The taxpayer may choose to extend the time for payment of all of one or more taxes, or it may choose to extend the time for payment of portions of several taxes. The taxes chosen by the taxpayer need not be those taxes which are affected by the carryback.

§ 1.6164–3 Computation of the amount of reduction of the tax previously determined.

(a) *Tax previously determined.* The taxpayer is to determine the amount of the reduction, attributable to the expected carryback, in the aggregate of the taxes previously determined for taxable years prior to the taxable year of the expected net operating loss. The tax previously determined is to be ascertained in accordance with the method prescribed in section 1314(a). Thus, the tax previously determined will be the tax shown on the return as filed, increased by any amounts assessed (or collected without assessment) as deficiencies prior to the date of the filing of the statement, and decreased by any amounts abated, credited, refunded, or otherwise repaid prior to such date. Any items as to which the Internal Revenue Service and the taxpayer are in disagreement at the time of the filing of the statement shall be taken into account in ascertaining the tax previously determined only if, and to the extent that, they were reported in the return, or were reflected in any amounts assessed (or collected without assessment) as deficiencies, or in any amounts abated, credited, refunded, or otherwise repaid, prior to the date of the filing of the

statement. The tax previously determined will reflect the foreign tax credit and the credit for tax withheld at source provided in section 32.

(b) *Reduction attributable to the expected carryback.* The reduction, attributable to the expected carryback or related adjustments, in any tax previously determined is to be ascertained by applying the expected carryback as if it were a determined net operating loss carryback, in accordance with the provisions of section 172 and the regulations thereunder. Items must be taken into account only to the extent that such items were included in the return, or were reflected in amounts assessed (or collected without assessment) as deficiencies, or in amounts abated, credited, refunded, or otherwise repaid, prior to the date of the filing of the statement. Thus, for example, if the taxpayer claims a deduction for depreciation of $10,000 in its return and the Internal Revenue Service asserts that only $4,000 is properly deductible, no change is to be made in the $10,000 depreciation deduction as shown by the taxpayer on his return unless a deficiency has been assessed, or an amount collected without assessment, prior to the date of filing of the statement as a result of a change in the depreciation deduction, or unless such change in the depreciation deduction was reflected in an amount abated, credited, refunded, or otherwise repaid prior to such date.

[T.D. 6500, 25 FR 12140, Nov. 26, 1960, as amended by T.D. 6862, 30 FR 14432, Nov. 18, 1965]

§ 1.6164–4 Payment of remainder of tax where extension relates to only part of the tax.

(a) *Time for payment.* If an extension of time relates to only part of the tax, the time for payment of the remainder of the tax shall be considered to be the dates on which payments would have been required if such remainder had been the tax and the taxpayer had elected to pay the tax in installments as provided in section 6152(a).

(b) *Example.* The provisions of this section may be illustrated by the following example:

Example. Corporation X, which keeps its books and makes its tax returns on the calendar year basis, filed its income tax return for 1956 on March 15, 1957. The corporation showed a tax of $1,000 on its return and paid 50 percent of such tax, or $500 on March 15, 1957. On June 3, 1957, Corporation X, pursuant to the provisions of section 6164, extended the time for payment of $400 of such tax. The remainder of the tax the time for payment of which was not so extended, i.e., $600, is to be considered the tax for purposes of determining when it is to be paid. The remainder is considered to be due on the dates on which payment would have been required if such remainder had been the tax. Since the taxable year ended on December 31, 1956, the tax is payable in two equal installments of $300 each on March 15, 1957, and June 17, 1957. The taxpayer, having paid $500 on March 15, 1957, will have $100 to pay on June 17, 1957.

§ 1.6164–5 Period of extension.

If the time for the payment of any tax has been extended pursuant to section 6164, such extension shall expire:

(a) On the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for the filing of the return for the taxable year of the expected net operating loss; or

(b) If an application for a tentative carryback adjustment provided in section 6411 with respect to such loss is filed before the expiration of the period specified in paragraph (a) of this section, on the date on which notice is mailed by registered mail prior to September 3, 1958, and by either registered or certified mail on and after September 3, 1958, to the taxpayer that such application is allowed or disallowed in whole or in part.

§ 1.6164–6 Revised statements.

(a) *Requirements and effect.* A corporation may file more than one statement under section 6164 with respect to any one taxable year. Each statement is to be considered a new statement and not an amendment of any prior statement. Each such new statement is to be in lieu of the last statement previously filed with respect to the taxable year. The new statement may extend the time for payment of a greater or lesser amount of tax than was extended under the prior statement or may change the kind of tax the time for payment of which is to be extended. The extension may not relate to any amount of tax which was paid or required to be paid prior to the date of filing the new

statement. Any amount of tax the time for payment of which was extended under a prior statement, however, may continue to be extended under the new statement. If the amount the time for payment of which is extended under the new statement is less than the amount so extended under the last statement previously filed, the extension of time shall be terminated on the date the new statement is filed as to the difference between the two amounts. See § 1.6164–8 for the dates on which such difference must be paid. If a corporation pays any amount of tax, the time for payment of which was extended, prior to the date the extension would otherwise terminate, the extension with respect to such amount shall be deemed terminated, without regard to whether a new statement is filed, on the date such amount is paid. The corporation shall indicate on each new statement filed that it has already filed one or more prior statements with respect to the taxable year. The corporation shall likewise indicate the date each prior statement was filed and the amount of each tax the time for payment of which was extended under each prior statement.

(b) *Example*. The provisions of this section may be illustrated by the following example:

Example. Corporation Y, which keeps its books and makes its tax returns on the calendar year basis, filed its income tax return for 1956 on March 15, 1957, showing a tax of $100,000. At the same time it filed a statement under section 6164 in which it stated that it expected to have a net operating loss of $75,000 in 1957 and that the reduction in the tax previously determined for 1955 (the second taxable year preceding the year of the expected net operating loss) attributable to the expected net operating loss carryback resulting from such expected loss, would be $39,000. The corporation accordingly extended the time for payment of $39,000 of its income tax for 1956, and paid $30,500 (50 percent of the excess of $100,000 over $39,000) of such tax on March 15, 1957 (see section 6164(c) and § 1.6164–4). As a result of its operations during the next several months, the corporation filed a second statement on June 3, 1957, in which it stated that its expected net operating loss for 1957 would amount to $150,000 and that the corresponding reduction in the tax for 1955 would amount to $78,000. Corporation Y under the new statement may extend the time for payment of $30,500, the installment due on June 17, 1957, and the time for payment of the $39,000 extended under the first statement filed on March 15, 1957, may continue to be extended under the second statement. The $30,500 which was paid on March 15, 1957, will not be affected by the second statement filed on June 3, 1957.

§ 1.6164–7 Termination by district director.

(a) *After an examination of the statement filed by the corporation is made*. The district director is authorized to make such examination of the statements filed as he deems necessary and practicable. If, upon such examination as he may make, the district director believes that, as of the time he makes the examination, all or any part of the statement is in a material respect erroneous or unreasonable, he will terminate the extension as to any part of the amount to which such extension relates which he deems should be terminated.

(b) *Jeopardy*. If the district director believes that the collection of any amount to which an extension under section 6164 relates is in jeopardy, he will immediately terminate the extension. In the case of such a termination, notice and demand shall be made by the district director for payment of such amount, and there may be no further extension of time under section 6164 with respect to such amount.

§ 1.6164–8 Payments on termination.

(a) *In general*. If an extension of time under section 6164 is terminated with respect to any amount either (1) by the filing of a new statement by the taxpayer under section 6164(e) extending the time for payment of a lesser amount than was extended in a prior statement, or (2) by action of the district director under section 6164(f) after making an examination of the statement filed by the corporation, no further extension of time may be made under section 6164 with respect to such amount. The time for payment of such amount shall be the dates on which payments would have been required if there had been no extension with respect to such amount and the taxpayer had elected under section 6152(a) to pay the tax in installments.

(b) *Example*. The provisions of this section may be illustrated by the following example:

Example. Corporation Z, which keeps its books and makes its tax returns on the calendar year basis, filed its income tax return for 1956 on March 15, 1957, showing a tax of $100,000. At the same time it filed a statement under section 6164 extending the time for payment of the entire $100,000 on the basis of an expected net operating loss carryback from 1957. On April 10, 1957, the corporation filed a new statement indicating that the reduction, attributable to the carryback from 1957, in its income tax for 1956, would only be $80,000, and thus terminated the above extension of $20,000. The time for payment of such $20,000 may not be extended again, and such $20,000 is payable as if it were the tax for 1956 and Corporation Z had elected to pay such tax in installments. That is, $10,000 is payable on March 15, 1957, and $10,000 payable on June 17, 1957. Inasmuch as the March 15 date had already passed when the Corporation Z terminated the extension with respect to the $20,000, $10,000 is payable immediately upon such termination, and the other installment of $10,000 is payable on June 17, 1957. This example would also apply if the extension of time for payment of the $20,000 were terminated instead by the district director on April 10, 1957.

§ 1.6164–9 Cross references.

For provisions with respect to interest due on amounts the payment of which is extended under section 6164, see section 6601 and paragraph (e) of § 301.6601–1 of this chapter (Regulations on Procedure and Administration). For extensions of time under section 6164 in the case of corporations making or required to make consolidated returns, see § 1. 1502–77(a).

[T.D. 6500, 25 FR 12140, Nov. 26, 1960, as amended by T.D. 7244, 37 FR 28897, Dec. 30, 1972]

§ 1.6165–1 Bonds where time to pay the tax or deficiency has been extended.

The district director, including the Director of International Operations, may, as a condition to the granting of an extension of time within which to pay any tax or any deficiency therein, require the taxpayer to furnish a bond in an amount not exceeding double the amount of the tax with respect to which the extension is granted. Such bond shall be furnished in accordance with the provisions contained in section 7101 and the regulations in part 301 of this chapter (Regulations on Procedure and Administration).

COLLECTION

GENERAL PROVISIONS

§ 1.6302–1 Use of Government depositaries in connection with corporation income and estimated income taxes and certain taxes of tax-exempt organizations.

(a) *Requirement*. A corporation (and, for taxable years beginning after December 31, 1986, any organization subject to the tax imposed by section 511, and any private foundation subject to the tax imposed by section 4940) shall deposit with an authorized depositary of Federal taxes all payments of tax imposed by chapter 1 of the Code (or treated as so imposed by section 6154 (h)), including any payments of estimated tax, on or before the date otherwise prescribed for paying such tax. This paragraph does not apply to a foreign corporation or entity which has no office or place of business in the United States.

(b) *Manner of deposit*—(1) *Deposit by Federal tax deposit coupon*. A deposit required to be made by this section shall be made separately from a deposit required by any other section. A corporation may make one, or more than one, remittance of the amount required by this section to be deposited. Each remittance shall be accompanied by a Federal Tax Deposit form which shall be prepared in accordance with the instructions applicable thereto. The remittance, together with the Federal Tax Deposit form, shall be forwarded to a financial institution authorized as a depositary for Federal taxes in accordance with 31 CFR part 203. The timeliness of the deposit will be determined by the date stamped on the Federal Tax Deposit form by the authorized financial institution or, if section 7502(e) applies, by the date the deposit is treated as received under section 7502(e). Each corporation making deposits under this section shall report on the return, for the period with respect to which such deposits are made, information regarding such deposits according to the instructions that

apply to such return. Amounts deposited under this section shall be considered as payment of the tax.

(2) *Deposits by electronic funds transfer*. For the requirement to deposit corporation income and estimated income taxes and certain taxes of tax-exempt organizations by electronic funds transfer, see § 31.6302–1(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1(h) of this chapter remains subject to the rules of paragraph (b)(1) of this section.

(c) *Procurement of the prescribed forms*. Copies of the Federal Tax Deposit form will so far as possible be furnished corporations. A corporation will not be excused from making a deposit, however, by the fact that no form has been furnished to it. Corporations not supplied with the proper form should make application therefor in ample time to make the required deposits within the time prescribed. The corporation may secure the form or additional forms by applying therefor and supplying its name, identification number, address and the taxable year to which the deposits will relate.

(d) *Failure to deposit*. For provisions relating to the penalty for failure to make a deposit within the prescribed time, see section 6656.

[T.D. 6914, 32 FR 3820, Mar. 8, 1967, as amended by T.D. 6941, 32 FR 18040, Dec. 16, 1967; T.D. 7293, 38 FR 32804, Nov. 28, 1973; T.D. 7953, 49 FR 19644, May 9, 1984; T.D. 8157, 52 FR 33809, Sept. 9, 1987; T.D. 8723, 62 FR 37492, July 14, 1997, T.D. 8947, 66 FR 32542, June 15, 2001; T.D. 8952, 66 FR 33831, June 26, 2001; T.D. 9239, 71 FR 13, Jan. 3, 2006]

§ 1.6302–2 Use of Government depositaries for payment of tax withheld on nonresident aliens and foreign corporations.

(a) *Time for making deposits*—(1) *Deposits for 1973 and subsequent years*—(i) *Monthly deposits*. Except as provided in paragraphs (a)(1)(ii) and (iv) of this section, every withholding agent who, pursuant to chapter 3 of the Internal Revenue Code, has accumulated at the close of any calendar month beginning on or after January 1, 1973, an aggregate amount of undeposited taxes of $200 or more shall deposit such aggregate amount with an authorized financial institution (see paragraph (b)(1)(ii) of this section) within 15 days after the close of such calendar month. However, the preceding sentence shall not apply if the withholding agent has made a deposit of taxes pursuant to paragraph (a)(1)(ii) of this section with respect to a quarter monthly period which occurred during such month. With respect to section 1446, this section shall only apply to a publicly traded partnership described in § 1.1446–4.

(ii) *Quarter-monthly deposits*. If at the close of any quarter-monthly period within a calendar month beginning on or after January 1, 1973, the aggregate amount of undeposited taxes required to be withheld pursuant to chapter 3 of the Code is $2,000 or more, the withholding agent shall deposit such aggregate amount in an authorized financial institution within 3 banking days after the close of such quarter-monthly period. For purposes of determining the amount of undeposited taxes at the close of a quarter-monthly period, undeposited taxes withheld with respect to items paid during a prior quarter-monthly period shall not be taken into account if the withholding agent made a deposit with respect to such prior quarter-monthly period. A withholding agent will be considered to have complied with the requirements of this subdivision with respect to the close of a quarter-monthly period if:

(*a*) His deposit is not less than 90 percent of the aggregate amount of the taxes required to be withheld during the period for which the deposit is made, and

(*b*) If such quarter-monthly period occurs in a month other than December, he deposits any underpayment with his first deposit which is otherwise required by this subparagraph to be made after the 15th day of the following month. Any underpayment of $200 or more for a quarter-monthly period closing during December must be deposited on or before the following January 31.

For purposes of this subparagraph, the term ''quarter-monthly period'' means the first 7 days of a calendar month, the 8th day through the 15th day of a calendar month, the 16th day through the 22d day of a calendar month, or the portion of a calendar month following the 22d day of such month.

(iii) *Excess deposits.* The excess (if any) of a deposit over the actual taxes for a monthly or quarter-monthly deposit period shall be applied in order of time to each of the withholding agent's succeeding deposits with respect to the same calendar year, until exhausted, to the extent that the amount by which the taxes for a subsequent deposit period exceed the deposit for such subsequent deposit period.

(iv) *Annual deposits.* If at the close of the month of December of each calendar year beginning on or after January 1, 1973, the aggregate amount of undeposited taxes required to be withheld pursuant to chapter 3 of the Code is less than $200, the withholding agent may deposit such aggregate amount in an authorized financial institution on or before March 15 of the following calendar year. If such aggregate amount is not so deposited, it shall be remitted in accordance with paragraph (a)(2) of § 1.1461–3.

(2) *Cross reference.* For rules relating to the adjustment of deposits, see §§ 1.1461–2(b) and 1.6414–1. For rules requiring payment of any undeposited tax, see § 1.1461–1.

(b) *Deposits by Federal tax deposit coupon*—(1) *Remittances.* Each remittance of amounts required to be deposited by paragraph (a) of this section shall be accompanied by a Federal Tax Deposit form which shall be prepared in accordance with the instructions applicable thereto. The remittance, together with the Federal Tax Deposit form, shall be forwarded to a financial institution authorized as a depositary for Federal taxes in accordance with 31 CFR part 203. The timeliness of the deposit will be determined by the date stamped on the Federal Tax Deposit form by the authorized financial institution or, if section 7502(e) applies, by the date the deposit is treated as received under section 7502(e). Each withholding agent making deposits under this section shall report on the return, for the period with respect to which such deposits are made, information regarding such deposits according to the instructions that apply to such return.

(2) *Voluntary deposits.* An amount of tax which is not required to be deposited may nevertheless be deposited if the withholding agent so desires.

(3) *Separation of deposits.* A deposit required by paragraph (a) of this section for any period occurring in one calendar year shall be made separately from any deposit for any period occurring in another calendar year. In addition, a deposit required to be made by paragraph (a) of this section shall be made separately from a deposit required by any other section.

(4) *Multiple remittances.* A withholding agent may make one, or more than one, remittance of the amount required to be deposited if each remittance is accompanied by the applicable deposit form.

(5) *Time deemed paid.* In general amounts deposited under this section shall be considered as paid on the last day prescribed for filing the return (Form 1042) in respect of such tax (determined without regard to any extension of time for filing such return), or at the time deposited, whichever is later. For purposes of section 6511 and the regulations thereunder, relating to period of limitation on credit or refund, if an amount is so deposited prior to April 15th of a calendar year immediately succeeding the calendar year in which occurs the period for which such amount was so deposited, such amount shall be considered as paid on such April 15th.

(6) *Procurement of Federal Tax Deposit form.* Copies of the Federal Tax Deposit form will so far as possible be furnished withholding agents. A withholding agent will not be excused from making a deposit, however, by the fact that no form has been furnished to it. A withholding agent not supplied with the form should make application therefor in ample time to make the required deposits within the time prescribed. The withholding agent may secure the form or additional forms by applying therefor and supplying its name, identification number, address, and the taxable period to which the deposit will relate. Copies of the Federal Tax Deposit form may be secured by application therefor.

(c) *Deposits by electronic funds transfer.* For the requirement to deposit taxes withheld on nonresident aliens and foreign corporations by electronic funds transfer, see § 31.6302–1(h) of this

chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1(h) of this chapter remains subject to the rules of paragraph (b) of this section.

(d) *Penalties for failure to make deposits.* For provisions relating to the penalty for failure to make a deposit within the prescribed time, see section 6656.

(e) *Saturday, Sunday, or legal holidays.* For provisions relating to the time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday, see § 301.7503–1 of this chapter (Procedure and Administration Regulations).

(f) *Employer identification number.* For the definition of the term ''employer identification number'', see § 301.7701–12 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty for failure to include the employer identification number in a return, statement, or other document, see § 301.6676–1 of such chapter.

(g) *Effective/Applicability date.* Except as otherwise provided, this section shall apply to tax required to be withheld under chapter 3 of the Internal Revenue Code after 1966. The last sentence of paragraph (a)(1)(i) of this section shall apply to partnership taxable years beginning after *April 29, 2008.*

[T.D. 6922, 32 FR 8713, June 17, 1967, as amended by T.D. 6941, 32 FR 18040, Dec. 16, 1967; T.D. 7243, 38 FR 22, Jan. 3, 1973; T.D. 7953, 49 FR 19644, May 9, 1984; T.D. 8723, 62 FR 37492, July 14, 1997; T.D. 8947, 66 FR 32542, June 15, 2001; T.D. 8952, 66 FR 33831, June 26, 2001; T.D. 9239, 71 FR 13, Jan. 3, 2006; T.D. 9394, 73 FR 23085, Apr. 29, 2008]

§ 1.6302–3 Use of Government depositaries in connection with estimated taxes of certain trusts.

(a) *Requirement.* A bank or other financial institution described in paragraph (b) of this section shall deposit in its Treasury Tax & Loan account described in 31 CFR 203 all payments of estimated tax required to be paid on or after September 15, 1988, under section 6654(l) with respect to trusts for which such institution acts as a fiduciary on or before the date otherwise prescribed for paying such tax.

(b) *Banks and financial institutions subject to this requirement.* The requirement of paragraph (a) of this section applies to banks and other financial institutions described in sections 581 and 591 that have been designated as authorized Federal tax depositaries described in section 6302(c) and that act as fiduciaries for at least 200 trusts to which section 6654(l) applies that during the calendar year are required to make installment payments of estimated tax with respect to such trusts. For purposes of this section, a fiduciary is the person responsible for filing the tax returns and paying the taxes with respect to a trust.

(c) *Cross-references.* For further guidance and instructions for certain banks and financial institutions acting as fiduciaries with respect to taxable trusts, see Rev. Proc. 89–49 (1989–2 C.B. 615), (see § 601.601(d)(2) of this chapter) or any successor revenue procedure. For the requirement to deposit estimated tax payments of taxable trusts by electronic funds transfer, see § 31.6302–1(h) of this chapter.

[T.D. 8192, 53 FR 12008, Apr. 12, 1988; T.D. 8192, 53 FR 13464, Apr. 25, 1988, as amended by T.D. 8723, 62 FR 37492, July 14, 1997; T.D. 8952, 66 FR 33831, June 26, 2001]

§ 1.6302–4 Use of financial institutions in connection with income taxes; voluntary payments by electronic funds transfer.

Any person may voluntarily remit by electronic funds transfer any payment of tax imposed by subtitle A of the Internal Revenue Code, including any payment of estimated tax. Such payment must be made in accordance with procedures prescribed by the Commissioner.

[T.D. 8828, 64 FR 37676, July 13, 1999]

§ 1.6361–1 Collection and administration of qualified State individual income taxes.

Except as otherwise provided in §§ 301.6361–1 to 301.6365–2, inclusive, of this chapter (Regulations on Procedure and Administration), the provisions of this part under subtitle F of the Internal Revenue Code of 1954 relating to the collection and administration of the taxes imposed by chapter 1 of such Code on the incomes of individuals (or relating to civil or criminal sanctions

with respect to such collection and administration) shall apply to the collection and administration of qualified State individual income taxes (as defined in section 6362 of such Code and the regulations thereunder) as if such taxes were imposed by chapter 1.

[T.D. 7577, 43 FR 59358, Dec. 20, 1978]

ABATEMENTS, CREDITS, AND REFUNDS

§ 1.6411–1 Tentative carryback adjustments.

(a) *In general.* Any taypayer who has a net operating loss under section 172, a net capital loss under section 1211(a) which is a carryback under section 1212, an unused investment credit under section 46, or an unused work incentive program (WIN) credit under section 50A, may file an application under section 6411 for a tentative carryback adjustment of the taxes for taxable years prior to the taxable year of the net operating or capital loss or the unused credit, whichever is applicable, which are affected by the net operating loss carryback, the capital loss carryback, the unused investment credit carryback, or the unused WIN credit carryback, resulting from such loss or unused credit. The regulations under section 6411 shall apply with respect to investment credit carrybacks for taxable years ending after December 31, 1961, but only with respect to applications for tentative carryback adjustments for investment credit carrybacks filed after November 2, 1966. The regulations under section 6411 shall apply with respect to WIN credit carrybacks for taxable years beginning after December 31, 1971. The right to file an application for a tentative carryback adjustment is not limited to corporations, but is available to any taxpayer otherwise entitled to carryback a loss or unused credit. A corporation may file an application for a tentative carryback adjustment even though it has not extended the time for payment of tax under section 6164. In determining any decrease in tax under §§ 1.6411–1 through 1.6411–4, the decrease in tax is determined net of any increase in the tax imposed by section 56 (relating to the minimum tax for tax preferences).

(b) *Contents of application.* (1) The application for a tentative carryback adjustment shall be filed, in the case of a corporation, on Form 1139, and in the case of taxpayers other than corporations, on Form 1045. The application shall be filled out in accordance with the instructions accompanying the form, and all information required by the form and the instructions must be furnished by the taxpayer.

(2) An application for a tentative carryback adjustment does not constitute a claim for credit or refund. If such application is disallowed by the district director or director of a service center in whole or in part, no suit may be maintained in any court for the recovery of any tax based on such application. The filing of an application for a tentative carryback adjustment will not constitute the filing of a claim for credit or refund within the meaning of section 6511 for purposes of determining whether a claim for credit or refund was filed prior to the expiration of the applicable period of limitation. The taxpayer, however, may file a claim for credit or refund under section 6402 at any time prior to the expiration of the applicable period of limitation, and may maintain a suit based on such claim if it is disallowed or if the district director or director of a service center does not act on the claim within 6 months from the date it is filed. Such claim may be filed before, simultaneously with, or after the filing of the application for a tentative carryback adjustment. A claim for credit or refund under section 6402 filed after the filing of an application for a tentative carryback adjustment is not to be considered an amendment of such application. Such claim, however, in proper cases may constitute an amendment to a prior claim filed under section 6402.

(c) *Time and place for filing application.* Except as otherwise provided in this paragraph the application for a tentative carryback adjustment shall be filed on or after the date of the filing of the return for the taxable year of the net operating loss, net capital loss, unused investment credit, or unused WIN credit and shall be filed within a period of twelve months from the end of such taxable year. With respect to any portion of an investment credit

carryback or a WIN credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, the twelve-month period shall be measured from the end of such subsequent taxable year. In the case of an application for a tentative carryback adjustment attributable to the carryback of an unused investment credit, the twelve-month period for filing shall not expire before the close of December 31, 1966. Any application filed prior to the date on which the return for the taxable year of the loss or unused credit is filed shall be considered to have been filed on the date such return is filed. In the case of an application filed before April 15, 1968, the application shall be filed with the internal revenue officer to whom the tax was paid or by whom the assessment was made. Except as provided in paragraph (b) of § 301.6091–1 (relating to hand-carried documents), in the case of an application filed after April 14, 1968, if the tax was paid to the Director of International Operations, the application shall be filed with him; otherwise the application shall be filed with the internal revenue office with which the return was filed.

[T.D. 6500, 25 FR 12144, Nov. 26, 1960, as amended by T.D. 6862, 30 FR 14432, Nov. 18, 1965; T.D. 6950, 33 FR 5357, Apr. 4, 1968; T.D. 7301, 39 FR 973, Jan. 4, 1974; T.D. 7564, 43 FR 40498, Sept. 12, 1978; T.D. 8107, 51 FR 43347, Dec. 2, 1986]

§ 1.6411–2 Computation of tentative carryback adjustment.

(a) *Tax previously determined.* The taxpayer is to determine the amount of decrease, attributable to the carryback, in tax previously determined for each taxable year before the taxable year of the net operating loss, net capital loss, or unused investment credit. The tax previously determined is to be ascertained in accordance with the method prescribed in section 1314(a). Thus, the tax previously determined will be the tax shown on the return as filed, increased by any amounts assessed (or collected without assessment) as deficiencies before the date of the filing of the application for a tentative carryback adjustment, and decreased by any amounts abated, credited, refunded, or otherwise repaid prior to such date. Any items as to which the Commissioner and the taxpayer are in disagreement at the time of the filing of the application shall be taken into account in ascertaining the tax previously determined only if, and to the extent that, they were reported in the return, or were reflected in any amounts assessed (or collected without assessment) as deficiencies, or in any amounts abated, credited, refunded, or otherwise repaid, before the date of filing the application. The tax previously determined, therefore, will reflect the foreign tax credit and the credit for tax withheld at source provided in section 33.

(b) *Decrease attributable to carryback.* The decrease in tax previously determined which is affected by the carryback or any related adjustments, is to be determined, except for such carryback and related adjustments, on the basis of the items which entered into the computation of such tax as previously determined; the tax previously determined being ascertained in the manner described in this section. In determining any such decrease, items shall be taken into account only to the extent that they were reported in the return, or were reflected in amounts assessed (or collected without assessment) as deficiencies, or in amounts abated, credited, refunded, or otherwise repaid, before the date of filing the application for a tentative carryback adjustment. If the Commissioner and the taxpayer are in disagreement as to the proper treatment of any item, it shall be assumed for purposes of determining the decrease in the tax previously determined that such item was correctly reported by the taxpayer unless, and to the extent that, the disagreement has resulted in the assessment of a deficiency (or the collection of an amount without an assessment), or the allowing or making of an abatement, credit, refund, or other repayment, before the date of filing the application. Thus, if the taxpayer claimed a deduction on its return of $50,000 for salaries paid its officers but the Commissioner asserts that such deduction should not exceed $20,000, and the Commissioner and the taxpayer have not agreed on the

amount properly deductible before the date the application for a tentative carryback adjustment is filed, $50,000 shall be considered as the amount properly deductible for purposes of determining the decrease in tax previously determined in respect of the application for a tentative carryback adjustment. In determining the decrease in tax previously determined, any items which are affected by the carryback must be adjusted to reflect such carryback. Thus, unless otherwise provided, any deduction limited, for example, by adjusted gross income, such as the deduction for medical, dental, etc., expenses is to be recomputed on the basis of the adjusted gross income as affected by the carryback.

(c) *Effective/applicability date.* These regulations apply with respect to applications for tentative refund filed on or after August 27, 2007.

[T.D. 6500, 25 FR 12144, Nov. 26, 1960, as amended by T.D. 7301, 39 FR 973, Jan. 4, 1974; T.D. 9355, 72 FR 48933, Aug. 27, 2007; 72 FR 56619, Oct. 4, 2007]

§ 1.6411–2T Computation of tentative carryback adjustment (temporary).

(a) *Tax previously determined.* The taxpayer is to determine the amount of decrease, attributable to the carryback, in tax previously determined for each taxable year before the taxable year of the net operating loss, net capital loss, or unused investment credit. The tax previously determined is to be ascertained in accordance with the method prescribed in section 1314(a). Thus, the tax previously determined will be the tax shown on the return as filed, increased by any amounts assessed (or collected without assessment) as deficiencies before the date of the filing of the application for a tentative carryback adjustment, and decreased by any amounts abated, credited, refunded, or otherwise repaid prior to that date. Any items as to which the Commissioner and the taxpayer are in disagreement at the time of the filing of the application shall, for purposes of § 1.6411–2, be taken into account in ascertaining the tax previously determined only if, and to the extent that, they were reported in the return, or were reflected in any amounts assessed (or collected without assessment) as deficiencies, or in any amounts abated, credited, refunded, or otherwise repaid, before the date of filing the application. The tax previously determined, therefore, will reflect the foreign tax credit and the credit for tax withheld at source provided in section 33.

(b) *Decrease attributable to carryback.* After ascertaining the tax previously determined in the manner described in paragraph (a) of this section, the taxpayer shall determine the decrease in tax previously determined attributable to the carryback and any related adjustments on the basis of the items of tax taken into account in computing the tax previously determined. In determining any decrease attributable to the carryback or any related adjustment, items shall be taken into account under this subsection only to the extent that they were reported in the return, or were reflected in amounts assessed (or collected without assessment) as deficiencies, or in amounts abated, credited, refunded, or otherwise repaid, before the date of filing the application for a tentative carryback adjustment. If the Commissioner and the taxpayer are in disagreement as to the proper treatment of any item, it shall be assumed for purposes of determining the decrease in the tax previously determined that the item was correctly reported by the taxpayer unless, and to the extent that, the disagreement has resulted in the assessment of a deficiency (or the collection of an amount without an assessment), or the allowing or making of an abatement, credit, refund, or other repayment, before the date of filing the application. Thus, if the taxpayer claimed a deduction on its return of $50,000 for salaries paid its officers but the Commissioner proposes that the deduction should not exceed $20,000, and the Commissioner and the taxpayer have not agreed on the amount properly deductible before the date the application for a tentative carryback adjustment is filed, $50,000 shall be considered as the amount properly deductible for purposes of determining the decrease in tax previously determined in respect of the application for a tentative carryback adjustment. In determining the decrease in tax previously determined, any items

which are affected by the carryback must be adjusted to reflect the carryback. Thus, unless otherwise provided, any deduction limited, for example, by adjusted gross income, such as the deduction for medical, dental, etc., expenses, is to be recomputed on the basis of the adjusted gross income as affected by the carryback. See § 1.6411–3T(d) for rules on the application of the decrease in tax to any tax liability.

(c) *Effective/applicability date.* (1) These regulations apply with respect to applications for tentative refund filed on or after August 27, 2007. (2) The applicability of this section expires on or before August 24, 2010.

[T.D. 9355, 72 FR 48934, Aug. 27, 2007]

§ 1.6411–3 Allowance of adjustments.

(a) *Time prescribed.* The Commissioner shall act upon any application for a tentative carryback adjustment filed under section 6411(a) within a period of 90 days from whichever of the following two dates is the later:

(1) The date the application is filed; or

(2) The last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss, net capital loss, or unused investment credit from which the carryback results.

(b) *Examination.* Within the 90-day period described in paragraph (a) of this section, the Commissioner shall make, to the extent deemed practicable in such period, an examination of the application to discover omissions and errors of computation. The Commissioner shall determine within such period the decrease in tax previously determined, affected by the carryback or any related adjustments, upon the basis of the application and such examination. Such decrease shall be determined in the same manner as that provided in section 1314(a) for the determination by the taxpayer of the decrease in taxes previously determined which must be set forth in the application for a tentative carryback adjustment. The Commissioner, however, may correct any errors of computation or omissions discovered upon examination of the application. In determining the decrease in tax previously determined which is affected by the carryback or any related adjustment, the Commissioner accordingly may correct any mathematical error appearing on the application and may likewise correct any modification required by the law and incorrectly made by the taxpayer in computing the net operating loss, net capital loss, or unused investment credit, the resulting carrybacks, or the net operating loss deduction, capital loss deduction, or investment credit allowable. If the required modification has not been made by the taxpayer and the Commissioner has available the necessary information to make such modification within the 90-day period, the Commissioner may, in the Commissioner's discretion, make such modification. In determining such decrease, however, the Commissioner will not, for example, change the amount claimed on the return as a deduction for depreciation because the Commissioner believes that the taxpayer has claimed an excessive amount; likewise, the Commissioner will not include in gross income any amount not so included by the taxpayer, even though the Commissioner believes that such amount is subject to tax and properly should be included in gross income.

(c) *Disallowance in whole or in part.* If the Commissioner finds that an application for a tentative carryback adjustment contains materials omissions or errors of computation, the Commissioner may disallow such application in whole or in part without further action. If, however, the Commissioner deems that any error of computation can be corrected within the 90-day period, the Commissioner may do so and allow the application in whole or in part. The Commissioner's determination as to whether the Commissioner can correct any error of computation within the 90-day period shall be conclusive. Similarly, the Commissioner's action in disallowing, in whole or in part, any application for a tentative carryback adjustment shall be final and may not be challenged in any proceeding. The taxpayer in such case, however, may file a claim for credit or refund under section 6402, and may maintain a suit based on such claim if

it is disallowed or if the Commissionerdoes not act upon the claim within 6 months from the date it is filed.

(d) *Application of decrease.* (1) Each decrease determined by the Commissioner in any previously determined tax which is affected by the carryback or any related adjustments shall first be applied against any unpaid amount of the tax with respect to which such decrease was determined. Such unpaid amount of tax may include one or more of the following:

(i) An amount with respect to which the taxpayer is delinquent;

(ii) An amount the time for payment of which has been extended under section 6164 and which is due and payable on or after the date of the allowance of the decrease; and

(iii) An amount (not including an amount the time for payment of which has been extended under section 6164) which is due and payable on or after the date of the allowance of the decrease.

(2) In case the unpaid amount of tax includes more than one of such amounts, the Commissioner in his discretion, shall determine against which amount or amounts, and in what proportion, the decrease is to be applied. In general, however, the decrease will be applied against any amounts described in subparagraph (1) (i), (ii), and (iii) of this paragraph in the order named. If there are several amounts of the type described in subparagraph (1)(iii) of this paragraph, any amount of the decrease which is to be applied against such amount will be applied by assuming that the tax previously determined minus the amount of the decrease to be so applied is ''the tax'' and that the taxpayer had elected to pay such tax in installments. The unpaid amount of tax against which a decrease may be applied under subparagraph (1) of this paragraph may not include any amount of tax for any taxable year other than the year of the decrease. After making such application, the Commissioner will credit any remainder of the decrease against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss, capital loss, or unused investment credit, the time for payment of which has been extended under section 6164.

(3) Any remainder of the decrease after such application and credits may, within the 90-day period, in the discretion of the Commissioner, be credited against any tax or installment thereof then due from the taxpayer, and, if not so credited, shall be refunded to the taxpayer within such 90-day period.

(e) *Effective/applicability date.* These regulations apply with respect to applications for tentative refund filed on or after August 27, 2007.

[T.D. 6950, 33 FR 5358, Apr. 4, 1968, as amended by T.D. 7301, 39 FR 973, Jan. 4, 1974; T.D. 9355, 72 FR 48934, 48934, Aug. 27, 2007; 72 FR 56619, Oct. 4, 2007]

§ 1.6411–3T Allowance of adjustments (temporary).

(a) *Time prescribed.* The Commissioner shall act upon any application for a tentative carryback adjustment filed under section 6411(a) within a period of 90 days from whichever of the following two dates is the later—

(1) The date the application is filed; or

(2) The last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss, net capital loss, or unused investment credit from which the carryback results.

(b) *Examination.* Within the 90-day period described in paragraph (a) of this section, the Commissioner shall make, to the extent deemed practicable within this period, an examination of the application to discover omissions and errors of computation. The Commissioner shall determine within this period the decrease in tax previously determined, affected by the carryback or any related adjustments, upon the basis of the application and examination. The decrease shall be determined in the same manner as that provided in section 1314(a) for the determination by the taxpayer of the decrease in taxes previously determined which must be set forth in the application for a tentative carryback adjustment. The Commissioner, however, may correct any

errors of computation or omissions discovered upon examination of the application. In determining the decrease in tax previously determined which is affected by the carryback or any related adjustment, the Commissioner may correct any mathematical error appearing on the application and may likewise correct any modification required by the law and incorrectly made by the taxpayer in computing the net operating loss, net capital loss, or unused investment credit, the resulting carrybacks, or the net operating loss deduction, capital loss deduction, or investment credit allowable. If the required modification has not been made by the taxpayer and the Commissioner has the necessary information to make the modification within the 90-day period, the Commissioner may, in the Commissioner's discretion, make the modification. In determining the decrease, however, the Commissioner will not, for example, change the amount claimed on the return as a deduction for depreciation because the Commissioner believes that the taxpayer has claimed an excessive amount; likewise, the Commissioner will not include in gross income any amount not so included by the taxpayer, even though the Commissioner believes that the amount is subject to tax and properly should be included in gross income.

(c) *Disallowance in whole or in part.* If the Commissioner finds that an application for a tentative carryback adjustment contains material omissions or errors of computation, the Commissioner may disallow such application in whole or in part without further action. If, however, the Commissioner deems that any error of computation can be corrected within the 90-day period, the Commissioner may do so and allow the application in whole or in part. The Commissioner's determination as to whether the Commissioner can correct any error of computation within the 90-day period shall be conclusive. Similarly, the Commissioner's action in disallowing, in whole or in part, any application for a tentative carryback adjustment shall be final and may not be challenged in any proceeding. The taxpayer may, however, file a claim for credit or refund under section 6402, and may maintain a suit based on the claim if it is disallowed or if the Commissioner does not act upon the claim within 6 months from the date it is filed.

(d) *Application of decrease.* (1) Each decrease determined by the Commissioner in any previously determined tax which is affected by the carryback or any related adjustments shall first be applied against any unpaid amount of the tax with respect to which such decrease was determined. The unpaid amount of tax may include one or more of the following:

(i) An amount with respect to which the taxpayer is delinquent.

(ii) An amount the time for payment of which has been extended under section 6164 and which is due and payable on or after the date of the allowance of the decrease.

(iii) An amount (not including an amount the time for payment of which has been extended under section 6164) which is due and payable on or after the date of the allowance of the decrease, including any assessed liabilities, unassessed liabilities determined in a statutory notice of deficiency, unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, and other unassessed liabilities in rare and unusual circumstances.

(2) If the unpaid amount of tax includes more than one unpaid amount, the Commissioner in his discretion, shall determine against which amount or amounts, and in what proportion, the decrease is to be applied. In general, however, the decrease will be applied against any amounts described in paragraphs (d)(1)(i) through (iii) of this section in the order named. If there are several amounts of the type described in paragraph (d)(1)(iii) of this section, any amount of the decrease which is to be applied against the amount will be applied by assuming that the tax previously determined minus the amount of the decrease to be so applied is ''the tax'' and that the taxpayer had elected to pay the tax in installments. The unpaid amount of tax against which a decrease may be applied under paragraph (d)(1) of this section may not include any amount of tax for any taxable year other than the year of the decrease. After making the application, the

Commissioner will credit any remainder of the decrease against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss, capital loss, or unused investment credit, the time for payment of which has been extended under section 6164.

(3) Any remainder of the decrease after the application and credits may, within the 90-day period, in the discretion of the Commissioner, be credited against any tax liability or installment thereof then due from the taxpayer (including assessed liabilities, unassessed liabilities determined in a statutory notice of deficiency, unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, and other unassessed liabilities in rare and unusual circumstances), and, if not so credited, shall be refunded to the taxpayer within the 90-day period.

(e) *Effective/applicability date.* (1) These regulations apply with respect to applications for tentative refund filed on or after August 27, 2007.

(2) The applicability of this section expires on or before August 24, 2010.

[T.D. 9355, 72 FR 48935, Aug. 27, 2007]

§ 1.6411–4 Consolidated groups.

For further rules applicable to consolidated groups, see § 1.1502–78. For further rules applicable to consolidated groups that include insolvent financial institutions, see § 301.6402–7 of this chapter.

[T.D. 8446, 57 FR 53034, Nov. 6, 1992]

§ 1.6414–1 Credit or refund of tax withheld on nonresident aliens and foreign corporations.

(a) *In general.* Any withholding agent who for the calendar year pays more than the correct amount of:

(1) Tax required to be withheld under chapter 3 of the Code, or

(2) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for credit or refund of the overpayment in the manner and subject to the conditions stated in the Procedure and Administration Regulations (Part 301 of this chapter) under section 6402, or may claim credit for the overpayment as provided in paragraph (b) of this section. With respect to the payment of withholding tax under section 1446, this section shall only apply to a publicly traded partnership described in § 1.1446–4. See § 1.1446–3(d)(2)(iv) for rules regarding refunds to a withholding agent under section 1446.

(b) *Claim for credit on Form 1042.* The withholding agent may claim credit of an overpayment described in paragraph (a) of this section for any calendar year by showing the amount of overpayment on the return on Form 1042 for such calendar year, which shall constitute a claim for credit under this paragraph. The claim for credit shall be evidenced by a statement on the return setting forth the amount determined as an overpayment and showing such other information as may be required by the instructions relating to the return. The amount claimed as a credit may be applied, to the extent it has not been applied under § 1.1461–2(b), by the withholding agent to reduce the amount of a payment or deposit of tax required by § 1.1461–1 or § 1.6302–2(a) for any payment period occurring in the calendar year following the calendar year of overwithholding. The amount so claimed as a credit shall also be entered on the annual return on Form 1042 for the calendar year following the calendar year of overwithholding and shall be applied as a payment on account of the tax shown on such form. If the withholding agent files a claim for credit or refund of the overpayment on Form 843 in accordance with § 301.6402–2 of this chapter (Procedure and Administration Regulations), or a claim for refund of the overpayment on Form 1042 in accordance with § 301.6402–3 of such chapter, he may not claim credit for the overpayment under this paragraph.

(c) *Overpayment of amounts actually withheld.* No credit or refund to the withholding agent shall be allowed for the amount of any overpayment of tax which, after taking into account paragraph (b) of § 1.1464–1, the withholding agent has actually withheld from an item of income under chapter 3 of the Code.

(d) *Effective/Applicability date.* The last two sentences of paragraph (a) of this section shall apply to partnership

taxable years beginning after April 29, 2008.

[T.D. 6922, 32 FR 8714, June 17, 1967, as amended by T.D. 9394, 73 FR 23085, Apr. 29, 2008]

§ 1.6425–1 Adjustment of overpayment of estimated income tax by corporation.

(a) *In general.* Any corporation which has made an overpayment of estimated income tax for a taxable year beginning after December 31, 1967, may file an application for an adjustment of such overpayment. The right to file an application for an adjustment of overpayment of estimated income tax is limited to corporations.

(b) *Contents of application.* (1) The application for an adjustment of overpayment of estimated income tax shall be filed on Form 4466. The application shall be filled out in accordance with the instructions accompanying the form, and all information required by the form and instructions must be furnished by the corporation. The application shall be verified in the manner prescribed by section 6065 as in the case of a return of the corporation.

(2) An application for an adjustment of overpayment of estimated income tax does not constitute a claim for credit or refund. If such application is disallowed by the district director, or director of a service center, in whole or in part, no suit may be maintained in any court for the recovery of any tax based on such application. The filing of an application for an adjustment of overpayment of estimated income tax will not constitute the filing of a claim for credit or refund within the meaning of section 6511 for the purpose of determining whether a claim for refund was filed prior to the expiration of the applicable period of limitation. The corporation, however, may file a claim for credit or refund under section 6402 at any time prior to the expiration of the applicable period of limitation and may maintain a suit based on such claim if it is disallowed or if the district director, or director of a service center, does not act on the claim within 6 months from the date it is filed. Such claim may be filed before, simultaneously with, or after the filing of the application for the adjustment of overpayment of estimated tax. A claim for credit or refund under section 6402 filed after the filing of an application for an adjustment of overpayment of estimated income tax is not to be considered an amendment of such application. Such claim, however, in proper cases, may constitute an amendment to a prior claim filed under section 6402.

(c) *Time and place for filing application.* (1) The application for an adjustment of overpayment of estimated income tax shall be filed after the last day of the taxable year and on or before the 15th day of the third month thereafter, or before the date on which the corporation first files its income tax return for such taxable year (whether or not it subsequently amends the return), whichever is earlier.

(2) Except as provided in paragraph (b)(2) of § 301.6091–1 of this chapter (relating to hand-carried documents), the application on Form 4466 shall be filed with the internal revenue officer designated in instructions applicable to such form.

[T.D. 7059, 35 FR 14546, Sept. 17, 1970]

§ 1.6425–2 Computation of adjustment of overpayment of estimated tax.

(a) *Income tax liability defined.* For purposes of § 1.6425–1, this section, §§ 1.6425–3 and 1.6655–7, relating to excessive adjustment, the term *income tax liability* means the excess of—

(1) The sum of—

(i) The tax imposed by section 11 or 1201(a), or subchapter L of chapter 1 of the Internal Revenue Code, whichever is applicable; plus

(ii) The tax imposed by section 55; over

(2) The credits against tax provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code.

(b) *Computation of adjustment.* The amount of an adjustment under section 6425 is an amount equal to the excess of the estimated income tax paid by the corporation during the taxable year over the amount which, at the time of filing Form 4466, the corporation estimates as its income tax liability for the taxable year.

(c) *Effective/applicability date.* Paragraph (a) of this section is applicable to

applications for adjustments of overpayments of estimated income tax that are filed in taxable years beginning after September 6, 2007.

[T.D. 7059, 35 FR 14547, Sept. 17, 1970, as amended by T.D. 9347, 72 FR 44348, Aug. 7, 2007]

§ 1.6425–3 Allowance of adjustments.

(a) *Limitation*. No application under section 6425 shall be allowed unless the amount of the adjustment is (1) at least 10 percent of the amount which, at the time of filing Form 4466 the corporation estimates as its income tax liability for the taxable year, and (2) at least $500.

(b) *Time prescribed*. The Internal Revenue Service shall act upon an application for an adjustment of overpayment of estimated income tax within a period of 45 days from the date on which such application is filed.

(c) *Examination*. Within the 45-day period described in paragraph (b) of this section, the Internal Revenue Service shall make, to the extent it deems practicable in such period, a limited examination of the application to discover omissions and errors therein. The Service shall calculate the adjustment, which calculation must be set forth in the application for such adjustment, in the manner provided in section 6425(c)(2) for the determination by the corporation of such adjustment. The Service, however, may correct any material error or omission that is discovered upon examination of the application. In determining the adjustment, the Service may correct any mathematical error appearing on the application, and it may likewise make any modification required by the law to correct the corporation's computation of the adjustment. If the required modification has not been made by the corporation and the Service has available the necessary information to make such modification within the 45-day period, it may make such modification. The examination of the application and the allowance of the adjustment shall not prejudice any right of the Service to claim later that the adjustment was improper.

(d) *Disallowance in whole or in part*. If the Internal Revenue Service finds that an application for an adjustment of overpayment of estimated tax contains material omissions or errors, the Service may disallow such application in whole or in part without further action. If, however, the Service deems that any omission or error can be corrected by it within the 45-day period, it may do so and allow the application in whole or in part. In the case of a disallowance or modification, the Service shall notify the corporation of such action. The Service's determination as to whether it can correct any omission or error shall be conclusive. Similarly, its action in disallowing, in whole or in part, any application for an adjustment of overpayment of estimated income tax shall be final and may not be challenged in any proceeding. The corporation in such case, however, may file a claim for credit or refund under section 6402, and may maintain a suit based on such claim if it is disallowed or if the Service does not act upon the claim within 6 months from the date it is filed.

(e) *Application of adjustment*. If the Internal Revenue Service allows the adjustment, it may first credit the amount of the adjustment against any liability in respect of an internal revenue tax on the part of the corporation which is due and payable on the date of the allowance of the adjustment before making payment of the balance to the corporation. In such a case, the Service shall notify the corporation of the credit, and refund the balance of the adjustment.

(f) *Effect of adjustment*. (1) For purposes of all sections of the Internal Revenue Code except section 6655, relating to additions to tax for failure to pay estimated income tax, any adjustment under section 6425 is to be treated as a reduction of prior estimated tax payments as of the date the credit is allowed or the refund is paid. For the purpose of sections 6655(a) through (g), (i), and (j), credit or refund of an adjustment is to be treated as if not made in determining whether there has been any underpayment of estimated income tax and, if there is an underpayment, the period during which the underpayment existed. However, an excessive adjustment under section 6425 is taken into account in applying the addition to tax under section 6655(h).

(2) For the effect of an excessive adjustment under section 6425, see § 1.6655–7.

(3) *Effective/applicability date:* This paragraph (f) is applicable to applications for adjustments of overpayments of estimated income tax that are filed in taxable years beginning after September 6, 2007.

[T.D. 7059, 35 FR 14547, Sept. 17, 1970 as amended by T.D. 9347, 72 FR 44348, Aug. 7, 2007]

ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

§ 1.6654–1 Addition to the tax in the case of an individual.

(a) *In general.* (1) Section 6654 imposes an addition to the taxes under chapters 1 and 2 of the Code in the case of any underpayment of estimated tax by an individual (with certain exceptions described in section 6654(d)), including any underpayment of estimated qualified State individual income taxes which are treated pursuant to section 6361(a) as if they were imposed by chapter 1. This addition to the tax is in addition to any applicable criminal penalties and is imposed whether or not there was reasonable cause for the underpayment. The amount of the underpayment for any installment date is the excess of:

(i) The following percentages of the tax shown on the return for the taxable year or, if no return was filed, of the tax for such year, divided by the number of installment dates prescribed for such taxable year:

(A) 80 percent in the case of taxable years beginning after December 31, 1966, of individuals not referred to in section 6073(b) (relating to income from farming or fishing);

(B) 70 percent in the case of taxable years beginning before January 1, 1967, of such individuals; and

(C) 66⅔ percent in the case of individuals referred to in section 6073(b); over

(ii) The amount, if any, of the installment paid on or before the last day prescribed for such payment.

(2) The amount of the addition is determinated at the annual rate referred to in the regulations under section 6621 upon the underpayment of any installment of estimated tax for the period from the date such installment is required to be paid until the 15th day of the fourth month following the close of the taxable year, or the date such underpayment is paid, whichever is earlier. For purposes of determining the period of the underpayment (i) the date prescribed for the payment of any installment of estimated tax shall be determined without regard to any extension of time, and (ii) a payment of estimated tax on any installment date, to the extent that it exceeds the amount of the installment determined under subparagraph (1)(i) of this paragraph for such installment date, shall be considered a payment of any previous underpayment.

(3) In determining the amount of the installment paid on or before the last day prescribed for payment thereof, the estimated tax shall be computed without any reduction for the amount which the taxpayer estimates as his credit under section 31 (relating to tax withheld at source on wages), and the amount of such credit shall be deemed a payment of estimated tax. An equal part of the amount of such credit shall be deemed paid on each installment date (determined under section 6153) for the taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld. In the latter case, all amounts withheld shall be considered as payments of estimated tax on the dates such amounts were actually withheld. Under section 31 the entire amount withheld during a calendar year is allowed as a credit against the tax for the taxable year which begins in such calendar year. However, where more than one taxable year begins in any calendar year no portion of the amount withheld during the calendar year will be treated as a payment of estimated tax for any taxable year other than the last taxable year beginning in such calendar year. The rules prescribed in this subparagraph for determining the time as of which the amount withheld shall be deemed paid are applicable even though such amount was withheld during a taxable year preceding that for which the credit is allowed.

(4) The term *tax* when used in subparagraph (1)(i) of this paragraph shall mean:

(i) The tax imposed by chapter 1 of the Code (other than by section 56 or, for taxable years ending before September 30, 1968, the tax surcharge imposed by section 51), including any qualified State individual income taxes which are treated pursuant to section 6361(a) as if they were imposed by chapter 1, plus—

(ii) For taxable years beginning after December 31, 1966, the tax imposed by chapter 2 of the Code, minus

(iii) All credits allowed by part IV, subchapter A of chapter 1, except the credit provided by section 31, relating to tax withheld at source on wages, minus

(iv) In the case of an individual who is subject to one or more qualified State individual incomes taxes, the sum of the credits allowed against such taxes pursuant to section 6362(b)(2) (B) or (C) or section 6362(c)(4) and paragraph (c) of § 301.6362–4 of this chapter (Regulations on Procedure and Administration) (relating to the credit for income taxes of other States or political subdivisions thereof) and paragraph (c)(2) of § 301.6361–1 (relating to the credit for tax withheld from wages on account of qualified State individual income taxes), and minus

(v) For taxable years ending after February 29, 1980, the individual's overpayment of windfall profit tax imposed by section 4986 of the Code for the taxable year. For this purpose, the amount of such overpayment is the sum of (A) the amount by which such individual's aggregate windfall profit tax liability for the taxable year as a producer of crude oil is exceeded by withholding of windfall profit tax for the taxable year, and (B) any amount treated under section 6429 or 6430 as an overpayment of windfall profit tax for crude oil removed during the taxable year. The deemed payment date in section 4995(a)(4)(B) for the amount of windfall profit tax withheld with respect to payments for crude oil shall have no effect in the determination of the overpayment of windfall profit tax.

(b) *Statement relating to underpayment.* If there has been an underpayment of estimated tax as of any installment date prescribed for its payment and the taxpayer believes that one or more of the exceptions described in § 1.6654–2 precludes the assertion of the addition to the tax under section 6654, he should attach to his income tax return for the taxable year a Form 2210 showing the applicability of any exception upon which he relies.

(c) *Examples.* The method prescribed in paragraph (a) of this section for computing the addition to the tax may be illustrated by the following examples:

Example 1. An individual taxpayer files his return for the calendar year 1972 on April 15, 1973, showing a tax (income and self-employment tax) of $30,000. He had paid a total of $20,000 of estimated tax in four installments of $5,000 on each of the four installment dates prescribed for such year. No other payments were made prior to the date the return was filed. Since the amount of each installment paid by the last date prescribed for payment thereof is less than one-quarter of 80 percent of the tax shown on the return, the addition to the tax is applicable in respect of the underpayment existing as of each installment date and is computed as follows:

(1) Amount of tax shown on return	$30,000
(2) 80 percent of item (1)	24,000
(3) One-fourth of item (2)	6,000
(4) Deduct amount paid on each installment date	5,000
(5) Amount of underpayment for each installment date (item (3) minus item (4))	1,000
(6) Addition to the tax:	
1st installment—period 4–15–72 to 4–15–73	60
2nd installment—period 6–15–72 to 4–15–73	50
3rd installment—period 9–15–72 to 4–15–73	35
4th installment—period 1–15–73 to 4–15–73	15
Total	$160

Example 2. An individual taxpayer files his return for the calendar year 1955 on April 15, 1956, showing a tax of $30,000. The requirements of section 6015(a) were first met after April 1 and before June 2, 1955, and a total of $18,000 of estimated tax was paid in three equal installments of $6,000 on each of the three installment dates prescribed for such year. Since the amount of each installment paid by the last date prescribed for payment thereof is less than one-third of 70 percent of the tax shown on the return, the addition to the tax is existing as of each installment date and is applicable in respect of the underpayment computed as follows:

(1) Amount of tax shown on return		$30,000
(2) 70 percent of item (1)		21,000
(3) One-third of item (2)		7,000
(4) Deduct amount paid on each installment date		6,000
(5) Amount of underpayment for each installment date (item (3) minus item (4))		1,000
(6) Addition to the tax:		
1st installment—period 6–15–55 to 4–15–56	$50	
2d installment—period 9–15–55 to 4–15–56	35	
3d installment—period 1–15–56 to 4–15–56	15	
Total	100	

(Secs. 6015, 6154, 6654, 6655, and 7805, Internal Revenue Code of 1954 (96 Stat. 2395 and 2396, 68A Stat. 917; 26 U.S.C. 6015, 6154, 6654, 6655, and 7805))

[T.D. 6500, 25 FR 12146, Nov. 26, 1960, as amended by T.D. 7384, 40 FR 49322, Oct. 22, 1975; T.D. 7427, 41 FR 34029, Aug. 12, 1976; T.D. 7577, 43 FR 59358, Dec. 20, 1978; T.D. 8016, 50 FR 11855, Mar. 26, 1985]

§ 1.6654–2 Exceptions to imposition of the addition to the tax in the case of individuals.

(a) *In general.* The addition to the tax under section 6654 will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax made equals or exceeds the least of the following amounts:

(1) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were the tax shown on the return for the preceding taxable year, provided that the preceding taxable year was a year of 12 months and a return showing a liability for tax was filed for such year. However, this subparagraph shall not apply with respect to any taxable year which ends on or after September 30, 1968, for which a tax is imposed by section 51 (relating to tax surcharge), in the case of a payment of estimated tax the time prescribed for payment of which is on or after September 15, 1968.

(2) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to a percentage of the tax computed by placing on an annual basis the taxable income for the calendar months in the taxable year ending before the month in which the installment is required to be paid. That percentage is 80 percent in the case of taxable years beginning after December 31, 1966, of individuals not referred to in section 6073(b) (relating to income from farming or fishing), 70 percent in the case of taxable years beginning before January 1, 1967, of such individuals, and 66⅔ percent in the case of individuals referred to inferred to in section 6073(b). With respect to taxable years beginning after December 31, 1966, the adjusted self-employment income shall be taken into account in determining the amount referred to in this subparagraph if net earnings from self-employment (as defined in section 1402(a)) for the taxable year equal or exceed $400. For purposes of this subparagraph:

(i) Taxable income shall be placed on an annualized basis:

(A) For taxable years beginning after 1976, by:

(*1*) Multiplying by 12 (or the number of months in the taxable year if less than 12) the adjusted gross income and the itemized deductions for the calendar months in the taxable year ending before the month in which the installment is required to be paid,

(*2*) Dividing the resulting amounts by the number of such calendar months,

(*3*) Increasing the amount of the annualized adjusted gross income by the unused zero bracket amount, if any, determined by reference to the annualized itemized deductions, or decreasing the amount of the annualized adjusted gross income by the excess itemized deductions, if any, determined by reference to the annualized itemized deductions (the amount resulting under this step is annualized tax table income), and

(*4*) Deducting from the annualized tax table income the deduction for personal exemptions (such personal exemptions being determined as of the date prescribed for payment of the installment).

If the taxpayer would be eligible to use the tax tables on the basis of annualized tax table income, the amount which would have been required to be paid for purposes of this subparagraph may be determined by applying the tax tables to annualized

tax table income. the amount resulting under (3).

(B) For taxable years beginning before 1977, by:

(*1*) Multiplying by 12 (or the number of months in the taxable year if less than 12) the taxable income (computed without the standard deduction and without the deduction for personal exemptions), or the adjusted gross income if the standard deduction is to be used for the calendar months in the taxable year ending before the month in which the installment is required to be paid,

(*2*) Dividing the resulting amount by the number of such calendar months, and

(*3*) Deducting from such amount the standard deduction, if applicable, and the deduction for personal exemptions (such personal exemptions being determined as of the date prescribed for payment of the installment).

(ii) The term ''adjusted self-employment income'' means:

(A) The net earnings from self-employment (as defined in section 1402(a)) for the calendar months in the taxable year ending before the month in which the installment is required to be paid, computed as if such months constituted the taxable year, but not more than

(B) The excess of:

(*1*) For taxable years beginning after 1966, $6,600

(*2*) For taxable years beginning after 1971, $9,000,

(*3*) For taxable years beginning after 1972, $10,800,

(*4*) For taxable years beginning after 1973, $13,200, and

(*5*) For taxable years beginning after 1974, an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for the calendar year in which the taxable year begins, over the amount of the wages (within the meaning of section 1402(b)) for such calendar months placed on an annual basis. For this purpose, wages are annualized by multiplying by 12 (or the number of months in the taxable year in the case of a taxable year of less than 12 months) the wages for such calendar months and dividing the resulting amount by the number of such months.

(3) An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the calendar months in the taxable year ending before the month in which the installment is required to be paid, as if such months constituted the entire taxable year. For taxable years beginning after December 31, 1966, such computation shall include the tax imposed by chapter 2 on the actual self-employment income for such months. For purposes of this subparagraph, the term ''actual self-employment income'' means:

(i) The net earnings from self-employment (as defined in section 1402(a))for such calendar months, computed as if such months constituted the taxable year, but not more than

(ii) The excess of:

(A) For taxable years beginning after 1966, $6,600,

(B) For taxable years beginning after 1971, $9,000,

(C) For taxable years beginning after 1972, $10,800,

(D) For taxable years beginning after 1973, $13,200, and

(E) For taxable years beginning after 1974, an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for the calendar year in which the taxable year begins, over the amount of wages (within the meaning of section 1402(b)) for such months.

(4) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to a tax determined on the basis of the tax rates and the taxpayer's status with respect to personal exemptions under section 151 for the taxable year, but otherwise on the basis of the facts shown on the return for the preceding taxable year and the law applicable to such year, in the case of an individual required to file a return for such preceding taxable year.

In the case of a taxpayer whose taxable year consists of 52 or 53 weeks in accordance with section 441(f), the rules

prescribed by § 1.441–2(c) shall be applicable in determining, for purposes of subparagraph (1) of this paragraph, whether a taxable year was a year of 12 months and, for purposes of subparagraphs (2) and (3) of this paragraph, the number of calendar months in a taxable year preceding the date prescribed for payment of an installment of estimated tax. For the rules to be applied in determining taxable income for any period described in subparagraphs (2) and (3) of this paragraph in the case of a taxpayer who employs accounting periods (e.g., thirteen 4-week periods or four 13-week periods) none of which terminates with the end of the applicable period described in subparagraph (2) or (3) of this paragraph, see paragraph (a)(5) of § 1.6655–2.

(b) *Meaning of terms.* As used in this section and § 1.6654–3:

(1) The term ''tax'' means:

(i) The tax imposed by chapter 1 of the Code (other than by section 56), including any qualified State individual income taxes which are treated pursuant to section 6361(a) as if they were imposed by chapter 1, plus

(ii) For taxable years beginning after December 31, 1966, the tax imposed by chapter 2 of the Code, minus

(iii) The credits against tax allowed by part iv, subchapter A, chapter 1 of the Code, other than the credit against tax provided by section 31 (relating to tax withheld on wages), and without reduction for any payments of estimated tax, minus

(iv) In the case of an individual who is subject to one or more qualified State individual income taxes, the sum of the credits allowed against such taxes pursuant to section 6262(b)(2) (B) or (C) or section 6262(c)(4) and paragraph (c) of § 301.6362–4 of this chapter (Regulations on Procedure and Administration) (relating to the credit for income taxes of other States or political subdivisions thereof) and paragraph (c)(2) of § 301.6361–1 (relating to the credit for tax withheld from wages on account of qualified State individual income taxes), and minus

(v) For taxable years ending after February 29, 1980, the individual's overpayment of windfall profit tax imposed by section 4986 of the Code for the taxable year. For this purpose, the amount of such overpayment is the sum of (A) the amount by which such individual's aggregate windfall profit tax liability for the taxable year as producer of crude oil is exceeded by withholding of windfall profit tax for the taxable year, and (B) any amount treated under section 6429 or 6430 as an overpayment of windfall profit tax for crude oil removed during the taxable year. The deemed payment date in section 4995(a)(4)(B) for the amount of windfall profit tax withheld with respect to payments for crude oil shall have no effect in the determination of the overpayment of windfall profit tax.

(2) The credits against tax allowed by part IV, subchapter A, chapter 1 of the Code, are:

(i) In the case of the exception described in paragraph (a)(1) of this section, the credits shown on the return for the preceding taxable year,

(ii) In the case of the exceptions described in paragraph (a)(2) and (3) of this section, the credits computed under the law and rates applicable to the current taxable year, and

(iii) In the case of the exception described in paragraph (a)(4) of this section, the credits shown on the return for the preceding taxable year, except that if the amount of any such credit would be affected by any change in rates or status with respect to personal exemptions, the credits shall be determined by reference to the rates and status applicable to the current taxable year.

A change in rate may be either a change in the rate of tax, such as a change in the rate of the tax imposed by section 1 or section 1401, or a change in a percentage affecting the computation of the credit, such as a change in the rate of withholding under chapter 3 of the Code or a change in the percentage of a qualified investment which is specified in section 46 for use in determining the amount of the investment credit allowed by section 38.

(3) The term ''return for the preceding taxable year'' means the income tax return for such year which is required by section 6012(a)(1) and, in the case of taxable years beginning after December 31, 1966, the self-employment tax return for such year which is required by section 607.

(c) *Examples*. The following examples illustrate the application of the exceptions to the imposition of the addition to the tax for an underpayment of estimated tax, in the case of an individual whose taxable year is the calendar year:

Example 1. A, a married man with one child and a dependent parent, files a joint return with his spouse, B, for 1955 on April 15, 1956, showing taxable income of $44,000 and a tax of $16,760. A and B had filed a joint declaration of estimated tax on April 15, 1955, showing an estimated tax of $10,000 which was paid in four equal installments of $2,500 each on April 15, June 15, and September 15, 1955, and January 15, 1956. The balance of $6,760 was paid with the return. A and B have an underpayment of estimated tax of $433 (¼ of 70 percent of $16,760, less $2,500) for each installment date. The 1954 calendar year return of A and B showed a liability of $10,000. Since the total amount of estimated tax paid by each installment date equalled the amount that would have been required to be paid on or before each of such dates if the estimated tax were the tax shown on the return for the preceding year, the exception described in paragraph (a)(1) of this section applies and no addition to the tax will be imposed.

Example 2. Assume the same facts as in example (1), except that the joint return of A and B for 1954 showed taxable income of $32,000 and a tax liability of $10,400. Assume further that only two personal exemptions under section 151 appeared on the 1954 return. The exception described in paragraph (a)(1) of this section would not apply. However, A and B are entitled to four exemptions under section 151 for 1955. Taxable income for 1954 based on four exemptions, but otherwise on the basis of the facts shown on the 1954 return, would be $30,800. The tax on such amount in the case of a joint return would be $9,836. Since the total amount of estimated tax paid by each installment date exceeds the amount which would have been required to be paid on or before each of such dates if the estimated tax were $9,836, the exception described in paragraph (a)(4) of this section applies and no addition to the tax will be imposed.

Example 3. C, who is self-employed (other than as a farmer or fisherman), has annualized taxable income of $6,900 for the period January 1, 1967, through August 31, 1967, the income tax on which is $1,171. For the same period his net earnings from self-employment are $5,000 and his wages are $2,000. The estimated tax payments made by C for 1967 on or before September 15, 1967, total $1,200. For the purposes of the exception described in paragraph (a)(2) of this section, the adjusted self-employment income is $3,600, computed as follows:

(1) Net earnings from self-employment	$5,000
(2) $6,600 minus annualized wages ($6,600 − 3,000 ($2,000×12÷8))	3,600
(3) Lesser of (1) or (2)	3,600

The tax on C's adjusted self-employment income would be $230.40 ($3,600×6.4 percent). Since the total amount of estimated tax paid on or before September 15, 1967, exceeds $1,121.12, that is, 80 percent of $1,401.40 ($1,171+230.40), the exception described in paragraph (a)(2) of this section applies and no addition to tax will be imposed.

Example 4. D, who is self-employed (other than as a farmer or fisherman), has actual taxable income of $3,800 for the period January 1, 1967, through August 31, 1967, the income tax on which is $586. For the same period his net earnings from self-employment are $5,000 and his wages are $2,000. The estimated tax payments made by D for 1967 on or before September 15, 1967, total $840. For the purposes of the exception described in paragraph (a)(3) of this section, the actual self-employment income for this period is $4,600, computed as follows:

(1) Net earnings from self-employment	$5,000
(2) $6,600 minus wages ($6,600 − 2,000)	4,600
(3) Lesser of (1) or (2)	4,600

The tax on D's actual self-employment income would be $294.40 ($4,600×6.4 percent). Since the total amount of estimated tax paid by September 15, 1967, exceeds $792.36, that is, 90 percent of $880.40 ($586+294.40), the exception described in paragraph (a)(3) of this section applies and no addition to tax will be imposed.

Example 5. E and F, his spouse, filed a joint return for the calendar year 1967, showing a tax liability of $10,000. The liability, attributable primarily to income received during the last quarter of the year, included both income and self-employment tax. Their aggregate payments of estimated tax on or before September 15, 1967, total $1,350, representing three installments of $450 paid on each of the first three installment dates prescribed for the taxable year. Since each installment paid, $450, was less then $2,000 (¼ of 80 percent of $10,000), there was an underpayment on each of the installment dates. Assume that the exceptions described in paragraph (a) (1) and (4) of this section do not apply. Actual taxable income for the three months ending March 31, 1967, was $2,000 and for the five months ending May 31, 1967, was $4,500. Actual self-employment income, for the same periods, was $2,000 and $4,000, respectively. Since the amounts paid by the April 15 and June 15 installment dates, $450 and $900, respectively, exceed $376.20 and $873.90, respectively (90 percent of the income tax on the actual taxable income of $2,000 and $4,500, respectively, determined on the basis of a joint return, and the self-

employment tax on the actual self-employment income of $2,000 and $4,000, respectively), the exception described in paragraph (a)(3) of this section applies and no addition to the tax will be imposed for the underpayments on the April 15 and June 15 installment dates. For the eight months ending August 31, 1967, actual taxable income, assuming E and F did not elect to use the standard deduction, was $7,500; net earnings from self-employment were $6,000 and wages were $2,700. Since the total amount paid by the September 15 installment date, $1,350, was less than $1,381.14 (90 percent of the income tax on the actual taxable income of $7,500 determined on the basis of a joint return and the self-employment tax on actual self-employment income of $3,900 ($6,600 − 2,700)), the exception described in paragraph (a)(3) of this section does not apply to the September 15 installment. Furthermore, the exception described in paragraph (a)(2) of this section does not apply, as illustrated by the following computation:

(1) Income tax:	
Taxable income for the period ending Aug. 31, 1967 (without deduction for personal exemptions) on an annual basis ($8,700×12÷8)	$13,050.00
Deduction for two personal exemptions	1,200.00
	11,850.00
Tax on $11,850 (on the basis of a joint return)	2,227.00
(2) Self-employment tax:	
Net earnings from self-employment	6,000.00
Adjusted self-employment income ($6,600 − 4,050 annualized wages ($2,700×12÷8))	2,550.00
Tax on adjusted self-employment income ($2,550×6.4 percent)	163.20
(3) Total tax ($2,227.00+163.20)	2,390.20
(4) ¾ of 80 percent of $2,390.20	1,434.12
Amount paid by Sept. 15, 1967	1,350.00

An addition to the tax will thus be imposed for the underpayment of $1,550 ($2,000 − 450) on the September 15 installment.

Example 6. Assume the same facts as in example (5) and assume further that adjusted gross income for the eight months ending August 31, 1967, was $9,200 and the amount of deductions (other than the deduction for personal exemptions) not allowable in determining adjusted gross income aggregate only $500. If E and F elect, they may use the standard deduction in computing the tax for purposes of the exceptions described in paragraph (a) (2) and (3) of this section. Taxable income for purposes of the exception described in paragraph (a)(3) of this section would be reduced to $7,080 ($9,200 less $1,200 for two personal exemptions and $920 for the standard deduction). The income tax thereon is $1,205.20; income tax and self-employment tax total $454.80 ($1,205.20+249.60 ($3,900×6.4 percent)). Since the amount paid by the September 15 installment date, $1,350, exceeds $1,309.32 (90 percent of $1,454.80), the exception described in paragraph (a)(3) of this section applies. However, the exception described in paragraph (a)(2) of this section does not apply, as illustrated by the following computation:

Adjusted gross income for period ending Aug. 31, 1967	$9,200.00
Adjusted gross income annualized ($9,200×12÷8)	13,800.00
Taxable income annualized ($13,800 minus $1,200 for two personal exemptions and $1,000 for the standard deduction)	11,600.00
Tax on $11,600 (on basis of joint return)	2,172.00
Self-employment tax on adjusted self-employment income ($2,550×6.4 percent)	163.20
Total tax ($2,172.00+163.20	2,335.20
¾ of 80 percent of $2,335.20	1,401.12
Amount paid by Sept. 15, 1967	1,350.00

Example 7. G was a married individual, 73 years of age, who filed a joint return with his wife, H, for the calendar year 1956. H, who was 70 years of age, had no income during the year. G had taxable income in the amount of $7,000 for the eight-month period ending on August 31, 1956, which included $2,000 of dividend income (after excluding $50 under section 116) and $900 of rental income. The $7,000 figure also reflected a deduction of $2,400 for personal exemptions ($600×4), since G and H are both over 65 years of age. The application of the exception described in paragraph (a)(2) of this section to an underpayment of estimated tax on the September 15 installment date may be illustrated by the following computation:

Taxable income for the period ending Aug. 31, 1956 (without deduction for personal exemptions) on an annual basis ($9,400×12÷8)	$14,100.00
Deduction for personal exemptions	2,400.00
Taxable income on an annual basis	11,700.00
Tax (on the basis of a joint return)	2,642.00
Dividends received for 8-month period	2,050.00
Less: Amount excluded from gross income under section 116	50.00
Dividends included in gross income	2,000.00
Dividend income annualized ($2,000×12÷8)	3,000.00
Dividends received credit under section 34 (4 percent of $3,000)	120.00
Tax less dividends received credit	2,522.00
Retirement income (as defined in section 37(c)) includes:	
Dividend income (to extent included in gross income)	2,000.00
Rental income	900.00
Total retirement income	2,900.00
Limit on amount of retirement income under section 37(d)	1,200.00
Retirement income credit under section 37 (20 percent of $1,200)	240.00
Tax less credits under section 34 and section 37	2,282.00
Amount determined under the exception described in paragraph (a)(2) of this section (¾ of 70 percent of $2,282)	1,198.05

Example 8. C, an unmarried individual for whom another taxpayer is entitled to a deduction under section 151(e), has adjusted

gross income of $4,000 for the period January 1, 1977, through August 31, 1977. All of C's income is non-exempt interest. For the same period C, who is entitled to one personal exemption, has itemized deductions amounting to $300. C is entitled to no credits other than the general tax credit. C filed a declaration of estimated tax on April 15, 1977, and on or before September 15, 1977, makes estimated tax payments for 1977 which total $460. For purposes of determining whether the exception described in paragraph (a)(2) of this section applies, the following computations are necessary:

Adjusted gross income for the period ending Aug. 31, 1977, on an annual basis ($4,000 × 12÷8)		$6,000.00
Itemized deductions for the period ending Aug. 31, 1977, on an annual basis ($300 × 12÷8)		450.00
Unused zero bracket amount computation required under sec. 63(e)(1)(D):		
Zero bracket amount	$2,200.00	
Annualized itemized deductions	450.00	
Unused zero bracket amount	1,750.00	
Annualized adjusted gross income		6,000.00
Plus: unused zero bracket amount		1,750.00
Annualized tax table income		7,750.00
Tax from tables		757.00
Amount specified in paragraph (a)(2) of this section (¾×80 pct.×$757)		$454.20

The exception described in paragraph (a)(2) applies, and no addition to tax will be imposed.

Example 9. An unmarried taxpayer entitled to one exemption, has adjusted gross income of $16,000 and itemized deductions of $2,000 for the period for the period January 1, 1977, through August 31, 1977. D has no net earnings from self-employment and is entitled to no credits other than the general tax credit. D files a declaration of estimated tax on April 15, 1977, and on or before September 15, 1977, makes estimated tax payments for 1977 which total $3,000. For purposes of determining whether the exception in paragraph (a)(2) of this section applies, the following computations are necessary:

Adjusted gross income for the period ending Aug. 31, 1977, on an annual basis ($16,000 × 12÷8)		$24,000
Itemized deductions for the period ending Aug. 31, 1977, on an annual basis ($2,000 × 12÷8)		3,000
Annualized itemized deductions	$3,000	
Minus zero bracket amount	2,200	
Excess itemized deductions	800	
Annualized adjusted gross income		24,000
Minus excess itemized deductions		800
Annualized tax table income		23,200
Minus: Personal exemption		750
Annualized taxable income		22,450
Tax under sec. 1(c) on annualized taxable income		5,325
Minus: general tax credit		180
Total		5,145
Amount specified in paragraph (a)(2) of this section (¾×80 pct.×$5,145)		3,087

The exception described in paragraph (a)(2) does not apply.

(d) *Determination of taxable income for installment periods*—(1) *In general.* (i) In determining the applicability of the exceptions described in paragraph (a) (2) and (3) of this section, there must be an accurate determination of the amount of income and deductions for the calendar months in the taxable year preceding the installment date as of which the determination is made, that is, for the period terminating with the last day of the third, fifth, or eighth month of the taxable year. For example, a taxpayer distributes year-end bonuses to his employees but does not determine the amount of the bonuses until the last month of the taxable year. He may not deduct any portion of such year-end bonuses in determining his taxable income for any installment period other than the final installment period for the taxable year, since deductions are not allowable until paid or accrued, depending on the taxpayer's method of accounting.

(ii) If a taxpayer on an accrual method of accounting wishes to use either of the exceptions described in paragraphs (a) (2) and (3) of this section, he must establish the amount of income and deductions for each applicable period. If his income is derived from a business in which the production, purchase, or sale of merchandise is an income-producing factor requiring the use of inventories, he will be unable to determine accurately the amount of his taxable income for the applicable period unless he can establish, with reasonable accuracy, his cost of goods sold for the applicable installment period. The cost of goods sold for such period shall be considered, unless a more exact determination is available, as such part of the cost of goods sold during the entire taxable year as the gross receipts from sales for such installment period is of gross receipts from sales for the entire taxable year.

(2) *Members of partnerships.* The provisions of this subparagraph shall apply in determining the applicability of the exceptions described in paragraphs (a)(2) and (3) of this section to an underpayment of estimated tax by a taxpayer who is a member of a partnership.

(i) For purposes of determining taxable income, there shall be taken into account:

(A) The partner's distributive share of partnership items set forth under section 702,

(B) The amount of any guaranteed payments under section 707(c), and

(C) Gains or losses on partnership distributions which are treated as gains or losses on sales of property.

(ii) For purposes of determining net earnings from self-employment (for taxable years beginning after December 31, 1966) there shall be taken into account:

(A) The partner's distributive share of income or loss, described in section 702(a)(9), subject to the special rules set forth in section 1402(a) and §§ 1.1402(a)–1 to 1.1402(a)–16, inclusive, and

(B) The amount of any guaranteed payments under section 707(c), except for payments received from a partnership not engaged in a trade or business within the meaning of section 1402(c) and § 1.1402(c)–1.

In determining a partner's taxable income and, for taxable years beginning after December 31, 1966, net earnings from self-employment, for the months in his taxable year which precede the month in which the installment date falls, the partner shall take into account items set forth in sections 702 and 1402(a) for any partnership taxable year ending with or within his taxable year to the extent that such items are attributable to months in such partnership taxable year which precede the month in which the installment date falls. For special rules used in computing a partner's net earnings from self-employment in the case of the termination of his taxable year as a result of death, see section 1402(f) and § 1.1402(f)–1. In addition, a partner shall include in his taxable income and, for taxable years beginning after December 31, 1966, net earnings from self-employment, for the months in his taxable year which precede the month in which the installment date falls guaranteed payments from the partnership to the extent that such guaranteed payments are includible in his taxable income for such months. See section 706(a), section 707(c), paragraph (c) of § 1.707–1 and section 1402(a).

(iii) The provisions of subdivision (i)(A) and (B) of this subdivision (ii) of this subparagraph may be illustrated by the following examples:

Example 1. A, whose taxable year is the calendar year, is a member of a partnership whose taxable year ends on January 31. A must take into account, in determining his taxable income for the installment due on April 15, 1973, all of his distributive share of partnership items described in section 702 and the amount of any guaranteed payments made to him which were deductible by the partnership in the partnership taxable year beginning on February 1, 1972, and ending on January 31, 1973. A must take into account, in determining his net earnings from self-employment, his distributive share of partnership income or loss described in section 702(a)(9), subject to the special rules set forth in section 1402(a) and §§ 1.1402(a)–1 to 1.1402(a)–16, inclusive.

Example 2. Assume that the taxable year of the partnership of which A, a calendar year taxpayer, is a member ends on June 30. A must take into account in the determination of his taxable income and net earnings from self-employment for the installment due on April 15, 1973, his distributive share of partnership items for the period July 1, 1972, through March 31, 1973; for the installment due on June 15, 1973, he must take into account such amounts for the period July 1, 1972, through May 31, 1973; and for the installment due on September 15, 1973, he must take into account such amounts for the entire partnership taxable year of July 1, 1972, through June 30, 1973 (the date on which the partnership taxable year ends).

(3) *Beneficiaries of estates and trusts.* In determining the applicability of the exceptions described in paragraph (a)(2) and (3) of this section as of any installment date, the beneficiary of an estate or trust must take into account his distributable share of income from the estate or trust for the applicable period (whether or not actually distributed) if the trust or estate is required to distribute income to him currently. If the estate or trust is not required to distribute income currently, only the amounts actually distributed to the beneficiary during such period must be taken into account. If the taxable year

of the beneficiary and the taxable year of the estate or trust are different, there shall be taken into account the beneficiary's distributable share of income, or the amount actually distributed to him as the case may be, during the months in the taxable year of the estate or trust ending within the taxable year of the beneficiary which precede the month in which the installment date falls. See subparagraph (2) of this paragraph for examples of a similar rule which is applied when a partner and the partnership of which he is a member have different taxable years.

(e) *Special rule in case of change from joint return or separate return for the preceding taxable year*—(1) *Joint return to separate returns*. In determining the applicability of the exceptions described in paragraph (a) (1) and (4) of this section to an underpayment of estimated tax, a taxpayer filing a separate return who filed a joint return for the preceding taxable year shall be subject to the following rule: The tax:

(i) Shown on the return for the preceding taxable year, or

(ii) Based on the tax rates and personal exemptions for the current taxable year but otherwise determined on the basis of the facts shown on the return for the preceding taxable year, and the law applicable to such year,

shall be that portion of the tax which bears the same ratio to the whole of the tax as the amount of the tax for which the taxpayer would have been liable bears to the sum of the taxes for which the taxpayer and his spouse would have been liable had each spouse filed a separate return for the preceding taxable year. For rules with respect to the allocation of joint payments of estimated tax, see § 1.6654–2(e)(5).

(2) *Examples*. The rule in paragraph (i) of this paragraph may be illustrated by the following examples:

Example 1. H and W filed a joint return for the calendar year 1955 showing taxable income of $20,000 and a tax of $5,280. Of the $20,000 taxable income, $18,000 was attributable to H, and $2,000 was attributable to W. H and W filed separate returns for 1956. The tax shown on the return for the preceding taxable year, for purposes of determining the applicability of the exception described in paragraph (a)(1) of this section to an underpayment of estimated tax by H for 1956, is determined as follows:

Taxable income of H for 1955	$18,000
Tax on $18,000 (on basis of separate return)	6,200
Taxable income of W for 1955	2,000
Tax on $2,000 (on basis of separate return)	400
Aggregate tax of H and W (on basis of separate returns)	6,600
Portion of 1955 tax shown on joint return attributable to H (6200/6600×5280)	4,960

Example 2. Assume the same facts as in example (1) and that H and W file a joint declaration of estimated tax for 1956 and pay estimated tax in amounts determined on the basis of their eligibility for three rather than two exemptions for 1956. H and W ultimately file separate income tax returns for 1956. Assume further that the exception described in paragraph (a)(1) of this section does not apply. The tax based on the tax rates and personal exemptions for 1956 but otherwise determined on the basis of the facts shown on the return for 1955 and the law applicable to 1955, for purposes of determining the applicability of the exception described in paragraph (a)(4) of this section to an underpayment of estimated tax by H for 1956, is determined as follows:

Taxable income of H and W for 1955 based on additional personal exemption for 1956	$19,400
Tax on 1955 income based on joint return rate for 1956	5,076
Portion of 1955 tax attributable to H (computed as in example (1) but allowing benefit of additional exemption to H)	5900/6300
Portion of tax attributable to H based on tax rates and personal exemptions for 1956 but otherwise on facts on 1955 return ($5900/6300×$5,076)	$4,754

Example 3. Assume that H and W had the same taxable income in 1972 as in 1955, and that they filed a joint return for 1972 and separate returns for 1973. Assume further that H's taxable income for 1972 included net earnings from self-employment in excess of the $9,000 maximum base for the self-employment tax for 1972, and that the joint return filed by H and W for 1972 showed tax under Chapter 1 (other than section 56) and tax under Chapter 2 totaling $5,055. The tax shown on the return for 1972, for purposes of determining the applicability of the exception described in paragraph (a)(1) of this section to an underpayment of estimated tax by H for 1973, is determined as follows:

Taxable income of H for 1972	$18,000
Chapter 1 tax (other than section 56 tax) on $18,000 (on basis of separate return)	5,170
Self-employment income of H for 1972	9,000
Chapter 2 tax on $9,000	$675
Total of such taxes	$5,845
Taxable income of W for 1972	2,000
Chapter 1 tax (other than section 56 tax) on $2,000 (on basis of separate return)	310
Aggregate tax on H and W (on basis of separate returns)	$6,155

Portion of 1972 tax shown on joint return attributable to H (5845/6155×$5,055)	$4,800.40

(3) *Separate return to joint return.* In the case of a taxpayer who files a joint return for the taxable year with respect to which there is an underpayment of estimated tax and who filed a separate return for the preceding taxable year:

(i) The tax shown on the return for the preceding taxable year, for purposes of determining the applicability of the exception described in paragraph (a)(1) of this section, shall be the sum of both the tax shown on the return of the taxpayer and the tax shown on the return of the taxpayer's spouse for such preceding year, and

(ii) The facts shown on both the taxpayer's return and the return of his spouse for the preceding taxable year shall be taken into account for purposes of determining the applicability of the exception described in paragraph (a)(4) of this section.

(4) *Example.* The rules described in subparagraph (3) of this paragraph may be illustrated by the following example:

Example. H and W filed separate income tax returns for the calendar year 1954 showing tax liabilities of $2,640 and $350, respectively. In 1956 they married and participated in the filing of a joint return for that year. In the filing of a joint return for that year. Thus, for the purpose of determining the applicability of the exceptions described in paragraph (a)(1) and (4) of this section to an underpayment of estimated tax for the year 1955, the tax shown on the return for the preceding taxable year is $2,990 ($2,640 plus $350).

(Secs. 6015, 6154, 6654, 6655, and 7805, Internal Revenue Code of 1954 (96 Stat. 2395 and 2396, 68A Stat. 917; 26 U.S.C. 6015, 6154, 6654, 6655, and 7805))

(5) *Joint payments of estimated tax*—(i) *In general.* A husband and wife may make a joint payment of estimated tax even though they are not living together. However, a joint payment of estimated tax may not be made if the husband and wife are separated under a decree of divorce or of separate maintenance. A joint payment of estimated tax may not be made if the taxpayer's spouse is a nonresident alien (including a nonresident alien who is a bona fide resident of Puerto Rico or a possession to which section 931 applies during the entire taxable year), unless an election is in effect for the taxable year under section 6013(g) or (h) and the regulations. In addition, a joint payment of estimated tax may not be made if the taxpayer's spouse has a taxable year different from that of the taxpayer. If a joint payment of estimated tax is made, the amount estimated as the income tax imposed by chapter 1 of the Internal Revenue Code must be computed on the aggregate estimated taxable income of the spouses (see section 6013(d)(3) and § 1.2–1), whereas, if applicable, the amount estimated as the self-employment tax imposed by chapter 2 of the Internal Revenue Code must be computed on the separate estimated self-employment income of each spouse. See sections 1401 and 1402 and § 1.6017–1(b)(1). The liability with respect to the estimated tax, in the case of a joint payment, shall be joint and several.

(ii) *Application to separate returns.* (A) Although a husband and wife may make a joint payment of estimated tax, they, nevertheless, can file separate returns. If they make a joint payment of estimated tax and file separate returns for the same taxable year with respect to which the joint payment was made, the payment made on account of the estimated tax for that taxable year may be treated as a payment on account of the tax liability of either the husband or wife for the taxable year, or may be divided between them in such manner as they may agree.

(B) In the event the husband and wife fail to agree to a division of the estimated tax payment, such payment shall be allocated between them in accordance with the following rule. The portion of such payment to be allocated to a taxpayer shall be that portion of the aggregate of all such payments as the amount of tax imposed by chapter 1 of the Internal Revenue Code shown on the separate return of the taxpayer (plus, if applicable, the amount of tax imposed by chapter 2 of the Internal Revenue Code shown on the return of the taxpayer) bears to the sum of the taxes imposed by chapter 1 of the Internal Revenue Code shown on the separate returns of the taxpayer and the spouse (plus, if applicable, the sum of the taxes imposed by chapter 2

of the Internal Revenue Code shown on the separate returns of the taxpayer and the spouse).

(6) *Example.* The rule described in paragraph (e)(5) of this section may be illustrated by the following example:

Example. (i) H and W make a joint payment of estimated tax of $19,500 for the taxable year. H and W subsequently file separate returns for the taxable year showing tax imposed by chapter 1 of the Internal Revenue Code in the amount of $11,500 and $8,000, respectively. In addition, H's return shows a tax imposed by chapter 2 of the Internal Revenue Code in the amount of $500. H and W fail to agree to a division of the estimated tax paid. The amount of the aggregate estimated tax payments allocated to H is determined as follows:

(A) Chapter 1 tax shown on H's return—$11,500

(B) Plus: Amount of tax imposed by chapter 2 shown on H's return—$500

(C) Total taxes imposed by chapter 1 and by chapter 2 shown on H's return—$12,000

(D) Amount of tax imposed by chapter 1 shown on W's return—$8,000

(E) Total taxes imposed by chapter 1 and by chapter 2 on both H's and W's—$20,000 returns

(F) Proportion of taxes shown on H's return to total amount—($12,000/$20,000) 60% of taxes shown on both H's and W's returns

(G) Amount of estimated tax payments allocated to H (60% of $19,500)—$11,700

(ii) Accordingly, H's return would show a balance due in the amount of $300 ($12,000 taxes shown less $11,700 estimated tax allocated).

(7) *Death of spouse.* (i) A joint payment of estimated tax may not be made after the death of either the husband or wife. However, if it is reasonable for a surviving spouse to assume that there will be filed a joint return for himself and the deceased spouse for his taxable year and the last taxable year of the deceased spouse, he may, in making a separate payment of estimated tax for his taxable year which includes the period comprising such last taxable year of his spouse, estimate the amount of the tax imposed by chapter 1 of the Internal Revenue Code on his and his spouse's taxable income on an aggregate basis and compute his estimated tax with respect to chapter 1 tax in the same manner as though a joint return had been filed.

(ii) If a husband and wife make a joint payment of estimated tax and thereafter one spouse dies, no further payments of joint estimated tax liability are required from the estate of the decedent. The surviving spouse, however, shall be liable for the payment of any subsequent installments of the joint estimated tax. For the purpose of making an amended payment of estimated tax by the surviving spouse, and the allocation of payments made pursuant to a joint payment of estimated tax between the surviving spouse and the legal representative of the decedent in the event a joint return is not filed, the payment of estimated tax may be divided between the decedent and the surviving spouse in such proportion as the surviving spouse and the legal representative of the decedent may agree.

(iii) If the surviving spouse and the legal representative of the decedent fail to agree to a division of a payment, such payment shall be allocated in accordance with the following rule. The portion of such payment to be allocated to the surviving spouse shall be that portion of the aggregate amount of such payments as the amount of tax imposed by chapter 1 of the Internal Revenue Code shown on the separate return of the surviving spouse (plus, if applicable, the amount of tax imposed by chapter 2 of the Internal Revenue Code shown on the return of the surviving spouse) bears to the sum imposed by chapter 1 of the Internal Revenue Code shown on the separate returns of the surviving spouse and of the decedent (plus, if applicable, the sum of the taxes imposed by chapter 2 of the Internal Revenue Code shown on the returns of the surviving spouse and of the decedent); and the balance of such payments shall be allocated to the decedent. This rule may be illustrated by analogizing the surviving spouse described in this rule to H in the example contained in paragraph (e)(6) of this section and the decedent in this rule to W in that example.

[T.D. 7427, 41 FR 34029, Aug. 12, 1976, as amended by T.D. 7577, 43 FR 59359, Dec. 20, 1978; T.D. 7585, 44 FR 1105, Jan. 4, 1979; T.D. 8016, 50 FR 11855, Mar. 26, 1985; 50 FR 18244, Apr. 30, 1985; T.D. 8996, 67 FR 35012, May 17, 2002; T.D. 9224, 70 FR 52300, Sept. 2, 2005]

§ 1.6654–3 Short taxable years of individuals.

(a) *In general.* The provisions of section 6654, with certain modifications relating to the application of section 6654(d), which are explained in paragraph (b) of this section, are applicable in the case of a short taxable year.

(b) *Rules as to application of section 6654(d).* (1) In any case in which the taxable year for which an underpayment of estimated tax exists is a short taxable year due to a change in annual accounting periods, in determining the tax:

(i) Shown on the return for the preceding taxable year (for purposes of section 6654(d)(1)), or

(ii) Based on the personal exemptions and rates for the current taxable year but otherwise on the basis of the facts shown on the return for the preceding taxable year, and the law applicable to such year (for purposes of section 6654(d)(4)),

the tax will be reduced by multiplying it by the number of months in the short taxable year and dividing the resulting amount by 12.

(2) If the taxable year for which an underpayment of estimated tax exists is a short taxable year due to a change in annual accounting periods, in annualizing the taxable income for the months in the taxable year preceding an installment date, for purposes of section 6654(d)(1)(C), the personal exemptions allowed as deductions under section 151 shall be reduced to the same extent that they are reduced under section 443(c) in computing the tax for a short taxable year.

(3) If ''the preceding taxable year'' referred to in section 6654(d)(4) was a short taxable year, for purposes of determining the applicability of the exception described in section 6654(d)(4), the tax, computed on the basis in the facts shown on the return for the preceding year, shall be the tax computed on the annual basis in the manner described in section 443(b)(1) (prior to its reduction in the manner described in the last sentence thereof). If the tax rates or the taxpayer's status with respect to personal exemptions for the taxable year with respect to which the underpayment occurs differ from such rates or status applicable to the preceding taxable year, the tax determined in accordance with this subparagraph shall be recomputed to reflect the rates and status applicable to the year with respect to which the underpayment occurs.

[T.D. 6500, 25 FR 12149, Nov. 26, 1960, as amended by T.D. 7427, 41 FR 34033, Aug. 12, 1976; T.D. 9224, 70 FR 52301, Sept. 2, 2005]

§ 1.6654–4 Waiver of penalty for underpayment of 1971 estimated tax by an individual.

(a) *In general.* Section 207 of the Revenue Act of 1971 provides that, in the case of individuals, the penalty prescribed by section 6654(a) and § 1.6654–1 for underpayment of estimated tax shall not apply in certain cases to taxable years beginning after December 31, 1970, and ending before January 1, 1972. The penalty shall be waived only if the taxpayer meets one of the gross income requirements contained in paragraph (b) of this section and if the limitation contained in paragraph (c) of this section is not applicable.

(b) *Gross income requirement.* Except as provided in paragraph (c) of this section, the waiver provided in paragraph (a) of this section shall be applicable only:

(1) If the gross income for the taxable year does not exceed $10,000 in the case of:

(i) A single individual who is neither a head of a household (as defined in section 2(b)) nor a surviving spouse (as defined in section 2(a)), or

(ii) A married individual not entitled under section 6013 to file a joint return for the taxable year, or

(2) If the gross income for the taxable year does not exceed $20,000 in the case of:

(i) A head of a household (as defined in section 2(b)) or

(ii) A surviving spouse (as defined in section 2(a)), or

(3) If the aggregate gross income for the taxable year does not exceed $20,000 in the case of a married individual (entitled under section 6013 to file a joint return for the taxable year) and his spouse.

(c) *Limitation.* Notwithstanding any other provision of this section, the waiver provided in paragraph (a) of this

section shall not be applicable if, in the taxable year, the taxpayer has income from sources other than wages (as defined in section 3401(a)) in excess of $200 ($400 in the case of a husband and wife entitled to file a joint return for the taxable year under section 6013). Thus, for example, even if the aggregate gross income of a husband and wife (entitled under section 6013 to file a joint return for the taxable year) does not exceed $20,000, the waiver of the penalty for underpayment of estimated tax shall not apply if the husband and wife have, in the aggregate, income from sources other than wages in excess of $400.

[T.D. 7282, 38 FR 19028, July 17, 1973]

§ 1.6654–5 Payments of estimated tax.

(a) *In general.* A payment of estimated tax by an individual shall be determined on Form 1040–ES. For the purpose of determining the estimated tax, the amount of gross income which the taxpayer can reasonably expect to receive or accrue, depending upon the method of accounting upon which taxable income is computed, and the amount of the estimated allowable deductions and credits to be taken into account in computing the amount of estimated tax, shall be determined upon the basis of the facts and circumstances existing at the time prescribed for determining the estimated tax, as well as those reasonably to be anticipated for the taxable year. If, therefore, the taxpayer is employed at the date prescribed for making an estimated tax payment at a given wage or salary, the taxpayer should presume, in the absence of circumstances indicating the contrary, for the purpose of the estimated tax payment that such employment will continue to the end of the taxable year at the wage or salary received by the taxpayer as of such date. In the case of income other than wages and salary, the regularity in the payment of income, such as dividends, interest, rents, royalties, and income arising from estates and trusts is a factor to be taken into consideration. Thus, if the taxpayer owns shares of stock in a corporation, and dividends have been paid regularly for several years upon the stock, the taxpayer should, in the absence of information indicating a change in the dividend policy, include the prospective dividends from the corporation for the taxable year as well as those actually received in such year prior to determining the estimated tax. In the case of a taxpayer engaged in business on his own account, there shall be made an estimate of gross income and deductions and credits in the light of the best available information affecting the trade, business, or profession.

(b) *Computation of estimated tax.* In computing the estimated tax the taxpayer should take into account the taxes, credits, and other amounts listed in § 1.6654–1(a)(4).

[T.D. 9224, 70 FR 52301, Sept. 2, 2005]

§ 1.6654–6 Nonresident alien individuals.

(a) *In general.* A nonresident alien individual is required to make a payment of estimated tax if that individual's gross income meets the requirements of section 6654 and § 1.6654–1. In making the determination under section 6654 as to whether the amount of the gross income of a nonresident alien individual is such as to require making a payment of estimated income tax, only the filing status relating to a single individual (other than a head of household) or to a married individual not entitled to file a joint return shall apply, unless an election is in effect 1 for the taxable year under section 6013(g) or (h) and the regulations.

(b) *Determination of gross income.* To determine the gross income of a nonresident alien individual who is not, or does not expect to be, a bona fide resident of Puerto Rico or a possession to which section 931 applies during the entire taxable year, see section 872 and §§ 1.872–1 and 1.872–2. To determine the gross income of a nonresident alien individual who is, or expects to be, a bona fide resident of Puerto Rico or a possession to which section 931 applies during the entire taxable year, see section 876 and the regulations. For rules for determining whether an individual is a bona fide resident of a United States possession (including Puerto Rico), see section 937 and the regulations.

[T.D. 9224, 70 FR 52301, Sept. 2, 2005]

§ 1.6654–7 Applicability.

Section 6654 is applicable only with respect to taxable years beginning after December 31, 1954. Section 294(d) of the Internal Revenue Code of 1939 shall continue in force with respect to taxable years beginning before January 1, 1955.

[T.D. 6500, 25 FR 12150, Nov. 26, 1960. Redesignated by T.D. 7282, 38 FR 19028, July 17, 1973. Redesignated by T.D. 9224, 70 FR 52301, Sept. 2, 2005]

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[T.D. 9347, 72 FR 44348, Aug. 7, 2007]

§ 1.6655–1 Addition to the tax in the case of a corporation.

(a) *In general.* Section 6655 imposes an addition to the tax under chapter 1 of the Internal Revenue Code in the case of any underpayment of estimated tax by a corporation. An addition to tax due to the underpayment of estimated taxes is determined by applying the underpayment rate established under section 6621 to the amount of the underpayment, for the period of the underpayment. This addition to the tax is in addition to any applicable criminal penalties and is imposed whether or not there was reasonable cause for the underpayment.

(b) *Amount of underpayment.* The amount of the underpayment for any required installment is the excess of—

(1) The required installment; over

(2) The amount, if any, of the installment paid on or before the last date prescribed for such payment.

(c) *Period of the underpayment.* The period of the underpayment of any required installment runs from the date the installment was required to be paid to the 15th day of the 3rd month following the close of the taxable year, or to the date such underpayment is paid, whichever is earlier. For purposes of determining the period of the underpayment a payment of estimated tax will be credited against unpaid required installments in the order in which such installments are required to be paid.

(d) *Amount of required installment*—(1) *In general.* Except as otherwise provided in this section and §§ 1.6655–2 through 1.6655–7, the amount of any required installment is 25 percent of the lesser of—

(i) 100 percent of the tax shown on the return for the taxable year (or, if no return is filed, 100 percent of the tax for such year); or

(ii) 100 percent of the tax shown on the return for the preceding taxable year.

(2) *Exception.* This paragraph (d)(1)(ii) does not apply if the preceding taxable

year was not a taxable year of 12 months or the corporation did not file a return for the preceding taxable year showing a liability for tax.

(e) *Large corporation required to pay 100 percent of current year tax*—(1) *In general*. Except as provided in paragraph (e)(2) of this section, paragraph (d)(1)(ii) of this section does not apply in the case of a large corporation (as defined in § 1.6655–4).

(2) *May use last year's tax for first installment*. Paragraph (e)(1) of this section does not apply for purposes of determining the amount of the 1st required installment for any taxable year. Any reduction in such 1st installment by reason of the preceding sentence is recaptured by increasing the amount of the next required installment determined under paragraph (d)(1)(i) of this section by the amount of such reduction and, if the next required installment is reduced by use of the annualized income installment method under § 1.6655–2 or the adjusted seasonal installment method under § 1.6655–3, by increasing subsequent required installments determined under paragraph (d)(1)(i) of this section to the extent that the reduction has not previously been recaptured.

(f) *Required installment due dates*—(1) *Number of required installments*. Unless otherwise provided, corporations must make 4 required installments for each taxable year.

(2) *Time for payment of installments*—(i) *Calendar year*. Unless otherwise provided, in the case of a calendar year taxpayer, the due dates of the required installments are as follows:

1st April 15
2nd June 15
3rd September 15
4th December 15

(ii) *Fiscal year*. In the case of a taxpayer other than a calendar year taxpayer, the due dates of the required installments are as follows:

1st 15th day of 4th month of the taxable year
2nd 15th day of 6th month of the taxable year
3rd 15th day of 9th month of the taxable year
4th 15th day of 12th month of the taxable year

(iii) *Short taxable year*. See § 1.6655–5 for rules regarding required installments for corporations with a short taxable year.

(iv) *Partial month*. Except as otherwise provided, for purposes of determining the due date of any required installment, a partial month is treated as a full month.

(g) *Definitions*. (1) The term *tax* as used in this section and §§ 1.6655–2 through 1.6655–7 means the excess of—

(i) The sum of—

(A) The tax imposed by section 11, section 1201(a), or subchapter L of chapter 1 of the Internal Revenue Code, whichever is applicable;

(B) The tax imposed by section 55; plus

(C) The tax imposed by section 887; over

(ii) The credits against tax provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code.

(2)(i) In the case of a foreign corporation subject to taxation under section 11, section 1201(a), or subchapter L of chapter 1 of the Internal Revenue Code, the tax imposed by section 881 is treated as a tax imposed by section 11.

(ii) In the case of a partnership that is treated, pursuant to regulations issued under section 1446(f)(2), as a corporation for purposes of this section, the tax imposed by section 1446 is treated as a tax imposed by section 11.

(iii) Unless otherwise provided in the Internal Revenue Code or Treasury regulations, for purposes of the definition of ''tax'' as used in this section, a recapture of tax, such as a recapture provided by section 50(a)(1)(A), and any other similar provision, is not considered to be a tax imposed by section 11.

(iv) For the purposes of paragraph (d) of this section, the return for the preceding taxable year is the Federal income tax return for such taxable year that is required by section 6012(a)(2). However, if an amended Federal income tax return has been filed before the due date of an installment, then the return for the preceding taxable year is the Federal income tax return as amended. If an amended Federal income tax return has been filed on or after the due date for an installment,

then the return for the preceding taxable year does not include for such installment period the Federal income tax return as amended subsequent to the due date for such installment. Paragraph (d) of this section will apply without regard to whether the taxpayer's Federal income tax return for the preceding taxable year is filed in a timely manner.

(h) *Special rules for consolidated returns* For special rules relating to the determination of the amount of the underpayment in the case of a corporation whose income is included in a consolidated return, see § 1.1502–5(b).

(i) *Overpayments applied to subsequent taxable year's estimated tax*—(1) *In general.* If a taxpayer elects under the provisions of sections 6402(b) and 6513(d) and the regulations to apply an overpayment in year one against the estimated tax liability for year two, the overpayment will be applied to the required installment payments for year two in the order due and to the extent necessary to satisfy such installments, similar to the manner in which an actual overpayment of one installment is carried forward to the next installment. No interest is accrued or paid on an overpayment if the election to apply the overpayment against estimated tax is made.

(2) *Subsequent examinations.* If a deficiency is determined in an examination of a return for a taxable year that originally reflected an overpayment that was applied against estimated tax for the succeeding taxable year, interest on the deficiency will not begin to accrue on an amount applied until that amount is used to satisfy a required estimated tax payment in such taxable year. Regardless of whether the taxpayer anticipated the application of such overpayment from the prior taxable year in calculating and paying its required estimated tax installment liabilities for the current taxable year, the subsequently determined underpayment and interest computation thereon will not change the taxpayer's original election to apply the overpayment against the estimated tax liability of the succeeding taxable year. Any changes to the usage of the original overpayment from the prior taxable year are hypothetical only and solely for the purpose of computing deficiency interest. Overpayment interest will not be impacted. For further guidance, see Rev. Rul. 99–40 (1999–2 CB 441), (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(j) *Examples.* The method prescribed in paragraphs (d) through (g) of this section is illustrated by the following examples:

Example 1. (i) X, a calendar year corporation, estimates its tax liability for its taxable year ending December 31, 2009, will be $85,000. X is not a large corporation as defined in section 6655(g)(2) and § 1.6655–4. X reported a liability of $74,900 on its return for the taxable year ended December 31, 2008, with no credits against tax. X paid four installments of estimated tax, each in the amount of $18,725 (25 percent of $74,900), on April 15, 2009, June 15, 2009, September 15, 2009, and December 15, 2009, respectively. X reported a tax liability of $88,900 on its return due March 15, 2010. X had a $5,000 credit against tax for tax year 2009 as provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code. X did not underpay its estimated tax for tax year 2009 for any of the four installments, determined as follows:

(A) Tax as defined in paragraph (g) of this section for 2009 ($88,900 − $5,000) = $83,900

(B) Tax as defined in paragraph (g) of this section for 2008 = $74,900

(C) 100% of the lesser of this paragraph (j), *Example 1* (i)(A) or (i)(B) = $74,900

(D) Amount of estimated tax required to be paid on or before each installment date (25% of $74,900) = $18,725

(E) Deduct amount paid on or before each installment date = $18,725

(F) Amount of underpayment for each installment date = $0

(ii) [Reserved]

Example 2. (i) *Facts.* Y, a calendar year corporation, estimates its tax liability for its taxable year ending December 31, 2009, will be $70,000. Y is not a large corporation as defined in section 6655(g)(2) and § 1.6655–4. Y reported a Federal income tax liability of $90,000 for its taxable year ending December 31, 2008. Y paid no installment of estimated tax on or before April 15, 2009, June 15, 2009, or September 15, 2009, but made a payment of $63,000 on December 15, 2009. On March 15, 2010, Y filed its income tax return showing a tax of $70,000. Y had no credits against tax for tax year 2009. Of the $63,000 paid by Y on December 15, 2009, $17,500 is applied to each of the first three installments due on April 15, June 15, and September 15, 2009, and the remaining $10,500 is applied to the fourth installment. Y has an underpayment of estimated tax for each of the first three installments of $17,500 and for the fourth installment of $7,000. The addition to tax under section 6655(a) is computed as follows:

(A) Tax as defined in paragraph (g) of this section for 2009 = $70,000

(B) Tax as defined in paragraph (g) of this section for 2008 = $90,000

(C) 100% of the lesser of this paragraph (j), *Example 2* (i)(A) or (i)(B) = $70,000

(D) Amount of estimated tax required to be paid on or before each installment date (25% of $70,000) = $17,500

(E) Amount paid on or before the first, second, and third installment dates = $0

(F) Amount paid on or before the fourth installment date = $63,000

(G) Amount of underpayment for each of the first, second, and third installment dates = $17,500

(H) Amount of underpayment for the fourth installment date = $7,000

(ii) *Addition to tax*. Assuming that neither the annualized income installment method nor the adjusted seasonal installment method described in §§ 1.6655–2 and 1.6655–3 would result in a lower payment for any installment period, and the addition to tax is computed under section 6621(a)(2) at the rate of 8 percent per annum for the applicable periods of underpayment, the addition to tax is determined as follows:

(A) First installment (underpayment period 4–16–09 through 12–15–09), computed as 244/365 × $17,500 × 8% = $936

(B) Second installment (underpayment period 6–16–09 through 12–15–09), computed as 183/365 × $17,500 × 8% = $702

(C) Third installment (underpayment period 9–16–09 through 12–15–09), computed as 91/365 × $17,500 × 8% = $349

(D) Fourth installment (underpayment period 12–16–09 through 3–15–10), computed as 90/365 × $7,000 × 8% = $138

(E) Total of this paragraph (j), *Example 2* (ii)(A) through (D) = $2,125

(k) *Effective/applicability date*. This section applies to taxable years beginning after September 6, 2007.

[T.D. 9347, 72 FR 44349, Aug. 7, 2007]

§ 1.6655–2 Annualized income installment method.

(a) *In general*. In the case of any required installment, if the corporation establishes that the annualized income installment determined under this section, or the adjusted seasonal installment determined under § 1.6655–3, is less than the amount determined under § 1.6655–1—

(1) The amount of such required installment is the annualized income installment (or, if less, the adjusted seasonal installment); and

(2) Any reduction in a required installment resulting from the application of this section will be recaptured by increasing the amount of the next required installment determined under § 1.6655–1 by the amount of such reduction (and, if the next required installment is similarly reduced, by increasing subsequent required installments to the extent that the reduction has not previously been recaptured).

(b) *Determination of annualized income installment—in general*. In the case of any required installment, the annualized income installment is the excess (if any) of—

(1) The product of the applicable percentage and the tax (after reducing the annualized tax by the amount of any allowable credits) for the taxable year computed by annualizing the taxable income and alternative minimum taxable income—

(i) For the first 3 months of the taxable year, in the case of the first required installment;

(ii) For the first 3 months of the taxable year, in the case of the second required installment;

(iii) For the first 6 months of the taxable year, in the case of the third required installment; and

(iv) For the first 9 months of the taxable year, in the case of the fourth required installment; over

(2) The aggregate amount of any prior required installments for the taxable year.

(c) *Special rules*—(1) *Applicable percentage*. Except as otherwise provided in § 1.6655–5(d) with respect to short taxable years—

In the case of the following required installments	The applicable percentage is
1st	25
2nd	50
3rd	75
4th	100

(2) *Partial month*. Except as otherwise provided, for purposes of paragraph (b) of this section a partial month is treated as a month.

(3) *Annualization period not a short taxable year*. An annualization period is not treated as a short taxable year for purposes of determining the taxable income of an annualization period.

(d) *Election of different annualization periods*. (1) If the taxpayer timely files Form 8842, ''Election to Use Different

Annualization Periods for Corporate Estimated Tax,'' in accordance with section 6655(e)(2)(C)(iii), and elects Option 1—

(i) Paragraph (b)(1)(i) of this section will be applied by using the language ''2 months'' instead of ''3 months'';

(ii) Paragraph (b)(1)(ii) of this section will be applied by using the language ''4 months'' instead of ''3 months'';

(iii) Paragraph (b)(1)(iii) of this section will be applied by using the language ''7 months'' instead of ''6 months''; and

(iv) Paragraph (b)(1)(iv) of this section will be applied by using the language ''10 months'' instead of ''9 months''.

(2) If the taxpayer timely files Form 8842, in accordance with section 6655(e)(2)(C)(iii), and elects Option 2—

(i) Paragraph (b)(1)(ii) of this section will be applied by using the language ''5 months'' instead of ''3 months'';

(ii) Paragraph (b)(1)(iii) of this section will be applied by using the language ''8 months'' instead of ''6 months''; and

(iii) Paragraph (b)(1)(iv) of this section will be applied by using the language ''11 months'' instead of ''9 months''.

(3) The application of the annualized income installment method is illustrated by the following example:

Example. (i) ABC, a calendar year corporation, had a taxable year of less than twelve months for tax year 2008 and no credits against tax for tax year 2009. ABC made an estimated tax payment of $15,000 on the installment dates of April 15, 2009, June 15, 2009, September 15, 2009, and December 15, 2009, respectively. Assume that, under paragraph (d)(1) of this section, ABC elected Option 1 by timely filing Form 8842, in accordance with section 6655(e)(2)(C)(iii), and determined that its taxable income for the first 2, 4, 7 and 10 months was $25,000, $64,000, $125,000, and $175,000 respectively. The income for each period is annualized as follows:

$25,000 × 12/2 = $150,000
$64,000 × 12/4 = $192,000
$125,000 × 12/7 = $214,286
$175,000 × 12/10 = $210,000

(ii)(A) To determine whether the installment payment made on April 15, 2009, equals or exceeds the amount that would have been required to have been paid if the estimated tax were equal to 100 percent of the tax computed on the annualized income for the 2-month period, the following computation is necessary:

(*1*) Annualized income for the 2 month period = $150,000

(*2*) Tax on this paragraph (d)(3), *Example* (ii)(A)(*1*) = $41,750

(*3*) 100% of this paragraph (d)(3), *Example* (ii)(A)(*2*) = $41,750

(*4*) 25% of this paragraph (d)(3), *Example* (ii)(A)(*3*) = $10,438

(B) Because the total amount of estimated tax that was timely paid on or before the first installment date ($15,000) exceeds the amount required to be paid on or before this date if the estimated tax were 100 percent of the tax determined by placing on an annualized basis the taxable income for the first 2-month period ($10,438), the exception described in paragraphs (a) and (b) of this section applies, and no addition to tax will be imposed for the installment due on April 15, 2009.

(iii)(A) To determine whether the installment payments made on or before June 15, 2009, equal or exceed the amount that would have been required to have been paid if the estimated tax were equal to 100 percent of the tax computed on the annualized income for the 4-month period, the following computation is necessary:

(*1*) Annualized income for the 4 month period = $192,000

(*2*) Tax on this paragraph (d)(3), *Example* (iii)(A)(*1*) = $58,130

(*3*) 100% of this paragraph (d)(3), *Example* (iii)(A)(*2*) = $58,130

(*4*) 50% of this paragraph (d)(3), *Example* (iii)(A)(*3*) less $10,438 (amount due with the first installment) = $18,627

(B) Because the total amount of estimated tax actually paid on or before the second installment date ($19,562 ($15,000 second required installment payment plus $4,562 overpayment of first required installment)) exceeds the amount required to be paid on or before this date if the estimated tax were 100 percent of the tax determined by placing on an annualized basis the taxable income for the first 4-month period ($18,627), the exception described in paragraphs (a) and (b) of this section applies, and no addition to tax will be imposed for the installment due on June 15, 2009.

(iv)(A) To determine whether the installment payments made on or before September 15, 2009, equal or exceed the amount that would have been required to have been paid if the estimated tax were equal to 100 percent of the tax computed on the annualized income for the 7-month period, the following computation is necessary:

(*1*) Annualized income for the 7 month period = $214,286

(*2*) Tax on this paragraph (d)(3), *Example* (iv)(A)(*1*) = $66,821

(*3*) 100% of this paragraph (d)(3), *Example* (iv)(A)(*2*) = $66,821

(*4*) 75% of this paragraph (d)(3), *Example* (iv)(A)(*3*) less $29,065 (amount due with the first and second installment) = $21,051

(B) Because the total amount of estimated tax actually paid on or before the third installment date ($15,935 ($15,000 third required installment payment plus $935 overpayment of second required installment)) does not equal or exceed the amount required to be paid on or before this date if the estimated tax were 100 percent of the tax determined by placing on an annualized basis the taxable income for the first 7-month period ($21,051), the exception described in paragraphs (a) and (b) of this section does not apply, and an addition to tax will be imposed with respect to the underpayment of the September 15, 2009, installment unless another exception applies to this installment payment.

(v)(A) To determine whether the installment payments made on or before December 15, 2009, equal or exceed the amount that would have been required to have been paid if the estimated tax were equal to 100 percent of the tax computed on the annualized income for the 10-month period, the following computation is necessary:

(*1*) Annualized income for the 10 month period = $210,000

(*2*) Tax on this paragraph (d)(3), *Example* (v)(A)(*1*) = $65,150

(*3*) 100% of this paragraph (d)(3), *Example* (v)(A)(*2*) = $65,150

(*4*) 100% of this paragraph (d)(3), *Example* (v)(A)(*3*) less $50,116 (amount due with the first, second and third installment) = $15,034

(B) Because the total amount of estimated tax payments made on or before the fourth installment date that is available to be applied to the estimated tax due for the fourth installment ($9,884 ($15,000 fourth required installment payment less $5,116 underpayment for the third installment of estimated tax ($21,051 third installment of estimated tax due less $15,935 payments available to be applied to the third installment of estimated tax))) does not equal or exceed the amount required to be paid on or before this date if the estimated tax were 100 percent of the tax determined by placing on an annualized basis the taxable income for the first 10-month period ($15,034), the exception described in paragraphs (a) and (b) of this section does not apply, and an addition to tax will be imposed with respect to the underpayment of the December 15, 2009, installment unless another exception applies to this installment payment.

(vi) Assuming that no other exceptions apply and the addition to tax is computed under section 6621(a)(2) at the rate of 8 percent per annum for the applicable periods of underpayment, the amount of the addition to tax is as follows:

(A) First installment (no underpayment) = $0

(B) Second installment (no underpayment) = $0

(C) Third installment (underpayment period 9–16–09 through 12–15–09), computed as $91/365 \times \$5{,}116 \times 8\% = \$102$

(D) Fourth installment (underpayment period 12–16–09 through 3–15–10), computed as $90/365 \times \$5{,}150 \times 8\% = \$102$

(E) Total of this paragraph (d)(3), *Example* (vi)(A) through (D) = $204

(e) *52–53 week taxable year*. (1) Generally, except as provided in the alternative rule in paragraph (e)(4) of this section, in the case of a taxpayer whose taxable year constitutes 52 or 53 weeks in accordance with section 441(f), the rules prescribed by § 1.441–2 are applicable in determining—

(i) Whether a taxable year is a taxable year of 12 months; and

(ii) When the 2-, 3-, 4-, 5-, 6-, 7-, 8-, 9-, 10-, or 11-month period (whichever is applicable) commences and ends for purposes of paragraphs (b)(1), (d)(1) and (d)(2) of this section.

(2) If a taxpayer employs four 13-week periods or thirteen 4-week accounting periods and the end of any accounting period employed by the taxpayer does not correspond to the end of the 2-, 3-, 4-, 5-, 6-, 7-, 8-, 9-, 10-, or 11-month period (whichever is applicable), then, provided the taxpayer has at least one full 4-week or 13-week accounting period, as appropriate, within the applicable period, annualized taxable income for the applicable period is—

(i) [(x/(y*13))*z], in the case of a taxpayer using four 13-week periods, if—

(A) x = Taxable income for the number of full 13-week periods in the applicable period;

(B) y = The number of full 13-week periods in the applicable period; and

(C) z = The number of weeks in the taxable year; or

(ii) [(x/(y*4))*z], in the case of a taxpayer using thirteen 4-week periods, if—

(A) x = Taxable income for the number of full 4-week periods in the applicable period;

(B) y = The number of full 4-week periods in the applicable period; and

(C) z = The number of weeks in the taxable year.

(3) If a taxpayer employs four 13-week periods and the taxpayer does not have at least one 13-week period within

the applicable 2-, 3-, 4-, 5-, 6-, 7-, 8-, 9-, 10-, or 11-month period, the taxpayer is permitted to determine annualized taxable income for the applicable period based upon—

(i) The taxable income for the number of weeks in the applicable period; or

(ii) The taxable income for the full 13-week periods that end before the due date of the required installment.

(4) As an alternative to using the 52/53 week taxable year rules provided in paragraphs (e)(1), (e)(2), and (e)(3) of this section, a taxpayer whose taxable year constitutes 52 or 53 weeks in accordance with section 441(f) may base its annualization period on the month that ends closest to the end of its applicable 4-week period or 13-week period that ends within the applicable annualization period. This alternative may only be used if it is used for determining annualization periods for all required installments for the taxable year.

(5) The following examples illustrate the rules of this paragraph (e):

Example 1. Corporation ABC, an accrual method taxpayer, uses a 52/53 week year-end ending on the last Friday in December and uses four thirteen-week periods. For its year beginning December 28, 2007, ABC uses the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installments. For purposes of computing its first and second required installments, the first 3 months of A's taxable year under paragraph (b)(1)(i) of this section will end on March 28th, the thirteenth Friday of ABC's taxable year. For purposes of its third required installment, the first 6 months of ABC's taxable year will end on June 27th, the twenty-sixth Friday of ABC's taxable year. For purposes of its fourth required installment, the first 9 months of ABC's taxable year will end on September 26th, the thirty-ninth Friday of ABC's taxable year.

Example 2. Same facts as *Example 1* except that ABC uses thirteen four-week periods and there are 52 weeks during ABC's taxable year beginning December 28, 2007, and ending December 26, 2008. For purposes of computing ABC's first and second required installments, ABC's annualized taxable income for the first three months will be the taxable income for the first three four-week periods of ABC's taxable year (December 28, 2007, through March 21, 2008) divided by 12 (number of full four-week periods in the first three months (3) multiplied by 4) and multiplied by 52 (the number of weeks in the taxable year). For purposes of computing ABC's third required installment, ABC's annualized taxable income for the first six months will be the taxable income for the first six four-week periods of ABC's taxable year (December 28, 2007, through June 13, 2008) divided by 24 and multiplied by 52. For purposes of computing ABC's fourth required installment, ABC's annualized taxable income for the first nine months will be the taxable income for the first nine four-week periods of ABC's taxable year (December 28, 2007, through September 5, 2008) divided by 36 and multiplied by 52.

Example 3. Same facts as *Example 1* except that ABC uses the alternative method under paragraph (e)(4) of this section for computing its required installments for 2008. For purposes of computing its first and second required installments, the first three months of ABC's taxable year under paragraph (b)(1)(i) of this section will end on March 31, 2008, the month that ends closest to the end of ABC's applicable thirteen-week period for the first and second required installments. For purposes of ABC's third required installment, the first six months of ABC's taxable year will end on June 30, 2008, the month that ends closest to the end of ABC's applicable thirteen-week period for the third required installment. For purposes of ABC's fourth required installment, the first nine months of ABC's taxable year will end on September 30, 2008, the month that ends closest to the end of ABC's applicable thirteen-week period for the fourth required installment.

(f) *Determination of taxable income for an annualization period*—(1) *In general.* This paragraph (f) applies for purposes of determining the applicability of the exception described in paragraphs (a) and (b) of this section (relating to the annualization of income) and the exception described in §1.6655–3 (relating to annualization of income for corporations with seasonal income). An item of income, deduction, gain or loss is to be taken into account in determining the taxable income and alternative minimum taxable income (and applicable tax and alternative minimum tax) for an annualization period in the manner provided in this paragraph (f). An item may not be taken into account in determining taxable income for any annualization period unless the item is properly taken into account by the last day of that annualization period and the item is properly taken into account in determining the taxpayer's taxable

income and alternative minimum taxable income (and applicable tax and alternative minimum tax) for the taxable year that includes the annualization period.

(i) *Items of income.* An item of income is taken into account in the annualization period in which the item is properly includible under the method of accounting employed by the taxpayer with respect to the item and in accordance with the appropriate provision of the Internal Revenue Code (for example, section 451 for accrual method taxpayers, section 453 for installment sales or section 460 for long-term contracts).

(ii) *Items of deduction.* An item of deduction is taken into account in the annualization period in which the item is properly deductible under the method of accounting employed by the taxpayer with respect to the item and in accordance with the appropriate provision of the Internal Revenue Code (for example, under the cash receipts and disbursements method of accounting, the deduction must be paid under §1.461–1(a)(1) and be otherwise deductible in computing taxable income; under an accrual method of accounting, the deduction must be incurred under §1.461–1(a)(2) and be otherwise deductible in computing taxable income). Section 170(a)(2) and §1.170A–11(b) (charitable contributions by accrual method corporations) and §1.461–5 (recurring item exception) may not be taken into consideration by an accrual method taxpayer in any annualization period in determining whether an item of deduction has been incurred under §1.461–1(a)(2) during that annualization period.

(iii) *Losses.* An item of loss is to be taken into account during the annualization period in which events have occurred that permit the loss to be taken into account under the appropriate provision of the Internal Revenue Code.

(2) *Certain deductions required to be allocated in a reasonably accurate manner*—(i) *In general.* The following deductions allowed for a taxable year must be allocated throughout the taxable year in a reasonably accurate manner (as defined in paragraph (f)(2)(iii) of this section), regardless of the annualization period in which the item is paid or incurred:

(A) Real property tax deductions.

(B) Employee and independent contractor bonus compensation deductions (including the employer's share of employment taxes related to such compensation).

(C) Deductions under sections 404 (deferred compensation) and 419 (welfare benefit funds).

(D) Items allowed as a deduction for the taxable year by reason of section 170(a)(2) and §1.170A–11(b) (certain charitable contributions by accrual method corporations), §1.461–5 (recurring item exception) or §1.263(a)-4(f) (12-month rule).

(E) Items of deduction designated by the Secretary by publication in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(*b*) of this chapter).

(ii) *Application of the reasonably accurate manner requirement to certain charitable contributions, recurring items, and 12-month rule items.* For purposes of paragraph (f)(2)(i)(D) of this section, the total amount of the item deducted in the computation of taxable income for the taxable year must be allocated in a reasonably accurate manner, notwithstanding the fact that section 170(a)(2) and §1.170A–11(b), §1.461–5, or §1.263(a)–4(f) applies to only a portion of the total amount of the item deducted for the taxable year. For example, if a portion of a taxpayer's rebate liabilities are deducted in the computation of taxable income under the recurring item exception, all rebate liabilities deducted in the computation of taxable income for the taxable year must be allocated in a reasonably accurate manner.

(iii) *Reasonably accurate manner defined.* (A) An item is allocated throughout the taxable year in a reasonably accurate manner if the item is allocated ratably throughout the taxable year or if the allocation provides a reasonably accurate estimate of taxable income for the taxable year based upon the facts known as of the end of the annualization period. In determining that an allocation of an item provides a reasonably accurate estimate of taxable income for the taxable year, relevant considerations include—

(*1*) The extent to which the allocation is consistent with the taxpayer's accounting for the item on its non-tax books and records;

(*2*) The extent to which the allocable portion of the item becomes fixed and determinable (under § 1.461–1(a)(2)) during the applicable annualization period; and

(*3*) The extent to which the allocation, if compared to the ratable allocation of the item, results in a better matching of the item of deduction to revenue, earnings, the use of property or the provision of services occurring during the annualization period.

(B) None of the relevant considerations above override the general requirement that the allocation must be done in a reasonably accurate manner based upon the facts known as of the end of the annualization period. For example, the fact that a liability for an annual expense becomes fixed and determinable during an annualization period will not establish that allocating all of the expense to that annualization period has been done in a reasonably accurate manner if the facts known as of the end of the annualization period indicate otherwise.

(iv) *Special rule for certain real property tax liabilities.* Notwithstanding paragraph (f)(2)(iii) of this section, real property tax liabilities for which an election under section 461(c) is in effect must be allocated ratably throughout the taxable year for purposes of this section.

(v) *Examples.* Unless otherwise stated, the following examples assume that the taxpayer uses the 3–3–6–9 annualization period:

Example 1. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC has adopted a plan under which ABC pays an annual bonus to its employees. As of March 31, 2008, ABC estimates that it will pay a year-end bonus of $500,000 to its employees if earnings remain constant throughout the tax year. ABC does not pay any of the estimated bonus liability as of March 31, 2008. On October 31, 2008, ABC declares a $600,000 bonus to its employees which is paid out on November 15, 2008, and properly deducted in ABC's December 31, 2008, tax year. No other bonus liabilities are incurred by ABC during the tax year.

(ii) Under the general rule provided in paragraph (f)(2)(i) of this section, ABC is required to allocate its employee bonus liability in a reasonably accurate manner for annualization purposes. Under paragraph (f)(2)(iii) of this section, ABC's employee bonus liability will be deemed to be allocated in a reasonably accurate manner if the item is allocated ratably throughout the taxable year. Therefore, ABC is permitted to recognize a $150,000 bonus deduction (one quarter of the $600,000 bonus liability properly recognized by ABC in the tax year ending December 31, 2008) in the first annualization period ending March 31, 2008.

Example 2. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC has adopted a plan under which ABC pays an annual bonus to its employees. ABC's employee bonus plan generally calls for an annual bonus equal to 2% of earnings. A bonus reserve for this amount is reported each quarter in ABC's non-tax books and records. ABC's quarterly revenues throughout the year are $10,000,000; $6,000,000; $7,000,000; and $7,000,000 respectively. As of March 31, 2008, ABC estimates that it will pay a year-end bonus of $800,000 ($10,000,000 × 4 × 2%) to its employees if earnings remain constant throughout the year. ABC does not pay any of the estimated bonus payment as of March 31, 2008. On December 31, 2008, ABC declares a $600,000 bonus to its employees which is paid out on January 15, 2009, and properly deducted in ABC's December 31, 2008, tax year.

(ii) Under the general rule provided in paragraph (f)(2)(i) of this section, ABC must allocate its employee bonus liability in a reasonably accurate manner for annualization purposes. Under paragraph (f)(2)(iii) of this section, ABC's employee bonus liability will be deemed to be allocated in a reasonably accurate manner if the allocation provides a reasonable estimate of taxable income based upon the facts known as of the end of the annualization period. Based upon its earnings activities and other information available as of March 31, 2008, ABC estimated that its total deduction for employee bonuses for the taxable year ending December 31, 2008, would be $800,000 ($10,000,000 first quarter earnings × 4 × 2%). Allocating $200,000 ($10,000,000 × 2%) of ABC's annual bonus liability of $600,000 to ABC's first quarter based upon earnings during the quarter represents a better matching of ABC's bonus expense to earnings in the quarter as compared to allocating $150,000 to ABC's first quarter under a ratable accrual method and is consistent with the allocation provided in ABC's non-tax books and records.

Accordingly, allocating ABC's employee bonus deductions based upon ABC's earnings will be considered allocated in a reasonably accurate manner.

Example 3. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC has adopted a plan under which ABC pays a bonus to its employees each quarter based upon earnings for that quarter. On March 31, 2008, ABC pays out $2,000,000 to its employees as a quarterly bonus based upon the earnings of ABC for the period January 1, 2008, through March 31, 2008. The $2,000,000 bonus is recognized as an expense on ABC's audited financial statements in the quarter ending March 31, 2008. As of March 31, 2008, ABC anticipates that its earnings will continue throughout the year resulting in future quarterly bonus payments in 2008 similar to the $2,000,000 first quarter payment.

(ii) Under the general rule provided in paragraph (f)(2)(i) of this section, ABC is required to allocate its employee bonus liability in a reasonably accurate manner for annualization purposes. Under paragraph (f)(2)(iii) of this section , ABC's employee bonus liability will be deemed to be allocated in a reasonably accurate manner if the item is allocated ratably throughout the taxable year. Therefore, ABC may recognize a $500,000 bonus deduction (one quarter of the $2,000,000 bonus liability properly recognized by ABC in the tax year ending December 31, 2008) in the first annualization period ending March 31, 2008 (as well as one quarter of any additional bonus liability properly recognized by ABC in the tax year ending December 31, 2008).

(iii) In addition, paragraph (f)(2)(iii) of this section provides that an allocation will be considered reasonable if the allocation provides an accurate estimate of taxable income for the taxable year based upon the facts known as of the end of the annualization period. Based upon its earnings activities and other information available as of March 31, 2008, ABC estimates that its total deduction for employee bonuses for the taxable year ending December 31, 2008, would be $8,000,000. In addition, the $2,000,000 bonus liability became fixed and determinable during the first quarter. Allocating $2,000,000 to ABC's first quarter earnings is also consistent with ABC's non-tax books and records and represents a better matching of ABC's bonus expense to earnings in the quarter as compared to a ratable accrual. Accordingly, allocating ABC's bonus liability based upon earnings will be considered a reasonably accurate manner for estimated tax purposes.

Example 4. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting with the recurring item exception and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2009 taxable year. ABC regularly incurs rebate obligations related to the sale of its products. Rebate coupons that are received and validated by ABC are generally paid in the following month. During the tax year ending December 31, 2009, ABC received, validated and paid $400,000 in rebates. In addition, as of the end of December 31, 2009, ABC had received and validated $100,000 in rebate claims that were paid in January of 2010 and deducted in ABC's December 31, 2009, tax year under the recurring item exception. Therefore, ABC properly recognized a $500,000 rebate liability deduction on ABC's December 31, 2009, tax return.

(ii) Under the rule provided in paragraph (f)(2)(ii) of this section, an item must be allocated in a reasonably accurate manner if any portion of the item is deducted under the recurring item exception. Therefore, ABC will be required to allocate its entire $500,000 rebate liability deduction in a reasonably accurate manner as defined in paragraph (f)(2)(iii) of this section.

(3) *Special rules*—(i) *Advance payments*—(A) *Advance payments under § 1.451–5(b)(1)(ii).* An advance payment for which the taxpayer uses the method of accounting provided in § 1.451–5(b)(1)(ii) is includible in computing taxable income for an annualization period in accordance with that method of accounting except that, if § 1.451–5(c) applies, any amount not included in computing taxable income by the end of the second taxable year following the year in which substantial advance payments are received, and not previously included in accordance with the taxpayer's accrual method of accounting, is includible in computing taxable income on the last day of such second taxable year.

(B) *Advance payments under Rev. Proc. 2004–34.* An advance payment for which the taxpayer uses the Deferral Method provided in section 5.02 of Rev. Proc. 2004–34 (2004–1 CB 991), (see § 601.601(d)(2)(ii)(*b*) of this chapter) is includible in computing taxable income for an annualization period in accordance with that method of accounting, except that any amount not included in computing taxable income by the end of the taxable year succeeding the taxable year of receipt is includible in computing taxable income on the last day of such succeeding taxable year.

(ii) *Extraordinary items*—(A) *In general.* In general, extraordinary items must be taken into account after annualizing the taxable income for the annualization period. For purposes of the preceding sentence an extraordinary item is any item identified in § 1.1502–76(b)(2)(ii)(C)(1), (2), (3), (4), (7), and (8), a net operating loss carryover, a section 481(a) adjustment, net gain or loss from the disposition of 25 percent or more of the fair market value of a taxpayer's business assets during a taxable year, and any other item designated by the Secretary by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(B) *De minimis extraordinary items.* A taxpayer may treat any *de minimis* extraordinary item, other than a net operating loss carryover or section 481(a) adjustment, as an item under the general rule of paragraph (f)(1) of this section rather than an extraordinary item as provided for in paragraph (f)(3)(ii) of this section. A *de minimis* extraordinary item is any item identified in paragraph (f)(3)(ii)(A) of this section resulting from a transaction in which the total extraordinary items resulting from such transaction is less than $1,000,000.

(C) *Special rule for net operating loss deductions and section 481(a) adjustments.* For purposes of paragraph (f)(3)(ii) of this section, a taxpayer must treat a net operating loss deduction and section 481(a) adjustment as extraordinary items arising on the first day of the tax year in which the item is taken into account in determining taxable income. Notwithstanding the preceding sentence, a taxpayer may choose to treat the portion of a section 481(a) adjustment recognized during the tax year of the accounting method change as an extraordinary item arising on the date the Form 3115, ''Application for Change in Accounting Method,'' requesting the change was filed with the national office of the Internal Revenue Service.

(iii) *Credits*—(A) *Current year credits.* With respect to a current year credit, the items upon which the credit is computed are annualized, the amount of the credit is computed based on the annualized items, and the amount of the credit is deducted from the annualized tax. For example, for an annualization period consisting of three months in a full 12-month taxable year, the items upon which the credit is based that are taken into account for the three month period are multiplied by four, the credit is determined based on the annualized amount of the items, and the credit reduces the annualized tax.

(B) *Credit carryovers.* Any credit carryover to the current taxable year is taken into account in computing an annualized income installment only after annualizing the taxable income for the annualization period and computing the applicable tax, and before applying the applicable percentage.

(iv) *Depreciation and amortization*—(A) *Estimated annual depreciation and amortization.* In general, in determining taxable income for any annualization period, a proportionate amount of the taxpayer's estimated annual depreciation and amortization (depreciation) expense may be taken into account. For purposes of the preceding sentence, estimated annual depreciation expense is the estimated depreciation expense to be properly taken into account in determining the taxpayer's taxable income for the taxable year. In determining the estimated annual depreciation expense, a taxpayer may take into account purchases, sales or other dispositions, changes in use, additional first-year depreciation and expense deductions and section 179 or any similar provision, and other events that, based on all the relevant information available as of the last day of the annualization period (such as capital spending budgets, financial statement data and projections, or similar reports that provide evidence of the taxpayer's capital spending plans for the current taxable year), are reasonably expected to occur or apply during the taxable year.

(B) *Safe harbors*—(*1*) *Proportionate depreciation allowance.* In determining taxable income for any annualization period, in lieu of the rule provided in paragraph (f)(3)(iv)(A) of this section a taxpayer may take into account a proportionate amount of the depreciation and amortization (depreciation) expense, including special depreciation and expense deductions such as those

provided for in section 168(k) and section 179 or any similar provision, allowed for the taxable year from—

(*i*) Assets that were in service on the last day of the prior taxable year, are in service on the first day of the current taxable year, and that have not been disposed of during the annualization period;

(*ii*) Assets placed in service during the annualization period and have not been disposed of during that period; and

(*iii*) Assets that were in service on the last day of the prior taxable year and that are disposed of during the annualization period.

(*2*) *90 percent of preceding year's depreciation*. In determining taxable income for any annualization period, in lieu of the general rule provided in paragraph (f)(3)(iv)(A) of this section, a proportionate amount of 90 percent of the amount of depreciation and amortization (depreciation) expense taken on the taxpayer's Federal income tax return for the preceding taxable year may be taken into account. If the taxpayer's preceding taxable year is less than 12 months (a short taxable year), the amount of depreciation expense taken into account is annualized by multiplying the depreciation and amortization for the short taxable year by 12, and dividing the result by the number of months in the short taxable year.

(*3*) *Safe harbor operational rules*. If a taxpayer selects one of the two safe harbors provided in paragraph (f)(3)(iv)(B)(*1*) or paragraph (f)(3)(iv)(B)(*2*) of this section, the taxpayer must use that safe harbor for all depreciation expenses within the annualization period for the annualized income installment. However, a taxpayer may use either the method provided for in paragraph (f)(3)(iv)(A) of this section or a method provided for in this paragraph (f)(3)(iv)(B) of this section for each annualized income installment during the taxable year. For example, a taxpayer may use the safe harbor provided in paragraph (f)(3)(iv)(B)(*1*) of this section for its first annualized income installment and may use the general rule provided in paragraph (f)(3)(iv)(A) of this section for its second annualized income installment.

(C) *Short taxable years*. If the taxable year is, or will be, a short taxable year (based on all relevant information available as of the last day of the annualization period), annual depreciation expense is computed using the rules applicable for computing depreciation during a short taxable year for purposes of determining the annual depreciation expense to be allocated to an annualization period. For this purpose, the rules applicable for computing depreciation during a short taxable year are applied on the basis of the date the taxable year is expected to end based on all relevant information available as of the last day of the annualization period. See Rev. Proc. 89–15 (1989–1 CB 816) for computing depreciation expense under section 168 (see § 601.601(d)(2)(ii)(*b*) of this chapter). An annualization period is not treated as a short taxable year for purposes of determining the depreciation expense for an annualization period. See paragraph (c)(3) of this section.

(v) *Distributive share of items*—(A) *Member of partnership*. In determining a partner's distributive share of partnership items that must be taken into account during an annualization period, the rules set forth in § 1.6654–2(d)(2) are applicable.

(B) *Treatment of subpart F income and income under section 936(h)*—(*1*) *General rule*. Any amounts required to be included in gross income under section 936(h) or section 951(a), and credits properly allocable thereto, are taken into account in computing any annualized income installment in a manner similar to the manner under which partnership inclusions, and credits properly allocable thereto, are taken into account in accordance with paragraph (f)(3)(v)(A) of this section.

(*2*) *Prior year safe harbor*—(i) *General rule*. If a taxpayer elects to have the safe harbor in this paragraph (f)(3)(v)(B)(2) apply for any taxable year, then paragraph (f)(3)(v)(B)(*1*) of this section does not apply; and, for purposes of computing any annualized income installment for the taxable year, the taxpayer is treated as having received ratably during the taxable

year items of income and credit described in paragraph (f)(3)(v)(B)(*1*) of this section in an amount equal to 115 percent of the amount of such items shown on the return of the taxpayer for the preceding taxable year (the second preceding taxable year in the case of the first and second required installments for such taxable year).

(ii) *Special rule for noncontrolling shareholder*. If a taxpayer making the election under paragraph (f)(3)(v)(B)(*2*)(*i*) of this section is a noncontrolling shareholder of a corporation, paragraph (f)(3)(v)(B)(*2*)(*i*) of this section is applied with respect to items of such corporation by substituting ''100 percent'' for ''115 percent''. For purposes of paragraph (f)(3)(v)(B)(*2*)(*ii*) of this section, the term *noncontrolling shareholder* means, with respect to any corporation, a shareholder that, as of the beginning of the taxable year for which the installment is being made, does not own within the meaning of section 958(a), and is not treated as owning within the meaning of section 958(b), more than 50 percent by vote or value of the stock in the corporation.

(C) *Dividends from closely held real estate investment trust—(1) General rule*. Any dividend received from a closely held real estate investment trust by any person that owns, after the application of section 856(d)(5), 10 percent or more by vote or value of the stock or beneficial interests in the trust is taken into account in computing annualized income installments in a manner similar to the manner under which partnership income inclusions are taken into account.

(*2*) *Closely held real estate investment trust*. For purposes of paragraph (f)(3)(v)(C)(*1*) of this section, the term *closely held real estate investment trust* means a real estate investment trust with respect to which 5 or fewer persons own, after the application of section 856(d)(5), 50 percent or more by vote or value of the stock or beneficial interests in the trust.

(D) *Other passthrough entities*. A taxpayer's distributive share of items from a passthrough entity, other than those described in paragraphs (f)(3)(v)(A) and (f)(3)(v)(C) of this section, is taken into account in computing any annualized income installment in a manner similar to the manner under which partnership items are taken into account under paragraph (f)(3)(v)(A) of this section.

(vi) *Alternative minimum taxable income exemption amount*. The alternative minimum taxable income exemption amount provided by section 55(d)(2) is applied after the alternative minimum taxable income for the annualization period is annualized.

(vii) *Examples*. The provisions of this paragraph (f) are illustrated by the following examples. Unless otherwise stated, the following examples assume that the taxpayer uses the 3–3–6–9 annualization period.

Example 1. Expense paid or incurred in the installment period. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC has licensed technology from Corporation XYZ. Pursuant to the license agreement, ABC pays a license fee to XYZ equal to $.01 for every dollar of gross receipts earned by ABC. For 2008, ABC projects gross receipts of $200,000,000, of which $100,000,000 is earned by March 31, 2008. Pursuant to paragraph (f)(1) of this section, a license fee expense of $1,000,000 ($100,000,000 × $.01) is incurred by March 31, 2008, and may be taken into account for purposes of determining the taxable income to be annualized in computing ABC's first annualized income installment.

Example 2. Expense not paid or incurred in the installment period. Same facts as *Example 1* except that ABC does not earn any gross receipts by March 31, 2008. In accordance with paragraph (f)(1) of this section, because the license fee expense was not incurred under §1.461–1(a)(2) by the last day of the annualization period, no license fee expense is taken into account for purposes of determining the taxable income to be annualized in computing ABC's first annualized income installment, which is based on the income and deductions from the first three months of the taxable year.

Example 3. Bad debt expense. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. As of December 31, 2007, ABC had a $100,000 account receivable due from XYZ related to the sale of goods from ABC to XYZ during 2007. On March 30, 2008, ABC determined that its receivable from XYZ was worthless under section 166 and the

regulations. No other receivables were determined to be worthless between January 1, 2008, and March 31, 2008. In accordance with paragraph (f)(1) of this section, a $100,000 bad debt write-off is taken into account for purposes of determining the taxable income to be annualized in computing ABC's first annualized income installment.

Example 4. Bad debt expense. Same facts as *Example 3* except that ABC determines that the receivable from XYZ was worthless under section 166 and the regulations on April 10, 2008. As of March 31, 2008, ABC had not determined that any receivables were worthless under section 166 and the regulations. In accordance with paragraph (f)(1) of this section, the $100,000 bad debt expense attributable to the receivable from XYZ is not taken into account for purposes of determining the taxable income to be annualized in computing ABC's first annualized income installment, which is based on the income and deductions from the first three months of the taxable year, because the receivable from XYZ became worthless after the last day of the annualization period.

Example 5. Employer deductions under section 404 and 419. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and uses the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. On March 1, 2008, the board of directors of ABC makes a binding, irrevocable commitment to fund a minimum contribution of $10,000,000 to ABC's qualified retirement plan by March 14, 2009. ABC remits a $1,000,000 payment to the retirement plan on March 1, 2008, and a $9,000,000 payment on March 3, 2009. ABC does not incur any other related retirement plan deductions during its 2008 taxable year.

(ii) Under the rule provided in paragraph (f)(2)(i) of this section, ABC's employer deduction for payment made to the qualified plan must be allocated throughout the tax year for estimated tax purposes in a reasonably accurate manner. Therefore, ABC will not be permitted to allocate the $10,000,000 deduction to its first installment period. Under paragraph (f)(2)(iii) of this section, ABC's qualified plan deduction will be deemed to be allocated in a reasonably accurate manner if the item is allocated ratably throughout the taxable year. Therefore, ABC will be permitted to allocate $2,500,000 of its qualified plan deduction in its first installment period.

Example 6. Prepaid expense. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and does not capitalize qualifying costs under the exception provided for in §1.263(a)–4(f). ABC uses the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. On July 1, 2008, ABC purchases an annual business license from State X which permits ABC to operate its business in State X from July 1, 2008, through June 30, 2009. An annual payment of $12,000 is due on July 1, 2008, and ABC pays the fee on this date. ABC has not elected out of the 12-month rule provided by §1.263(a)–4(f) and therefore ABC is not required to capitalize any amount paid for the license and will recognize a $12,000 deduction for the tax year ending December 31, 2008, with respect to this license.

(ii) Under the rule provided in paragraph (f)(2)(ii) of this section, ABC's $12,000 business license expense must be allocated in a reasonably accurate manner because ABC utilizes the 12-month rule exception provided for in the §1.263(a)–4(f). Under paragraph (f)(2)(iii) of this section, ABC's deduction will be deemed to be allocated in a reasonably accurate manner if the item is allocated ratably throughout the taxable year. Therefore, ABC will be permitted to allocate $3,000 of its business license deduction in its first installment period.

Example 7. Real property tax liability. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC owns real property in State Y and uses the real property in its trade or business. ABC incurs a $400,000 deduction for State Y real estate taxes during ABC's December 31, 2008, taxable year. ABC has elected to recognize its real property taxes ratably under section 461(c).

(ii) Under the rule provided in paragraph (f)(2)(i) of this section, ABC's $400,000 real property tax liabilities must be allocated in a reasonably accurate manner. However, paragraph (f)(2)(iv) of this section provides that with respect to real property taxes for which an election has been made under section 461(c), ratable accrual is the only method which will be considered a reasonably accurate method. Therefore, ABC will be required to allocate its $400,000 real property taxes ratably for estimated tax purposes and thus $100,000 will be allocated to the ABC's first annualized income installment.

Example 8. NOL (Net Operating Loss) deduction. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC has a net operating loss carryover to 2008 of $2,000,000. ABC's taxable income from January 1, 2008, through March 31, 2008, without regard to any net operating loss deduction, is $1,500,000 (pre-NOL taxable income). Under the special rule for net operating loss deductions provided in paragraph (f)(3)(ii) of this

section, the NOL deduction is treated as an extraordinary item incurred on the first day of ABC's December 31, 2008, tax year. Therefore, the NOL deduction is taken into account after annualization for purposes of determining ABC's first annualized income installment.

Example 9. Advance payment. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 and 2009 taxable years. ABC is in the business of giving dancing lessons and receives advance payments. For Federal income tax purposes, ABC uses the Deferral Method provided in section 5.02 of Rev. Proc. 2004–34 for the advance payments it receives for dance lessons. On November 1, 2008, ABC receives an advance payment of $2,400 for a 2-year contract commencing on November 1, 2008, and providing for up to 24 individual, 1-hour lessons. ABC provides 2 lessons in 2008, 12 lessons in 2009, and 10 lessons in 2010. ABC recognizes $200 in revenues in its financial statements for the last quarter of 2008. ABC recognizes $300 in revenues in its financial statements for each quarter of 2009 for a total of $1,200 in 2009. ABC recognizes the remaining $1,000 in revenues in its financial statements during 2010. For tax purposes, ABC recognizes $200 into revenue in 2008 and $2,200 into revenue in 2009 under Rev. Proc. 2004–34. See § 601.601(d)(2)(ii)(*b*).

(ii) Pursuant to paragraph (f)(3)(i)(B) of this section, ABC is not required to take into account any of the advance payment for purposes of computing any required installment payment for ABC's 2008 taxable year because no part of the $2,400 advance payment was recognized as income in ABC's financial statements during the first nine months of ABC's 2008 taxable year. In 2009, ABC must take into account $300 of revenue for purposes of computing its first and second required installment payments, $600 of revenue for purposes of computing its third required installment payment and $900 for purposes of computing its fourth required installment payment. Pursuant to paragraph (f)(3)(i)(B) of this section, the remaining deferred revenue is recognized on December 31, 2009, for purposes of computing ABC's annualized income installments for 2009.

Example 10. Section 481(a) adjustment. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. On December 20, 2008, ABC files a Form 3115 requesting permission to change its method of accounting. The requested change results in a negative section 481(a) adjustment of $80,000. ABC subsequently receives the consent of the Commissioner to make the change and therefore, the negative $80,000 section 481(a) adjustment is properly recognized in ABC's tax return for the year ending December 31, 2008. Under paragraph (f)(3)(ii) of this section ABC is permitted to recognize the negative $80,000 section 481(a) adjustment as an extraordinary item occurring on January 1, 2008 (the first day of ABC's December 31, 2008, tax year), or December 20, 2008 (the date ABC filed the Form 3115). ABC chooses to recognize the negative $80,000 section 481(a) adjustment as an extraordinary item occurring in January 1, 2008. Accordingly, $80,000 of the negative section 481(a) adjustment is taken into account after annualization for purposes of determining ABC's first annualized income installment. In addition, under § 1.6655–6(b), ABC is required to use its new method of accounting as of January 1, 2008 for estimated tax purposes, consistent with the recognition of the section 481(a) adjustment for estimated tax purposes. Therefore, ABC will be required to use the new method of accounting in determining taxable income to be annualized in computing ABC's first annualized income installment.

Example 11. Section 481(a) adjustment. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and uses the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. On June 15, 2008, ABC files a Form 3115 requesting permission to change its method of accounting. The requested change results in a positive section 481(a) adjustment of $240,000. ABC subsequently receives the consent of the Commissioner to make the change and therefore, $60,000 of the section 481(a) adjustment (one quarter of the positive $240,000 section 481(a) adjustment) is properly recognized in ABC's tax return for the year ending December 31, 2008. Under paragraph (f)(3)(ii) of this section, ABC is permitted to recognize the positive $60,000 section 481(a) adjustment as an extraordinary item occurring on January 1, 2008 (the first day of ABC's December 31, 2008, tax year), or June 15, 2008 (the date ABC filed the Form 3115). ABC chooses to recognize the positive $60,000 section 481(a) adjustment as an extraordinary item occurring on June 15, 2008. Accordingly, the $60,000 positive section 481(a) adjustment is not taken into account for purposes of determining ABC's first annualized income installment. However, in all futures years any portion of the section 481(a) adjustment related to this change in method of accounting will be treated as an extraordinary item occurring on the first day of the tax year under paragraph (f)(3)(ii) of this section. In addition, under § 1.6655–6(b), ABC is required to use its new method of accounting as of June 15, 2008 for estimated tax purposes, consistent with the recognition of the section 481(a) adjustment for

estimated tax purposes. Therefore, ABC will be required to use the new method of accounting (as of the beginning of the tax year) for purposes of determining taxable income to be annualized in computing ABC's third and fourth annualized income installments (which are based upon annualization periods that include June 15, 2008.)

Example 12. Extraordinary item. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. On May 10, 2008, ABC reaches a settlement agreement with XYZ over a tort action filed by ABC. As a result, ABC receives a payment of $10,000,000 on June 15, 2006, that is recognized as income by ABC. The settlement of a tort action is an extraordinary item defined in paragraph (f)(3)(ii)(A) of this section. Accordingly, the $10,000,000 of income will be taken into account by ABC on May 10, 2008, for purposes of computing ABC's annualized income installments for 2008. Therefore, the $10,000,000 settlement will only be taken into account in computing ABC's third and fourth annualized income installments (which are based upon annualization periods that include May 10, 2008). In addition, the $10,000,000 settlement income will be taken into account as an extraordinary item of income after annualization for purposes of determining ABC's third and fourth annualized installment payments.

Example 13. Credit carryover. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC projects its annualized tax for its 2008 taxable year, based on annualizing ABC's taxable income for its first annualization period from January 1, 2008, through March 31, 2008, to be $1,500,000 before reduction for any credits. ABC has an unused section 38 credit from 2007 for increasing research activities from 2007 of $500,000 that is carried over to 2008. For purposes of determining ABC's first annualized income installment, ABC's annualized tax for 2008 is $1,000,000, determined as the tax for the taxable year computed by placing on an annualized basis ABC's taxable income from its first annualization period from January 1, 2008, through March 31, 2008 ($1,500,000) reduced by the $500,000 credit carryover from 2007. Therefore, ABC's first required installment payment for 2008 is $250,000 ($1,000,000 × 25%).

Example 14. Current year credit. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC projects its annualized tax for its 2008 taxable year, based on annualizing ABC's taxable income for its first annualization period from January 1, 2008, through March 31, 2008, to be $2,000,000 before reduction for any credits. ABC has historically earned a section 41 credit for increasing research activities and, for 2008, ABC estimates that it will earn a credit for increasing research activities under section 41 of $1,200,000. However, pursuant to paragraph (f)(3)(iii) of this section, if ABC were to annualize all components involved in computing the current year credit based on ABC's activity from January 1, 2008, through March 31, 2008, ABC would generate a credit of $1,600,000 for 2008. For purposes of determining ABC's first annualized income installment, ABC's annualized tax for 2008 is $400,000, determined as the tax for the 2008 taxable year ($2,000,000) computed by placing on an annualized basis ABC's taxable income from its first annualization period January 1, 2008, through March 31, 2008, reduced by a $1,600,000 current year section 41 credit from increasing research activities. Therefore, ABC's first required installment payment for 2008 is $100,000 ($400,000 × 25%).

Example 15. Current year credit. Same facts as *Example 14* except that ABC does not begin any research activities until April 3, 2008, and will not incur any research expenses described in paragraph (f)(1)(ii) of this section. As a result, if ABC were to annualize all components involved in computing the current year credit based on ABC's activity from January 1, 2008, through March 31, 2008, ABC would generate no section 41 research credit for purposes of determining its first annualized income installment. Pursuant to paragraph (f)(3)(iii) of this section, ABC cannot take into account any credit for its first annualization period because ABC did not incur any qualified research expenses by the last day of the first annualization period. Accordingly, for purposes of determining ABC's first annualized income installment, ABC's annualized tax for its first annualization period January 1, 2008, through March 31, 2008, is $2,000,000. Therefore, ABC's first required installment payment for 2008 is $500,000 ($2,000,000 × 25%).

Example 16. Depreciation and amortization expense. Corporation ABC, a calendar year taxpayer that began business on January 2, 2007, adopted an accrual method of accounting and will use the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. On January 2, 2007, ABC purchased and placed in service a tangible depreciable asset that costs $50,000 and is 5-year property under section 168(e). ABC depreciates its 5-year property placed in service in 2007 under the general depreciation system using the

200-percent declining balance method, a 5-year recovery period, and the half year convention. On January 2, 2008, ABC purchased and placed in service qualified Gulf Opportunity Zone property (GO Zone property) that costs $30,000 and is 5-year property under section 168(e). ABC will depreciate its 5-year property placed in service in 2008 under the general depreciation system using the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. ABC will deduct the 50% additional first year depreciation deduction under section 1400N(d) with respect to the GO Zone property. For tax year 2007, ABC takes a depreciation deduction under section 168 of $10,000 ($50,000 × 20% = $10,000). ABC does not anticipate being subject to the mid-quarter convention for the 2008 taxable year, does not anticipate making any depreciation elections for any class of property, does not anticipate making a section 179 election, does not anticipate any sales or other dispositions of depreciable property, and no events have occurred, nor does ABC know, based on all relevant information available as of the due date of ABC's first required installment for 2008, of any event that will occur to cause ABC's 2008 taxable year to be a short taxable year. The optional amounts of depreciation expense ABC may take into account for its first annualized income installment for its 2008 taxable year are determined as follows:

(i) *General rule—Estimated annual depreciation.* In accordance with the general rule provided in paragraph (f)(3)(iv)(A) of this section, ABC may take a depreciation expense of $8,500 ($34,000 × 3/12 = $8,500) into account in computing ABC's January 1, 2008, through March 31, 2008, taxable income. ABC's estimated annual depreciation expense for 2008 of $34,000 is computed as follows: $15,000 for the 50% additional first year depreciation deduction under section 1400N(d) ($30,000 × 50% = $15,000) plus annual depreciation of $16,000 ($40,000 × 40% = $16,000) and $3,000 ($15,000 × 20% = $3,000). Under paragraphs (c)(3) and (f)(3)(iv)(C) of this section, ABC may not consider its first annualization period to be a short taxable year for purposes of determining the depreciation allowance for such annualization period.

(ii) *Safe Harbor—Proportionate depreciation allowance.* In accordance with the safe harbor provided in paragraph (f)(3)(iv)(B)(1) of this section, ABC may take a depreciation expense of $8,500 ($34,000 × 3/12 = $8,500) into account in computing ABC's January 1, 2008, through March 31, 2008, taxable income based on annual depreciation expense for 2008 of $34,000, computed as follows: $15,000 for the 50% additional first year depreciation deduction under section 1400N(d) ($30,000 × 50% = $15,000) plus annual depreciation of $16,000 ($40,000 × 40% = $16,000) and $3,000 ($15,000 × 20% = $3,000). Under paragraphs (c)(3) and (f)(3)(iv)(C) of this section, ABC may not consider its first annualization period to be a short taxable year for purposes of determining the depreciation allowance for such annualization period.

(iii) *Safe Harbor—90 percent of preceding year's depreciation.* In accordance with the safe harbor in paragraph (f)(3)(iv)(B)(*2*) of this section, ABC may take a depreciation expense of $2,250 ($10,000 prior year's depreciation × 90% = $9,000 × 3/12 = $2,250) into account in computing ABC's January 1, 2008, through March 31, 2008, taxable income. Under paragraphs (c)(3) and (f)(3)(iv)(C) of this section, ABC may not consider its first annualization period to be a short taxable year for purposes of determining the depreciation allowance for such annualization period.

(g) *Items that substantially affect taxable income but cannot be determined accurately by the installment due date*—(1) *In general.* In determining the applicability of the annualization exceptions described in paragraphs (a) and (b) of this section and § 1.6655–3, reasonable estimates may be made from existing data for items that substantially affect income if the amount of such items cannot be determined accurately by the installment due date. This paragraph (g) applies only to the inflation index for taxpayers using the dollar-value LIFO (last-in, first-out) inventory method, adjustments required under section 263A, the computation of a taxpayer's section 199 deduction, intercompany adjustments for taxpayers that file consolidated returns, the liquidation of a LIFO layer at the installment date that the taxpayer reasonably believes will be replaced at the end of the year, deferred gain on a qualifying conversion or exchange of property under sections 1031 and 1033 that the taxpayer reasonably believes will be replaced with qualifying replacement property, and any other item designated by the Secretary by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(2) *Example.* The following example illustrates the rules of this paragraph (g):

Example. Section 199 deduction. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its

2008 taxable year. ABC engages in production activities that generate qualified production activities income (QPAI), as defined in § 1.199–1(c), and projects taxable income of $50,000 for its first annualization period from January 1, 2008, through March 31, 2008, without taking into account the section 199 deduction. During its first annualization period from January 1, 2008, through March 31, 2008, ABC incurs W–2 wages allocable to domestic production gross receipts pursuant to section 199(b)(2) of $10,000. Pursuant to paragraph (g)(1) of this section, ABC is permitted to take into account its estimated section 199 deduction before annualizing taxable income based on the lesser of its estimated QPAI or taxable income and W–2 wages for its first installment period for 2008. For the first installment period in 2008, ABC is permitted to recognize a deduction under section 199 of $3,000 ($50,000 × .06 = $3,000) subject to the wage limitation of $5,000 (50 percent of $10,000 of W–2 wages incurred during the first installment period). Accordingly, ABC's annualized income for the first installment for 2008 is $188,000 (($50,000–$3,000) × 1⅔ = $188,000). The tax on $188,000 is $56,570 and ABC's first required installment for 2008 is $14,143 ($56,570 × .25 = $14,143).

(h) *Effective/applicability date.* This section applies to taxable years beginning after September 6, 2007.

[T.D. 9347, 72 FR 44349, Aug. 7, 2007; 72 FR 53684, Sept. 20, 2007; 72 FR 54350, Sept. 25, 2007]

§ 1.6655–2T Safe harbor for certain installments of tax due before July 1, 1987 (temporary).

(a) *Applicability*—(1) *Safe harbor.* The safe harbor provided by paragraph (b) of this section applies only to installment payments of corporate estimated tax required to be made before July 1, 1987, for taxable years beginning in 1987.

(2) *Subsequent payment.* The requirement that a corporation using the safe harbor provided by this section make a timely subsequent installment payment in accordance with paragraph (c) of this section applies with respect to the corporation's first installment payment (''the subsequent installment payment'') of estimated tax required to be made after the last payment computed under the safe harbor rule.

(3) *Section inapplicable to new corporation.* This section shall not apply in the case of any corporation whose first taxable year began after December 31, 1986.

(b) *Safe harbor for use of annualization exception*—(1) *In general.* A corporation computing an installment payment of estimated tax using the annualization exception provided in section 6655(d)(3) will not be subject to an addition to tax under section 6655 with respect to an installment payment of estimated tax that satisfies the requirements of this paragraph (b), except as provided in paragraph (c) of this section. For purposes of this paragraph (b)—

(i) A corporation shall assume that its annualized taxable income for the current year equals or exceeds 120 percent of the taxable income shown on its return for the preceding taxable year, and

(ii) The term ''tax'' as used in section 6655(d)(3) shall be defined by reference to section 6655(f) without regard to section 6655(f)(1) (B) and (C) (that is, without regard to the alternative minimum tax imposed by section 55 or the environmental tax imposed by section 59A).

(2) *Special rules for determining taxable income for preceding year.* For purposes of paragraph (b)(1)(i) of this section, the taxable income shown on the return of the corporation for its preceding taxable year shall be—

(i) Adjusted to eliminate any net operating loss deduction taken into account in that preceding year, and

(ii) Annualized, if that preceding year was of less than 12 months.

(3) *Credits taken into account*—(i) *In general.* In computing the amount of an installment payment under paragraph (b)(1) of this section, the corporation may take into account any credits against tax that are permitted to be taken into account under section 6655(d)(3) for the current taxable year.

(ii) *Foreign tax credit.* For purposes of paragraph (b)(3)(i) of this section, the amount of foreign tax credit that is permitted to be taken into account for the current taxable year is equal to the foreign tax credit allowed for the preceding taxable year multiplied by the fraction specified in the following sentence. The numerator of the fraction is the highest tax rate applicable for the taxable year under section 11, as adjusted under section 15, and the denominator is 46 percent. This alternative computation of the foreign tax credit is

applicable only for purposes of computing a safe harbor installment payment under paragraph (b) of this section and cannot be applied for other estimated tax purposes.

(4) *Net operating loss carryover*. A corporation that has a net operating loss carryover as of the first day of the taxable year for which the estimated tax is being paid may use that carryover to reduce the annualized taxable income referred to in paragraph (b)(1)(i) of this section. For example, if a corporation with a net operating loss carryover of $3,000 had taxable income of $10,000 in 1986, it may use the carryover to reduce its annualized taxable income to $9,000, (($10,000 × 120%) − 3,000).

(c) *Corporation must bring aggregate payments to required level through timely subsequent installment*—(1) *In general*. A corporation using the safe harbor provided by paragraph (b) of this section shall make a timely subsequent installment payment of estimated tax in an amount sufficient to satisfy the requirements of either paragraph (c)(3) or paragraph (c)(4) of this section.

(2) *Applicable percentage*. For purposes of this paragraph (c), the applicable percentage is—

(i) 45 percent (50 percent × 90 percent), if the subsequent installment payment is the second installment payment for the taxable year, or

(ii) 67.5 percent (75 percent × 90 percent), if the subsequent installment payment is the third installment payment for the taxable year.

(3) *Annualization exception*. The subsequent installment payment of a corporation satisfies the requirements of this paragraph (c)(3) if the amount of the payment is sufficient to satisfy the requirements of section 6655(d)(3) with respect to all applicable taxes specified in section 6655(f). Thus, the corporation must determine its annualized taxable income under section 6655(d)(3)(A) (ii) or (iii), whichever is applicable, and compute the resulting tax. The resulting tax shall include the alternative minimum tax under section 55 and the environmental tax under section 59A and may take credits into account to the extent permitted under section 6655(d)(3). The sum of this subsequent installment payment and the earlier installment payment or payments of the corporation must equal or exceed the applicable percentage of the tax so computed. In determining whether the corporation has satisfied the requirements of section 6655(d)(3)(A) (ii) or (iii) with respect to the subsequent installment, the safe harbor provided in paragraph (b)(1) of this section shall not apply.

(4) *Installment payments equal to applicable percentage of tax shown on return*. The subsequent installment payment of a corporation satisfies the requirement of this paragraph (c)(4) if the sum of that payment and the earlier installment payment or payments of the corporation equals or exceeds the applicable percentage of the tax shown on the return of the corporation for the taxable year to which the installment payments relate. The tax shown on the return includes all taxes specified in section 6655(f).

(5) *Consequence of corporation's failure to satisfy requirements for subsequent installment*—(i) *In general*. If a corporation fails to satisfy the requirements set out in this paragraph (c), the corporation shall lose the benefit of the safe harbor provided by paragraph (b)(1) of this section.

(ii) *Limit on penalty*. The aggregate underpayment penalty with respect to any installment payment or payments for which a corporation loses the benefit of the safe harbor under paragraph (c)(5)(i) of this section shall be limited to the ''shortfall penalty amount.'' The shortfall penalty amount is the penalty that would be imposed under section 6655(a) if there were an underpayment of the subsequent installment payment equal to the excess of—

(A) The amount required to be paid, as determined under this paragraph (c), on or before the due date of the subsequent installment payment, over

(B) The amount actually paid on or before such date with respect to the subsequent installment payment.

For purposes of this determination, the period of the underpayment shall run from the due date of the subsequent installment payment until the earlier of the dates specified in section 6655(c) (1) or (2).

(iii) *Example*. The provisions of this paragraph (c)(5) may be illustrated by the following example:

Example. Corporation M, which uses the calendar year as its taxable year, relies on the safe harbor provided by paragraph (b) of this section for its first two installment payments of estimated tax for 1987. M is required by this paragraph (c) to make a timely subsequent installment payment of $1,000,000 by September 15, 1987, but M's actual installment payment by that date is only $990,000. Because of this shortfall, M loses the benefit of the safe harbor and is subject to underpayment penalties with respect to the first two installments. The aggregate penalties with respect to those two installments, however, cannot exceed the amount of the underpayment penalty to which M would be subject if there were an underpayment of $10,000 with respect to the September 15, 1987, installment payment. Such penalties are independent of any penalty that may apply with respect to M's third installment payment under the normal rules of section 6655.

(d) *Example*. The provisions of this section may be illustrated by the following example:

Example. (i) Corporation X (which is not a life insurance company) uses as its taxable year a fiscal year ending on January 31 and is required to pay an installment of estimated income tax by May 15, 1987, for its taxable year beginning on February 1, 1987. On its return for the taxable year ending January 31, 1987, which was a year of 12 months, X reported taxable income of $10,000,000 ($9,000,000 of which was ordinary income and $1,000,000 of which was net capital gain) and did not claim any net operating loss deduction. As of February 1, 1987, X has no net operating loss carryforwards and no credit carryforwards. X has no credits against tax that are permitted to be taken into account under section 6655(d)(3) for 1987. If X uses the safe harbor provided in paragraph (b)(1) of this section, X must make by May 15, 1987, an installment payment of estimated tax of at least $1,037,836, computed as follows:

(1) Taxable income shown on return for taxable year ending on January 31, 1987	$10,000,000
(2) Annualized taxable income for taxable year ending January 31, 1988, determined pursuant to paragraph (b)(1) of this section (Item (1)x120%)	$12,000,000
(Note: 120%xordinary income of $9,000,000=$10,800,000; 120%xnet capital gain of $1,000,000=$1,200,000)	
(3) Tax on annualized taxable income (Item 2) using rates under section 11 and 1201, taking into account section 15, applicable to the taxable year ending January 31, 1988	$4,612,603
(4) Amount described in section 6655(d)(3)(A)(i) (Item (3)x22.5%)	$1,037,836

(ii) To preclude imposition of an addition to tax under section 6655 with respect to its May 15, 1987, installment payment, X must make by July 15, 1987, a second installment payment of estimated tax sufficient to bring its aggregate payments to the minimum level required under paragraph (c) of this section.

(iii) X may satisfy the requirements of paragraph (c)(3) of this section by making a second installment payment sufficient to bring X within the exception provided in section 6655(d)(3). Thus, if X determines under that section that the aggregate of X's installment payments of estimated tax by July 15, 1987, must equal at least $3,000,000, X may obtain the benefit of the safe harbor provided in paragraph (b)(1) of this section with respect to the May 15, 1987, installment payment by making a timely second installment payment of $1,962,164 ($3,000,000—$1,037,836).

(iv) Even if X fails to satisfy the requirements of paragraph (c)(3) of this section, X may obtain the benefit of the safe harbor for the May 15, 1987, installment payment if X's second installment payment, when aggregated with the first payment, equals at least 45 percent of the tax (including the alternative minimum tax under section 55 and the environmental tax under section 59A) shown on X's return for X's taxable year beginning on February 1, 1987. Thus, if the tax shown on that return is $6,000,000, X's second installment payment under paragraph (c)(4) of this section must be at least $1,662,164, computed as follows:

45 percent of $6,000,000	$2,700,000
less first payment	1,037,836
Minimum second installment	$1,662,164

[T.D. 8132, 52 FR 10051, Mar. 30, 1987]

§ 1.6655–3 Adjusted seasonal installment method.

(a) *In general*. In the case of any required installment, the amount of the adjusted seasonal installment is the excess (if any) of—

(1) 100 percent of the amount determined under paragraph (c) of this section; over

(2) The aggregate amount of all prior required installments for the taxable year.

(b) *Limitation on application of section.* This section applies only if the base period percentage (as defined in section 6655(e)(3)(D)(i) and paragraph (d)(1) of this section) for any six consecutive months of the taxable year equals or exceeds seventy percent.

(c) *Determination of amount.* The amount determined under this paragraph (c) for any installment will be determined in the following manner—

(1) Take the taxable income for all months during the taxable year preceding the filing month;

(2) Divide such amount by the base period percentage for all months during the taxable year preceding the filing month;

(3) Determine the tax on the amount determined under paragraph (c)(2) of this section; and

(4) Multiply the tax computed under paragraph (c)(3) of this section by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(d) *Special rules*—(1) *Base period percentage.* The base period percentage for any period of months is the average percent that the taxable income for the corresponding months in each of the three preceding taxable years bears to the taxable income for the three preceding taxable years. If there is no taxable income for the corresponding months, taxable income for this purpose is zero.

(2) *Filing month.* The term *filing month* means the month in which the installment is required to be paid.

(3) *Application of the rules related to the annualized income installment method to the adjusted seasonal installment method.* The rules governing the computation of taxable income (and resulting tax) for purposes of determining any required installment payment of estimated tax under the annualized income installment method under §1.6655–2 apply to the computation of taxable income (and resulting tax) for purposes of determining any required installment payment of estimated tax under the adjusted seasonal installment method.

(4) *Alternative minimum tax.* The amount determined under paragraph (c) of this section must properly take into account the amount of any alternative minimum tax under section 55 that would apply for the period of the computation. The amount of any alternative minimum tax that would apply is determined by applying to alternative minimum taxable income, tentative minimum tax, and alternative minimum tax, the rules described in paragraph (c) of this section for taxable income and tax.

(e) *Example.* The provisions of this section may be illustrated by the following example:

Example. (i) X, a corporation that reports on a calendar year basis, expects to have an estimated tax liability of $1,200,000 for its taxable year ending December 31, 2009. On its 2008 tax return, X reports a tax liability of $652,800. X pays four installments of estimated tax, each in the amount of $250,000, $250,000, $250,000, and $450,000 on April 15, 2009, June 15, 2009, September 15, 2009, and December 15, 2009, respectively. X reports a tax liability of $1,152,600 on its return due March 15, 2010, with no credits against tax. Under the general provision of section 6655(b) and section 6655(d), there was an underpayment in the amount of $76,300 for the second installment through September 15, 2009, and $114,450 for the third installment through December 15, 2009, determined as follows:

(A) Tax as defined in section 6655(g) = $1,152,600

(B) 100% of this paragraph (e), Example (i)(A) = $1,152,600

(C) Amount of estimated tax required to be paid on or before the first installment (25% of $652,800) = $163,200

(D) Deduction of amount timely paid on or before the first installment due date under the general rule of section 6655(b) = $250,000

(E) Amount of overpaid estimated tax for the first installment date = $86,800

(F) Amount of estimated tax required to be paid on or before the second installment (25% of $1,152,600 plus the recapture amount under section 6655(d)(2)(B) of $124,950 (25% of $1,152,600 less $163,200)) = $413,100

(G) Deduction of amount paid on or before the due date of the second installment less amount applied towards the first installment under the general rule of section 6655(b) ($250,000 paid in each of the first and second installments less this paragraph (e), Example (i)(C)) = $336,800

(H) Amount of underpayment for the second installment date = $76,300

(I) Amount of estimated tax required to be paid on or before the third installment (25% of $1,152,600) = $288,150

(J) Deduction of amount paid on or before the due date of the third installment less amount applied towards the first and second installments under the general rule of section 6655(b) ($250,000 paid in each of the first, second, and third installments less this paragraph (e), *Example* (i)(C) less this paragraph (e), *Example* (i)(F)) = $173,700

(K) Amount of underpayment for the third installment date = $114,450

(L) Amount of estimated tax required to be paid on or before the fourth installment (25% of $1,152,600) = $288,150

(M) Deduction of amount paid on or before the due date of the fourth installment less amount applied towards the first, second, and third installments under the general rule of section 6655(b) ($250,000 paid in each of the first, second, and third installments plus $450,000 paid in the fourth installment less this paragraph (e), *Example* (i)(C) less this paragraph (e), *Example* (i)(F) less this paragraph (e), *Example* (i)(I)) = $335,550

(N) Amount of overpaid estimated tax for the fourth installment date = $47,400

(ii) X wants to determine if it qualifies for the adjusted seasonal installment method. X determines that its monthly taxable income for the preceding three taxable years and for the current taxable year 2009 is as follows:

January	February	March	April	May	June	July	August	September	October	November	December
2006: $100,000	$90,000	$80,000	$70,000	$60,000	$20,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000
2007: 200,000	170,000	170,000	130,000	125,000	45,000	21,000	19,000	20,000	20,000	20,000	20,000
2008: 410,000	350,000	330,000	270,000	240,000	80,000	40,000	40,000	40,000	40,000	40,000	40,000
2009: 600,000	680,000	650,000	560,000	460,000	170,000	70,000	60,000	50,000	40,000	30,000	20,000

(iii) X must initially determine if its base period percentage for the same 6 consecutive months of the 3 preceding taxable years equals or exceeds 70 percent (see section 6655(e)(3) and paragraphs (b) and (c) of this section). By using its taxable income for the first 6 months of 2006, 2007, and 2008, X qualifies for the adjusted seasonal installment method because its base period percentage is 87.5 percent (which exceeds 70 percent) computed as follows:

(A) Taxable income for first 6 months of 2006 = $420,000

(B) Total taxable income for 2006 = $480,000

(C) Divide this paragraph (e), *Example* (iii)(A) by this paragraph (e), *Example* (iii)(B) = .875

(D) Taxable income for first 6 months of 2007 = $840,000

(E) Total taxable income for 2007 = $960,000

(F) Divide this paragraph (e), *Example* (iii)(D) by this paragraph (e), *Example* (iii)(E) = .875

(G) Taxable income for first 6 months of 2008 = $1,680,000

(H) Total taxable income for 2008 = $1,920,000

(I) Divide this paragraph (e), *Example* (iii)(G) by this paragraph (e), *Example* (iii)(H) = .875

(J) Add this paragraph (e), *Example* (iii)(C), (F), and (I) = $2.625

(K) Divide this paragraph (e), *Example* (iii)(J) by 3 = .875

(iv) To determine the amount of the first installment under the rules of section 6655(e)(3) and paragraph (a) of this section, the following computation is necessary:

(A) Taxable income for first 3 months of 2009 = $1,930,000

(B) Taxable income for first 3 months of 2006 ($270,000) divided by total taxable income for 2006 ($480,000) = .5625

(C) Taxable income for first 3 months of 2007 ($540,000) divided by total taxable income for 2007 ($960,000) = .5625

(D) Taxable income for first 3 months of 2008 ($1,090,000) divided by total taxable income for 2008 ($1,920,000) = .5677

(E) Add this paragraph (e), *Example* (iv)(B), (C), and (D) and divide by 3 = .5642

(F) Divide this paragraph (e), *Example* (iv)(A) by this paragraph (e), *Example* (iv)(E) = $3,420,773

(G) Determine the tax on this paragraph (e), *Example* (iv)(F) = $1,163,049

(H) Taxable income for first 4 months of 2006 ($340,000) divided by total taxable income for 2006 ($480,000) = .7083

(I) Taxable income for first 4 months of 2007 ($670,000) divided by total taxable income for 2007 ($960,000) = .6979

(J) Taxable income for first 4 months of 2008 ($1,360,000) divided by total taxable income for 2008 (1,920,000) = .7083

(K) Add this paragraph (e), *Example* (iv)(H), (I), and (J) and divide by 3 = .7048

(L) Multiply this paragraph (e), *Example* (iv)(G) by this paragraph (e), *Example* (iv)(K) = $819,717

(M) 100% of this paragraph (e), *Example* (iv)(L) = $819,717

(N) Amount of all prior required installments for 2009 = $0

(O) Amount of adjusted seasonal installment for the first installment payment (this paragraph (e), *Example* (iv)(M) less this paragraph (e), *Example* (iv)(N)) = $819,717

(v) To determine the amount of the second installment under the rules of section 6655(e)(3) and paragraph (a) of this section, the following computation is necessary:

(A) Taxable income for first 5 months of 2009 = $2,950,000

(B) Taxable income for first 5 months of 2006 ($400,000) divided by total taxable income for 2006 ($480,000) = .8333

(C) Taxable income for first 5 months of 2007 ($795,000) divided by total taxable income for 2007 ($960,000) = .8281

(D) Taxable income for first 5 months of 2008 ($1,600,000) divided by total taxable income for 2008 ($1,920,000) = .8333

(E) Add this paragraph (e), *Example* (v)(B), (C), and (D) and divide by 3 = .8316

(F) Divide this paragraph (e), *Example* (v)(A) by this paragraph (e), *Example* (v)(E) = $3,547,379

(G) Determine the tax on this paragraph (e), *Example* (v)(F) = $1,206,109

(H) Taxable income for first 6 months of 2006 ($420,000) divided by total taxable income for 2006 ($480,000) = .875

(I) Taxable income for first 6 months of 2007 ($840,000) divided by total taxable income for 2007 ($960,000) = .875

(J) Taxable income for first 6 months of 2008 ($1,680,000) divided by total taxable income for 2008 ($1,920,000) = .875

(K) Add this paragraph (e), *Example* (v)(H), (I), and (J) and divide by 3 = .875

(L) Multiply this paragraph (e), *Example* (v)(G) by this paragraph (e), *Example* (v)(K) = $1,055,345

(M) 100% of this paragraph (e), *Example* (v)(L) = $1,055,345

(N) Amount of all prior required installments for 2009 = $163,200

(O) Amount of adjusted seasonal installment for the second installment payment (this paragraph (e), *Example* (v)(M) less this paragraph (e), *Example* (v)(N)) = $892,145

(vi) To determine the amount of the third installment under the rules of section 6655(e)(3) and paragraph (a) of this section, the following computation is necessary:

(A) Taxable income for first 8 months of 2009 = $3,250,000

(B) Taxable income for first 8 months of 2006 ($440,000) divided by total taxable income for 2006 ($480,000) = .9167

(C) Taxable income for first 8 months of 2007 ($880,000) divided by total taxable income for 2007 ($960,000) = .9167

(D) Taxable income for first 8 months of 2008 ($1,760,000) divided by total taxable income for 2008 ($1,920,000) = .9167

(E) Add this paragraph (e), *Example* (vi)(B), (C), and (D) and divide by 3 = .9167

(F) Divide this paragraph (e), *Example* (vi)(A) by this paragraph (e), *Example* (vi)(E) = $3,545,326

(G) Determine the tax on this paragraph (e), *Example* (vi)(F) = $1,205,411

(H) Taxable income for first 9 months of 2006 ($450,000) divided by total taxable income for 2006 ($480,000) = .9375

(I) Taxable income for first 9 months of 2007 ($900,000) divided by total taxable income for 2007 ($960,000) = .9375

(J) Taxable income for first 9 months of 2008 ($1,800,000) divided by total taxable income for 2008 ($1,920,000) = .9375

(K) Add this paragraph (e), *Example* (vi)(H), (I), and (J) and divide by 3 = .9375

(L) Multiply this paragraph (e), *Example* (vi)(G) by this paragraph (e), *Example* (vi)(K) = $1,130,073

(M) 100% of this paragraph (e), *Example* (vi)(L) = $1,130,073

(N) Amount of all prior required installments for 2009 = $576,300

(O) Amount of adjusted seasonal installment for the third installment payment (this paragraph (e), *Example* (vi)(M) less this paragraph (e), *Example* (vi)(N)) = $553,773

(vii) To determine the amount of the fourth installment under the rules of section 6655(e)(3) and paragraph (a) of this section, the following computation is necessary:

(A) Taxable income for first 11 months of 2009 = $3,370,000

(B) Taxable income for first 11 months of 2006 ($470,000) divided by total taxable income for 2006 ($480,000) = .9792

(C) Taxable income for first 11 months of 2007 ($940,000) divided by total taxable income for 2007 ($960,000) = .9792

(D) Taxable income for first 11 months of 2008 ($1,880,000) divided by total taxable income for 2008 ($1,920,000) = .9792

(E) Add this paragraph (e), *Example* (vii)(B), (C), and (D) and divide by 3 = .9792

(F) Divide this paragraph (e), *Example* (vii)(A) by this paragraph (e), *Example* (vii)(E) = $3,441,585

(G) Determine the tax on this paragraph (e), *Example* (vii)(F) = $1,170,139

(H) Taxable income for first 12 months of 2006 ($480,000) divided by total taxable income for 2006 ($480,000) = 1.0000

(I) Taxable income for first 12 months of 2007 ($960,000) divided by total taxable income for 2007 ($960,000) = 1.0000

(J) Taxable income for first 12 months of 2008 ($1,920,000) divided by total taxable income for 2008 ($1,920,000) = 1.0000

(K) Add this paragraph (e), *Example* (vii)(H), (I), and (J) and divide by 3 = 1.0000

(L) Multiply this paragraph (e), *Example* (vii)(G) by this paragraph (e), *Example* (vi)(K) = $1,170,139

(M) 100% of this paragraph (e), *Example* (vii)(L) = $1,170,139

(N) Amount of all prior required installments for 2009 = $864,450

(O) Amount of adjusted seasonal installment for the fourth installment payment (this paragraph (e), *Example* (vii)(M) less this paragraph (e), *Example* (vii)(N)) = $305,689

(viii) Because the total amount of each required estimated tax payment determined under section 6655(e)(3) and paragraph (a) of this section exceeds the amount of each required estimated tax payment determined under section 6655(d) and § 1.6655–1(d) and (e), the exception described in section 6655(e) and this section does not apply and the addition to the tax with respect to the underpayment for the June 15, 2009, and September 15, 2009, installments will be imposed unless another exception (for example, see section 6655(e)(2)) applies with respect to these installments.

(f) *Effective/applicability date.* This section applies to taxable years beginning after September 6, 2007.

[T.D. 9347, 72 FR 44358, Aug. 7, 2007]

§ 1.6655–4 Large corporations.

(a) *Large corporation defined.* The term *large corporation* means any corporation (or a predecessor corporation) that had taxable income of at least $1,000,000 for any taxable year during the testing period. For purposes of this section, a predecessor corporation is the distributor or transferor corporation in a transaction to which section 381 (relating to carryovers in certain corporate acquisitions) applies.

(b) *Testing period.* For purposes of paragraph (a) of this section, the term *testing period* means the 3 taxable years immediately preceding the taxable year for which estimated tax is being determined (the current taxable year) or, if less, the number of taxable years the taxpayer has been in existence.

(c) *Computation of taxable income during testing period*—(1) *Short taxable year.* In the case of a corporation (or predecessor corporation) that had a short taxable year during the testing period, for purposes of determining whether the $1,000,000 amount referred to in paragraph (a) of this section is equaled or exceeded, the taxable income for the short taxable year is computed by—

(i) Multiplying the taxable income for the short taxable year by 12; and

(ii) Dividing the resulting amount by the number of months in the short taxable year.

(2) *Computation of taxable income in taxable year when there occurs a transaction to which section 381 applies.* (i) For purposes of determining whether an acquiring corporation had taxable income of $1,000,000 or more for a taxable year in which a section 381 transaction occurs, the acquiring corporation's taxable income will be the sum of—

(A) The taxable income of the acquiring corporation for its taxable year; plus

(B) The taxable income (or loss) of the distributor or transferor corporation for that portion of its taxable year corresponding to the acquiring corporation's taxable year up to and including the date of distribution or transfer (as defined in § 1.381(b)–1(b)).

(ii) For purposes of determining whether a transferor or distributor corporation had taxable income of $1,000,000 or more for a taxable year in which a section 381 transaction occurs, the distributor or transferor corporation's taxable income (or loss) is reduced by the amount of taxable income (or loss) that is included in the acquiring corporation's taxable income for the taxable year in which the distribution or transfer (as defined in § 1.381(b)–1(b)) occurs, as described in paragraph (c)(2)(i)(B) of this section.

(d) *Members of controlled group*—(1) *In general.* For purposes of applying paragraph (a) of this section, the taxable income of members of a controlled group of corporations (as defined in section 1563(a)) must be aggregated for each year of the testing period. The provisions of this section do not apply to a controlled group for any taxable year in which the aggregate taxable income of the members of the controlled group is less than $1,000,000.

(2) *Aggregation.* For purposes of paragraph (d)(1) of this section, a taxable loss of any member of the controlled group for a taxable year during the testing period is not taken into account.

(3) *Allocation rule.* If the aggregate taxable income of members of a controlled group computed pursuant to paragraph (d)(1) of this section exceeds $1,000,000 during the testing period, the $1,000,000 amount that is relevant for purposes of determining, under paragraph (a)(1) of this section, whether a corporation is a large corporation is divided equally among the component

members of such group (including component members excluded pursuant to paragraph (d)(2) of this section) unless all of such component members consent to an apportionment plan providing for an alternative allocation of such amount. The procedure for making and filing this plan will be the same as the procedure used for making and filing an apportionment plan under section 1561. See section 1561 and the regulations.

(4) *Controlled group members.* (i) In the case of any corporation that was a member of a controlled group of corporations at any time during the testing period but is not a member of such group during the taxable year involved, the taxable income of the former member for the testing period is determined as if such corporation were not a member of a group at any time during that period. With respect to the controlled group, the taxable income of its former member will not be taken into account in determining such group's taxable income for any taxable year during the testing period for purposes of applying paragraph (a)(1) of this section.

(ii) For purposes of paragraph (d)(4)(i) of this section, the determination of whether a corporation is a member of a controlled group during the testing period is based on whether the corporation was a member of the controlled group on the last day of the month preceding the due date of the required installment.

(e) *Effect on a corporation's taxable income of items that may be carried back or carried over from any other taxable year.* In determining whether a corporation (or predecessor corporation) is a large corporation for its current taxable year, items that could offset taxable income during a taxable year included in the testing period (for example, those described in sections 172 and 1212) are not to be taken into account and the taxable income of a corporation for any taxable year during the testing period is determined without regard to items carried back or carried over from any other taxable year.

(f) *Consolidated returns.* [Reserved]

(g) *Example.* The provisions of this section may be illustrated by the following example:

Example. Y Corporation and Z Corporation are calendar year taxpayers. In 2008, Z acquires all of the assets of Y in a transaction to which section 381 applies. Z's taxable income for both 2006 and 2007 was less than $1,000,000. Y's taxable income for 2008 is determined under paragraph (c)(2) of this section to be $300,000 for that portion of Y's taxable year corresponding to Z's taxable year up to and including the date of transfer. Z's taxable income for 2008 is $800,000. Under the provisions of paragraph (c)(2) of this section, Z's 2008 taxable income for purposes of determining whether it is a large corporation for taxable year 2009 is $1,100,000 ($800,000 + $300,000). Thus, Z is a large corporation for the 2009 taxable year. In addition, if Z's 2008 taxable income, as determined under paragraph (c)(2) of this section, had been less than $1,000,000 but Y's taxable income in 2006 or 2007 had been $1,000,000 or more, Z would be a large corporation for taxable year 2009 because Y is a predecessor corporation.

(h) *Effective/applicability date.* This section applies to taxable years beginning after September 6, 2007.

[T.D. 9347, 72 FR 44360, Aug. 7, 2007]

§ 1.6655–5 Short taxable year.

(a) *In general.* Except as otherwise provided in this section, the provisions of section 6655 and these regulations are applicable in the case of a short taxable year (including an initial taxable year) for which a payment of estimated tax is required to be made.

(b) *Exception to payment of estimated tax.* In the case of a short taxable year, no payment of estimated tax is required if—

(1) The short taxable year is a period of less than 4 full calendar months; or

(2) The tax shown on the return for such taxable year (or, if no return is filed, the tax) is less than $500.

(c) *Installment due dates*—(1) *In general*—(i) *Taxable year of at least four months but less than twelve months.* Except as otherwise provided, in the case of a short taxable year, if such year results in a taxable year of four or more full calendar months but less than twelve full calendar months, the due dates prescribed in § 1.6655–1(f)(2) apply.

(ii) *Exceptions.* (A) If the date determined under paragraph (c)(1)(i) of this section for the first required installment due during the taxpayer's short taxable year is earlier than the 15th

day of the fourth month of the taxpayer's short taxable year, the taxpayer's first required installment is due on the first due date otherwise determined under paragraph (c)(1)(i) of this section that is on or after the 15th day of the fourth month of the short taxable year.

(B) A taxpayer with an initial short taxable year may make estimated tax payments as though it were a calendar year taxpayer until it files its tax return for its initial taxable year and will not be subject to an addition to tax under section 6655 for making estimated tax payments as though it were a calendar year taxpayer for the period beginning with its initial short taxable year to the time it files its tax return for its initial short taxable year if, when filing its tax return for its initial short taxable year, the taxpayer chooses to be a fiscal year taxpayer.

(2) *Early termination of taxable year*—(i) *In general*. Except as provided in paragraph (c)(2)(ii) of this section, if a taxable year ends early (for example, as a result of an acquisition or a change in taxable year), the due date for the final required installment is the date that would have been the due date of the next required installment if the event that gave rise to the short taxable year had not occurred.

(ii) *Exception*. If the date determined under paragraph (c)(2)(i) of this section is within thirty days of the last day of the short taxable year, the due date for the final required installment is the fifteenth day of the second month following the month that includes the last day of the short taxable year.

(d) *Amount due for required installment*—(1) *In general*. The amount due for any required installment determined under section 6655(d)(1)(B)(i) for a short taxable year is 100% of the required annual payment for the short taxable year divided by the number of required installments due (as determined under this section) for the short taxable year.

(2) *Tax shown on the return for the preceding taxable year*. If the current taxable year is a short taxable year, the amount due for any required installment determined under section 6655(d)(1)(B)(ii) is determined in the following manner—

(i) Take 100% of the tax shown on the return of the corporation for the preceding taxable year;

(ii) Multiply such amount by the number of full calendar months in the current short taxable year and divide by 12; and

(iii) Divide the amount determined under paragraph (d)(2)(ii) of this section by the number of required installments due (as determined under this section) for the current short taxable year.

(3) *Applicable percentage*. In the case of any required installment determined under section 6655(e), the applicable percentage under section 6655(e)(2)(B)(ii) is—

(i) 25%, 50%, 75%, and 100% for the first, second, third, and fourth (last) required installments, respectively, if the taxpayer will have four required installments due for the short taxable year;

(ii) 33.33%, 66.67%, and 100% for the first, second, and third (last) required installments, respectively, if the taxpayer will have three required installments due for the short taxable year;

(iii) 50% and 100% for the first and second (last) required installments, respectively, if the taxpayer will have two required installments due for the short taxable year; or

(iv) 100% for the first (and last) required installment if the taxpayer will have one required installment for the short taxable year.

(4) *Applicable percentage for installment period in which taxpayer does not reasonably expect that the taxable year will be an early termination year*. In the case of any required installment determined under section 6655(e) in which the taxpayer does not reasonably expect that the taxable year will be an early termination year, the applicable percentage under section 6655(e)(2)(B)(ii) is the applicable percentage provided by paragraph (d)(3)(i) of this section with the remaining balance of the estimated tax payment for the year due with the final installment.

(e) *Examples*. The following examples illustrate the rules of this section:

Example 1. Short year of less than 4 months. Corporation A is a calendar year taxpayer

that was acquired by corporation B, a member of a consolidated group (as defined in §1.1502–1(h)) on April 16, 2009, resulting in A having a short taxable year from January 1, 2009, through April 16, 2009. Because A has a taxable year of less than four full calendar months, no estimated tax payments are required by A for the short taxable year.

Example 2. Initial short year with four required installments. Corporation B began business on January 9, 2009, and adopted a calendar year as its taxable year. B computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). Pursuant to §1.6655–1(f)(2)(i), the due dates of B's required installments for B's initial taxable year from January 9, 2009, through December 31, 2009, are April 15, 2009, June 15, 2009, September 15, 2009, and December 15, 2009. Pursuant to paragraph (d)(1) of this section, the amount due with each required installment is 25% of the required annual payment for B's first required installment, 50% of the required annual payment for B's second required installment, 75% of the required annual payment for B's third required installment, and 100% of the required annual payment for B's fourth required installment.

Example 3. Initial short year with three required installments. Corporation C began business on February 12, 2009, and adopted a calendar year as its taxable year. C computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). Pursuant to §1.6655–1(f)(2)(i), the due dates of C's required installments for C's initial taxable year from February 12, 2009, through December 31, 2009, are April 15, 2009, June 15, 2009, September 15, 2009, and December 15, 2009. However, in accordance with paragraph (c)(1)(ii)(A) of this section, C's first required installment is due June 15, 2009, because April 15, 2009, is earlier than the fifteenth day of the fourth month of C's taxable year. As a result, C's second required installment is due September 15, 2009, and C's third (and last) installment is due December 15, 2009. Pursuant to paragraph (d)(1) of this section, the amount due with each required installment is 33.33% of the required annual payment for C's first required installment, 66.67% of the required annual payment for C's second required installment, and 100% of the required annual payment for C's third (and last) required installment.

Example 4. Initial short year with two required installments. Same facts as *Example 3* except C began business on April 10, 2009. In accordance with paragraph (c)(1)(ii)(A) of this section, C's first required installment is due September 15, 2009, because April 15, 2009, and June 15, 2009, are earlier than the fifteenth day of the fourth month of C's taxable year. As a result, C's second (and last) required installment is due December 15, 2009. Pursuant to paragraph (d)(1) of this section, the amount due with each required installment is 50% of the required annual payment for C's first required installment, and 100% of the required annual payment for C's second (and last) required installment.

Example 5. Initial short year for fiscal year taxpayer with two required installments. Corporation D began business on February 12, 2009, and adopted a fiscal year ending October 31 as its taxable year. D computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). Pursuant to §1.6655–1(f)(2)(ii), the due dates of D's required installments for D's initial taxable year from February 12, 2009, through October 31, 2009, are February 15, 2009, April 15, 2009, July 15, 2009, and October 15, 2009. However, in accordance with paragraph (c)(1)(ii)(A) of this section, D's first required installment is due July 15, 2009, because February 15, 2009, and April 15, 2009, are earlier than the fifteenth day of the fourth month of D's taxable year. As a result, D's second (and last) installment is due October 15, 2009. Pursuant to paragraph (d)(1) of this section, the amount due with each required installment is 50% of the required annual payment for D's first required installment, and 100% of the required annual payment for D's second (and last) required installment.

Example 6. Initial short year for fiscal year taxpayer with one required installment. Same facts as *Example 5* except D corporation began business on May 11, 2009. In accordance with paragraph (c)(1)(ii)(A) of this section, D's first (and last) installment is due October 15, 2009, because July 15, 2009, is earlier than the fifteenth day of the fourth month of D's taxable year. Pursuant to paragraph (d)(1) of this section, the amount due with D's required installment is 100% of the required annual payment, computed as 100% divided by the number of required installments due for the short taxable year.

Example 7. Short termination year with three required installments. Corporation E is a calendar year taxpayer that computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). E computes its 2009 required installments based on a projected 2009 total tax liability of $600,000. On July 31, 2009, E is acquired by corporation F, a member of a consolidated group (as defined in §1.1502–1(h)), resulting in E having a short taxable year from January 1, 2009, through July 31, 2009. E determines that its total tax liability for the short period is $350,000. The due dates for E's first and second required installments are April 15, 2009, and June 15, 2009, respectively. Pursuant to section 6655(d)(1)(A), E paid $150,000 with each required installment.

Pursuant to paragraph (c)(2) of this section, E's third (and last) required installment of estimated tax is due on September 15, 2009, and the percentage of the required annual payment due with such installment is 100% pursuant to paragraph (d)(1) of this section. Accordingly, E is required to pay $50,000 with its final required installment on September 15, 2009 ($350,000 total tax liability for the short taxable year less prior installment payments of $300,000).

Example 8. Unexpected short termination year with three required installments using the annualization method. Same facts as *Example 7* except that E uses the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2009 taxable year. In addition, E does not reasonably expect until July 28, 2009, that it will have a short termination year caused by E being acquired by F on July 31, 2009. Had E known about its acquisition by F in the first quarter of 2009, E's applicable percentages for computing the amount of its three required installments would be 33.33%, 66.67%, and 100% for the first, second, and third (last) required installments, respectively, pursuant to paragraph (d)(3)(ii) of this section. However, because E had an unexpected short termination year that E was not aware of until after its second required installment payment, E's applicable percentages for computing the amount of its three required installment are 25%, 50%, and 100% for the first, second, and third (last) required installments, respectively, pursuant to paragraph (d)(4) of this section.

Example 9. Short termination year ending within 30 days of the regular final installment due date. Same facts as *Example 7* except that E is acquired by F on August 31, 2009. Pursuant to paragraph (c)(2)(ii) of this section, E's third (and last) required installment of estimated tax is due on October 15, 2009, because September 15, 2009, the date that would have been the due date of E's next required installment if F's acquisition of E had not occurred, is within thirty days of the last day of E's short taxable year, and 100% of the required annual payment is due with such installment.

Example 10. Short termination year ending within 30 days of the regular final installment due date. Corporation F is a calendar year taxpayer that computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). F computes its 2009 estimated tax payments based on a projected 2009 total tax liability of $900,000. On December 3, 2009, F is acquired by corporation G, a member of a consolidated group (as defined in §1.1502–2(h)), resulting in F having a short taxable year from January 1, 2009, through December 3, 2009. F determined its total tax liability for the short period to be $800,000. The due dates for F's first, second, and third required installments are April 15, 2009, June 15, 2009, and September 15, 2009, respectively. Pursuant to section 6655(d)(1)(A), F paid $225,000 with each required installment. Pursuant to paragraph (c)(2)(ii) of this section, F's fourth (and last) required installment of estimated tax is due on February 15, 2010, and the percentage of the required annual payment due with such installment is 100% pursuant to paragraph (d)(1) of this section. However, because the due date for the fourth required installment falls on a legal holiday, F's required installment payment will be timely if paid on or before the first business day following the actual due date of the fourth required installment, that is, February 16, 2010. Accordingly, F is required to pay $125,000 with its final required installment on February 16, 2010 ($800,000 total tax liability for the short taxable year less prior installment payments of $675,000).

Example 11. Short termination year using the tax shown on the return for the preceding taxable year. Corporation G, a calendar year taxpayer, reported a tax liability of $75,000 on its return for the taxable year ending December 31, 2008, and is not a large corporation as defined in section 6655(g). On July 31, 2009, G makes a final distribution of its assets, in connection with a plan of complete liquidation, resulting in a short taxable year from January 1, 2009, through July 31, 2009. To satisfy the requirements of the exception described in section 6655(d)(1)(B)(ii) for payments determined by reference to the tax shown on the return of the corporation for the preceding taxable year, pursuant to paragraph (d)(2) of this section, G must pay in a proportionate amount of its 2008 tax liability based on the number of months in the current taxable year. Accordingly, G must pay $43,750 ($75,000 × 7/12) through payments of estimated tax payments in 2009, with $14,583 due on April 15, 2009, June 15, 2009, and September 15, 2009.

Example 12. Short termination year using the tax shown on the return for the preceding taxable year. Same facts as *Example 11* except that G makes a final distribution of its assets, in connection with a plan of complete liquidation, on October 1, 2009, resulting in a short taxable year from January 1, 2009, through October 1, 2009. To satisfy the requirements of the exception described in section 6655(d)(1)(B)(ii), G must pay $56,250 ($75,000 × 9/12) through payments of estimated tax in 2009, with $14,063 due on April 15, 2009, June 15, 2009, September 15, 2009, and December 15, 2009, respectively.

Example 13. Short initial year with three required installments resulting in an underpayment. (i) Corporation H began business on February 17, 2009, and adopted a calendar year. H computes its required installments based on 100 percent of the tax shown on the

return for the taxable year in accordance with section 6655(d)(1)(B)(i). H estimated at the beginning of its short taxable year that its estimated tax liability for short taxable year February 17, 2009, through December 31, 2009, would be $180,000. H paid its first required installment of estimated tax of $60,000 on June 15, 2009, its second required installment of estimated tax of $60,000 on September 15, 2009, and its third (and last) required installment of estimated tax of $60,000 on December 15, 2009 ($180,000 total estimated tax liability for the short taxable year less prior installment payments of $120,000). H reported a tax liability of $240,000 on its return for the short period February 17, 2009, through December 31, 2009, with no credits against tax. There was an underpayment in the amount of $20,000 on the first installment date through September 15, 2009, $40,000 on the second installment date through December 15, 2009, and $60,000 on the third (and last) installment date through March 15, 2010, determined as follows:

(A) Tax as defined in section 6655(d)(1)(B)(i) = $240,000

(B) 100% of this paragraph (e), *Example 13* (A) = $240,000

(C) Amount of estimated tax required to be paid by the first installment date (33.33% of $240,000) = $80,000

(D) Amount of estimated tax required to be paid by the second installment date (66.67% of $240,000 less $80,000 (amount due with first installment)) = $80,000

(E) Amount of estimated tax required to be paid by the third installment date (100% of $240,000 less $160,000 (amount due with first and second installment)) = $80,000

(F) Deduction of amount paid on or before the first installment date = $60,000

(G) Amount of underpayment for the first installment date (this paragraph (e), *Example 13* (i)(C) minus this paragraph (e), *Example 13* (i)(F)) = $20,000

(H) Deduction of amount available for the second installment date ($60,000 second installment payment less this paragraph (e), *Example 13* (i)(G) applied towards the first installment underpayment) = $40,000

(I) Amount of underpayment for the second installment date (this paragraph (e), *Example 13* (i)(D) minus this paragraph (e), *Example 13* (i)(H)) = $40,000

(J) Deduction of amount available for the third installment date ($60,000 third installment payment less this paragraph (e), *Example 13* (i)(I) applied towards the second installment underpayment) = $20,000

(K) Amount of underpayment for the third installment date (this paragraph (e), *Example 1* (i)(E) minus this paragraph (e), *Example 13* (i)(J)) = $60,000

(ii) [Reserved]

(f) *52 or 53 week taxable year*. For purposes of this section a taxable year of 52 or 53 weeks is deemed a period of 12 months in the case of a corporation that computes its taxable income in accordance with the election permitted by section 441(f).

(g) *Use of annualized income or seasonal installment method*—(1) *In general*. Regardless of the annual accounting period used by a corporation (for example, calendar year, fiscal year) the taxpayer may use the method described in §1.6655–2 (annualized income installment method) or §1.6655–3 (adjusted seasonal installment method) to compute its required installments of estimated tax when the current taxable year is a short taxable year.

(2) *Computation of annualized income installment*. To the extent a short taxable year includes an annualization period elected by the taxpayer, the taxpayer computes its annualized income installment by determining the tax on the basis of such annualized income for the annualization period, divided by 12, multiplied by the number of months in the short taxable year, and multiplied by the applicable percentage for the required installment.

(3) *Annualization period for final required installment*. For purposes of determining the final required installment (as described in paragraph (c)(2) of this section) for a short taxable year, annualized taxable income is determined by placing on an annualized basis the taxable income for the last complete annualization period that occurs within the short taxable year.

(4) *Examples*. The provisions of paragraph (g) of this section may be illustrated by the following examples:

Example 1. Corporation X began business on February 12, 2009, and adopted a calendar year as its taxable year. X adopts an accrual method of accounting and uses the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2009 taxable year. Pursuant to §1.6655–1(f)(2)(i), the due dates of X's required installments for X's initial taxable year from February 12, 2009, through December 31, 2009, are April 15, 2009, June 15, 2009, September 15, 2009, and December 15, 2009. However, in accordance with paragraph (c)(1)(ii)(A) of this section, X's first required installment is due June 15, 2009. As a result, X's second required installment is due September 15, 2009, and X's third (and last) required installment is due December 15, 2009. The amount of X's

first and second required installments are each based on annualizing X's taxable income from February 12, 2009, through April 30, 2009, (the first three months of X's taxable year) and X's third (and last) required installment is based on annualizing X's taxable income from February 12, 2009, through July 31, 2009 (the first six months of X's taxable year). Because X will have three required installments due for its short taxable year, pursuant to paragraph (d)(3)(ii) of this section, the applicable percentage is 33.33% for X's first required installment, 66.67% for X's second required installment, and 100% for X's third (and last) required installment.

Example 2. (i) Y, a calendar year corporation, made a final distribution of its assets, in connection with a plan of complete liquidation, on August 3, 2009. Y filed a timely election to use the alternative annualization periods described under section 6655(e)(2)(C)(i) and determined that its taxable income for the first 2, 4 and 7 months of the taxable year was $25,000, $50,000 and $140,000. The due dates for Y's required installments for its short taxable year January 1, 2009, through August 3, 2009, are April 15, 2009, June 15, 2009, and September 15, 2009. Y made installment payments of $10,000, $10,000, and $20,000, respectively, on April 15, 2009, June 15, 2009, and September 15, 2009. The taxable income for each period is annualized as follows:

$25,000 × 12/2 = $150,000
$50,000 × 12/4 = $150,000
$140,000 × 12/7 = $240,000

(ii)(A) To determine whether the first required installment equals or exceeds the amount that would have been required to have been paid if the estimated tax were equal to one hundred percent of the tax computed on the annualized income for the 2-month period taking into account the number of months in the short taxable year, the following computation is necessary:

(*1*) Annualized income for the 2 month period = $150,000

(*2*) Tax on this paragraph (g)(4), *Example 2* (ii)(A)(*1*) = $41,750

(*3*) Tax determined under this paragraph (g)(4), *Example 2* (ii)(A)(*2*) divided by 12 multiplied by 7 (the number of months in the short taxable year) = $24,354

(*4*) 100% of this paragraph (g)(4), *Example 2* (ii)(A)(*3*) = $24,354

(*5*) 33.33% of this paragraph (g)(4), *Example 2* (ii)(A)(*4*) = $ 8,117

(B) Because the total amount of estimated tax that is timely paid on or before the first installment date ($10,000) exceeds the amount required to be paid on or before this date if the estimated tax were one hundred percent of the tax determined by placing on an annualized basis the taxable income for the first 2-month period taking into account the number of months in the short taxable year, the exception described in §1.6655–2(a) applies and no addition to tax will be imposed for the installment due on April 15, 2009.

(iii)(A) To determine whether the required installments made on or before June 15, 2009, equal or exceed the amount that would have been required to have been paid if the estimated tax were equal to one hundred percent of the tax computed on the annualized income for the 4-month period taking into account the number of months in the short taxable year, the following computation is necessary:

(*1*) Annualized income for the 4 month period = $150,000

(*2*) Tax on this paragraph (g)(4), *Example 2* (iii)(A)(*1*) = $41,750

(*3*) Tax determined under this paragraph (g)(4), *Example 2* (iii)(A)(*2*) divided by 12 multiplied by 7 (the number of months in the short taxable year) = $24,354

(*4*) 100% of this paragraph (g)(4), *Example 2* (iii)(A)(*3*) = $24,354

(*5*) 66.67% of this paragraph (g)(4), *Example 2* (iii)(A)(*4*) less $8,117 (amount due with first installment) = $8,120

(B) Because the total amount of estimated tax available to apply towards the amount due for the second installment ($11,883 ($10,000 paid on the second installment date plus $1,883 overpayment of the first installment)) exceeds the amount required to be paid on or before this date if the estimated tax were one hundred percent of the tax determined by placing on an annualized basis the taxable income for the first 4-month period for the taxable year taking into account the number of months in the short taxable year, the exception described in §1.6655–2(a) applies and no addition to tax will be imposed for the installment due on June 15, 2009.

(iv)(A) Pursuant to paragraph (c) and (d) of this section, the final required installment is due by September 15, 2009, and the applicable percentage due for the final required installment is 100%. To determine whether the installment payments made on or before September 15, 2009, equal or exceed the amount that would have been required to have been paid if the estimated tax were equal to one hundred percent of the tax computed on the annualized income for the 7-month period taking into account the number of months in the short taxable year, the following computation is necessary:

(*1*) Annualized income for the 7 month period = $240,000

(*2*) Tax on this paragraph (g)(4), *Example 2* (iv)(A)(*1*) = $76,850

(*3*) Tax determined under this paragraph (g)(4), *Example 2* (iv)(A)(*2*) divided by 12 multiplied by 7 (the number of months in the short taxable year) = $44,829

(*4*) 100% of this paragraph (g)(4), *Example 2* (iv)(A)(*3*) = $44,829

(*5*) 100% of this paragraph (g)(4), *Example 2* (iv)(A)(*4*) less $16,237 (amount due with first and second installment) = $28,592

(B) Because the total amount of estimated tax available to apply towards the amount due for the final installment ($23,763 ($20,000 that is timely paid on the third installment date plus $3,763 overpayment of the second installment)) does not exceed the amount required to be paid on or before this date if the estimated tax were one hundred percent of the tax determined by placing on an annualized basis the taxable income for the first 7-month period for the taxable year taking into account the number of months in the short taxable year, the exception described in §1.6655–2(a) does not apply and an addition to tax will be imposed for the final installment due on September 15, 2009, unless another exception (for example, see section 6655(e)(3)) applies with respect to these installments.

(h) *Effective/applicability date*. This section applies to taxable years beginning after September 6, 2007.

[T.D. 9347, 72 FR 44361, Aug. 7, 2007]

§ 1.6655–6 Methods of accounting.

(a) *In general*. In computing any required installment, a corporation must use the methods of accounting used in computing taxable income for the taxable year for which estimated tax is being determined (the current taxable year).

(b) *Accounting method changes*. A taxpayer that changes its method of accounting with the consent of the Commissioner for the current taxable year must use the new method of accounting (as of the beginning of the taxable year) in the determination of taxable income for annualization periods ending on or after the date the related section 481(a) adjustment is treated as arising. See §1.6655–2(f)(3)(ii)(C) for the date a section 481(a) adjustment is treated as arising. If the change in method of accounting does not result in a section 481(a) adjustment, the taxpayer may choose to use the new method of accounting (as of the beginning of the taxable year) in the determination of taxable income for all annualization periods during the year of change or only those annualization periods ending on or after the date the Form 3115 ''Application for Change in Accounting Method'' was filed with the national office of the Internal Revenue Service. This paragraph (b) only applies to the extent a taxpayer changes a method of accounting for the taxable year with the consent of the Commissioner. Therefore, a taxpayer may be subject to a section 6655 addition to tax for an underpayment of estimated tax if an underpayment results from a change in a method of accounting the taxpayer anticipates making for the taxable year but for which the consent of the Commissioner is not subsequently received.

(c) *Examples*. The following examples illustrate the rules of this section:

Example 1. Accounting method used in computing taxable income for the taxable year. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualization method under section 6655(e)(2)(A)(i) to calculate all of its 2008 required installments. ABC receives advance payments each taxable year with respect to agreements for the sale of goods properly includible in ABC's inventory. The advance payments received by ABC qualify for deferral under §1.451–5(c). Although ABC is eligible to defer the advance payments in accordance with §1.451–5(c), ABC's method of accounting with respect to the advance payments is to include the advance payments in income when received and ABC does not change its accounting method for advance payments for the 2008 taxable year. ABC must use its current method of recognizing advance payments as income in the year received for purposes of computing its 2008 required installments.

Example 2. Change of accounting method. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualization method under section 6655(e)(2)(A)(i) to calculate all of its 2008 required installments. On June 15, 2008, ABC files a Form 3115 requesting permission to change its method of accounting for future litigation reserves for the tax year ending December 31, 2008. On February 15, 2009, ABC receives consent from the Commissioner to make the change for the tax year ending December 31, 2008. The change results in a positive section 481(a) adjustment of $100,000. Under the provisions of §1.6655–2(f)(3)(ii) ABC chooses to treat the section 481(a) adjustment as arising on the date the Form 3115 is filed with the national office of the Internal Revenue Service. Therefore, ABC is required to use the new method of accounting (as of the beginning of the year) in the determination of taxable income for annualization periods ending on or after June 15, 2008.

(d) *Effective/applicability date.* This section applies to taxable years beginning after September 6, 2007.

[T.D. 9347, 72 FR 44361, Aug. 7, 2007]

§ 1.6655–7 Addition to tax on account of excessive adjustment under section 6425.

(a) Section 6655(h) imposes an addition to the tax under chapter 1 of the Internal Revenue Code in the case of any excessive amount (as defined in paragraph (c) of this section) of an adjustment under section 6425 that is made before the 15th day of the third month following the close of a taxable year beginning after December 31, 1967. This addition to tax is imposed whether or not there was reasonable cause for an excessive adjustment.

(b) If the amount of an adjustment under section 6425 is excessive, there shall be added to the tax under chapter 1 of the Internal Revenue Code for the taxable year an amount determined at the annual rate referred to in the regulations under section 6621 upon the excessive amount from the date on which the credit is allowed or refund paid to the 15th day of the third month following the close of the taxable year. A refund is paid on the date it is allowed under section 6407.

(c) The excessive amount is equal to the lesser of the amount of the adjustment or the amount by which—

(1) The income tax liability (as defined in section 6425(c)) for the taxable year, as shown on the return for the taxable year; exceeds

(2) The estimated income tax paid during the taxable year, reduced by the amount of the adjustment.

(d) The computation of the addition to the tax imposed by section 6425 is made independent of, and does not affect the computation of, any addition to the tax that a corporation may otherwise owe for an underpayment of an installment of estimated tax.

(e) The following example illustrates the rules of this section:

Example. (i) Corporation X, a calendar year taxpayer, had an underpayment as defined in section 6655(b), for its fourth installment of estimated tax that was due on December 15, 2009, in the amount of $10,000. On January 4, 2010, X filed an application for adjustment of overpayment of estimated income tax for 2009 in the amount of $20,000.

(ii) On February 16, 2010, the Internal Revenue Service, in response to the application, refunded $20,000 to X. On March 15, 2010, X filed its 2009 tax return and made a payment in settlement of its total tax liability. Assuming that the addition to tax is computed under section 6621(a)(2) at a rate of 8% per annum for the applicable periods of underpayment, under section 6655(a), X is subject to an addition to tax in the amount of $197 (90/365 X $10,000 X 8%) on account of X's December 15, 2009, underpayment. Under section 6655(h), X is subject to an addition to tax in the amount of $118 (27/365 X $20,000 X 8%) on account of X's excessive adjustment under section 6425. In determining the amount of the addition to tax under section 6655(a) for failure to pay estimated income tax, the excessive adjustment under section 6425 is not taken into account.

(f) An adjustment is generally to be treated as a reduction of estimated income tax paid as of the date of the adjustment. However, for purposes of §§ 1.6655–1 through 1.6655–6, the adjustment is to be treated as if not made in determining whether there has been any underpayment of estimated income tax and, if there is an underpayment, the period during which the underpayment existed.

(g) *Effective/applicability date:* This section applies to taxable years beginning after September 6, 2007.

[T.D. 9347, 72 FR 44365, Aug. 7, 2007]

§ 1.6655(e)–1 Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993.

(a) *Description.* Section 6655(e)(2)(C), as added by section 13225 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 486), allows a corporate taxpayer to make an annual election to use a different annualization period to determine annualized income for purposes of paying any required installment of estimated income tax for a taxable year beginning after December 31, 1993.

(b) *Time and manner for making the election.* An election under section 6655(e)(2)(C) must be made on or before the date required for the payment of the first required installment for the taxable year. For a calendar or fiscal year corporation, Form 8842, Election to Use Different Annualization Periods for Corporate Estimated Tax, must be

filed by the 15th day of the 4th month of the taxable year for which the election is to apply. Form 8842 must be filed with the Internal Revenue Service Center where the corporation files its income tax return.

(c) *Revocability of election*. The election described in this section is irrevocable.

(d) *Effective date*. The rules set forth in this section are effective December 12, 1996.

[T.D. 8688, 61 FR 65322, Dec. 12, 1996]

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[T.D. 8381, 56 FR 67497, Dec. 31, 1991; T.D. 8381, 57 FR 6165, Feb. 20, 1992, as amended by T.D. 8519, 59 FR 4794, Feb. 2, 1994; T.D. 8533, 59 FR 12548, Mar. 17, 1994; T.D. 8551, 59 FR 35031, July 8, 1994; T.D. 8617, 60 FR 45663, Sept. 1, 1995; T.D. 8656, 61 FR 4879, Feb. 9, 1996; T.D. 8656, 61 FR 14248, Apr. 1, 1996; T.D. 8790, 63 FR 66434, Dec. 2, 1998; T.D. 9109, 68 FR 75127, Dec. 30, 2003]

§ 1.6662–1 Overview of the accuracy-related penalty.

Section 6662 imposes an accuracy-related penalty on any portion of an underpayment of tax required to be shown on a return that is attributable to one or more of the following:

(a) Negligence or disregard of rules or regulations;

(b) Any substantial understatement of income tax;

(c) Any substantial valuation misstatement under chapter 1;

(d) Any substantial overstatement of pension liabilities; or

(e) Any substantial estate or gift tax valuation understatement.

Sections 1.6662–1 through 1.6662–5 address only the first three components of the accuracy-related penalty, *i.e.*, the penalties for negligence or disregard of rules or regulations, substantial understatements of income tax, and substantial (or gross) valuation misstatements under chapter 1. The penalties for disregard of rules or regulations and for a substantial understatement of income tax may be avoided by adequately disclosing certain information as provided in §1.6662–3(c) and §§1.6662–4(e) and (f), respectively. The penalties for negligence and for a substantial (or gross) valuation misstatement under chapter 1 may not be avoided by disclosure. No accuracy-related penalty may be imposed on any portion of an underpayment if there was reasonable cause for, and the taxpayer acted in good faith with respect to, such portion. The reasonable cause and good faith exception to the accuracy-related penalty is set forth in §1.6664–4.

[T.D. 8381, 56 FR 67498, Dec. 31, 1991, as amended by T.D. 8617, 60 FR 45664, Sept. 1, 1995]

§1.6662–2 Accuracy-related penalty.

(a) *In general.* Section 6662(a) imposes an accuracy-related penalty on any portion of an underpayment of tax (as defined in section 6664(a) and §1.6664–2) required to be shown on a return if such portion is attributable to one or more of the following types of misconduct:

(1) Negligence or disregard of rules or regulations (see §1.6662–3);

(2) Any substantial understatement of income tax (see §1.6662–4); or

(3) Any substantial (or gross) valuation misstatement under chapter 1 (''substantial valuation misstatement'' or ''gross valuation misstatement''), provided the applicable dollar limitation set forth in section 6662(e)(2) is satisfied (see §1.6662–5).

The accuracy-related penalty applies only in cases in which a return of tax is filed, except that the penalty does not apply in the case of a return prepared by the Secretary under the authority of section 6020(b). The accuracy-related penalty under section 6662 and the penalty under section 6651 for failure to timely file a return of tax may both be imposed on the same portion of an underpayment if a return is filed, but is filed late. The fact that a return is filed late, however, is not taken into account in determining whether an accuracy-related penalty should be imposed. No accuracy-related penalty may be imposed on any portion of an underpayment of tax on which the fraud penalty set forth in section 6663 is imposed.

(b) *Amount of penalty*—(1) *In general.* The amount of the accuracy-related penalty is 20 percent of the portion of an underpayment of tax required to be shown on a return that is attributable to any of the types of misconduct listed in paragraphs (a)(1) through (a)(3) of this section, except as provided in paragraph (b)(2) of this section.

(2) *Increase in penalty for gross valuation misstatement.* In the case of a gross valuation misstatement, as defined in section 6662(h)(2) and §1.6662–5(e)(2), the amount of the accuracy-related penalty is 40 percent of the portion of an underpayment of tax required to be shown on a return that is attributable to the gross valuation misstatement, provided the applicable dollar limitation set forth in section 6662(e)(2) is satisfied.

(c) *No stacking of accuracy-related penalty components.* The maximum accuracy-related penalty imposed on a portion of an underpayment may not exceed 20 percent of such portion (40 percent of the portion attributable to a gross valuation misstatement), notwithstanding that such portion is attributable to more than one of the types of misconduct described in paragraph (a) of this section. For example, if a portion of an underpayment of tax required to be shown on a return is attributable both to negligence and a substantial understatement of income tax, the maximum accuracy-related penalty is 20 percent of such portion. Similarly, the maximum accuracy-related penalty imposed on any portion of an underpayment that is attributable both to negligence and a gross valuation misstatement is 40 percent of such portion.

(d) *Effective dates*—(1) *Returns due before January 1, 1994.* Section 1.6662–3(c) and §§1.6662–4 (e) and (f) (relating to

methods of making adequate disclosure) (as contained in 26 CFR part 1 revised April 1, 1995) apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1991, but before January 1, 1994. Except as provided in the preceding sentence and in paragraphs (d)(2), (3), and (4) of this section, §§ 1.6662–1 through 1.6662–5 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1989, but before January 1, 1994. To the extent the provisions of these regulations were not reflected in the statute as amended by the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989), in Notice 90–20, 1990–1 C.B. 328, or in rules and regulations in effect prior to March 4, 1991 (to the extent not inconsistent with the statute as amended by OBRA 1989), these regulations will not be adversely applied to a taxpayer who took a position based upon such prior rules on a return filed before January 1, 1992.

(2) *Returns due after December 31, 1993.* Except as provided in paragraphs (d)(3), (4) and (5) of this section and the last sentence of this paragraph (d)(2), the provisions of §§ 1.6662–1 through 1.6662–4 and § 1.6662–7 (as revised to reflect the changes made to the accuracy-related penalty by the Omnibus Budget Reconciliation Act of 1993) and of § 1.6662–5 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1993. These changes include raising the disclosure standard for the penalties for disregarding rules or regulations and for a substantial understatement of income tax from not frivolous to reasonable basis, eliminating the disclosure exception for the negligence penalty, and providing guidance on the meaning of reasonable basis. The Omnibus Budget Reconciliation Act of 1993 changes relating to the penalties for negligence or disregard of rules or regulations will not apply to returns (including qualified amended returns) that are filed on or before March 14, 1994, but the provisions of §§ 1.6662–1 through 1.6662–3 (as contained in 26 CFR part 1 revised April 1, 1995) relating to those penalties will apply to such returns.

(3) *Special rules for tax shelter items.* Sections 1.6662–4(g)(1) and 1.6662–4(g)(4) apply to returns the due date of which (determined without regard to extensions of time for filing) is after September 1, 1995. Except as provided in the last sentence of this paragraph (d)(3), §§ 1.6662–4(g)(1) and 1.6662–4(g)(4) (as contained in 26 CFR part 1 revised April 1, 1995) apply to returns the due date of which (determined without regard to extensions of time for filing) is on or before September 1, 1995 and after December 31, 1989. For transactions occurring after December 8, 1994, §§ 1.6662–4(g)(1) and 1.6662–4(g)(2) (as contained in 26 CFR part 1 revised April 1, 1995) are applied taking into account the changes made to section 6662(d)(2)(C) (relating to the substantial understatement penalty for tax shelter items of corporations) by section 744 of Title VII of the Uruguay Round Agreements Act, Pub. L. 103–465 (108 Stat. 4809).

(4) *Special rules for reasonable basis.* Section 1.6662–3(b)(3) applies to returns filed on or after December 2, 1998.

(5) *For returns filed after December 31, 2002.* Sections 1.6662–3(a), 1.6662–3(b)(2) and 1.6662–3(c)(1) (relating to adequate disclosure) apply to returns filed after December 31, 2002, with respect to transactions entered into on or after January 1, 2003. Except as provided in paragraph (d)(1) of this section, §§ 1.6662–3(a), 1.6662–3(b)(2) and 1.6662–3(c)(1) (as contained in 26 CFR part 1 revised April 1, 2003) apply to returns filed with respect to transactions entered into prior to January 1, 2003.

[T.D. 8381, 56 FR 67498, Dec. 31, 1991, as amended by T.D. 8617, 60 FR 45664, Sept. 1, 1995; T.D. 8790, 63 FR 66434, Dec. 2, 1998; T.D. 9109, 68 FR 75127, Dec. 30, 2003]

§ 1.6662–3 Negligence or disregard of rules or regulations.

(a) *In general.* If any portion of an underpayment, as defined in section 6664(a) and § 1.6664–2, of any income tax imposed under subtitle A of the Internal Revenue Code that is required to be shown on a return is attributable to negligence or disregard of rules or regulations, there is added to the tax an amount equal to 20 percent of such portion. The penalty for disregarding rules or regulations does not apply, however, if the requirements of paragraph (c)(1)

of this section are satisfied and the position in question is adequately disclosed as provided in paragraph (c)(2) of this section (and, if the position relates to a reportable transaction as defined in §1.6011–4(b) (or §1.6011–4T(b), as applicable), the transaction is disclosed in accordance with §1.6011–4 (or §1.6011–4T, as applicable)), or to the extent that the reasonable cause and good faith exception to this penalty set forth in §1.6664–4 applies. In addition, if a position with respect to an item (other than with respect to a reportable transaction, as defined in §1.6011–4(b) or §1.6011–4T(b), as applicable) is contrary to a revenue ruling or notice (other than a notice of proposed rulemaking) issued by the Internal Revenue Service and published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter), this penalty does not apply if the position has a realistic possibility of being sustained on its merits. See §1.6694–2(b) of the income tax return preparer penalty regulations for a description of the realistic possibility standard.

(b) *Definitions and rules*—(1) *Negligence*. The term *negligence* includes any failure to make a reasonable attempt to comply with the provisions of the internal revenue laws or to exercise ordinary and reasonable care in the preparation of a tax return. ''Negligence'' also includes any failure by the taxpayer to keep adequate books and records or to substantiate items properly. A return position that has a reasonable basis as defined in paragraph (b)(3) of this section is not attributable to negligence. Negligence is strongly indicated where—

(i) A taxpayer fails to include on an income tax return an amount of income shown on an information return, as defined in section 6724(d)(1);

(ii) A taxpayer fails to make a reasonable attempt to ascertain the correctness of a deduction, credit or exclusion on a return which would seem to a reasonable and prudent person to be ''too good to be true'' under the circumstances;

(iii) A partner fails to comply with the requirements of section 6222, which requires that a partner treat partnership items on its return in a manner that is consistent with the treatment of such items on the partnership return (or notify the Secretary of the inconsistency); or

(iv) A shareholder fails to comply with the requirements of section 6242, which requires that an S corporation shareholder treat subchapter S items on its return in a manner that is consistent with the treatment of such items on the corporation's return (or notify the Secretary of the inconsistency).

(2) *Disregard of rules or regulations*. The term *disregard* includes any careless, reckless or intentional disregard of rules or regulations. The term ''rules or regulations'' includes the provisions of the Internal Revenue Code, temporary or final Treasury regulations issued under the Code, and revenue rulings or notices (other than notices of proposed rulemaking) issued by the Internal Revenue Service and published in the Internal Revenue Bulletin. A disregard of rules or regulations is ''careless'' if the taxpayer does not exercise reasonable diligence to determine the correctness of a return position that is contrary to the rule or regulation. A disregard is ''reckless'' if the taxpayer makes little or no effort to determine whether a rule or regulation exists, under circumstances which demonstrate a substantial deviation from the standard of conduct that a reasonable person would observe. A disregard is ''intentional'' if the taxpayer knows of the rule or regulation that is disregarded. Nevertheless, a taxpayer who takes a position (other than with respect to a reportable transaction, as defined in §1.6011–4(b) or §1.6011–4T(b), as applicable) contrary to a revenue ruling or notice has not disregarded the ruling or notice if the contrary position has a realistic possibility of being sustained on its merits.

(3) *Reasonable basis*. Reasonable basis is a relatively high standard of tax reporting, that is, significantly higher than not frivolous or not patently improper. The reasonable basis standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim. If a return position is reasonably based on one or more of the authorities set forth in §1.6662–4(d)(3)(iii) (taking into account the relevance and persuasiveness of the

authorities, and subsequent developments), the return position will generally satisfy the reasonable basis standard even though it may not satisfy the substantial authority standard as defined in §1.6662–4(d)(2). (See §1.6662–4(d)(3)(ii) for rules with respect to relevance, persuasiveness, subsequent developments, and use of a well-reasoned construction of an applicable statutory provision for purposes of the substantial understatement penalty.) In addition, the reasonable cause and good faith exception in §1.6664–4 may provide relief from the penalty for negligence or disregard of rules or regulations, even if a return position does not satisfy the reasonable basis standard.

(c) *Exception for adequate disclosure*—(1) *In general.* No penalty under section 6662(b)(1) may be imposed on any portion of an underpayment that is attributable to a position contrary to a rule or regulation if the position is disclosed in accordance with the rules of paragraph (c)(2) of this section (and, if the position relates to a reportable transaction as defined in §1.6011–4(b) (or §1.6011–4T(b), as applicable), the transaction is disclosed in accordance with §1.6011–4 (or §1.6011–4T, as applicable)) and, in case of a position contrary to a regulation, the position represents a good faith challenge to the validity of the regulation. This disclosure exception does not apply, however, in the case of a position that does not have a reasonable basis or where the taxpayer fails to keep adequate books and records or to substantiate items properly.

(2) *Method of disclosure.* Disclosure is adequate for purposes of the penalty for disregarding rules or regulations if made in accordance with the provisions of §§1.6662–4(f)(1), (3), (4), and (5), which permit disclosure on a properly completed and filed Form 8275 or 8275–R, as appropriate. In addition, the statutory or regulatory provision or ruling in question must be adequately identified on the Form 8275 or 8275–R, as appropriate. The provisions of §1.6662–4(f)(2), which permit disclosure in accordance with an annual revenue procedure for purposes of the substantial understatement penalty, do not apply for purposes of this section.

(d) *Special rules in the case of carrybacks and carryovers*—(1) *In general.* The penalty for negligence or disregard of rules or regulations applies to any portion of an underpayment for a year to which a loss, deduction or credit is carried, which portion is attributable to negligence or disregard of rules or regulations in the year in which the carryback or carryover of the loss, deduction or credit arises (the ''loss or credit year'').

(2) *Transition rule for carrybacks to pre-1990 years.* A 20 percent penalty under section 6662(b)(1) is imposed on any portion of an underpayment for a carryback year, the return for which is due (without regard to extensions) before January 1, 1990, if—

(i) That portion is attributable to negligence or disregard of rules or regulations in a loss or credit year; and

(ii) The return for the loss or credit year is due (without regard to extensions) after December 31, 1989.

(3) *Example.* The following example illustrates the provisions of paragraph (d) of this section. This example does not take into account the reasonable cause exception under §1.6664–4.

Example. Corporation M is a C corporation. In 1990, M had a loss of $200,000 before taking into account a deduction of $350,000 that M claimed as an expense in careless disregard of the capitalization requirements of section 263 of the Code. M failed to make adequate disclosure of the item for 1990. M reported a $550,000 loss for 1990 and carried back the loss to 1987 and 1988. M had reported taxable income of $400,000 for 1987 and $200,000 for 1988, before application of the carryback. The carryback eliminated all of M's taxable income for 1987 and $150,000 of taxable income for 1988. After disallowance of the $350,000 expense deduction and allowance of a $35,000 depreciation deduction with respect to the capitalized amount, the correct loss for 1990 was determined to be $235,000. Because there is no underpayment for 1990, the penalty for negligence or disregard of rules or regulations does not apply for 1990. However, as a result of the 1990 adjustments, the loss carried back to 1987 is reduced from $550,000 to $235,000. After application of the $235,000 carryback, M has taxable income of $165,000 for 1987 and $200,000 for 1988. This adjustment results in underpayments for 1987 and 1988 that are attributable to the disregard of rules or regulations on the 1990 return.

Therefore, the 20 percent penalty rate applies to the 1987 and 1988 underpayments attributable to the disallowed carryback.

[T.D. 8381, 56 FR 67498, Dec. 31, 1991, as amended by T.D. 8617, 60 FR 45664, Sept. 1, 1995; T.D. 8790, 63 FR 66434, Dec. 2, 1998; T.D. 9109, 68 FR 75127, Dec. 30, 2003]

§ 1.6662–4 Substantial understatement of income tax.

(a) *In general*. If any portion of an underpayment, as defined in section 6664(a) and § 1.6664–2, of any income tax imposed under subtitle A of the Code that is required to be shown on a return is attributable to a substantial understatement of such income tax, there is added to the tax an amount equal to 20 percent of such portion. Except in the case of any item attributable to a tax shelter (as defined in paragraph (g)(2) of this section), an understatement is reduced by the portion of the understatement that is attributable to the tax treatment of an item for which there is substantial authority, or with respect to which there is adequate disclosure. General rules for determining the amount of an understatement are set forth in paragraph (b) of this section and more specific rules in the case of carrybacks and carryovers are set forth in paragraph (c) of this section. The rules for determining when substantial authority exists are set forth in § 1.6662–4(d). The rules for determining when there is adequate disclosure are set forth in § 1.6662–4 (e) and (f). This penalty does not apply to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664–4 applies.

(b) *Definitions and computational rules*—(1) *Substantial*. An understatement (as defined in paragraph (b)(2) of this section) is ''substantial'' if it exceeds the greater of—

(i) 10 percent of the tax required to be shown on the return for the taxable year (as defined in paragraph (b)(3) of this section); or

(ii) $5,000 ($10,000 in the case of a corporation other than an S corporation (as defined in section 1361(a)(1)) or a personal holding company (as defined in section 542)).

(2) *Understatement*. Except as provided in paragraph (c)(2) of this section (relating to special rules for carrybacks), the term ''understatement'' means the excess of—

(i) The amount of the tax required to be shown on the return for the taxable year (as defined in paragraph (b)(3) of this section), over

(ii) The amount of the tax imposed which is shown on the return for the taxable year (as defined in paragraph (b)(4) of this section), reduced by any rebate (as defined in paragraph (b)(5) of this section).

The definition of understatement also may be expressed as—

$$\text{Understatement} = X - (Y - Z)$$

where X = the amount of the tax required to be shown on the return; Y = the amount of the tax imposed which is shown on the return; and Z = any rebate.

(3) *Amount of the tax required to be shown on the return*. The ''amount of the tax required to be shown on the return'' for the taxable year has the same meaning as the ''amount of income tax imposed'' as defined in § 1.6664–2(b).

(4) *Amount of the tax imposed which is shown on the return*. The ''amount of the tax imposed which is shown on the return'' for the taxable year has the same meaning as the ''amount shown as the tax by the taxpayer on his return,'' as defined in § 1.6664–2(c), except that—

(i) There is no reduction for the excess of the amount described in § 1.6664–2(c)(1)(i) over the amount described in § 1.6664–2(c)(1)(ii), and

(ii) The tax liability shown by the taxpayer on his return is recomputed as if the following items had been reported properly:

(A) Items (other than tax shelter items as defined in § 1.6662–4(g)(3)) for which there is substantial authority for the treatment claimed (as provided in § 1.6662–4(d)).

(B) Items (other than tax shelter items as defined in § 1.6662–4(g)(3)) with respect to which there is adequate disclosure (as provided in § 1.6662–4 (e) and (f)).

(C) Tax shelter items (as defined in § 1.6662–4(g)(3)) for which there is substantial authority for the treatment claimed (as provided in § 1.6662–4(d)), and with respect to which the taxpayer reasonably believed that the tax treatment of the items was more likely than

not the proper tax treatment (as provided in § 1.6662–4(g)(4)).

(5) *Rebate.* The term *rebate* has the meaning set forth in § 1.6664–2(e), except that—

(i) ''Amounts not so shown previously assessed (or collected without assessment)'' includes only amounts not so shown previously assessed (or collected without assessment) as a deficiency, and

(ii) The amount of the rebate is determined as if any items to which the rebate is attributable that are described in paragraph (b)(4) of this section had received the proper tax treatment.

(6) *Examples.* The following examples illustrate the provisions of paragraph (b) of this section. These examples do not take into account the reasonable cause exception under § 1.6664–4:

Example 1. In 1990, Individual A, a calendar year taxpayer, files a return for 1989, which shows taxable income of $18,200 and tax liability of $2,734. Subsequent adjustments on audit for 1989 increase taxable income to $51,500 and tax liability to $12,339. There was substantial authority for an item resulting in an adjustment that increases taxable income by $5,300. The item is not a tax shelter item. In computing the amount of the understatement, the amount of tax shown on A's return is determined as if the item for which there was substantial authority had been given the proper tax treatment. Thus, the amount of tax that is treated as shown on A's return is $4,176, i.e., the tax on $23,500 ($18,200 taxable income actually shown on A's return plus $5,300, the amount of the adjustment for which there was substantial authority). The amount of the understatement is $8,163, i.e., $12,339 (the amount of tax required to be shown) less $4,176 (the amount of tax treated as shown on A's return after adjustment for the item for which there was substantial authority). Because the $8,163 understatement exceeds the greater of 10 percent of the tax required to be shown on the return for the year, i.e., $1,234 ($12,339 × .10) or $5,000, A has a substantial understatement of income tax for the year.

Example 2. Individual B, a calendar year taxpayer, files a return for 1990 that fails to include income reported on an information return, Form 1099, that was furnished to B. The Service detects this omission through its document matching program and assesses $3,000 in unreported tax liability. B's return is later examined and as a result of the examination the Service makes an adjustment to B's return of $4,000 in additional tax liability. Assuming there was neither substantial authority nor adequate disclosure with respect to the items adjusted, there is an understatement of $7,000 with respect to B's return. There is also an underpayment of $7,000. (See § 1.6664–2.) The amount of the understatement is not reduced by imposition of a negligence penalty on the $3,000 portion of the underpayment that is attributable to the unreported income. However, if the Services does impose the negligence penalty on this $3,000 portion, the Service may only impose the substantial understatement penalty on the remaining $4,000 portion of the underpayment. (See § 1.6662–2(c), which prohibits stacking of accuracy-related penalty components.)

(c) *Special rules in the case of carrybacks and carryovers*—(1) *In general.* The penalty for a substantial understatement of income tax applies to any portion of an underpayment for a year to which a loss, deduction or credit is carried that is attributable to a ''tainted item'' for the year in which the carryback or carryover of the loss, deduction or credit arises (the ''loss or credit year''). The determination of whether an understatement is substantial for a carryback or carryover year is made with respect to the return of the carryback or carryover year. ''Tainted items'' are taken into account with items arising in a carryback or carryover year to determine whether the understatement is substantial for that year.

(2) *Understatements for carryback years not reduced by amount of carrybacks.* The amount of an understatement for a carryback year is not reduced on account of a carryback of a loss, deduction or credit to that year.

(3) *Tainted items defined*—(i) *In general.* Except in the case of a tax shelter item (as defined in paragraph (g)(3) of this section), a ''tainted item'' is any item for which there is neither substantial authority nor adequate disclosure with respect to the loss or credit year.

(ii) *Tax shelter items.* In the case of a tax shelter item (as defined in paragraph (g)(3) of this section), a ''tainted item'' is any item for which there is not, with respect to the loss or credit year, both substantial authority and a reasonable belief that the tax treatment is more likely than not the proper treatment.

(4) *Transition rule for carrybacks to pre-1990 years.* A 20 percent penalty

under section 6662(b)(2) is imposed on any portion of an underpayment for a carryback year, the return for which is due (without regard to extensions) before January 1, 1990, if—

(i) That portion is attributable to one or more ''tainted items'' (as defined in paragraph (c)(3) of this section) arising in a loss or credit year; and

(ii) The return for the loss or credit year is due (without regard to extensions) after December 31, 1989.

The preceding sentence applies only if the understatement in the carryback year is substantial. See *Example 2* in paragraph (c)(5) of this section.

(5) *Examples*. The following examples illustrate the rules of paragraph (c) of this section regarding carrybacks and carryovers. These examples do not take into account the reasonable cause exception under § 1.6664–4.

Example 1. (i) Corporation N, a calendar year taxpayer, is a C corporation. N was formed on January 1, 1987, and timely filed the following income tax returns:

[In dollars]

	Tax Year			
	1987	1988	1989	1990 (before NOLCO)
Taxable income	30,000	100,000	(300,000)	50,000
Tax liability	4,575	22,250	.....	7,500

(ii) During 1990, N files Form 1139, Corporation Application for Tentative Refund, to carry back the NOL generated in 1989 (NOLCB). N received refunds of $4,575 for 1987 and $22,250 for 1988.

(iii) For tax year 1990, N carries over $50,000 of the 1989 loss to offset $50,000 of income earned in 1990 and reduce taxable income to zero. N would have reported $7,500 of tax liability for 1990 if it were not for use of the net operating loss carryover (NOLCO). N assumes there is a remaining NOLCO of $120,000 to be applied for tax year 1991.

(iv) In June 1991, the Service completes its examination of the 1989 loss year return and makes the following adjustment:

Taxable income per 1989 return	($300,000)
Adjustment: Unreported income	310,000
Corrected taxable income	$10,000
Corrected tax liability	$1,500

(v) There was not substantial authority for N's treatment of the items comprising the 1989 adjustment and N did not make adequate disclosure.

(vi) As a result of the adjustment to the 1989 return, N had an understatement of $4,575 for tax year 1987; an understatement of $22,250 for tax year 1988; an understatement of $1,500 for tax year 1989; and an understatement of $7,500 for tax year 1990. Only the $22,250 understatement for 1988 is a substantial understatement, i.e., it exceeds the greater of (a) $2,225 (10 percent of the tax required to be shown on the return for the taxable year (.10 X $22,250)) or (b) $10,000. The underpayment for 1988 is subject to a penalty rate of 20 percent.

Example 2. The facts are the same as in *Example 1*, except that in addition to examining the 1989 return, the Service also examines the 1987 return and makes an adjustment that results in an understatement. (This adjustment is unrelated to the adjustment on the 1987 return for the disallowance of the NOLCB from 1989.) If the understatement resulting from the adjustment to the 1987 return, when combined with the understatement resulting from the disallowance of the NOLCB from 1989, exceeds the greater of (a) 10 percent of the tax required to be shown on the return for 1987 or (b) $10,000, the underpayment for 1987 will also be subject to a substantial understatement penalty. The portion of the underpayment attributable to the adjustment unrelated to the disallowance of the NOLCB will be subject to a penalty rate of 25 percent under former section 6661. The portion of the underpayment attributable to the disallowance of the NOLCB will be subject to a penalty rate of 20 percent under section 6662.

Example 3. Individual P, a calendar year single taxpayer, files his 1990 return reporting taxable income of $10,000 and a tax liability of $1,504. An examination of the 1990 return results in an adjustment for unreported income of $25,000. There was not substantial authority for P's failure to report the income, and P did not make adequate disclosure with respect to the unreported income. P's correct tax liability for 1990 is determined to be $7,279, resulting in an understatement of $5,775 (the difference between the amount of tax required to be shown on the return ($7,279) and the tax shown on the return ($1,504)). Because the understatement exceeds the greater of (a) $728 (10 percent of the tax required to be shown on the return (.10 × $7,279)) or (b) $5,000, the understatement is substantial. Subsequently, P files his 1993 return showing a net operating loss. The loss is carried back to his 1990 return, reducing his taxable income for 1990 to zero. However, the amount of the understatement for 1990 is not reduced on account of the NOLCB to that year. P is subject to the 20 percent penalty rate under section 6662 on the underpayment attributable to the substantial understatement for 1990, notwithstanding that the tax required to be shown on the return

for that year, after application of the NOLCB, is zero.

(d) *Substantial authority*—(1) *Effect of having substantial authority*. If there is substantial authority for the tax treatment of an item, the item is treated as if it were shown properly on the return for the taxable year in computing the amount of the tax shown on the return. Thus, for purposes of section 6662(d), the tax attributable to the item is not included in the understatement for that year. (For special rules relating to tax shelter items see §1.6662–4(g).)

(2) *Substantial authority standard*. The substantial authority standard is an objective standard involving an analysis of the law and application of the law to relevant facts. The substantial authority standard is less stringent than the more likely than not standard (the standard that is met when there is a greater than 50-percent likelihood of the position being upheld), but more stringent than the reasonable basis standard as defined in §1.6662–3(b)(3). The possibility that a return will not be audited or, if audited, that an item will not be raised on audit, is not relevant in determining whether the substantial authority standard (or the reasonable basis standard) is satisfied.

(3) *Determination of whether substantial authority is present*—(i) *Evaluation of authorities*. There is substantial authority for the tax treatment of an item only if the weight of the authorities supporting the treatment is substantial in relation to the weight of authorities supporting contrary treatment. All authorities relevant to the tax treatment of an item, including the authorities contrary to the treatment, are taken into account in determining whether substantial authority exists. The weight of authorities is determined in light of the pertinent facts and circumstances in the manner prescribed by paragraph (d)(3)(ii) of this section. There may be substantial authority for more than one position with respect to the same item. Because the substantial authority standard is an objective standard, the taxpayer's belief that there is substantial authority for the tax treatment of an item is not relevant in determining whether there is substantial authority for that treatment.

(ii) *Nature of analysis*. The weight accorded an authority depends on its relevance and persuasiveness, and the type of document providing the authority. For example, a case or revenue ruling having some facts in common with the tax treatment at issue is not particularly relevant if the authority is materially distinguishable on its facts, or is otherwise inapplicable to the tax treatment at issue. An authority that merely states a conclusion ordinarily is less persuasive than one that reaches its conclusion by cogently relating the applicable law to pertinent facts. The weight of an authority from which information has been deleted, such as a private letter ruling, is diminished to the extent that the deleted information may have affected the authority's conclusions. The type of document also must be considered. For example, a revenue ruling is accorded greater weight than a private letter ruling addressing the same issue. An older private letter ruling, technical advice memorandum, general counsel memorandum or action on decision generally must be accorded less weight than a more recent one. Any document described in the preceding sentence that is more than 10 years old generally is accorded very little weight. However, the persuasiveness and relevance of a document, viewed in light of subsequent developments, should be taken into account along with the age of the document. There may be substantial authority for the tax treatment of an item despite the absence of certain types of authority. Thus, a taxpayer may have substantial authority for a position that is supported only by a well-reasoned construction of the applicable statutory provision.

(iii) *Types of authority*. Except in cases described in paragraph (d)(3)(iv) of this section concerning written determinations, only the following are authority for purposes of determining whether there is substantial authority for the tax treatment of an item: Applicable provisions of the Internal Revenue Code and other statutory provisions; proposed, temporary and final regulations construing such statues; revenue rulings and revenue procedures; tax treaties and regulations thereunder, and Treasury Department

and other official explanations of such treaties; court cases; congressional intent as reflected in committee reports, joint explanatory statements of managers included in conference committee reports, and floor statements made prior to enactment by one of a bill's managers; General Explanations of tax legislation prepared by the Joint Committee on Taxation (the Blue Book); private letter rulings and technical advice memoranda issued after October 31, 1976; actions on decisions and general counsel memoranda issued after March 12, 1981 (as well as general counsel memoranda published in pre-1955 volumes of the Cumulative Bulletin); Internal Revenue Service information or press releases; and notices, announcements and other administrative pronouncements published by the Service in the Internal Revenue Bulletin. Conclusions reached in treatises, legal periodicals, legal opinions or opinions rendered by tax professionals are not authority. The authorities underlying such expressions of opinion where applicable to the facts of a particular case, however, may give rise to substantial authority for the tax treatment of an item. Notwithstanding the preceding list of authorities, an authority does not continue to be an authority to the extent it is overruled or modified, implicitly or explicitly, by a body with the power to overrule or modify the earlier authority. In the case of court decisions, for example, a district court opinion on an issue is not an authority if overruled or reversed by the United States Court of Appeals for such district. However, a Tax Court opinion is not considered to be overruled or modified by a court of appeals to which a taxpayer does not have a right of appeal, unless the Tax Court adopts the holding of the court of appeals. Similarly, a private letter ruling is not authority if revoked or if inconsistent with a subsequent proposed regulation, revenue ruling or other administrative pronouncement published in the Internal Revenue Bulletin.

(iv) *Special rules*—(A) *Written determinations.* There is substantial authority for the tax treatment of an item by a taxpayer if the treatment is supported by the conclusion of a ruling or a determination letter (as defined in §301.6110–2 (d) and (e)) issued to the taxpayer, by the conclusion of a technical advice memorandum in which the taxpayer is named, or by an affirmative statement in a revenue agent's report with respect to a prior taxable year of the taxpayer (''written determinations''). The preceding sentence does not apply, however, if—

(*1*) There was a misstatement or omission of a material fact or the facts that subsequently develop are materially different from the facts on which the written determination was based, or

(*2*) The written determination was modified or revoked after the date of issuance by—

(*i*) A notice to the taxpayer to whom the written determination was issued,

(*ii*) The enactment of legislation or ratification of a tax treaty,

(*iii*) A decision of the United States Supreme Court,

(*iv*) The issuance of temporary or final regulations, or

(*v*) The issuance of a revenue ruling, revenue procedure, or other statement published in the Internal Revenue Bulletin.

Except in the case of a written determination that is modified or revoked on account of §1.6662–4(d)(3)(iv)(A)(*1*), a written determination that is modified or revoked as described in §1.6662–4(d)(3)(iv)(A)(*2*) ceases to be authority on the date, and to the extent, it is so modified or revoked. See section 6404(f) for rules which require the Secretary to abate a penalty that is attributable to erroneous written advice furnished to a taxpayer by an officer or employee of the Internal Revenue Service.

(B) *Taxpayer's jurisdiction.* The applicability of court cases to the taxpayer by reason of the taxpayer's residence in a particular jurisdiction is not taken into account in determining whether there is substantial authority for the tax treatment of an item. Notwithstanding the preceding sentence, there is substantial authority for the tax treatment of an item if the treatment is supported by controlling precedent of a United States Court of Appeals to which the taxpayer has a right of appeal with respect to the item.

(C) *When substantial authority determined.* There is substantial authority

for the tax treatment of an item if there is substantial authority at the time the return containing the item is filed or there was substantial authority on the last day of the taxable year to which the return relates.

(v) *Substantial authority for tax returns due before January 1, 1990.* There is substantial authority for the tax treatment of an item on a return that is due (without regard to extensions) after December 31, 1982 and before January 1, 1990, if there is substantial authority for such treatment under either the provisions of paragraph (d)(3)(iii) of this section (which set forth an expanded list of authorities) or of § 1.6661–3(b)(2) (which set forth a narrower list of authorities). Under either list of authorities, authorities both for and against the position must be taken into account.

(e) *Disclosure of certain information*—(1) *Effect of adequate disclosure.* Items for which there is adequate disclosure as provided in this paragraph (e) and in paragraph (f) of this section are treated as if such items were shown properly on the return for the taxable year in computing the amount of the tax shown on the return. Thus, for purposes of section 6662(d), the tax attributable to such items is not included in the understatement for that year.

(2) *Circumstances where disclosure will not have an effect.* The rules of paragraph (e)(1) of this section do not apply where the item or position on the return—

(i) Does not have a reasonable basis (as defined in § 1.6662–3(b)(3));

(ii) Is attributable to a tax shelter (as defined in section 6662(d)(2)(C)(iii) and paragraph (g)(2) of this section); or

(iii) Is not properly substantiated, or the taxpayer failed to keep adequate books and records with respect to the item or position.

(3) *Restriction for corporations.* For purposes of paragraph (e)(2)(i) of this section, a corporation will not be treated as having a reasonable basis for its tax treatment of an item attributable to a multi-party financing transaction entered into after August 5, 1997, if the treatment does not clearly reflect the income of the corporation.

(f) *Method of making adequate disclosure*—(1) *Disclosure statement.* Disclosure is adequate with respect to an item (or group of similar items, such as amounts paid or incurred for supplies by a taxpayer engaged in business) or a position on a return if the disclosure is made on a properly completed form attached to the return or to a qualified amended return (as defined in § 1.6664–2(c)(3)) for the taxable year. In the case of an item or position other than one that is contrary to a regulation, disclosure must be made on Form 8275 (Disclosure Statement); in the case of a position contrary to a regulation, disclosure must be made on Form 8275–R (Regulation Disclosure Statement).

(2) *Disclosure on return.* The Commissioner may by annual revenue procedure (or otherwise) prescribe the circumstances under which disclosure of information on a return (or qualified amended return) in accordance with applicable forms and instructions is adequate. If the revenue procedure does not include an item, disclosure is adequate with respect to that item only if made on a properly completed Form 8275 or 8275–R, as appropriate, attached to the return for the year or to a qualified amended return.

(3) *Recurring item.* Disclosure with respect to a recurring item, such as the basis of recovery property, must be made for each taxable year in which the item is taken into account.

(4) *Carrybacks and carryovers.* Disclosure is adequate with respect to an item which is included in any loss, deduction or credit that is carried to another year only if made in connection with the return (or qualified amended return) for the taxable year in which the carryback or carryover arises (the ''loss or credit year''). Disclosure is not also required in connection with the return for the taxable year in which the carryback or carryover is taken into account.

(5) *Pass-through entities.* Disclosure in the case of items attributable to a pass-through entity (pass-through items) is made with respect to the return of the entity, except as provided in this paragraph (f)(5). Thus, disclosure in the case of pass-through items must be made on a Form 8275 or 8275–R, as appropriate, attached to the return (or qualified amended return) of the entity, or on the entity's return in

accordance with the revenue procedure described in paragraph (f)(2) of this section, if applicable. A taxpayer (i.e., partner, shareholder, beneficiary, or holder of a residual interest in a REMIC) also may make adequate disclosure with respect to a pass-through item, however, if the taxpayer files a properly completed Form 8275 or 8275–R, as appropriate, in duplicate, one copy attached to the taxpayer's return (or qualified amended return) and the other copy filed with the Internal Revenue Service Center with which the return of the entity is required to be filed. Each Form 8275 or 8275–R, as appropriate, filed by the taxpayer should relate to the pass-through items of only one entity. For purposes of this paragraph (f)(5), a pass-through entity is a partnership, S corporation (as defined in section 1361(a)(1)), estate, trust, regulated investment company (as defined in section 851(a)), real estate investment trust (as defined in section 856(a)), or real estate mortgage investment conduit (''REMIC'') (as defined in section 860D(a)).

(g) *Items relating to tax shelters*—(1) *In general*—(i) *Noncorporate taxpayers*. Tax shelter items (as defined in paragraph (g)(3) of this section) of a taxpayer other than a corporation are treated for purposes of this section as if such items were shown properly on the return for a taxable year in computing the amount of tax shown on the return, and thus the tax attributable to such items is not included in the understatement for the year, if—

(A) There is substantial authority (as provided in paragraph (d) of this section) for the tax treatment of that item; and

(B) The taxpayer reasonably believed at the time the return was filed that the tax treatment of that item was more likely than not the proper treatment.

(ii) *Corporate taxpayers*—(A) *In general*. Except as provided in paragraph (g)(1)(ii)(B) of this section, all tax shelter items (as defined in paragraph (g)(3) of this section) of a corporation are taken into account in computing the amount of any understatement.

(B) *Special rule for transactions occurring prior to December 9, 1994*. The tax shelter items of a corporation arising in connection with transactions occurring prior to December 9, 1994 are treated for purposes of this section as if such items were shown properly on the return if the requirements of paragraph (g)(1)(i) are satisfied with respect to such items.

(iii) *Disclosure irrelevant*. Disclosure made with respect to a tax shelter item of either a corporate or noncorporate taxpayer does not affect the amount of an understatement.

(iv) *Cross-reference*. See § 1.6664–4(f) for certain rules regarding the availability of the reasonable cause and good faith exception to the substantial understatement penalty with respect to tax shelter items of corporations.

(2) *Tax shelter*—(i) *In general*. For purposes of section 6662(d), the term ''tax shelter'' means—

(A) A partnership or other entity (such as a corporation or trust),

(B) An investment plan or arrangement, or

(C) Any other plan or arrangement,

if the principal purpose of the entity, plan or arrangement, based on objective evidence, is to avoid or evade Federal income tax. The principal purpose of an entity, plan or arrangement is to avoid or evade Federal income tax if that purpose exceeds any other purpose. Typical of tax shelters are transactions structured with little or no motive for the realization of economic gain, and transactions that utilize the mismatching of income and deductions, overvalued assets or assets with values subject to substantial uncertainty, certain nonrecourse financing, financing techniques that do not conform to standard commercial business practices, or the mischaracterization of the substance of the transaction. The existence of economic substance does not of itself establish that a transaction is not a tax shelter if the transaction includes other characteristics that indicate it is a tax shelter.

(ii) *Principal purpose*. The principal purpose of an entity, plan or arrangement is not to avoid or evade Federal income tax if the entity, plan or arrangement has as its purpose the claiming of exclusions from income, accelerated deductions or other tax benefits in a manner consistent with the statute and Congressional purpose.

For example, an entity, plan or arrangement does not have as its principal purpose the avoidance or evasion of Federal income tax solely as a result of the following uses of tax benefits provided by the Internal Revenue Code: the purchasing or holding of an obligation bearing interest that is excluded from gross income under section 103; taking an accelerated depreciation allowance under section 168; taking the percentage depletion allowance under section 613 or section 613A; deducting intangible drilling and development costs as expenses under section 263(c); establishing a qualified retirement plan under sections 401–409; claiming the possession tax credit under section 936; or claiming tax benefits available by reason of an election under 992 to be taxed as a domestic international sales corporation (''DISC''), under section 927(f)(1) to be taxed as a foreign sales corporation (''FSC''), or under section 1362 to be taxed as an S corporation.

(3) *Tax shelter item.* An item of income, gain, loss, deduction or credit is a ''tax shelter item'' if the item is directly or indirectly attributable to the principal purpose of a tax shelter to avoid or evade Federal income tax. Thus, if a partnership is established for the principal purpose of avoiding or evading Federal income tax by acquiring and overstating the basis of property for purposes of claiming accelerated depreciation, the depreciation with respect to the property is a tax shelter item. However, a deduction claimed in connection with a separate transaction carried on by the same partnership is not a tax shelter item if the transaction does not constitute a plan or arrangement the principal purpose of which is to avoid or evade tax.

(4) *Reasonable belief*—(i) *In general.* For purposes of section 6662(d) and paragraph (g)(1)(i)(B) of this section (pertaining to tax shelter items of noncorporate taxpayers), a taxpayer is considered reasonably to believe that the tax treatment of an item is more likely than not the proper tax treatment if (without taking into account the possibility that a return will not be audited, that an issue will not be raised on audit, or that an issue will be settled)—

(A) The taxpayer analyzes the pertinent facts and authorities in the manner described in paragraph (d)(3)(ii) of this section, and in reliance upon that analysis, reasonably concludes in good faith that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service; or

(B) The taxpayer reasonably relies in good faith on the opinion of a professional tax advisor, if the opinion is based on the tax advisor's analysis of the pertinent facts and authorities in the manner described in paragraph (d)(3)(ii) of this section and unambiguously states that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service.

(ii) *Facts and circumstances; reliance on professional tax advisor.* All facts and circumstances must be taken into account in determining whether a taxpayer satisfies the requirements of paragraph (g)(4)(i) of this section. However, in no event will a taxpayer be considered to have reasonably relied in good faith on the opinion of a professional tax advisor for purposes of paragraph (g)(4)(i)(B) of this section unless the requirements of § 1.6664–4(c)(1) are met. The fact that the requirements of § 1.6664–4(c)(1) are satisfied will not necessarily establish that the taxpayer reasonably relied on the opinion in good faith. For example, reliance may not be reasonable or in good faith if the taxpayer knew, or should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

(5) *Pass-through entities.* In the case of tax shelter items attributable to a pass-through entity, the actions described in paragraphs (g)(4)(i)(A) and (B) of this section, if taken by the entity, are deemed to have been taken by

the taxpayer and are considered in determining whether the taxpayer reasonably believed that the tax treatment of an item was more likely than not the proper tax treatment.

[T.D. 8381, 56 FR 67499, Dec. 31, 1991; T.D. 8381, 57 FR 6165, Feb. 20, 1992, as amended by T.D. 8617, 60 FR 45665, Sept. 1, 1995; T.D. 8790, 63 FR 66435, Dec. 2, 1998; T.D. 9109, 68 FR 75128, Dec. 30, 2003]

§ 1.6662–5 Substantial and gross valuation misstatements under chapter 1.

(a) *In general*. If any portion of an underpayment, as defined in section 6664(a) and § 1.6664–2, of any income tax imposed under chapter 1 of subtitle A of the Code that is required to be shown on a return is attributable to a substantial valuation misstatement under chapter 1 (''substantial valuation misstatement''), there is added to the tax an amount equal to 20 percent of such portion. Section 6662(h) increases the penalty to 40 percent in the case of a gross valuation misstatement under chapter 1 (''gross valuation misstatement''). No penalty under section 6662(b)(3) is imposed, however, on a portion of an underpayment that is attributable to a substantial or gross valuation misstatement unless the aggregate of all portions of the underpayment attributable to substantial or gross valuation misstatements exceeds the applicable dollar limitation ($5,000 or $10,000), as provided in section 6662(e)(2) and paragraphs (b) and (f)(2) of this section. This penalty also does not apply to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664–4 applies. There is no disclosure exception to this penalty.

(b) *Dollar limitation*. No penalty may be imposed under section 6662(b)(3) for a taxable year unless the portion of the underpayment for that year that is attributable to substantial or gross valuation misstatements exceeds $5,000 ($10,000 in the case of a corporation other than an S corporation (as defined in section 1361(a)(1)) or a personal holding company (as defined in section 542)). This limitation is applied separately to each taxable year for which there is a substantial or gross valuation misstatement.

(c) *Special rules in the case of carrybacks and carryovers*—(1) *In general*. The penalty for a substantial or gross valuation misstatement applies to any portion of an underpayment for a year to which a loss, deduction or credit is carried that is attributable to a substantial or gross valuation misstatement for the year in which the carryback or carryover of the loss, deduction or credit arises (the ''loss or credit year''), provided that the applicable dollar limitation set forth in section 6662(e)(2) is satisfied in the carryback or carryover year.

(2) *Transition rule for carrybacks to pre-1990 years*. The penalty under section 6662(b)(3) is imposed on any portion of an underpayment for a carryback year, the return for which is due (without regard to extensions) before January 1, 1990, if—

(i) That portion is attributable to a substantial or gross valuation misstatement for a loss or credit year; and

(ii) The return for the loss or credit year is due (without regard to extensions) after December 31, 1989.

The preceding sentence applies only if the underpayment for the carryback year exceeds the applicable dollar limitation ($5,000, or $10,000 for most corporations). See *Example 3* in paragraph (d) of this section.

(d) *Examples*. The following examples illustrate the provisions of paragraphs (b) and (c) of this section. These examples do not take into account the reasonable cause exception under § 1.6664–4.

Example 1. Corporation Q is a C corporation. In 1990, the first year of its existence, Q had taxable income of $200,000 without considering depreciation of a particular asset. On its calendar year 1990 return, Q overstated its basis in this asset by an amount that caused a substantial valuation misstatement. The overstated basis resulted in depreciation claimed of $350,000, which was $250,000 more than the $100,000 allowable. Thus, on its 1990 return, Q showed a loss of $150,000. In 1991, Q had taxable income of $450,000 before application of the loss carryover, and Q claimed a carryover loss deduction under section 172 of $150,000, resulting in taxable income of $300,000 for 1991. Upon audit of the 1990 return, the basis of the asset was corrected, resulting in an adjustment of

$250,000. For 1990, the underpayment resulting from the $100,000 taxable income (−$150,000+$250,000) is attributable to the valuation misstatement. Assuming the underpayment resulting from the $100,000 taxable income exceeds the $10,000 limitation, the penalty will be imposed in 1990. For 1991, the elimination of the loss carryover results in additional taxable income of $150,000. The underpayment for 1991 resulting from that adjustment is also attributable to the substantial valuation misstatement on the 1990 return. Assuming the underpayment resulting from the $150,000 additional taxable income for 1991 exceeds the $10,000 limitation, the substantial valuation misstatement penalty also will be imposed for that year.

Example 2. (i) Corporation T is a C corporation. In 1990, the first year of its existence, T had a loss of $3,000,000 without considering depreciation of its major asset. On its calendar year 1990 return, T overstated its basis in this asset in an amount that caused a substantial valuation misstatement. This overstatement resulted in depreciation claimed of $3,500,000, which was $2,500,000 more than the $1,000,000 allowable. Thus, on its 1990 return, T showed a loss of $6,500,000. In 1991, T had taxable income of $4,500,000 before application of the carryover loss, but claimed a carryover loss deduction under section 172 in the amount of $4,500,000, resulting in taxable income of zero for that year and leaving a $2,000,000 carryover available. Upon audit of the 1990 return, the basis of the asset was corrected, resulting in an adjustment of $2,500,000.

(ii) For 1990, the underpayment is still zero (−$6,500,000+$2,500,000=−$4,000,000). Thus, the penalty does not apply in 1990. The loss for 1990 is reduced to $4,000,000.

(iii) For 1991, there is additional taxable income of $500,000 as a result of the reduction of the carryover loss ($4,500,000 reported income before carryover loss minus corrected carryover loss of $4,000,000=$500,000). The underpayment for 1991 resulting from reduction of the carryover loss is attributable to the valuation misstatement on the 1990 return. Assuming the underpayment resulting from the $500,000 additional taxable income exceeds the $10,000 limitation, the substantial valuation misstatement penalty will be imposed in 1991.

Example 3. Corporation V is a C corporation. In 1990, V had a loss of $100,000 without considering depreciation of a particular asset which it had fully depreciated in earlier years. V had a depreciable basis in the asset of zero, but on its 1990 calendar year return erroneously claimed a basis in the asset of $1,250,000 and depreciation of $250,000. V reported a $350,000 loss for the year 1990, and carried back the loss to the 1987 and 1988 tax years. V had reported taxable income of $300,000 in 1987 and $200,000 in 1988, before application of the carryback. The $350,000 carryback eliminated all taxable income for 1987, and $50,000 of the taxable income for 1988. After disallowance of the $250,000 depreciation deduction for 1990, V still had a loss of $100,000. Because there is no underpayment for 1990, no valuation misstatement penalty is imposed for 1990. However, as a result of the 1990 depreciation adjustment, the carryback to 1987 is reduced from $350,000 to $100,000. After absorption of the $100,000 carryback, V has taxable income of $200,000 for 1987. This adjustment results in an underpayment for 1987 that is attributable to the valuation misstatement on the 1990 return. The valuation misstatement for 1990 is a gross valuation misstatement because the correct adjusted basis of the depreciated asset was zero. (See paragraph (e)(2) of this section.) Therefore, the 40 percent penalty rate applies to the 1987 underpayment attributable to the 1990 misstatement, provided that this underpayment exceeds $10,000. The adjustment also results in the elimination of any loss carryback to 1988 resulting in an increase in taxable income for 1988 of $50,000. Assuming the underpayment resulting from this additional $50,000 of income exceeds $10,000, the gross valuation misstatement penalty is imposed on the underpayment for 1988.

(e) *Definitions*—(1) *Substantial valuation misstatement.* There is a substantial valuation misstatement if the value or adjusted basis of any property claimed on a return of tax imposed under chapter 1 is 200 percent or more of the correct amount.

(2) *Gross valuation misstatement.* There is a gross valuation misstatement if the value or adjusted basis of any property claimed on a return of tax imposed under chapter 1 is 400 percent or more of the correct amount.

(3) *Property.* For purposes of this section, the term ''property'' refers to both tangible and intangible property. Tangible property includes property such as land, buildings, fixtures and inventory. Intangible property includes property such as goodwill, covenants not to compete, leaseholds, patents, contract rights, debts and choses in action.

(f) *Multiple valuation misstatements on a return*—(1) *Determination of whether valuation misstatements are substantial or gross.* The determination of whether there is a substantial or gross valuation misstatement on a return is made on a property-by-property basis. Assume, for example, that property A has a value of 60 but a taxpayer claims

a value of 110, and that property B has a value of 40 but the taxpayer claims a value of 100. Because the claimed and correct values are compared on a property-by-property basis, there is a substantial valuation misstatement with respect to property B, but not with respect to property A, even though the claimed values (210) are 200 percent or more of the correct values (100) when compared on an aggregate basis.

(2) *Application of dollar limitation*. For purposes of applying the dollar limitation set forth in section 6662(e)(2), the determination of the portion of an underpayment that is attributable to a substantial or gross valuation misstatement is made by aggregating all portions of the underpayment attributable to substantial or gross valuation misstatements. Assume, for example, that the value claimed for property C on a return is 250 percent of the correct value, and that the value claimed for property D on the return is 400 percent of the correct value. Because the portions of an underpayment that are attributable to a substantial or gross valuation misstatement on a return are aggregated in applying the dollar limitation, the dollar limitation is satisfied if the portion of the underpayment that is attributable to the misstatement of the value of property C, when aggregated with the portion of the underpayment that is attributable to the misstatement of the value of property D, exceeds $5,000 ($10,000 in the case of most corporations).

(g) *Property with a value or adjusted basis of zero*. The value or adjusted basis claimed on a return of any property with a correct value or adjusted basis of zero is considered to be 400 percent or more of the correct amount. There is a gross valuation misstatement with respect to such property, therefore, and the applicable penalty rate is 40 percent.

(h) *Pass-through entities*—(1) *In general*. The determination of whether there is a substantial or gross valuation misstatement in the case of a return of a pass-through entity (as defined in §1.6662–4(f)(5)) is made at the entity level. However, the dollar limitation ($5,000 or $10,000, as the case may be) is applied at the taxpayer level (*i.e.*, with respect to the return of the shareholder, partner, beneficiary, or holder of a residual interest in a REMIC).

(2) *Example*. The rules of paragraph (h)(1) of this section may be illustrated by the following example.

Example. Partnership P has two partners, individuals A and B. P claims a $40,000 basis in a depreciable asset which, in fact, has a basis of $15,000. The determination that there is a substantial valuation misstatement is made solely with reference to P by comparing the $40,000 basis claimed by P with P's correct basis of $15,000. However, the determination of whether the $5,000 threshold for application of the penalty has been reached is made separately for each partner. With respect to partner A, the penalty will apply if the portion of A's underpayment attributable to the passthrough of the depreciation deduction, when aggregated with any other portions of A's underpayment also attributable to substantial or gross valuation misstatements, exceeds $5,000 (assuming there is not reasonable cause for the misstatements (*see* §1.6664–4(c)).

(i) [Reserved]

(j) *Transactions between persons described in section 482 and net section 482 transfer price adjustments*. [Reserved]

(k) *Returns affected*. Except in the case of rules relating to transactions between persons described in section 482 and net sections 482 transfer price adjustments, the provisions of section 6662(b)(3) apply to returns due (without regard to extensions of time to file) after December 31, 1989, notwithstanding that the original substantial or gross valuation misstatement occurred on a return that was due (without regard to extensions) before January 1, 1990. Assume, for example, that a calendar year corporation claimed a deduction on its 1990 return for depreciation of an asset with a basis of X. Also assume that it had reported the same basis for computing depreciation on its returns for the preceding 5 years and that the basis shown on the return each year was 200 percent or more of the correct basis. The corporation may be subject to a penalty for substantial valuation misstatements on its 1989 and 1990 returns, even though the original misstatement occurred prior to the effective date of sections 6662(b)(3) and (e).

[T.D. 8381, 56 FR 67504, Dec. 31, 1991; T.D. 8381, 57 FR 6165, Feb. 20, 1992]

§ 1.6662–5T Substantial and gross valuation misstatements under chapter 1 (temporary).

(a)–(e)(3) [Reserved]. For further information, see § 1.6662–5(a) through (e)(3).

(e)(4) *Tests related to section 482*—(i) *Substantial valuation misstatement*. There is a substantial valuation misstatement if there is a misstatement described in § 1.6662–6 (b)(1) or (c)(1) (concerning substantial valuation misstatements pertaining to transactions between related persons).

(ii) *Gross valuation misstatement*. There is a gross valuation misstatement if there is a misstatement described in § 1.6662–6 (b)(2) or (c)(2) (concerning gross valuation misstatements pertaining to transactions between related persons).

(iii) *Property*. For purposes of this section, the term *property* refers to both tangible and intangible property. Tangible property includes property such as money, land, buildings, fixtures and inventory. Intangible property includes property such as goodwill, covenants not to compete, leaseholds, patents, contract rights, debts, choses in action, and any other item of intangible property described in § 1.482–4(b).

(f)–(h) [Reserved]. For further information, see § 1.6662–5 (f) through (h).

(i) [Reserved]

(j) *Transactions between persons described in section 482 and net section 482 transfer price adjustments*. For rules relating to the penalty imposed with respect to a substantial or gross valuation misstatement arising from a section 482 allocation, see § 1.6662–6.

[T.D. 8656, 61 FR 4879, Feb. 9, 1996; T.D. 8656, 61 FR 14248, Apr. 1, 1996]

§ 1.6662–6 Transactions between persons described in section 482 and net section 482 transfer price adjustments.

(a) *In general*—(1) *Purpose and scope*. Pursuant to section 6662(e) a penalty is imposed on any underpayment attributable to a substantial valuation misstatement pertaining to either a transaction between persons described in section 482 (the transactional penalty) or a net section 482 transfer price adjustment (the net adjustment penalty). The penalty is equal to 20 percent of the underpayment of tax attributable to that substantial valuation misstatement. Pursuant to section 6662(h) the penalty is increased to 40 percent of the underpayment in the case of a gross valuation misstatement with respect to either penalty. Paragraph (b) of this section provides specific rules related to the transactional penalty. Paragraph (c) of this section provides specific rules related to the net adjustment penalty, and paragraph (d) of this section describes amounts that will be excluded for purposes of calculating the net adjustment penalty. Paragraph (e) of this section sets forth special rules in the case of carrybacks and carryovers. Paragraph (f) of this section provides coordination rules between penalties. Paragraph (g) of this section provides the effective date of this section.

(2) *Reported results*. Whether an underpayment is attributable to a substantial or gross valuation misstatement must be determined from the results of controlled transactions that are reported on an income tax return, regardless of whether the amount reported differs from the transaction price initially reflected in the taxpayer's books and records. The results of controlled transactions that are reported on an amended return will be used only if the amended return is filed before the Internal Revenue Service has contacted the taxpayer regarding the corresponding original return. A written statement furnished by a taxpayer subject to the Coordinated Examination Program or a written statement furnished by the taxpayer when electing Accelerated Issue Resolution or similar procedures will be considered an amended return for purposes of this section if it satisfies either the requirements of a qualified amended return for purposes of § 1.6664–2(c)(3) or such requirements as the Commissioner may prescribe by revenue procedure. In the case of a taxpayer that is a member of a consolidated group, the rules of this paragraph (a)(2) apply to the consolidated income tax return of the group.

(3) *Identical terms used in the section 482 regulations*. For purposes of this section, the terms used in this section

shall have the same meaning as identical terms used in regulations under section 482.

(b) *The transactional penalty*—(1) *Substantial valuation misstatement.* In the case of any transaction between related persons, there is a substantial valuation misstatement if the price for any property or services (or for the use of property) claimed on any return is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct price.

(2) *Gross valuation misstatement.* In the case of any transaction between related persons, there is a gross valuation misstatement if the price for any property or services (or for the use of property) claimed on any return is 400 percent or more (or 25 percent or less) of the amount determined under section 482 to be the correct price.

(3) *Reasonable cause and good faith.* Pursuant to section 6664(c), the transactional penalty will not be imposed on any portion of an underpayment with respect to which the requirements of §1.6664–4 are met. In applying the provisions of §1.6664–4 in a case in which the taxpayer has relied on professional analysis in determining its transfer pricing, whether the professional is an employee of, or related to, the taxpayer is not determinative in evaluating whether the taxpayer reasonably relied in good faith on advice. A taxpayer that meets the requirements of paragraph (d) of this section with respect to an allocation under section 482 will be treated as having established that there was reasonable cause and good faith with respect to that item for purposes of §1.6664–4. If a substantial or gross valuation misstatement under the transactional penalty also constitutes (or is part of) a substantial or gross valuation misstatement under the net adjustment penalty, then the rules of paragraph (d) of this section (and not the rules of §1.6664–4) will be applied to determine whether the adjustment is excluded from calculation of the net section 482 adjustment.

(c) *Net adjustment penalty*—(1) *Net section 482 adjustment.* For purposes of this section, the term *net section 482 adjustment* means the sum of all increases in the taxable income of a taxpayer for a taxable year resulting from allocations under section 482 (determined without regard to any amount carried to such taxable year from another taxable year) less any decreases in taxable income attributable to collateral adjustments as described in §1.482–1(g). For purposes of this section, amounts that meet the requirements of paragraph (d) of this section will be excluded from the calculation of the net section 482 adjustment. Substantial and gross valuation misstatements that are subject to the transactional penalty under paragraph (b) (1) or (2) of this section are included in determining the amount of the net section 482 adjustment. See paragraph (f) of this section for coordination rules between penalties.

(2) *Substantial valuation misstatement.* There is a substantial valuation misstatement if a net section 482 adjustment is greater than the lesser of 5 million dollars or ten percent of gross receipts.

(3) *Gross valuation misstatement.* There is a gross valuation misstatement if a net section 482 adjustment is greater than the lesser of 20 million dollars or twenty percent of gross receipts.

(4) *Setoff allocation rule.* If a taxpayer meets the requirements of paragraph (d) of this section with respect to some, but not all of the allocations made under section 482, then for purposes of determining the net section 482 adjustment, setoffs, as taken into account under §1.482–1(g)(4), must be applied ratably against all such allocations. The following example illustrates the principle of this paragraph (c)(4):

Example. (i) The Internal Revenue Service makes the following section 482 adjustments for the taxable year:

(1) Attributable to an increase in gross income because of an increase in royalty payments	$9,000,000
(2) Attributable to an increase in sales proceeds due to a decrease in the profit margin of a related buyer	6,000,000
(3) Because of a setoff under §1.482–1(g)(4)	(5,000,000)
Total section 482 adjustments	10,000,000

(ii) The taxpayer meets the requirements of paragraph (d) with respect to adjustment number one, but not with respect to adjustment number two. The five million dollar setoff will be allocated ratably against the nine million dollar adjustment ($9,000,000/$15,000,000×$5,000,000=$3,000,000) and the six million dollar adjustment ($6,000,000/

$15,000,000×$5,000,000=$2,000,000). Accordingly, in determining the net section 482 adjustment, the nine million dollar adjustment is reduced to six million dollars ($9,000,000–$3,000,000) and the six million dollar adjustment is reduced to four million dollars ($6,000,000–$2,000,000). Therefore, the net section 482 adjustment equals four million dollars.

(5) *Gross receipts*. For purposes of this section, gross receipts must be computed pursuant to the rules contained in §1.448–1T(f)(2)(iv), as adjusted to reflect allocations under section 482.

(6) *Coordination with reasonable cause exception under section 6664(c)*. Pursuant to section 6662(e)(3)(D), a taxpayer will be treated as having reasonable cause under section 6664(c) for any portion of an underpayment attributable to a net section 482 adjustment only if the taxpayer meets the requirements of paragraph (d) of this section with respect to that portion.

(7) *Examples*. The principles of this paragraph (c) are illustrated by the following examples:

Example 1. (i) The Internal Revenue Service makes the following section 482 adjustments for the taxable year:

(1) Attributable to an increase in gross income because of an increase in royalty payments	$2,000,000
(2) Attributable to an increase in sales proceeds due to a decrease in the profit margin of a related buyer	2,500,000
(3) Attributable to a decrease in the cost of goods sold because of a decrease in the cost plus mark-up of a related seller	2,000,000
Total section 482 adjustments	6,500,000

(ii) None of the adjustments are excluded under paragraph (d) of this section. The net section 482 adjustment ($6.5 million) is greater than five million dollars. Therefore, there is a substantial valuation misstatement.

Example 2. (i) The Internal Revenue Service makes the following section 482 adjustments for the taxable year:

(1) Attributable to an increase in gross income because of an increase in royalty payments	$11,000,000
(2) Attributable to an increase in sales proceeds due to a decrease in the profit margin of a related buyer	2,000,000
(3) Because of a setoff under §1.482–1(g)(4)	(9,000,000)
Total section 482 adjustments	4,000,000

(ii) The taxpayer has gross receipts of sixty million dollars after taking into account all section 482 adjustments. None of the adjustments are excluded under paragraph (d) of this section. The net section 482 adjustment ($4 million) is less than the lesser of five million dollars or ten percent of gross receipts ($60 million×10%=$6 million). Therefore, there is no substantial valuation misstatement.

Example 3. (i) The Internal Revenue Service makes the following section 482 adjustments to the income of an affiliated group that files a consolidated return for the taxable year:

(1) Attributable to Member A	$1,500,000
(2) Attributable to Member B	1,000,000
(3) Attributable to Member C	2,000,000
Total section 482 adjustments	4,500,000

(ii) Members A, B, and C have gross receipts of 20 million dollars, 12 million dollars, and 11 million dollars, respectively. Thus, the total gross receipts are 43 million dollars. None of the adjustments are excluded under paragraph (d) of this section. The net section 482 adjustment ($4.5 million) is greater than the lesser of five million dollars or ten percent of gross receipts ($43 million × 10% = $4.3 million). Therefore, there is a substantial valuation misstatement.

Example 4. (i) The Internal Revenue Service makes the following section 482 adjustments to the income of an affiliated group that files a consolidated return for the taxable year:

(1) Attributable to Member A	$1,500,000
(2) Attributable to Member B	3,000,000
(3) Attributable to Member C	2,500,000
Total section 482 adjustments	7,000,000

(ii) Members A, B, and C have gross receipts of 20 million dollars, 35 million dollars, and 40 million dollars, respectively. Thus, the total gross receipts are 95 million dollars. None of the adjustments are excluded under paragraph (d) of this section. The net section 482 adjustment (7 million dollars) is greater than the lesser of five million dollars or ten percent of gross receipts ($95 million × 10% = $9.5 million). Therefore, there is a substantial valuation misstatement.

Example 5. (i) The Internal Revenue Service makes the following section 482 adjustments to the income of an affiliated group that files a consolidated return for the taxable year:

(1) Attributable to Member A	$2,000,000
(2) Attributable to Member B	1,000,000
(3) Attributable to Member C	1,500,000
Total section 482 adjustments	4,500,000

(ii) Members A, B, and C have gross receipts of 10 million dollars, 35 million dollars, and 40 million dollars, respectively. Thus, the total gross receipts are 85 million dollars. None of the adjustments are excluded under paragraph (d) of this section. The net section 482 adjustment ($4.5 million) is less than the lesser of five million dollars or ten percent of gross receipts ($85 million × 10%=$8.5 million). Therefore, there is no substantial valuation misstatement even though individual member A's adjustment ($2 million) is greater than ten percent of its

individual gross receipts ($10 million × 10%=$1 million).

(d) *Amounts excluded from net section 482 adjustments*—(1) *In general.* An amount is excluded from the calculation of a net section 482 adjustment if the requirements of paragraph (d) (2), (3), or (4) of this section are met with respect to that amount.

(2) *Application of a specified section 482 method*—(i) *In general.* An amount is excluded from the calculation of a net section 482 adjustment if the taxpayer establishes that both the specified method and documentation requirements of this paragraph (d)(2) are met with respect to that amount. For purposes of this paragraph (d), a method will be considered a specified method if it is described in the regulations under section 482 and the method applies to transactions of the type under review. An unspecified method is not considered a specified method. See §§ 1.482–3(e) and 1.482–4(d).

(ii) *Specified method requirement.* (A) The specified method requirement is met if the taxpayer selects and applies a specified method in a reasonable manner. The taxpayer's selection and application of a specified method is reasonable only if, given the available data and the applicable pricing methods, the taxpayer reasonably concluded that the method (and its application of that method) provided the most reliable measure of an arm's length result under the principles of the best method rule of § 1.482–1(c). A taxpayer can reasonably conclude that a specified method provided the most reliable measure of an arm's length result only if it has made a reasonable effort to evaluate the potential applicability of the other specified methods in a manner consistent with the principles of the best method rule. The extent of this evaluation generally will depend on the nature of the available data, and it may vary from case to case and from method to method. This evaluation may not entail an exhaustive analysis or detailed application of each method. Rather, after a reasonably thorough search for relevant data, the taxpayer should consider which method would provide the most reliable measure of an arm's length result given that data. The nature of the available data may enable the taxpayer to conclude reasonably that a particular specified method provides a more reliable measure of an arm's length result than one or more of the other specified methods, and accordingly no further consideration of such other specified methods is needed. Further, it is not necessary for a taxpayer to conclude that the selected specified method provides a more reliable measure of an arm's length result than any unspecified method. For examples illustrating the selection of a specified method consistent with this paragraph (d)(2)(ii), see § 1.482–8. Whether the taxpayer's conclusion was reasonable must be determined from all the facts and circumstances. The factors relevant to this determination include the following:

(*1*) The experience and knowledge of the taxpayer, including all members of the taxpayer's controlled group.

(*2*) The extent to which reliable data was available and the data was analyzed in a reasonable manner. A taxpayer must engage in a reasonably thorough search for the data necessary to determine which method should be selected and how it should be applied. In determining the scope of a reasonably thorough search for data, the expense of additional efforts to locate new data may be weighed against the likelihood of finding additional data that would improve the reliability of the results and the amount by which any new data would change the taxpayer's taxable income. Furthermore, a taxpayer must use the most current reliable data that is available before the end of the taxable year in question. Although the taxpayer is not required to search for relevant data after the end of the taxable year, the taxpayer must maintain as a principal document described in paragraph (d)(2)(iii)(B)(*9*) of this section any relevant data it obtains after the end of the taxable year but before the return is filed, if that data would help determine whether the taxpayer has reported its true taxable income.

(*3*) The extent to which the taxpayer followed the relevant requirements set forth in regulations under section 482 with respect to the application of the method.

(*4*) The extent to which the taxpayer reasonably relied on a study or other analysis performed by a professional qualified to conduct such a study or analysis, including an attorney, accountant, or economist. Whether the professional is an employee of, or related to, the taxpayer is not determinative in evaluating the reliability of that study or analysis, as long as the study or analysis is objective, thorough, and well reasoned. Such reliance is reasonable only if the taxpayer disclosed to the professional all relevant information regarding the controlled transactions at issue. A study or analysis that was reasonably relied upon in a prior year may reasonably be relied upon in the current year if the relevant facts and circumstances have not changed or if the study or analysis has been appropriately modified to reflect any change in facts and circumstances.

(*5*) If the taxpayer attempted to determine an arm's length result by using more than one uncontrolled comparable, whether the taxpayer arbitrarily selected a result that corresponds to an extreme point in the range of results derived from the uncontrolled comparables. Such a result generally would not likely be closest to an arm's length result. If the uncontrolled comparables that the taxpayer uses to determine an arm's length result are described in §1.482–1(e)(2)(iii)(B), one reasonable method of selecting a point in the range would be that provided in §1.482–1(e)(3).

(*6*) The extent to which the taxpayer relied on a transfer pricing methodology developed and applied pursuant to an Advance Pricing Agreement for a prior taxable year, or specifically approved by the Internal Revenue Service pursuant to a transfer pricing audit of the transactions at issue for a prior taxable year, provided that the taxpayer applied the approved method reasonably and consistently with its prior application, and the facts and circumstances surrounding the use of the method have not materially changed since the time of the IRS's action, or if the facts and circumstances have changed in a way that materially affects the reliability of the results, the taxpayer makes appropriate adjustments to reflect such changes.

(*7*) The size of a net transfer pricing adjustment in relation to the size of the controlled transaction out of which the adjustment arose.

(B) [Reserved]. For further guidance, see §1.6662–6T(d)(2)(ii)(B).

(iii) *Documentation requirement*—(A) *In general*. The documentation requirement of this paragraph (d)(2)(iii) is met if the taxpayer maintains sufficient documentation to establish that the taxpayer reasonably concluded that, given the available data and the applicable pricing methods, the method (and its application of that method) provided the most reliable measure of an arm's length result under the principles of the best method rule in §1.482–1(c), and provides that documentation to the Internal Revenue Service within 30 days of a request for it in connection with an examination of the taxable year to which the documentation relates. With the exception of the documentation described in paragraphs (d)(2)(iii)(B) (*9*) and (*10*) of this section, that documentation must be in existence when the return is filed. The district director may, in his discretion, excuse a minor or inadvertent failure to provide required documents, but only if the taxpayer has made a good faith effort to comply, and the taxpayer promptly remedies the failure when it becomes known. The required documentation is divided into two categories, principal documents and background documents as described in paragraphs (d)(2)(iii) (B) and (C) of this section.

(B) *Principal documents*. The principal documents should accurately and completely describe the basic transfer pricing analysis conducted by the taxpayer. The documentation must include the following—

(*1*) An overview of the taxpayer's business, including an analysis of the economic and legal factors that affect the pricing of its property or services;

(*2*) A description of the taxpayer's organizational structure (including an organization chart) covering all related parties engaged in transactions potentially relevant under section 482, including foreign affiliates whose transactions directly or indirectly affect the pricing of property or services in the United States;

(*3*) Any documentation explicitly required by the regulations under section 482;

(*4*) [Reserved]. For further guidance, see § 1.6662–6T(d)(2)(iii)(B)(*4*).

(*5*) A description of the alternative methods that were considered and an explanation of why they were not selected;

(*6*) [Reserved]. For further guidance, see § 1.6662–6T(d)(2)(iii)(B)(*6*).

(*7*) A description of the comparables that were used, how comparability was evaluated, and what (if any) adjustments were made;

(*8*) An explanation of the economic analysis and projections relied upon in developing the method. For example, if a profit split method is applied, the taxpayer must provide an explanation of the analysis undertaken to determine how the profits would be split;

(*9*) A description or summary of any relevant data that the taxpayer obtains after the end of the tax year and before filing a tax return, which would help determine if a taxpayer selected and applied a specified method in a reasonable manner; and

(*10*) A general index of the principal and background documents and a description of the recordkeeping system used for cataloging and accessing those documents.

(C) *Background documents*. The assumptions, conclusions, and positions contained in principal documents ordinarily will be based on, and supported by, additional background documents. Documents that support the principal documentation may include the documents listed in § 1.6038A–3(c) that are not otherwise described in paragraph (d)(2)(iii)(B) of this section. Every document listed in those regulations may not be relevant to pricing determinations under the taxpayer's specific facts and circumstances and, therefore, each of those documents need not be maintained in all circumstances. Moreover, other documents not listed in those regulations may be necessary to establish that the taxpayer's method was selected and applied in the way that provided the most reliable measure of an arm's length result under the principles of the best method rule in § 1.482–1(c). Background documents need not be provided to the Internal Revenue Service in response to a request for principal documents. If the Internal Revenue Service subsequently requests background documents, a taxpayer must provide that documentation to the Internal Revenue Service within 30 days of the request. However, the district director may, in his discretion, extend the period for producing the background documentation.

(D) Satisfaction of the documentation requirements described in § 1.482–7T(k)(2) for the purpose of complying with the rules for CSAs under § 1.482–7T also satisfies all of the documentation requirements listed in paragraph (d)(2)(iii)(B) of this section, except the requirements listed in paragraphs (d)(2)(iii)(B)(*2*) and (*10*) of this section, with respect to CSTs and PCTs described in § 1.482–7T(b)(1)(i) and (ii), provided that the documentation also satisfies the requirements of paragraph (d)(2)(iii)(A) of this section.

(3) *Application of an unspecified method*—(i) *In general*. An adjustment is excluded from the calculation of a net section 482 adjustment if the taxpayer establishes that both the unspecified method and documentation requirements of this paragraph (d)(3) are met with respect to that amount.

(ii) *Unspecified method requirement*—(A) *In general*. If a method other than a specified method was applied, the unspecified method requirement is met if the requirements of paragraph (d)(3)(ii)(B) or (C) of this section, as appropriate, are met.

(B) *Specified method potentially applicable*. If the transaction is of a type for which methods are specified in the regulations under section 482, then a taxpayer will be considered to have met the unspecified method requirement if the taxpayer reasonably concludes, given the available data, that none of the specified methods was likely to provide a reliable measure of an arm's length result, and that it selected and applied an unspecified method in a way that would likely provide a reliable measure of an arm's length result. A taxpayer can reasonably conclude that no specified method was likely to provide a reliable measure of an arm's length result only if it has made a reasonable effort to evaluate the potential applicability of the specified methods

in a manner consistent with the principles of the best method rule. However, it is not necessary for a taxpayer to conclude that the selected method provides a more reliable measure of an arm's length result than any other unspecified method. Whether the taxpayer's conclusion was reasonable must be determined from all the facts and circumstances. The factors relevant to this conclusion include those set forth in paragraph (d)(2)(ii) of this section.

(C) *No specified method applicable.* If the transaction is of a type for which no methods are specified in the regulations under section 482, then a taxpayer will be considered to have met the unspecified method requirement if it selected and applied an unspecified method in a reasonable manner. For purposes of this paragraph (d)(3)(ii)(C), a taxpayer's selection and application is reasonable if the taxpayer reasonably concludes that the method (and its application of that method) provided the most reliable measure of an arm's length result under the principles of the best method rule in § 1.482–1(c). However, it is not necessary for a taxpayer to conclude that the selected method provides a more reliable measure of an arm's length result than any other unspecified method. Whether the taxpayer's conclusion was reasonable must be determined from all the facts and circumstances. The factors relevant to this conclusion include those set forth in paragraph (d)(2)(ii) of this section.

(iii) *Documentation requirement*—(A) *In general.* The documentation requirement of this paragraph (d)(3) is met if the taxpayer maintains sufficient documentation to establish that the unspecified method requirement of paragraph (d)(3)(ii) of this section is met and provides that documentation to the Internal Revenue Service within 30 days of a request for it. That documentation must be in existence when the return is filed. The district director may, in his discretion, excuse a minor or inadvertent failure to provide required documents, but only if the taxpayer has made a good faith effort to comply, and the taxpayer promptly remedies the failure when it becomes known.

(B) *Principal and background documents.* See paragraphs (d)(2)(iii) (B) and (C) of this section for rules regarding these two categories of required documentation.

(4) *Certain foreign to foreign transactions.* For purposes of calculating a net section 482 adjustment, any increase in taxable income resulting from an allocation under section 482 that is attributable to any controlled transaction solely between foreign corporations will be excluded unless the treatment of that transaction affects the determination of either corporation's income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States.

(5) *Special rule.* If the regular tax (as defined in section 55(c)) imposed on the taxpayer is determined by reference to an amount other than taxable income, that amount shall be treated as the taxable income of the taxpayer for purposes of section 6662(e)(3). Accordingly, for taxpayers whose regular tax is determined by reference to an amount other than taxable income, the increase in that amount resulting from section 482 allocations is the taxpayer's net section 482 adjustment.

(6) *Examples.* The principles of this paragraph (d) are illustrated by the following examples:

Example 1. (i) The Internal Revenue Service makes the following section 482 adjustments for the taxable year:

(1) Attributable to an increase in gross income because of an increase in royalty payments	$9,000,000
(2) Not a 200 percent or 400 percent adjustment	2,000,000
(3) Attributable to a decrease in the cost of goods sold because of a decrease in the cost plus mark-up of a related seller	9,000,000
Total section 482 adjustments	20,000,000

(ii) The taxpayer has gross receipts of 75 million dollars after all section 482 adjustments. The taxpayer establishes that for adjustments number one and three, it applied a transfer pricing method specified in section 482, the selection and application of the method was reasonable, it documented the pricing analysis, and turned that documentation over to the IRS within 30 days of a request. Accordingly, eighteen million dollars is excluded from the calculation of the net section 482 adjustment. Because the net section 482 adjustment is two million dollars,

there is no substantial valuation misstatement.

Example 2. (i) The Internal Revenue Service makes the following section 482 adjustments for the taxable year:

(1) Attributable to an increase in gross income because of an increase in royalty payments	$9,000,000
(2) Attributable to an adjustment that is 200 percent or more of the correct section 482 price	2,000,000
(3) Attributable to a decrease in the cost of goods sold because of a decrease in the cost plus mark-up of a related seller	9,000,000
Total section 482 adjustments	20,000,000

(ii) The taxpayer has gross receipts of 75 million dollars after all section 482 adjustments. The taxpayer establishes that for adjustments number one and three, it applied a transfer pricing method specified in section 482, the selection and application of the method was reasonable, it documented that analysis, and turned the documentation over to the IRS within 30 days. Accordingly, eighteen million dollars is excluded from the calculation of the section 482 transfer pricing adjustments for purposes of applying the five million dollar or 10% of gross receipts test. Because the net section 482 adjustment is only two million dollars, the taxpayer is not subject to the net adjustment penalty. However, the taxpayer may be subject to the transactional penalty on the underpayment of tax attributable to the two million dollar adjustment.

Example 3. CFC1 and CFC2 are controlled foreign corporations within the meaning of section 957. Applying section 482, the IRS disallows a deduction for 25 million dollars of the interest that CFC1 paid to CFC2, which results in CFC1's U.S. shareholder having a subpart F inclusion in excess of five million dollars. No other adjustments under section 482 are made with respect to the controlled taxpayers. However, the increase has no effect upon the determination of CFC1's or CFC2's income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States. Accordingly, there is no substantial valuation misstatement.

(e) *Special rules in the case of carrybacks and carryovers.* If there is a substantial or gross valuation misstatement for a taxable year that gives rise to a loss, deduction or credit that is carried to another taxable year, the transactional penalty and the net adjustment penalty will be imposed on any resulting underpayment of tax in that other taxable year. In determining whether there is a substantial or gross valuation misstatement for a taxable year, no amount carried from another taxable year shall be included. The following example illustrates the principle of this paragraph (e):

Example. The Internal Revenue Service makes a section 482 adjustment of six million dollars in taxable year 1, no portion of which is excluded under paragraph (d) of this section. The taxpayer's income tax return for year 1 reported a loss of three million dollars, which was carried to taxpayer's year 2 income tax return and used to reduce income taxes otherwise due with respect to year 2. A determination is made that the six million dollar allocation constitutes a substantial valuation misstatement, and a penalty is imposed on the underpayment of tax in year 1 attributable to the substantial valuation misstatement and on the underpayment of tax in year 2 attributable to the disallowance of the net operating loss in year 2. For purposes of determining whether there is a substantial or gross valuation misstatement for year 2, the three million dollar reduction of the net operating loss will not be added to any section 482 adjustments made with respect to year 2.

(f) *Rules for coordinating between the transactional penalty and the net adjustment penalty*—(1) *Coordination of a net section 482 adjustment subject to the net adjustment penalty and a gross valuation misstatement subject to the transactional penalty.* In determining whether a net section 482 adjustment exceeds five million dollars or 10 percent of gross receipts, an adjustment attributable to a substantial or gross valuation misstatement that is subject to the transactional penalty will be taken into account. If the net section 482 adjustment exceeds five million dollars or ten percent of gross receipts, any portion of such amount that is attributable to a gross valuation misstatement will be subject to the transactional penalty at the forty percent rate, but will not also be subject to net adjustment penalty at a twenty percent rate. The remaining amount is subject to the net adjustment penalty at the twenty percent rate, even if such amount is less than the lesser of five million dollars or ten percent of gross receipts.

(2) *Coordination of net section 482 adjustment subject to the net adjustment penalty and substantial valuation misstatements subject to the transactional penalty.* If the net section 482 adjustment exceeds twenty million dollars or 20 percent of gross receipts, the entire

amount of the adjustment is subject to the net adjustment penalty at a forty percent rate. No portion of the adjustment is subject to the transactional penalty at a twenty percent rate.

(3) *Examples*. The following examples illustrate the principles of this paragraph (f):

Example 1. (i) Applying section 482, the Internal Revenue Service makes the following adjustments for the taxable year:

(1) Attributable to an adjustment that is 400 percent or more of the correct section 482 arm's length result	$2,000,000
(2) Not a 200 or 400 percent adjustment	2,500,000
Total	4,500,000

(ii) The taxpayer has gross receipts of 75 million dollars after all section 482 adjustments. None of the adjustments is excluded under paragraph (d) (Amounts excluded from net section 482 adjustments) of this section, in determining the five million dollar or 10% of gross receipts test under section 6662(e)(1)(B)(ii). The net section 482 adjustment (4.5 million dollars) is less than the lesser of five million dollars or ten percent of gross receipts ($75 million × 10% = $7.5 million). Thus, there is no substantial valuation misstatement. However, the two million dollar adjustment is attributable to a gross valuation misstatement. Accordingly, the taxpayer may be subject to a penalty, under section 6662(h), equal to 40 percent of the underpayment of tax attributable to the gross valuation misstatement of two million dollars. The 2.5 million dollar adjustment is not subject to a penalty under section 6662(b)(3).

Example 2. The facts are the same as in *Example 1*, except the taxpayer has gross receipts of 40 million dollars. The net section 482 adjustment ($4.5 million) is greater than the lesser of five million dollars or ten percent of gross receipts ($40 million × 10% = $4 million). Thus, the five million dollar or 10% of gross receipts test has been met. The two million dollar adjustment is attributable to a gross valuation misstatement. Accordingly, the taxpayer is subject to a penalty, under section 6662(h), equal to 40 percent of the underpayment of tax attributable to the gross valuation misstatement of two million dollars. The 2.5 million dollar adjustment is subject to a penalty under sections 6662(a) and 6662(b)(3), equal to 20 percent of the underpayment of tax attributable to the substantial valuation misstatement.

Example 3. (i) Applying section 482, the Internal Revenue Service makes the following transfer pricing adjustments for the taxable year:

(1) Attributable to an adjustment that is 400 percent or more of the correct section 482 arm's length result	$6,000,000
(2) Not a 200 or 400 percent adjustment	15,000,000
Total	21,000,000

(ii) None of the adjustments are excluded under paragraph (d) (Amounts excluded from net section 482 adjustments) in determining the twenty million dollar or 20% of gross receipts test under section 6662(h). The net section 482 adjustment (21 million dollars) is greater than twenty million dollars and thus constitutes a gross valuation misstatement. Accordingly, the total adjustment is subject to the net adjustment penalty equal to 40 percent of the underpayment of tax attributable to the 21 million dollar gross valuation misstatement. The six million dollar adjustment will not be separately included for purposes of any additional penalty under section 6662.

(g) [Reserved]. For further guidance, see § 1.6662–6T(g).

[T.D. 8656, 61 FR 4880, Feb. 9, 1996; T.D. 8656, 61 FR 14248, Apr. 1, 1996; 62 FR 46877, Sept. 5, 1997, as amended by T.D. 9278, 71 FR 44518, Aug. 4, 2006; T.D. 9441, 74 FR 390, Jan. 5, 2009]

§ 1.6662–6T Transactions between parties described in section 482 and net section 482 transfer price adjustments (temporary).

(a) through (d)(2)(ii)(A) [Reserved]. For further guidance, see § 1.6662–6(a) through (d)(2)(ii)(A).

(d)(2)(ii)(B) *Services cost method*. A taxpayer's selection of the services cost method for certain services, described in § 1.482–9T(b), and its application of that method to a controlled services transaction will be considered reasonable for purposes of the specified method requirement only if the taxpayer reasonably allocated and apportioned costs in accordance with § 1.482–9T(k), reasonably concluded that the controlled services transaction meets the conditions of § 1.482–9T(b)(3), and reasonably concluded that the controlled services transaction is not described in § 1.482–9T(b)(2). Whether the taxpayer's conclusion was reasonable must be determined from all the facts and circumstances. The factors relevant to this determination include those described in paragraph (d)(2)(ii)(A) of this section, to the extent applicable.

(d)(2)(iii)(A) through (d)(2)(iii)(B)(*3*) [Reserved]. For further guidance, see § 1.6662–6(d)(2)(iii)(A) through (d)(2)(iii)(B)(*3*).

(d)(2)(iii)(B)(*4*) A description of the method selected and an explanation of

why that method was selected, including an evaluation of whether the regulatory conditions and requirements for application of that method, if any, were met;

(d)(2)(iii)(B)(*5*) [Reserved]. For further guidance, see §1.6662–6(d)(2)(iii)(B)(*5*).

(d)(2)(iii)(B)(*6*) A description of the controlled transactions (including the terms of sale) and any internal data used to analyze those transactions. For example, if a profit split method is applied, the documentation must include a schedule providing the total income, costs, and assets (with adjustments for different accounting practices and currencies) for each controlled taxpayer participating in the relevant business activity and detailing the allocations of such items to that activity. Similarly, if a cost-based method (such as the cost plus method, the services cost method for certain services, or a comparable profits method with a cost-based profit level indicator) is applied, the documentation must include a description of the manner in which relevant costs are determined and are allocated and apportioned to the relevant controlled transaction.

(d)(2)(iii)(B)(*7*) through (f) [Reserved]. For further guidance, see §1.6662–6(d)(2)(iii)(B)(*7*) through (f).

(g) *Effective date*—(1) This section is generally effective February 9, 1996. However, taxpayers may elect to apply this section to all open taxable years beginning after December 31, 1993.

(2)(i) The provisions of paragraphs (d)(2)(ii)(B), (d)(2)(iii)(B)(*4*) and (d)(2)(iii)(B)(*6*) of this section are applicable for taxable years beginning after December 31, 2006.

(ii) *Election to apply regulation to earlier taxable years*. A person may elect to apply the provisions of this section to earlier taxable years in accordance with the rules set forth in §1.482–9T(n)(2) of this chapter.

(iii) *Expiration date*. The applicability of §1.6662–6T expires on or before July 31, 2009.

[T.D. 9278, 71 FR 44518, Aug. 4, 2006; 71 FR 76904, Dec. 22, 2006]

§1.6662–7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

(a) *Scope*. The Omnibus Budget Reconciliation Act of 1993 made certain changes to the accuracy-related penalty in section 6662. This section provides rules reflecting those changes.

(b) *No disclosure exception for negligence penalty*. The penalty for negligence in section 6662(b)(1) may not be avoided by disclosure of a return position.

(c) *Disclosure standard for other penalties is reasonable basis*. The penalties for disregarding rules or regulations in section 6662(b)(1) and for a substantial understatement of income tax in section 6662(b)(2) may be avoided by adequate disclosure of a return position only if the position has at least a reasonable basis. See §1.6662–3(c) and §§1.6662–4(e) and (f) for other applicable disclosure rules.

(d) *Reasonable basis*. For purposes of §§1.6662–3(c) and 1.6662–4(e) and (f) (relating to methods of making adequate disclosure), the provisions of §1.6662–3(b)(3) apply in determining whether a return position has a reasonable basis.

[T.D. 8617, 60 FR 45665, Sept. 1, 1995, as amended by T.D. 8790, 63 FR 66435, Dec. 2, 1998]

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(a)–(c) [Reserved]
(d) Transactions between persons described in section 482 and net section 482 transfer price adjustments.

[T.D. 8381, 56 FR 67505, Dec. 31, 1991, as amended by T.D. 8519, 59 FR 4799, Feb. 2, 1994; T.D. 8617, 60 FR 45666, Sept. 1, 1995; T.D. 8656, 61 FR 4885, Feb. 9, 1996; T.D. 8790, 63 FR 66435, Dec. 2, 1998; T.D. 9109, 68 FR 75128, Dec. 30, 2003; T.D. 9309, 72 FR 903, Jan. 9, 2007]

§ 1.6664–1 Accuracy-related and fraud penalties; definitions, effective date and special rules.

(a) *In general.* Section 6664(a) defines the term ''underpayment'' for purposes of the accuracy-related penalty under section 6662 and the fraud penalty under section 6663. The definition of ''underpayment'' of income taxes imposed under subtitle A is set forth in § 1.6664–2. Ordering rules for computing the total amount of accuracy-related and fraud penalties imposed with respect to a return are set forth in § 1.6664–3. Section 6664(c) provides a reasonable cause and good faith exception to the accuracy-related penalty. Rules relating to the reasonable cause and good faith exception are set forth in § 1.6664–4.

(b) *Effective date*—(1) *In general.* Sections 1.6664–1 through 1.6664–3 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1989.

(2) *Reasonable cause and good faith exception to section 6662 penalties.* (i) *For returns due after September 1, 1995.* Section 1.6664–4 applies to returns the due date of which (determined without regard to extensions of time for filing) is after September 1, 1995. Except as provided in the last sentence of this paragraph (b)(2), § 1.6664–4 (as contained in 26 CFR part 1 revised April 1, 1995) applies to returns the due date of which (determined without regard to extensions of time for filing) is on or before September 1, 1995 and after December 31, 1989. For transactions occurring after December 8, 1994, § 1.6664–4 (as contained in 26 CFR part 1 revised April 1, 1995) is applied taking into account the changes made to section 6662(d)(2)(C) (relating to the substantial understatement penalty for tax shelter items of corporations) by section 744 of

Title VII of the Uruguay Round Agreements Act, Pub. L. 103–465 (108 Stat. 4809).

(ii) *For returns filed after December 31, 2002*. Sections 1.6664–4(c) (relating to relying on opinion or advice) and (d) (relating to underpayments attributable to reportable transactions) apply to returns filed after December 31, 2002, with respect to transactions entered into on or after January 1, 2003. Except as provided in paragraph (b)(2)(i) of this section, § 1.6664–4 (as contained in 26 CFR part 1 revised April 1, 2003) applies to returns filed with respect to transactions entered into before January 1, 2003.

(3) *Qualified amended returns*. Sections 1.6664–2(c)(1), (c)(2), (c)(3)(i)(A), (c)(3)(i)(B), (c)(3)(i)(C), (c)(3)(i)(D)(*2*), (c)(3)(i)(E), and (c)(4) are applicable for amended returns and requests for administrative adjustment filed on or after March 2, 2005. Sections 1.6664–2(c)(3)(i)(D)(*1*) and (c)(3)(ii)(B) and (C) are applicable for amended returns and requests for administrative adjustment filed on or after April 30, 2004. The applicability date for § 1.6664–2(c)(3)(ii)(A) varies depending upon which event occurs under § 1.6664–2(c)(3)(i). For purposes of § 1.6664–2(c)(3)(ii)(A), the date described in § 1.6664–2(c)(3)(i)(D)(*1*) is applicable for amended returns and requests for administrative adjustment filed on or after April 30, 2004. For purposes of § 1.6664–2(c)(3)(ii)(A), the dates described in § 1.6664–2(c)(3)(i)(A), (B), (C), (D)(*2*), and (E) are applicable for amended returns and requests for administrative adjustment filed on or after March 2, 2005. Section 1.6664–2(c)(1) through (c)(3), as contained in 26 CFR part 1 revised as of April 1, 2004 and as modified by Notice 2004–38, 2004–1 C.B. 949, applies with respect to returns and requests for administrative adjustment filed on or after April 30, 2004 and before March 2, 2005. Section 1.6664–2(c)(1) through (3), as contained in 26 CFR part 1 revised as of April 30, 2004, applies with respect to returns and requests for administrative adjustment filed before April 30, 2004.

[T.D. 8381, 56 FR 67506, Dec. 31, 1991, as amended by T.D. 8617, 60 FR 45666, Sept. 1, 1995; T.D. 9109, 68 FR 75128, Dec. 30, 2003; T.D. 9309, 72 FR 903, Jan. 9, 2007]

§ 1.6664–2 Underpayment.

(a) *Underpayment defined*. In the case of income taxes imposed under subtitle A, an underpayment for purposes of section 6662, relating to the accuracy-related penalty, and section 6663, relating to the fraud penalty, means the amount by which any income tax imposed under this subtitle (as defined in paragraph (b) of the section) exceeds the excess of—

(1) The sum of—

(i) The amount shown as the tax by the taxpayer on his return (as defined in paragraph (c) of this section), plus

(ii) Amounts not so shown previously assessed (or collected without assessment) (as defined in paragraph (d) of this section), over

(2) The amount of rebates made (as defined in paragraph (e) of this section).

The definition of underpayment also may be expressed as—

$$\text{Underpayment}=W-(X+Y-Z),$$

where W=the amount of income tax imposed; X=the amount shown as the tax by the taxpayer on his return; Y=amounts not so shown previously assessed (or collected without assessment); and Z=the amount of rebates made.

(b) *Amount of income tax imposed*. For purposes of paragraph (a) of this section, the ''amount of income tax imposed'' is the amount of tax imposed on the taxpayer under subtitle A for the taxable year, determined without regard to—

(1) The credits for tax withheld under sections 31 (relating to tax withheld on wages) and 33 (relating to tax withheld at source on nonresident aliens and foreign corporations);

(2) Payments of tax or estimated tax by the taxpayer;

(3) Any credit resulting from the collection of amounts assessed under section 6851 as the result of a termination assessment, or section 6861 as the result of a jeopardy assessment; and

(4) Any tax that the taxpayer is not required to assess on the return (such as the tax imposed by section 531 on the accumulated taxable income of a corporation).

(c) *Amount shown as the tax by the taxpayer on his return*—(1) *Defined*. For

purposes of paragraph (a) of this section, the *amount shown as the tax by the taxpayer on his return* is the tax liability shown by the taxpayer on his return, determined without regard to the items listed in paragraphs (b)(1), (2), and (3) of this section, except that it is reduced by the excess of—

(i) The amounts shown by the taxpayer on his return as credits for tax withheld under section 31 (relating to tax withheld on wages) and section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations), as payments of estimated tax, or as any other payments made by the taxpayer with respect to a taxable year before filing the return for such taxable year, over

(ii) The amounts actually withheld, actually paid as estimated tax, or actually paid with respect to a taxable year before the return is filed for such taxable year.

(2) *Effect of qualified amended return.* The *amount shown as the tax by the taxpayer on his return* includes an amount shown as additional tax on a qualified amended return (as defined in paragraph (c)(3) of this section), except that such amount is not included if it relates to a fraudulent position on the original return.

(3) *Qualified amended return defined*—(i) *General rule.* A *qualified amended return* is an amended return, or a timely request for an administrative adjustment under section 6227, filed after the due date of the return for the taxable year (determined with regard to extensions of time to file) and before the earliest of—

(A) The date the taxpayer is first contacted by the Internal Revenue Service (IRS) concerning any examination (including a criminal investigation) with respect to the return;

(B) The date any person is first contacted by the IRS concerning an examination of that person under section 6700 (relating to the penalty for promoting abusive tax shelters) for an activity with respect to which the taxpayer claimed any tax benefit on the return directly or indirectly through the entity, plan or arrangement described in section 6700(a)(1)(A);

(C) In the case of a pass-through item (as defined in §1.6662–4(f)(5)), the date the pass-through entity (as defined in §1.6662–4(f)(5)) is first contacted by the IRS in connection with an examination of the return to which the pass-through item relates;

(D)(*1*) The date on which the IRS serves a summons described in section 7609(f) relating to the tax liability of a person, group, or class that includes the taxpayer (or pass-through entity of which the taxpayer is a partner, shareholder, beneficiary, or holder of a residual interest in a REMIC) with respect to an activity for which the taxpayer claimed any tax benefit on the return directly or indirectly.

(*2*) The rule in paragraph (c)(3)(i)(D)(*1*) of this section applies to any return on which the taxpayer claimed a direct or indirect tax benefit from the type of activity that is the subject of the summons, regardless of whether the summons seeks the production of information for the taxable period covered by such return; and

(E) The date on which the Commissioner announces by revenue ruling, revenue procedure, notice, or announcement, to be published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter), a settlement initiative to compromise or waive penalties, in whole or in part, with respect to a listed transaction. This rule applies only to a taxpayer who participated in the listed transaction and for the taxable year(s) in which the taxpayer claimed any direct or indirect tax benefits from the listed transaction. The Commissioner may waive the requirements of this paragraph or identify a later date by which a taxpayer who participated in the listed transaction must file a qualified amended return in the published guidance announcing the listed transaction settlement initiative.

(ii) *Undisclosed listed transactions.* An *undisclosed listed transaction* is a transaction that is the same as, or substantially similar to, a listed transaction within the meaning of §1.6011–4(b)(2) (regardless of whether §1.6011–4 requires the taxpayer to disclose the transaction) and was neither previously disclosed by the taxpayer within the meaning of §1.6011–4 or §1.6011–4T, nor disclosed under Announcement 2002–2 (2002–1 C.B. 304), (see

§ 601.601(d)(2)(ii) of this chapter) by the deadline therein. In the case of an *undisclosed listed transaction* for which a taxpayer claims any direct or indirect tax benefits on its return (regardless of whether the transaction was a listed transaction at the time the return was filed), an amended return or request for administrative adjustment under section 6227 will not be a *qualified amended return* if filed on or after the earliest of—

(A) The dates described in paragraph (c)(3)(i) of this section;

(B) The date on which the IRS first contacts any person regarding an examination of that person's liability under section 6707(a) with respect to the undisclosed listed transaction of the taxpayer; or

(C) The date on which the IRS requests, from any person who made a tax statement to or for the benefit of the taxpayer or from any person who gave the taxpayer material aid, assistance, or advice as described in section 6111(b)(1)(A)(i) with respect to the taxpayer, the information required to be included on a list under section 6112 relating to a transaction that was the same as, or substantially similar to, the undisclosed listed transaction, regardless of whether the taxpayer's information is required to be included on that list.

(4) *Special rules.* (i) A qualified amended return includes an amended return that is filed to disclose information pursuant to § 1.6662–3(c) or § 1.6662–4(e) and (f) even though it does not report any additional tax liability. See § 1.6662–3(c), § 1.6662–4(f), and § 1.6664–4(c) for rules relating to adequate disclosure.

(ii) The Commissioner may by revenue procedure prescribe the manner in which the rules of paragraph (c) of this section regarding qualified amended returns apply to particular classes of taxpayers.

(5) *Examples.* The following examples illustrate the provisions of paragraphs (c)(3) and (c)(4) of this section:

Example 1. T, an individual taxpayer, claimed tax benefits on its 2002 Federal income tax return from a transaction that is substantially similar to the transaction identified as a listed transaction in Notice 2002–65, 2002–2 C.B. 690 (Partnership Entity Straddle Tax Shelter). T did not disclose his participation in this transaction on a Form 8886, ''Reportable Transaction Disclosure Statement,'' as required by § 1.6011–4. On June 30, 2004, the IRS requested from P, T's material advisor, an investor list required to be maintained under section 6112. The section 6112 request, however, related to the type of transaction described in Notice 2003–81, 2003–2 C.B. 1223 (Tax Avoidance Using Offsetting Foreign Currency Option Contracts). T did not participate in (within the meaning of § 1.6011–4(c)) a transaction described in Notice 2003–81. T may file a qualified amended return relating to the transaction described in Notice 2002–65 because T did not claim a tax benefit with respect to the listed transaction described in Notice 2003–81, which is the subject of the section 6112 request.

Example 2. The facts are the same as in *Example 1,* except that T's 2002 Federal income tax return reflected T's participation in the transaction described in Notice 2003–81. As of June 30, 2004, T may not file a qualified amended return for the 2002 tax year.

Example 3. (i) Corporation X claimed tax benefits from a transaction on its 2002 Federal income tax return. In October 2004, the IRS and Treasury Department identified the transaction as a listed transaction. In December 2004, the IRS contacted P concerning an examination of P's liability under section 6707(a) (as in effect prior to the amendment to section 6707 by section 816 of the American Jobs Creation Act of 2004 (the Jobs Act), Public Law 108–357 (118 Stat. 1418)). P is the organizer of a section 6111 tax shelter (as in effect prior to the amendment to section 6111 by section 815 of the Jobs Act) who provided representations to X regarding tax benefits from the transaction, and the IRS has contacted P about the failure to register that transaction. Three days later, X filed an amended return.

(ii) X's amended return is not a qualified amended return, because X did not disclose the transaction before the IRS contacted P. X's amended return would have been a qualified amended return if it was submitted prior to the date on which the IRS contacted P.

Example 4. The facts are the same as in *Example 3* except that, instead of contacting P concerning an examination under section 6707(a), in December 2004, the IRS served P with a John Doe summons described in section 7609(f) relating to the tax liability of participants in the type of transaction for which X claimed tax benefits on its return. X cannot file a qualified amended return after the John Doe summons has been served regardless of when, or whether, the transaction becomes a listed transaction.

Example 5. On November 30, 2003, the IRS served a John Doe summons described in section 7609(f) on Corporation Y, a credit card company. The summons requested the identity of, and information concerning, United

States taxpayers who, during the taxable years 2001 and 2002, had signature authority over Corporation Y's credit cards issued by, through, or on behalf of certain offshore financial institutions. Corporation Y complied with the summons, and identified, among others, Taxpayer B. On May 31, 2004, before the IRS first contacted Taxpayer B concerning an examination of Taxpayer B's Federal income tax return for the taxable year 2002, Taxpayer B filed an amended return for that taxable year, that showed an increase in Taxpayer B's Federal income tax liability. Under paragraph (c)(3)(i)(D) of this section, the amended return is not a qualified amended return because it was not filed before the John Doe summons was served on Corporation Y.

Example 6. The facts are the same as in *Example 5*. Taxpayer B continued to maintain the offshore credit card account through 2003 and filed an original tax return for the 2003 taxable year claiming tax benefits attributable to the existence of the account. On March 21, 2005, Taxpayer B filed an amended return for the taxable year 2003, that showed an increase in Taxpayer B's Federal income tax liability. Under paragraph (c)(3)(i)(D) of this section, the amended return is not a qualified amended return because it was not filed before the John Doe summons for 2001 and 2002 was served on Corporation Y, and the return reflects benefits from the type of activity that is the subject of the John Doe summons.

Example 7. (i) On November 30, 2003, the IRS served a John Doe summons described in section 7609(f) on Corporation Y, a credit card company. The summons requested the identity of, and information concerning, United States taxpayers who, during the taxable years 2001 and 2002, had signature authority over Corporation Y's credit cards issued by, through, or on behalf of certain offshore financial institutions. Taxpayer C did not have signature authority over any of Corporation Y's credit cards during either 2001 or 2002 and, therefore, was not a person described in the John Doe summons.

(ii) In 2003, Taxpayer C first acquired signature authority over a Corporation Y credit card issued by an offshore financial institution. Because Taxpayer C did not have signature authority during 2001 or 2002 over a Corporation Y credit card issued by an offshore financial institution, and was therefore not covered by the John Doe summons served on November 30, 2003, Taxpayer C's ability to file a qualified amended return for the 2003 taxable year is not limited by paragraph (c)(3)(i)(D) of this section.

(d) *Amounts not so shown previously assessed (or collected without assessment)*. For purposes of paragraph (a) of this section, ''amounts not so shown previously assessed'' means only amounts assessed before the return is filed that were not shown on the return, such as termination assessments under section 6851 and jeopardy assessments under section 6861 made prior to the filing of the return for the taxable year. For purposes of paragraph (a) of this section, the amount ''collected without assessment'' is the amount by which the total of the credits allowable under section 31 (relating to tax withheld on wages) and section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations), estimated tax payments, and other payments in satisfaction of tax liability made before the return is filed, exceed the tax shown on the return (provided such excess has not been refunded or allowed as a credit to the taxpayer).

(e) *Rebates*. The term ''rebate'' means so much of an abatement credit, refund or other repayment, as was made on the ground that the tax imposed was less than the excess of—

(1) The sum of—

(i) The amount shown as the tax by the taxpayer on his return, plus

(ii) Amounts not so shown previously assessed (or collected without assessment), over

(2) Rebates previously made.

(f) *Underpayments for certain carryback years not reduced by amount of carrybacks*. The amount of an underpayment for a taxable year that is attributable to conduct proscribed by sections 6662 or 6663 is not reduced on account of a carryback of a loss, deduction or credit to that year. Such conduct includes negligence or disregard of rules or regulations; a substantial understatement of income tax; and a substantial (or gross) valuation misstatement under chapter 1, provided that the applicable dollar limitation is satisfied for the carryback year.

(g) *Examples*. The following examples illustrate this section:

Example 1. Taxpayer's 1990 return showed a tax liability of $18,000. Taxpayer had no amounts previously assessed (or collected without assessment) and received no rebates of tax. Taxpayer claimed a credit in the amount of $23,000 for income tax withheld under section 3402, which resulted in a refund received of $5,000. It is later determined that the taxpayer should have reported additional

income and that the correct tax for the taxable year is $25,500. There is an underpayment of $7,500, determined as follows:

Tax imposed under subtitle A		$25,500
Tax shown on return	$18,000	
Tax previously assessed (or collected without assessment)	None	
Amount of rebates made	None	
Balance		$18,000
Underpayment		$7,500

Example 2. The facts are the same as in *Example 1* except that the taxpayer failed to claim on the return a credit of $1,500 for income tax withheld. This $1,500 constitutes an amount collected without assessment as defined in paragraph (d) of this section. The underpayment is $6,000, determined as follows:

Tax imposed under subtitle A		$25,500
Tax shown on return	$18,000	
Tax previously assessed (or collected without assessment)	1,500	
Amount of rebates made	None	
Balance		$19,500
Underpayment		$6,000

Example 3. On Form 1040 filed for tax year 1990, taxpayer reported a tax liability of $10,000, estimated tax payments of $15,000, and received a refund of $5,000. Estimated tax payments actually made with respect to tax year 1990 were only $7,000. For purposes of determining the amount of underpayment subject to a penalty under section 6662 or section 6663, the tax shown on the return is $2,000 (reported tax liability of $10,000 reduced by the overstated estimated tax of $8,000 ($15,000–$7,000)). The underpayment is $8,000, determined as follows:

Tax imposed under subtitle A		$10,000
Tax shown on return	$2,000	
Tax previously assessed (or collected without assessment)	None	
Amount of rebates made	None	
Balance		$2,000
Underpayment		$8,000

[T.D. 8381, 56 FR 67506, Dec. 31, 1991; T.D. 8381, 57 FR 6165, Feb. 20, 1992, as amended by T.D. 9186, 70 FR 10039, Mar. 2, 2005; T.D. 9309, 72 FR 903, Jan. 9, 2007]

§ 1.6664–3 Ordering rules for determining the total amount of penalties imposed.

(a) *In general*. This section provides rules for determining the order in which adjustments to a return are taken into account for the purpose of computing the total amount of penalties imposed under sections 6662 and 6663, where—

(1) There is at least one adjustment with respect to which no penalty has been imposed and at least one with respect to which a penalty has been imposed, or

(2) There are at least two adjustments with respect to which penalties have been imposed and they have been imposed at different rates.

This section also provides rules for allocating unclaimed prepayment credits to adjustments to a return.

(b) *Order in which adjustments are taken into account*. In computing the portions of an underpayment subject to penalties imposed under sections 6662 and 6663, adjustments to a return are considered made in the following order:

(1) Those with respect to which no penalties have been imposed.

(2) Those with respect to which a penalty has been imposed at a 20 percent rate (*i.e.*, a penalty for negligence or disregard of rules or regulations, substantial understatement of income tax, or substantial valuation misstatement, under sections 6662(b)(1) through 6662(b)(3), respectively).

(3) Those with respect to which a penalty has been imposed at a 40 percent rate (*i.e.*, a penalty for a gross valuation misstatement under sections 6662 (b)(3) and (h)).

(4) Those with respect to which a penalty has been imposed at a 75 percent rate (*i.e.*, a penalty for fraud under section 6663).

(c) *Manner in which unclaimed prepayment credits are allocated*. Any income tax withholding or other payment made before a return was filed, that was neither claimed on the return nor previously allowed as a credit against the tax liability for the taxable year (an ''unclaimed prepayment credit''), is allocated as follows—

(1) If an unclaimed prepayment credit is allocable to a particular adjustment, such credit is applied in full in determining the amount of the underpayment resulting from such adjustment.

(2) If an unclaimed prepayment credit is not allocable to a particular adjustment, such credit is applied in accordance with the ordering rules set forth in paragraph (b) of this section.

(d) *Examples*. The following examples illustrate the rules of this § 1.6664–3.

These examples do not take into account the reasonable cause exception to the accuracy-related penalty under § 1.6664–4.

Example 1. A and B, husband and wife, filed a joint federal income tax return for calendar year 1989, reporting taxable income of $15,800 and a tax liability of $2,374. A and B had no amounts previously assessed (or collected without assessment) and no rebates had been made. Subsequently, the return was examined and the following adjustments and penalties were agreed to:

Adjustment #1 (No penalty imposed)		$1,000
Adjustment #2 (Substantial understatement penalty imposed)		40,000
Adjustment #3 (Civil fraud penalty imposed)		45,000
Total adjustments		$86,000
Taxable income shown on return		15,800
Taxable income as corrected		$101,800
Computation of underpayment:		
Tax imposed by subtitle A		$25,828
Tax shown on return	$2,374	
Previous assessments	None	
Rebates	None	
Balance		$2,374
Underpayment		$23,454

Computation of the portions of the underpayment on which penalties under section 6662(b)(2) and section 6663 are imposed:

Step 1 Determine the portion, if any, of the underpayment on which no accuracy-related or fraud penalty is imposed:

Taxable income shown on return	$15,800
Adjustment #1	1,000
"Adjusted" taxable income	$16,800
Tax on "adjusted" taxable income	$2,524
Tax shown on return	2,374
Portion of underpayment on which no penalty is imposed	$150

Step 2 Determine the portion, if any, of the underpayment on which a penalty of 20 percent is imposed:

"Adjusted" taxable income from step 1	$16,800
Adjustment #2	40,000
"Adjusted" taxable income	56,800
Tax on "adjusted" taxable income	$11,880
Tax on "adjusted" taxable income from step 1	$2,524
Portion of underpayment on which 20 percent penalty is imposed	$9,356

Step 3 Determine the portion, if any, of the underpayment on which a penalty of 75 percent is imposed:

Total underpayment		$23,454
Less the sum of the portions of such underpayment determined in:		
Step 1	$150	
Step 2	9,356	
Total		$9,506
Portion of underpayment on which 75 percent penalty is imposed		$13,948

Example 2. The facts are the same as in *Example 1* except that the taxpayers failed to claim on their return a credit of $1,500 for income tax withheld on unreported additional income that resulted in Adjustment #2. Because the unclaimed prepayment credit is allocable to Adjustment #2, the portion of the underpayment attributable to that adjustment is $7,856 ($9,356—$1,500). The portions of the underpayment attributable to Adjustments #1 and #3 remain the same.

Example 3. The facts are the same as in *Example 1* except that the taxpayers made a timely estimated tax payment of $1,500 for 1989 which they failed to claim (and which the Service had not previously allowed). This unclaimed prepayment credit is not allocable to any particular adjustment. Therefore, the credit is allocated first to the portion of the underpayment on which no penalty is imposed ($150). The remaining amount ($1,350) is allocated next to the 20 percent penalty portion of the underpayment ($9,356). Thus, the portion of the underpayment that is not penalized is zero ($150—$150), the portion subject to a 20 percent penalty is $8,006 ($9,356—$1,350) and the portion subject to a 75 percent penalty is unchanged at $13,948.

[T.D. 8381, 56 FR 67507, Dec. 31, 1991; T.D. 8381, 57 FR 6165, Feb. 20, 1992]

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

(a) *In general.* No penalty may be imposed under section 6662 with respect to any portion of an underpayment upon a showing by the taxpayer that there was reasonable cause for, and the taxpayer acted in good faith with respect to, such portion. Rules for determining whether the reasonable cause and good faith exception applies are set forth in paragraphs (b) through (h) of this section.

(b) *Facts and circumstances taken into account*—(1) *In general.* The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances. (See paragraph (e) of this section for certain rules relating to a substantial understatement penalty attributable to tax shelter items of corporations.) Generally, the most

important factor is the extent of the taxpayer's effort to assess the taxpayer's proper tax liability. Circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of all of the facts and circumstances, including the experience, knowledge, and education of the taxpayer. An isolated computational or transcriptional error generally is not inconsistent with reasonable cause and good faith. Reliance on an information return or on the advice of a professional tax advisor or an appraiser does not necessarily demonstrate reasonable cause and good faith. Similarly, reasonable cause and good faith is not necessarily indicated by reliance on facts that, unknown to the taxpayer, are incorrect. Reliance on an information return, professional advice, or other facts, however, constitutes reasonable cause and good faith if, under all the circumstances, such reliance was reasonable and the taxpayer acted in good faith. (See paragraph (c) of this section for certain rules relating to reliance on the advice of others.) For example, reliance on erroneous information (such as an error relating to the cost or adjusted basis of property, the date property was placed in service, or the amount of opening or closing inventory) inadvertently included in data compiled by the various divisions of a multidivisional corporation or in financial books and records prepared by those divisions generally indicates reasonable cause and good faith, provided the corporation employed internal controls and procedures, reasonable under the circumstances, that were designed to identify such factual errors. Reasonable cause and good faith ordinarily is not indicated by the mere fact that there is an appraisal of the value of property. Other factors to consider include the methodology and assumptions underlying the appraisal, the appraised value, the relationship between appraised value and purchase price, the circumstances under which the appraisal was obtained, and the appraiser's relationship to the taxpayer or to the activity in which the property is used. (See paragraph (g) of this section for certain rules relating to appraisals for charitable deduction property.) A taxpayer's reliance on erroneous information reported on a Form W-2, Form 1099, or other information return indicates reasonable cause and good faith, provided the taxpayer did not know or have reason to know that the information was incorrect. Generally, a taxpayer knows, or has reason to know, that the information on an information return is incorrect if such information is inconsistent with other information reported or otherwise furnished to the taxpayer, or with the taxpayer's knowledge of the transaction. This knowledge includes, for example, the taxpayer's knowledge of the terms of his employment relationship or of the rate of return on a payor's obligation.

(2) *Examples*. The following examples illustrate this paragraph (b). They do not involve tax shelter items. (See paragraph (e) of this section for certain rules relating to the substantial understatement penalty attributable to the tax shelter items of corporations.)

Example 1. A, an individual calendar year taxpayer, engages B, a professional tax advisor, to give A advice concerning the deductibility of certain state and local taxes. A provides B with full details concerning the taxes at issue. B advises A that the taxes are fully deductible. A, in preparing his own tax return, claims a deduction for the taxes. Absent other facts, and assuming the facts and circumstances surrounding B's advice and A's reliance on such advice satisfy the requirements of paragraph (c) of this section, A is considered to have demonstrated good faith by seeking the advice of a professional tax advisor, and to have shown reasonable cause for any underpayment attributable to the deduction claimed for the taxes. However, if A had sought advice from someone that A knew, or should have known, lacked knowledge in the relevant aspects of Federal tax law, or if other facts demonstrate that A failed to act reasonably or in good faith, A would not be considered to have shown reasonable cause or to have acted in good faith.

Example 2. C, an individual, sought advice from D, a friend who was not a tax professional, as to how C might reduce his Federal tax obligations. D advised C that, for a nominal investment in Corporation X, D had received certain tax benefits which virtually eliminated D's Federal tax liability. D also named other investors who had received similar benefits. Without further inquiry, C invested in X and claimed the benefits that he had been assured by D were due him. In this case, C did not make any good faith attempt to ascertain the correctness of what D

had advised him concerning his tax matters, and is not considered to have reasonable cause for the underpayment attributable to the benefits claimed.

Example 3. E, an individual, worked for Company X doing odd jobs and filling in for other employees when necessary. E worked irregular hours and was paid by the hour. The amount of E's pay check differed from week to week. The Form W-2 furnished to E reflected wages for 1990 in the amount of $29,729. It did not, however, include compensation of $1,467 paid for some hours E worked. Relying on the Form W-2, E filed a return reporting wages of $29,729. E had no reason to know that the amount reported on the Form W-2 was incorrect. Under the circumstances, E is considered to have acted in good faith in relying on the Form W-2 and to have reasonable cause for the underpayment attributable to the unreported wages.

Example 4. H, an individual, did not enjoy preparing his tax returns and procrastinated in doing so until April 15th. On April 15th, H hurriedly gathered together his tax records and materials, prepared a return, and mailed it before midnight. The return contained numerous errors, some of which were in H's favor and some of which were not. The net result of all the adjustments, however, was an underpayment of tax by H. Under these circumstances, H is not considered to have reasonable cause for the underpayment or to have acted in good faith in attempting to file an accurate return.

(c) *Reliance on opinion or advice*—(1) *Facts and circumstances; minimum requirements.* All facts and circumstances must be taken into account in determining whether a taxpayer has reasonably relied in good faith on advice (including the opinion of a professional tax advisor) as to the treatment of the taxpayer (or any entity, plan, or arrangement) under Federal tax law. For example, the taxpayer's education, sophistication and business experience will be relevant in determining whether the taxpayer's reliance on tax advice was reasonable and made in good faith. In no event will a taxpayer be considered to have reasonably relied in good faith on advice (including an opinion) unless the requirements of this paragraph (c)(1) are satisfied. The fact that these requirements are satisfied, however, will not necessarily establish that the taxpayer reasonably relied on the advice (including the opinion of a tax advisor) in good faith. For example, reliance may not be reasonable or in good faith if the taxpayer knew, or reasonably should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

(i) *All facts and circumstances considered.* The advice must be based upon all pertinent facts and circumstances and the law as it relates to those facts and circumstances. For example, the advice must take into account the taxpayer's purposes (and the relative weight of such purposes) for entering into a transaction and for structuring a transaction in a particular manner. In addition, the requirements of this paragraph (c)(1) are not satisfied if the taxpayer fails to disclose a fact that it knows, or reasonably should know, to be relevant to the proper tax treatment of an item.

(ii) *No unreasonable assumptions.* The advice must not be based on unreasonable factual or legal assumptions (including assumptions as to future events) and must not unreasonably rely on the representations, statements, findings, or agreements of the taxpayer or any other person. For example, the advice must not be based upon a representation or assumption which the taxpayer knows, or has reason to know, is unlikely to be true, such as an inaccurate representation or assumption as to the taxpayer's purposes for entering into a transaction or for structuring a transaction in a particular manner.

(iii) *Reliance on the invalidity of a regulation.* A taxpayer may not rely on an opinion or advice that a regulation is invalid to establish that the taxpayer acted with reasonable cause and good faith unless the taxpayer adequately disclosed, in accordance with §1.6662–3(c)(2), the position that the regulation in question is invalid.

(2) *Advice defined.* Advice is any communication, including the opinion of a professional tax advisor, setting forth the analysis or conclusion of a person, other than the taxpayer, provided to (or for the benefit of) the taxpayer and on which the taxpayer relies, directly or indirectly, with respect to the imposition of the section 6662 accuracy-related penalty. Advice does not have to be in any particular form.

(3) *Cross-reference.* For rules applicable to advisors, see e.g., §§1.6694–1 through 1.6694–3 (regarding preparer

penalties), 31 CFR 10.22 (regarding diligence as to accuracy), 31 CFR 10.33 (regarding tax shelter opinions), and 31 CFR 10.34 (regarding standards for advising with respect to tax return positions and for preparing or signing returns).

(d) *Underpayments attributable to reportable transactions.* If any portion of an underpayment is attributable to a reportable transaction, as defined in §1.6011–4(b) (or §1.6011–4T(b), as applicable), then failure by the taxpayer to disclose the transaction in accordance with §1.6011–4 (or §1.6011–4T, as applicable) is a strong indication that the taxpayer did not act in good faith with respect to the portion of the underpayment attributable to the reportable transaction.

(e) *Pass-through items.* The determination of whether a taxpayer acted with reasonable cause and in good faith with respect to an underpayment that is related to an item reflected on the return of a pass-through entity is made on the basis of all pertinent facts and circumstances, including the taxpayer's own actions, as well as the actions of the pass-through entity.

(f) *Special rules for substantial understatement penalty attributable to tax shelter items of corporations*—(1) *In general; facts and circumstances.* The determination of whether a corporation acted with reasonable cause and in good faith in its treatment of a tax shelter item (as defined in §1.6662–4(g)(3)) is based on all pertinent facts and circumstances. Paragraphs (f)(2), (3), and (4) of this section set forth rules that apply, in the case of a penalty attributable to a substantial understatement of income tax (within the meaning of section 6662(d)), in determining whether a corporation acted with reasonable cause and in good faith with respect to a tax shelter item.

(2) *Reasonable cause based on legal justification*—(i) *Minimum requirements.* A corporation's legal justification (as defined in paragraph (f)(2)(ii) of this section) may be taken into account, as appropriate, in establishing that the corporation acted with reasonable cause and in good faith in its treatment of a tax shelter item only if the authority requirement of paragraph (f)(2)(i)(A) of this section and the belief requirement of paragraph (f)(2)(i)(B) of this section are satisfied (the minimum requirements). Thus, a failure to satisfy the minimum requirements will preclude a finding of reasonable cause and good faith based (in whole or in part) on the corporation's legal justification.

(A) *Authority requirement.* The authority requirement is satisfied only if there is substantial authority (within the meaning of §1.6662–4(d)) for the tax treatment of the item.

(B) *Belief requirement.* The belief requirement is satisfied only if, based on all facts and circumstances, the corporation reasonably believed, at the time the return was filed, that the tax treatment of the item was more likely than not the proper treatment. For purposes of the preceding sentence, a corporation is considered reasonably to believe that the tax treatment of an item is more likely than not the proper tax treatment if (without taking into account the possibility that a return will not be audited, that an issue will not be raised on audit, or that an issue will be settled)—

(*1*) The corporation analyzes the pertinent facts and authorities in the manner described in §1.6662–4(d)(3)(ii), and in reliance upon that analysis, reasonably concludes in good faith that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service; or

(*2*) The corporation reasonably relies in good faith on the opinion of a professional tax advisor, if the opinion is based on the tax advisor's analysis of the pertinent facts and authorities in the manner described in §1.6662–4(d)(3)(ii) and unambiguously states that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service. (For this purpose, the requirements of paragraph (c) of this section must be met with respect to the opinion of a professional tax advisor.)

(ii) *Legal justification defined.* For purposes of this paragraph (e), *legal justification* includes any justification relating to the treatment or characterization under the Federal tax law of the tax shelter item or of the entity,

plan, or arrangement that gave rise to the item. Thus, a taxpayer's belief (whether independently formed or based on the advice of others) as to the merits of the taxpayer's underlying position is a legal justification.

(3) *Minimum requirements not dispositive.* Satisfaction of the minimum requirements of paragraph (f)(2) of this section is an important factor to be considered in determining whether a corporate taxpayer acted with reasonable cause and in good faith, but is not necessarily dispositive. For example, depending on the circumstances, satisfaction of the minimum requirements may not be dispositive if the taxpayer's participation in the tax shelter lacked significant business purpose, if the taxpayer claimed tax benefits that are unreasonable in comparison to the taxpayer's investment in the tax shelter, or if the taxpayer agreed with the organizer or promoter of the tax shelter that the taxpayer would protect the confidentiality of the tax aspects of the structure of the tax shelter.

(4) *Other factors.* Facts and circumstances other than a corporation's legal justification may be taken into account, as appropriate, in determining whether the corporation acted with reasonable cause and in good faith with respect to a tax shelter item regardless of whether the minimum requirements of paragraph (f)(2) of this section are satisfied.

(g) *Tranactions between persons described in section 482 and net section 482 transfer price adjustments.* [Reserved]

(h) *Valuation misstatements of charitable deduction property*—(1) *In general.* There may be reasonable cause and good faith with respect to a portion of an underpayment that is attributable to a substantial (or gross) valuation misstatement of charitable deduction property (as defined in paragraph (h)(2) of this section) only if—

(i) The claimed value of the property was based on a qualified appraisal (as defined in paragraph (h)(2) of this section) by a qualified appraiser (as defined in paragraph (h)(2) of this section); and

(ii) In addition to obtaining a qualified appraisal, the taxpayer made a good faith investigation of the value of the contributed property.

(2) *Definitions.* For purposes of this paragraph (h):

Charitable deduction property means any property (other than money or publicly traded securities, as defined in §1.170A–13(c)(7)(xi)) contributed by the taxpayer in a contribution for which a deduction was claimed under section 170.

Qualified appraisal means a qualified appraisal as defined in §1.170A–13(c)(3).

Qualified appraiser means a qualified appraiser as defined in §1.170A–13(c)(5).

(3) *Special rules.* The rules of this paragraph (h) apply regardless of whether §1.170A–13 permits a taxpayer to claim a charitable contribution deduction for the property without obtaining a qualified appraisal. The rules of this paragraph (h) apply in addition to the generally applicable rules concerning reasonable cause and good faith.

[T.D. 8381, 56 FR 67508, Dec. 31, 1991; T.D. 8381, 57 FR 6166, Feb. 20, 1992, as amended by T.D. 8617, 60 FR 45666, Sept. 1, 1995; T.D. 8790, 63 FR 66435, Dec. 2, 1998; T.D. 9109, 68 FR 75128, Dec. 30, 2003]

§ 1.6664–4T Reasonable cause and good faith exception to section 6662 penalties.

(a)–(e) [Reserved]

(f) *Transactions between persons described in section 482 and net section 482 transfer price adjustments.* For purposes of applying the reasonable cause and good faith exception of section 6664(c) to net section 482 adjustments, the rules of §1.6662–6(d) apply. A taxpayer that does not satisfy the rules of §1.6662–6(d) for a net section 482 adjustment cannot satisfy the reasonable cause and good faith exception under section 6664(c). The rules of this section apply to underpayments subject to the transactional penalty in §1.6662–6(b). If the standards of the net section 482 penalty exclusion provisions under §1.6662–6(d) are met with respect to such underpayments, then the taxpayer will be considered to have acted with reasonable cause and good faith for purposes of this section.

[T.D. 8656, 61 FR 4885, Feb. 9, 1996]

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[T.D. 9436, 73 FR 78439, Dec. 22, 2008]

§ 1.6694–1 Section 6694 penalties applicable to tax return preparers.

(a) *Overview*—(1) *In general.* Sections 6694(a) and (b) impose penalties on tax return preparers for conduct giving rise to certain understatements of liability on a return (including an amended or adjusted return) or claim for refund. For positions other than those with respect to tax shelters (as defined in section 6662(d)(2)(C)(ii)) and reportable transactions to which section 6662A applies, the section 6694(a) penalty is imposed in an amount equal to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer for an understatement of tax liability that is due to an undisclosed position for which the tax return preparer did not have substantial authority or due to a disclosed position for which there is no reasonable basis. For positions with respect to tax shelters (as defined in section 6662(d)(2)(C)(ii)) or reportable transactions to which section 6662A applies,

the section 6694(a) penalty is imposed in an amount equal to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer for an understatement of tax liability for which it is not reasonable to believe that the position would more likely than not be sustained on its merits. The section 6694(b) penalty is imposed in an amount equal to the greater of $5,000 or 50 percent of the income derived (or to be derived) by the tax return preparer for an understatement of liability with respect to tax that is due to a willful attempt to understate tax liability or that is due to reckless or intentional disregard of rules or regulations. Refer to §1.6694–2 for rules relating to the penalty under section 6694(a). Refer to §1.6694–3 for rules relating to the penalty under section 6694(b).

(2) *Date return is deemed prepared.* For purposes of the penalties under section 6694, a return or claim for refund is deemed prepared on the date it is signed by the tax return preparer. If a signing tax return preparer within the meaning of §301.7701–15(b)(1) of this chapter fails to sign the return, the return or claim for refund is deemed prepared on the date the return or claim is filed. See §1.6695–1 of this section. In the case of a nonsigning tax return preparer within the meaning of §301.7701–15(b)(2) of this chapter, the relevant date is the date the nonsigning tax return preparer provides the tax advice with respect to the position giving rise to the understatement. This date will be determined based on all the facts and circumstances.

(b) *Tax return preparer*—(1) *In general.* For purposes of this section, ''tax return preparer'' means any person who is a tax return preparer within the meaning of section 7701(a)(36) and §301.7701–15 of this chapter. An individual is a tax return preparer subject to section 6694 if the individual is primarily responsible for the position(s) on the return or claim for refund giving rise to an understatement. See §301.7701–15(b)(3). There is only one individual within a firm who is primarily responsible for each position on the return or claim for refund giving rise to an understatement. In the course of identifying the individual who is primarily responsible for the position, the Internal Revenue Service (IRS) may advise multiple individuals within the firm that it may be concluded that they are the individual within the firm who is primarily responsible. In some circumstances, there may be more than one tax return preparer who is primarily responsible for the position(s) giving rise to an understatement if multiple tax return preparers are employed by, or associated with, different firms.

(2) *Responsibility of signing tax return preparer.* If there is a signing tax return preparer within the meaning of §301.7701–15(b)(1) of this chapter within a firm, the signing tax return preparer generally will be considered the person who is primarily responsible for all of the positions on the return or claim for refund giving rise to an understatement unless, based upon credible information from any source, it is concluded that the signing tax return preparer is not primarily responsible for the position(s) on the return or claim for refund giving rise to an understatement. In that case, a nonsigning tax return preparer within the signing tax return preparer's firm (as determined in paragraph (b)(3) of this section) will be considered the tax return preparer who is primarily responsible for the position(s) on the return or claim for refund giving rise to an understatement.

(3) *Responsibility of nonsigning tax return preparer.* If there is no signing tax return preparer within the meaning of §301.7701–15(b)(1) of this chapter for the return or claim for refund within the firm or if, after the application of paragraph (b)(2) of this section, it is concluded that the signing tax return preparer is not primarily responsible for the position, the nonsigning tax return preparer within the meaning of §301.7701–15(b)(2) of this chapter within the firm with overall supervisory responsibility for the position(s) giving rise to the understatement generally will be considered the tax return preparer who is primarily responsible for the position for purposes of section 6694 unless, based upon credible information from any source, it is concluded that another nonsigning tax return preparer within that firm is primarily responsible for the position(s) on the return

or claim for refund giving rise to the understatement.

(4) *Responsibility of signing and nonsigning tax return preparer*. If the information presented would support a finding that, within a firm, either the signing tax return preparer or a nonsigning tax return preparer is primarily responsible for the position(s) giving rise to the understatement, the penalty may be assessed against either one of the individuals, but not both, as the primarily responsible tax return preparer.

(5) *Tax return preparer and firm responsibility*. To the extent provided in §§ 1.6694–2(a)(2) and 1.6694–3(a)(2), an individual and the firm that employs the individual, or the firm of which the individual is a partner, member, shareholder, or other equity holder, both may be subject to penalty under section 6694 with respect to the position(s) on the return or claim for refund giving rise to an understatement. If an individual (other than the sole proprietor) who is employed by a sole proprietorship is subject to penalty under section 6694, the sole proprietorship is considered a ''firm'' for purposes of this paragraph (b).

(6) *Examples*. The provisions of paragraph (b) of this section are illustrated by the following examples:

Example 1. Attorney A provides advice to Client C concerning the proper treatment of an item with respect to which all events have occurred on C's tax return. In preparation for providing that advice, A seeks advice regarding the proper treatment of the item from Attorney B, who is within the same firm as A, but A is the attorney who signs C's return as a tax return preparer. B provides advice on the treatment of the item upon which A relies. B's advice is reflected on C's tax return but no disclosure was made in accordance with § 1.6694–2(d)(3). The advice constitutes preparation of a substantial portion of the return within the meaning of § 301.7701–15(b)(3). The IRS later challenges the position taken on the tax return, giving rise to an understatement of liability. For purposes of the regulations under section 6694, A is initially considered the tax return preparer with respect to C's return, and the IRS advises A that A may be subject to the penalty under section 6694 with respect to C's return. Based upon information received from A or another source, it may be concluded that B, rather than A, had primary responsibility for the position taken on the return that gave rise to the understatement and may be subject to penalty under section 6694 instead of A.

Example 2. Same as *Example 1*, except that neither Attorney A nor any other source produce credible information that Attorney B had primary responsibility for the position on the return giving rise to an understatement. Attorney A is the tax return preparer who may be subject to penalty under section 6694 with respect to C's return.

Example 3. Same as *Example 1*, except that neither Attorney A nor any other attorney within A's firm signs Client C's return as a tax return preparer. Attorney B is the nonsigning tax return preparer within the firm with overall supervisory responsibility for the position giving rise to an understatement. Accordingly, B is the tax return preparer who is primarily responsible for the position on C's return giving rise to an understatement and may be subject to penalty under section 6694.

Example 4. Same as *Example 1*, except Attorney D, who works for a different firm than A, also provides advice on the same position upon which A relies. It may be concluded that D is also primarily responsible for the position on the return and may be subject to penalty under section 6694.

Example 5. Same as *Example 1*, except Attorney B is able to present credible information that A is also responsible for the position on C's return giving rise to an understatement. The IRS may conclude between A and B, the two responsible persons for the position, who is primarily responsible and may assess a section 6694 penalty against A or B, but not both, as the primarily responsible tax return preparer.

(c) *Understatement of liability*. For purposes of this section, an ''understatement of liability'' exists if, viewing the return or claim for refund as a whole, there is an understatement of the net amount payable with respect to any tax imposed by the Internal Revenue Code (Code), or an overstatement of the net amount creditable or refundable with respect to any tax imposed by the Code. The net amount payable in a taxable year with respect to the return for which the tax return preparer engaged in conduct proscribed by section 6694 is not reduced by any carryback. Tax imposed by the Code does not include additions to the tax, additional amounts, and assessable penalties imposed by subchapter 68 of the Code. Except as provided in paragraph (d) of this section, the determination of whether an understatement of liability exists may be made in a proceeding involving the tax return

preparer that is separate and apart from any proceeding involving the taxpayer.

(d) *Abatement of penalty where taxpayer's liability not understated.* If a penalty under section 6694(a) or (b) concerning a return or claim for refund has been assessed against one or more tax return preparers, and if it is established at any time in a final administrative determination or a final judicial decision that there was no understatement of liability relating to the position(s) on the return or claim for refund, then—

(1) The assessment shall be abated; and

(2) If any amount of the penalty was paid, that amount shall be refunded to the person or persons who so paid, as if the payment were an overpayment of tax, without consideration of any period of limitations.

(e) *Verification of information furnished by taxpayer or other party*—(1) *In general.* For purposes of sections 6694(a) and (b) (including demonstrating that a position complied with relevant standards under section 6694(a) and demonstrating reasonable cause and good faith under §1.6694–2(e)), the tax return preparer generally may rely in good faith without verification upon information furnished by the taxpayer. A tax return preparer also may rely in good faith and without verification upon information and advice furnished by another advisor, another tax return preparer or other party (including another advisor or tax return preparer at the tax return preparer's firm). The tax return preparer is not required to audit, examine or review books and records, business operations, documents, or other evidence to verify independently information provided by the taxpayer, advisor, other tax return preparer, or other party. The tax return preparer, however, may not ignore the implications of information furnished to the tax return preparer or actually known by the tax return preparer. The tax return preparer must make reasonable inquiries if the information as furnished appears to be incorrect or incomplete. Additionally, some provisions of the Code or regulations require that specific facts and circumstances exist (for example, that the taxpayer maintain specific documents) before a deduction or credit may be claimed. The tax return preparer must make appropriate inquiries to determine the existence of facts and circumstances required by a Code section or regulation as a condition of the claiming of a deduction or credit.

(2) *Verification of information on previously filed returns.* For purposes of section 6694(a) and (b) (including meeting the reasonable to believe that the position would more likely than not be sustained on its merits and reasonable basis standards in §§1.6694–2(b) and (d)(2), and demonstrating reasonable cause and good faith under §1.6694–2(e)), a tax return preparer may rely in good faith without verification upon a tax return that has been previously prepared by a taxpayer or another tax return preparer and filed with the IRS. For example, a tax return preparer who prepares an amended return (including a claim for refund) need not verify the positions on the original return. The tax return preparer, however, may not ignore the implications of information furnished to the tax return preparer or actually known by the tax return preparer. The tax return preparer must make reasonable inquiries if the information as furnished appears to be incorrect or incomplete. The tax return preparer must confirm that the position being relied upon has not been adjusted by examination or otherwise.

(3) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

Example 1. During an interview conducted by Preparer E, a taxpayer stated that he had made a charitable contribution of real estate in the amount of $50,000 during the tax year, when in fact he had not made this charitable contribution. E did not inquire about the existence of a qualified appraisal or complete a Form 8283, Noncash Charitable Contributions, in accordance with the reporting and substantiation requirements under section 170(f)(11). E reported a deduction on the tax return for the charitable contribution, which resulted in an understatement of liability for tax, and signed the tax return as the tax return preparer. E is subject to a penalty under section 6694.

Example 2. While preparing the 2008 tax return for an individual taxpayer, Preparer F realizes that the taxpayer did not provide a Form 1099–INT, ''Interest Income'', for a

bank account that produced significant taxable income in 2007. When F inquired about any other income, the taxpayer furnished the Form 1099–INT to F for use in preparation of the 2008 tax return. F did not know that the taxpayer owned an additional bank account that generated taxable income for 2008, and the taxpayer did not reveal this information to the tax return preparer notwithstanding F's general inquiry about any other income. F signed the taxpayer's return as the tax return preparer. F is not subject to a penalty under section 6694.

Example 3. In preparing a tax return, for purposes of determining the deductibility of a contribution by an employer for a qualified pension plan, Accountant G relies on a computation of the section 404 limit on deductible amounts made by the enrolled actuary for the plan. On the basis of this calculation, G completed and signed the tax return. It is later determined that there is an understatement of liability for tax that resulted from the overstatement of the section 404 limit on deductible amounts made by the actuary. G had no reason to believe that the actuary's calculation of the limit on deductible contributions was incorrect or incomplete, and the calculation appeared reasonable on its face. G was also not aware at the time the return was prepared of any reason why the actuary did not know all of the relevant facts or that the calculation of the limit on deductible contributions was no longer reliable due to developments in the law since the time the calculation was given. G is not subject to a penalty under section 6694. The actuary, however, may be subject to penalty under section 6694 if the calculation provided by the actuary constitutes a substantial portion of the tax return within the meaning of § 301.7701–15(b)(3) of this chapter.

(f) *Income derived (or to be derived) with respect to the return or claim for refund*—(1) *In general.* For purposes of sections 6694(a) and (b), *income derived (or to be derived)* means all compensation the tax return preparer receives or expects to receive with respect to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement. In the situation of a tax return preparer who is not compensated directly by the taxpayer, but rather by a firm that employs the tax return preparer or with which the tax return preparer is associated, *income derived (or to be derived)* means all compensation the tax return preparer receives from the firm that can be reasonably allocated to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement. In the situation where a firm that employs the individual tax return preparer (or the firm of which the individual tax return preparer is a partner, member, shareholder, or other equity holder) is subject to a penalty under section 6694(a) or (b) pursuant to the provisions in §§ 1.6694–2(a)(2) or 1.6694–3(a)(2), *income derived (or to be derived)* means all compensation the firm receives or expects to receive with respect to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement.

(2) *Compensation*—(i) *Multiple engagements.* For purposes of applying paragraph (f)(1) of this section, if the tax return preparer or the tax return preparer's firm has multiple engagements related to the same return or claim for refund, only those engagements relating to the position(s) taken on the return or claim for refund that gave rise to the understatement are considered for purposes of calculating the income derived (or to be derived) with respect to the return or claim for refund.

(ii) *Reasonable allocation.* For purposes of applying paragraph (f)(1) of this section, only compensation for tax advice that is given with respect to events that have occurred at the time the advice is rendered and that relates to the position(s) giving rise to the understatement will be taken into account for purposes of calculating the section 6694(a) and (b) penalties. If a lump sum fee is received that includes amounts not taken into account under the preceding sentence, the amount of income derived will be based on a reasonable allocation of the lump sum fee between the tax advice giving rise to the penalty and the advice that does not give rise to the penalty.

(iii) *Fee refunds.* For purposes of applying paragraph (f)(1) of this section, a refund to the taxpayer of all or part of

the amount paid to the tax return preparer or the tax return preparer's firm will not reduce the amount of the section 6694 penalty assessed. A refund in this context does not include a discounted fee or alternative billing arrangement for the services provided.

(iv) *Reduction of compensation.* For purposes of applying paragraph (f)(1) of this section, it may be concluded based upon information provided by the tax return preparer or the tax return preparer's firm that an appropriate allocation of compensation attributable to the position(s) giving rise to the understatement on the return or claim for refund is less than the total amount of compensation associated with the engagement. For example, the number of hours of the engagement spent on the position(s) giving rise to the understatement may be less than the total hours associated with the engagement. If this is concluded, the amount of the penalty will be calculated based upon the compensation attributable to the position(s) giving rise to the understatement. Otherwise, the total amount of compensation from the engagement will be the amount of income derived for purposes of calculating the penalty under section 6694.

(3) *Individual and firm allocation.* If both an individual within a firm and a firm that employs the individual (or the firm of which the individual is a partner, member, shareholder, or other equity holder) are subject to a penalty under section 6694(a) or (b) pursuant to the provisions in §§ 1.6694–2(a)(2) or 1.6694–3(a)(2), the amount of penalties assessed against the individual and the firm shall not exceed 50 percent of the income derived (or to be derived) by the firm from the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement. The portion of the total amount of the penalty assessed against the individual tax return preparer shall not exceed 50 percent of the individual's compensation as determined under paragraphs (f)(1) and (2) of this section.

(4) *Examples.* The provisions of this paragraph (f) are illustrated by the following examples:

Example 1. Signing Tax Return Preparer H is engaged by a taxpayer and paid a total of $21,000. Of this amount, $20,000 relates to research and consultation regarding a transaction that is later reported on a return, and $1,000 is for the activities relating to the preparation of the return. Based on H's hourly rates, a reasonable allocation of the amount of compensation related to the advice rendered prior to the occurrence of events that are the subject of the advice is $5,000. The remaining compensation of $16,000 is considered to be compensation related to the advice rendered after the occurrence of events that are the subject of the advice and return preparation. The income derived by H with respect to the return for purposes of computing the penalty under section 6694(a) is $16,000, and the amount of the penalty imposed under section 6694(a) is $8,000.

Example 2. Accountants I, J, and K are employed by Firm L. I is a principal manager of Firm L and provides corporate tax advice for the taxpayer after all events have occurred subject to an engagement for corporate tax advice. J provides international tax advice for the taxpayer after all events have occurred subject to a different engagement for international tax advice. K prepares and signs the taxpayer's return under a general tax services engagement. I's advice is the source of an understatement on the return and the advice constitutes preparation of a substantial portion of the return within the meaning of § 301.7701–15(b) of this chapter. I is the nonsigning tax return preparer within the firm with overall supervisory responsibility for the position on the taxpayer's return giving rise to an understatement. Thus, I is the tax return preparer who is primarily responsible for the position on the taxpayer's return giving rise to the understatement. Because K's signature as the signing tax return preparer is on the return, the IRS advises K that K may be subject to the section 6694(a) penalty. K provides credible information that I is the tax return preparer with primary responsibility for the position that gave rise to the understatement. The IRS, therefore, assesses the section 6694 penalty against I. The portion of the total amount of the penalty allocable to I does not exceed 50 percent of that part of I's compensation that is attributable to the corporate tax advice engagement. In the event that Firm L is also liable under the provisions in § 1.6694–2(a)(2), the IRS assesses the section 6694 penalty in an amount not exceeding 50 percent of Firm L's firm compensation based on the engagement relating to the corporate tax advice services provided by I where there is no applicable reduction in compensation pursuant to § 1.6694–1(f)(2)(iii).

Example 3. Same facts as *Example 2*, except that I provides the advice on the corporate matter when the events have not yet occurred. I's advice is the cause of an understatement position on the return, but I is not a tax return preparer pursuant to § 301.7701–15(b)(2) or (3) of this chapter. K is not limited to reliance on persons who provide post-transactional advice if such reliance is reasonable and in good faith. Further, K has reasonable cause because K relied on I for the advice on the corporate tax matter. I, K and Firm L are not liable for the section 6694 penalty.

Example 4. Attorney M is an employee of Firm N with a salary of $75,000 per year. M performs tax preparation work for Client O. Client O's return contains a position that results in an understatement subject to the section 6694 penalty. M spent 100 hours on the position (out of a total 2,000 billed during the year). The total fees earned by Firm N with respect to the position reflected on Client O's return are $50,000. If M is subject to the penalty, the penalty amount computed under the 50 percent of income standard is .5 × (100/2,000) × $75,000 = $1,875. If Firm N is subject to the penalty, the penalty amount computed under the 50% of income standard is .5 × $50,000 = $25,000, less any penalty amount imposed against M. If a penalty of $1,875 was assessed against M and Firm N was subject to the penalty, a penalty of $23,125 would be the amount of penalty assessed against Firm N.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78439, Dec. 22, 2008, as amended at 74 FR 5104, Jan. 29, 2009]

§ 1.6694–2 Penalty for understatement due to an unreasonable position.

(a) *In general*—(1) *Proscribed conduct.* Except as otherwise provided in this section, a tax return preparer is liable for a penalty under section 6694(a) equal to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer for any return or claim for refund that it prepares that results in an understatement of liability due to a position if the tax return preparer knew (or reasonably should have known) of the position and either—

(i) The position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, and it was not reasonable to believe that the position would more likely than not be sustained on its merits;

(ii) The position was not disclosed as provided in this section, the position is not with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, and there was not substantial authority for the position; or

(iii) The position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) was disclosed as provided in this section but there was no reasonable basis for the position.

(2) *Special rule for corporations, partnerships, and other firms.* A firm that employs a tax return preparer subject to a penalty under section 6694(a) (or a firm of which the individual tax return preparer is a partner, member, shareholder or other equity holder) is also subject to penalty if, and only if—

(i) One or more members of the principal management (or principal officers) of the firm or a branch office participated in or knew of the conduct proscribed by section 6694(a);

(ii) The corporation, partnership, or other firm entity failed to provide reasonable and appropriate procedures for review of the position for which the penalty is imposed; or

(iii) The corporation, partnership, or other firm entity disregarded its reasonable and appropriate review procedures through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) in the formulation of the advice, or the preparation of the return or claim for refund, that included the position for which the penalty is imposed.

(b) *Reasonable to believe that the position would more likely than not be sustained on its merits*—(1) *In general.* If a position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, it is ''reasonable to believe that a position would more likely than not be sustained on its merits'' if the tax return preparer analyzes the pertinent facts and authorities and, in reliance upon that analysis, reasonably concludes in good faith that the position has a greater

than 50 percent likelihood of being sustained on its merits. In reaching this conclusion, the possibility that the position will not be challenged by the Internal Revenue Service (IRS) (for example, because the taxpayer's return may not be audited or because the issue may not be raised on audit) is not to be taken into account. The analysis prescribed by §1.6662–4(d)(3)(ii) (or any successor provision) for purposes of determining whether substantial authority is present applies for purposes of determining whether the more likely than not standard is satisfied. Whether a tax return preparer meets this standard will be determined based upon all facts and circumstances, including the tax return preparer's diligence. In determining the level of diligence in a particular situation, the tax return preparer's experience with the area of Federal tax law and familiarity with the taxpayer's affairs, as well as the complexity of the issues and facts, will be taken into account. A tax return preparer may reasonably believe that a position more likely than not would be sustained on its merits despite the absence of other types of authority if the position is supported by a well-reasoned construction of the applicable statutory provision. For purposes of determining whether it is reasonable to believe that the position would more likely than not be sustained on the merits, a tax return preparer may rely in good faith without verification upon information furnished by the taxpayer and information and advice furnished by another advisor, another tax return preparer, or other party (including another advisor or tax return preparer at the tax return preparer's firm), as provided in §§1.6694–1(e) and 1.6694–2(e)(5).

(2) *Authorities.* The authorities considered in determining whether a position satisfies the more likely than not standard are those authorities provided in §1.6662–4(d)(3)(iii) (or any successor provision).

(3) *Written determinations.* The tax return preparer may avoid the section 6694(a) penalty by taking the position that the tax return preparer reasonably believed that the taxpayer's position satisfies the ''more likely than not'' standard if the taxpayer is the subject of a ''written determination'' as provided in §1.6662–4(d)(3)(iv)(A).

(4) *Taxpayer's jurisdiction.* The applicability of court cases to the taxpayer by reason of the taxpayer's residence in a particular jurisdiction is not taken into account in determining whether it is reasonable to believe that the position would more likely than not be sustained on the merits. Notwithstanding the preceding sentence, the tax return preparer may reasonably believe that the position would more likely than not be sustained on the merits if the position is supported by controlling precedent of a United States Court of Appeals to which the taxpayer has a right of appeal with respect to the item.

(5) *When ''more likely than not'' standard must be satisfied.* For purposes of this section, the requirement that a position satisfies the ''more likely than not'' standard must be satisfied on the date the return is deemed prepared, as prescribed by §1.6694–1(a)(2).

(c) [Reserved]

(d) *Exception for adequate disclosure of positions with a reasonable basis*—(1) *In general.* The section 6694(a) penalty will not be imposed on a tax return preparer if the position taken (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) has a reasonable basis and is adequately disclosed within the meaning of paragraph (c)(3) of this section. For an exception to the section 6694(a) penalty for reasonable cause and good faith, see paragraph (e) of this section.

(2) *Reasonable basis.* For purposes of this section, ''reasonable basis'' has the same meaning as in §1.6662–3(b)(3) or any successor provision of the accuracy-related penalty regulations. For purposes of determining whether the tax return preparer has a reasonable basis for a position, a tax return preparer may rely in good faith without verification upon information furnished by the taxpayer and information and advice furnished by another advisor, another tax return preparer, or other party (including another advisor or tax return preparer at the tax return preparer's firm), as provided in §§1.6694–1(e) and 1.6694–2(e)(5).

(3) *Adequate disclosure*—(i) *Signing tax return preparers*. In the case of a signing tax return preparer within the meaning of § 301.7701–15(b)(1) of this chapter, disclosure of a position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) for which there is a reasonable basis but for which there is not substantial authority is adequate if the tax return preparer meets any of the following standards:

(A) The position is disclosed in accordance with § 1.6662–4(f) (which permits disclosure on a properly completed and filed Form 8275, ''Disclosure Statement,'' or Form 8275–R, ''Regulation Disclosure Statement,'' as appropriate, or on the tax return in accordance with the annual revenue procedure described in § 1.6662–4(f)(2));

(B) The tax return preparer provides the taxpayer with the prepared tax return that includes the disclosure in accordance with § 1.6662–4(f); or

(C) For returns or claims for refund that are subject to penalties pursuant to section 6662 other than the accuracy-related penalty attributable to a substantial understatement of income tax under section 6662(b)(2) and (d), the tax return preparer advises the taxpayer of the penalty standards applicable to the taxpayer under section 6662. The tax return preparer must also contemporaneously document the advice in the tax return preparer's files.

(ii) *Nonsigning tax return preparers*. In the case of a nonsigning tax return preparer within the meaning of § 301.7701–15(b)(2) of this chapter, disclosure of a position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) that satisfies the reasonable basis standard but does not satisfy the substantial authority standard is adequate if the position is disclosed in accordance with § 1.6662–4(f) (which permits disclosure on a properly completed and filed Form 8275 or Form 8275–R, as applicable, or on the return in accordance with an annual revenue procedure described in § 1.6662–4(f)(2)). In addition, disclosure of a position is adequate in the case of a nonsigning tax return preparer if, with respect to that position, the tax return preparer complies with the provisions of paragraph (c)(3)(ii)(A) or (B) of this section, whichever is applicable.

(A) *Advice to taxpayers*. If a nonsigning tax return preparer provides advice to the taxpayer with respect to a position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) for which there is a reasonable basis but for which there is not substantial authority, disclosure of that position is adequate if the tax return preparer advises the taxpayer of any opportunity to avoid penalties under section 6662 that could apply to the position, if relevant, and of the standards for disclosure to the extent applicable. The tax return preparer must also contemporaneously document the advice in the tax return preparer's files. The contemporaneous documentation should reflect that the affected taxpayer has been advised by a tax return preparer in the firm of the potential penalties and the opportunity to avoid penalty through disclosure.

(B) *Advice to another tax return preparer*. If a nonsigning tax return preparer provides advice to another tax return preparer with respect to a position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) for which there is a reasonable basis but for which there is not substantial authority, disclosure of that position is adequate if the tax return preparer advises the other tax return preparer that disclosure under section 6694(a) may be required. The tax return preparer must also contemporaneously document the advice in the tax return preparer's files. The contemporaneous documentation should reflect that the tax return preparer outside the firm has been advised that disclosure under section 6694(a) may be required. In addition, disclosure of a position is adequate in the case of a nonsigning tax return preparer if, with respect to that position, the tax return preparer complies with the provisions of paragraph (d)(3)(ii)(A) or (B) of this section, whichever is applicable.

(iii) *Requirements for advice*. For purposes of satisfying the disclosure standards of paragraphs (d)(3)(i)(C) and (ii) of this section, each return position for which there is a reasonable basis

but for which there is not substantial authority must be addressed by the tax return preparer. The advice to the taxpayer with respect to each position, therefore, must be particular to the taxpayer and tailored to the taxpayer's facts and circumstances. The tax return preparer is required to contemporaneously document the fact that the advice was provided. There is no general pro forma language or special format required for a tax return preparer to comply with these rules. A general disclaimer will not satisfy the requirement that the tax return preparer provide and contemporaneously document advice regarding the likelihood that a position will be sustained on the merits and the potential application of penalties as a result of that position. Tax return preparers, however, may rely on established forms or templates in advising clients regarding the operation of the penalty provisions of the Internal Revenue Code. A tax return preparer may choose to comply with the documentation standard in one document addressing each position or in multiple documents addressing all of the positions.

(iv) *Pass-through entities.* Disclosure in the case of items attributable to a pass-through entity is adequate if made at the entity level in accordance with the rules in §1.6662–4(f)(5) or at the entity level in accordance with the rules in paragraphs (d)(3)(i) or (ii) of this section.

(v) *Examples.* The provisions of paragraph (d)(3) of this section are illustrated by the following examples:

Example 1. An individual taxpayer hires Accountant R to prepare its income tax return. A particular position taken on the tax return does not have substantial authority although there is a reasonable basis for the position. The position is not with respect to a tax shelter or a reportable transaction to which section 6662A applies. R prepares and signs the tax return and provides the taxpayer with the prepared tax return that includes the Form 8275, ''Disclosure Statement,'' disclosing the position taken on the tax return. The individual taxpayer signs and files the tax return without disclosing the position. The IRS later challenges the position taken on the tax return, resulting in an understatement of liability. R is not subject to a penalty under section 6694.

Example 2. Attorney S advises a large corporate taxpayer concerning the proper treatment of complex entries on the corporate taxpayer's tax return. S has reason to know that the tax attributable to the entries is a substantial portion of the tax required to be shown on the tax return within the meaning of §301.7701–15(b)(3). When providing the advice, S concludes that one position does not have substantial authority, although the position meets the reasonable basis standard. The position is not with respect to a tax shelter or a reportable transaction to which section 6662A applies. S advises the corporate taxpayer that the position lacks substantial authority and the taxpayer may be subject to an accuracy-related penalty under section 6662 unless the position is disclosed in a disclosure statement included in the return. S also documents the fact that this advice was contemporaneously provided to the corporate taxpayer at the time the advice was provided. Neither S nor any other attorney within S's firm signs the corporate taxpayer's return as a tax return preparer, but the advice by S constitutes preparation of a substantial portion of the tax return, and S is the individual with overall supervisory responsibility for the position giving rise to the understatement. Thus, S is a tax return preparer for purposes of section 6694. S, however, will not be subject to a penalty under section 6694.

(e) *Exception for reasonable cause and good faith.* The penalty under section 6694(a) will not be imposed if, considering all the facts and circumstances, it is determined that the understatement was due to reasonable cause and that the tax return preparer acted in good faith. Factors to consider include:

(1) *Nature of the error causing the understatement.* The error resulted from a provision that was complex, uncommon, or highly technical, and a competent tax return preparer of tax returns or claims for refund of the type at issue reasonably could have made the error. The reasonable cause and good faith exception, however, does not apply to an error that would have been apparent from a general review of the return or claim for refund by the tax return preparer.

(2) *Frequency of errors.* The understatement was the result of an isolated error (such as an inadvertent mathematical or clerical error) rather than a number of errors. Although the reasonable cause and good faith exception generally applies to an isolated error, it does not apply if the isolated error is so obvious, flagrant, or material that it should have been discovered during a

review of the return or claim for refund. Furthermore, the reasonable cause and good faith exception does not apply if there is a pattern of errors on a return or claim for refund even though any one error, in isolation, would have qualified for the reasonable cause and good faith exception.

(3) *Materiality of errors.* The understatement was not material in relation to the correct tax liability. The reasonable cause and good faith exception generally applies if the understatement is of a relatively immaterial amount. Nevertheless, even an immaterial understatement may not qualify for the reasonable cause and good faith exception if the error or errors creating the understatement are sufficiently obvious or numerous.

(4) *Tax return preparer's normal office practice.* The tax return preparer's normal office practice, when considered together with other facts and circumstances, such as the knowledge of the tax return preparer, indicates that the error in question would occur rarely and the normal office practice was followed in preparing the return or claim for refund in question. Such a normal office practice must be a system for promoting accuracy and consistency in the preparation of returns or claims for refund and generally would include, in the case of a signing tax return preparer, checklists, methods for obtaining necessary information from the taxpayer, a review of the prior year's return, and review procedures. Notwithstanding these rules, the reasonable cause and good faith exception does not apply if there is a flagrant error on a return or claim for refund, a pattern of errors on a return or claim for refund, or a repetition of the same or similar errors on numerous returns or claims for refund.

(5) *Reliance on advice of others.* For purposes of demonstrating reasonable cause and good faith, a tax return preparer may rely without verification upon advice and information furnished by the taxpayer and information and advice furnished by another advisor, another tax return preparer or other party, as provided in §1.6694–1(e). The tax return preparer may rely in good faith on the advice of, or schedules or other documents prepared by, the taxpayer, another advisor, another tax return preparer, or other party (including another advisor or tax return preparer at the tax return preparer's firm), who the tax return preparer had reason to believe was competent to render the advice or other information. The advice or information may be written or oral, but in either case the burden of establishing that the advice or information was received is on the tax return preparer. A tax return preparer is not considered to have relied in good faith if—

(i) The advice or information is unreasonable on its face;

(ii) The tax return preparer knew or should have known that the other party providing the advice or information was not aware of all relevant facts; or

(iii) The tax return preparer knew or should have known (given the nature of the tax return preparer's practice), at the time the return or claim for refund was prepared, that the advice or information was no longer reliable due to developments in the law since the time the advice was given.

(6) *Reliance on generally accepted administrative or industry practice.* The tax return preparer reasonably relied in good faith on generally accepted administrative or industry practice in taking the position that resulted in the understatement. A tax return preparer is not considered to have relied in good faith if the tax return preparer knew or should have known (given the nature of the tax return preparer's practice), at the time the return or claim for refund was prepared, that the administrative or industry practice was no longer reliable due to developments in the law or IRS administrative practice since the time the practice was developed.

(f) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78442, Dec. 22, 2008, as amended at 74 FR 5104, Jan. 29, 2009]

§1.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general*—(1) *Proscribed conduct.* A tax return preparer is liable for a penalty under section 6694(b) equal to

the greater of $5,000 or 50 percent of the income derived (or to be derived) by the tax return preparer if any part of an understatement of liability for a return or claim for refund that is prepared is due to—

(i) A willful attempt by a tax return preparer to understate in any manner the liability for tax on the return or claim for refund; or

(ii) Any reckless or intentional disregard of rules or regulations by a tax return preparer.

(2) *Special rule for corporations, partnerships, and other firms.* A firm that employs a tax return preparer subject to a penalty under section 6694(b) (or a firm of which the individual tax return preparer is a partner, member, shareholder or other equity holder) is also subject to penalty if, and only if—

(i) One or more members of the principal management (or principal officers) of the firm or a branch office participated in or knew of the conduct proscribed by section 6694(b);

(ii) The corporation, partnership, or other firm entity failed to provide reasonable and appropriate procedures for review of the position for which the penalty is imposed; or

(iii) The corporation, partnership, or other firm entity disregarded its reasonable and appropriate review procedures through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) in the formulation of the advice, or the preparation of the return or claim for refund, that included the position for which the penalty is imposed.

(b) *Willful attempt to understate liability.* A preparer is considered to have willfully attempted to understate liability if the preparer disregards, in an attempt wrongfully to reduce the tax liability of the taxpayer, information furnished by the taxpayer or other persons. For example, if a preparer disregards information concerning certain items of taxable income furnished by the taxpayer or other persons, the preparer is subject to the penalty. Similarly, if a taxpayer states to a preparer that the taxpayer has only two dependents, and the preparer reports six dependents on the return, the preparer is subject to the penalty.

(c) *Reckless or intentional disregard.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, a preparer is considered to have recklessly or intentionally disregarded a rule or regulation if the preparer takes a position on the return or claim for refund that is contrary to a rule or regulation (as defined in paragraph (f) of this section) and the preparer knows of, or is reckless in not knowing of, the rule or regulation in question. A preparer is reckless in not knowing of a rule or regulation if the preparer makes little or no effort to determine whether a rule or regulation exists, under circumstances which demonstrate a substantial deviation from the standard of conduct that a reasonable preparer would observe in the situation.

(2) A tax return preparer is not considered to have recklessly or intentionally disregarded a rule or regulation if the position contrary to the rule or regulation has a reasonable basis as defined in §1.6694–2(d)(2) and is adequately disclosed in accordance with §§1.6694–2(d)(3)(i)(A) or (C) or 1.6694–2(d)(3)(ii). In the case of a position contrary to a regulation, the position must represent a good faith challenge to the validity of the regulation and, when disclosed in accordance with §§1.6694–2(d)(3)(i)(A) or (C) or 1.6694–2(d)(3)(ii), the tax return preparer must identify the regulation being challenged. For purposes of this section, disclosure on the return in accordance with an annual revenue procedure under §1.6662–4(f)(2) is not applicable.

(3) In the case of a position contrary to a revenue ruling or notice (other than a notice of proposed rulemaking) published by the Internal Revenue Service in the Internal Revenue Bulletin, a tax return preparer also is not considered to have recklessly or intentionally disregarded the ruling or notice if the position meets the substantial authority standard described in §1.6662–4(d) and is not with respect to a reportable transaction to which section 6662A applies.

(d) *Examples.* The provisions of paragraphs (b) and (c) of this section are illustrated by the following examples:

Example 1. A taxpayer provided Preparer T with detailed check registers reflecting personal and business expenses. One of the expenses was for domestic help, and this expense was identified as personal on the check register. T knowingly deducted the expenses of the taxpayer's domestic help as wages paid in the taxpayer's business. T is subject to the penalty under section 6694(b).

Example 2. A taxpayer provided Preparer U with detailed check registers to compute the taxpayer's expenses. U, however, knowingly overstated the expenses on the return. After adjustments by the examiner, the tax liability increased significantly. Because U disregarded information provided in the check registers, U is subject to the penalty under section 6694(b).

Example 3. Preparer V prepares a taxpayer's return in 2009 and encounters certain expenses incurred in the purchase of a business. Final regulations provide that such expenses incurred in the purchase of a business must be capitalized. One U.S. Tax Court case decided in 2006 has expressly invalidated that portion of the regulations. There are no courts that ruled favorably with respect to the validity of that portion of the regulations and there are no other authorities existing on the issue. Under these facts, V will have a reasonable basis for the position as defined in §1.6694–2(d)(2) and will not be subject to the section 6694(b) penalty if the position is adequately disclosed in accordance with paragraph (c)(2) of this section because the position represents a good faith challenge to the validity of the regulations.

(e) *Rules or regulations*. The term *rules or regulations* includes the provisions of the Internal Revenue Code (Code), temporary or final Treasury regulations issued under the Code, and revenue rulings or notices (other than notices of proposed rulemaking) issued by the Internal Revenue Service and published in the Internal Revenue Bulletin.

(f) *Section 6694(b) penalty reduced by section 6694(a) penalty*. The amount of any penalty to which a tax return preparer may be subject under section 6694(b) for a return or claim for refund is reduced by any amount assessed and collected against the tax return preparer under section 6694(a) for the same position on a return or claim for refund.

(g) *Effective/applicability date*. This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

(h) *Burden of proof*. In any proceeding with respect to the penalty imposed by section 6694(b), the Government bears the burden of proof on the issue of whether the preparer willfully attempted to understate the liability for tax. See section 7427. The preparer bears the burden of proof on such other issues as whether—

(1) The preparer recklessly or intentionally disregarded a rule or regulation;

(2) A position contrary to a regulation represents a good faith challenge to the validity of the regulation; and

(3) Disclosure was adequately made in accordance with paragraph (e) of this section.

[T.D. 8382, 56 FR 67518, Dec. 31, 1991, as amended by T.D. 9436, 73 FR 78445, Dec. 22, 2008; 74 FR 5104, Jan. 29, 2009]

§ 1.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general*. (1) The Internal Revenue Service (IRS) will investigate the preparation by a tax return preparer of a return of tax under the Internal Revenue Code (Code) or claim for refund of tax under the Code as described in §301.7701–15(b)(4) of this chapter, and will send a report of the examination to the tax return preparer before the assessment of either—

(i) A penalty for understating tax liability due to a position for which either it was not reasonable to believe that the position would more likely than not be sustained on its merits under section 6694(a) or no substantial authority, as applicable (or not a reasonable basis for disclosed positions); or

(ii) A penalty for willful understatement of liability or reckless or intentional disregard of rules or regulations under section 6694(b).

(2) Unless the period of limitations (if any) under section 6696(d) may expire without adequate opportunity for assessment, the IRS will also send, before assessment of either penalty, a 30-day letter to the tax return preparer notifying him of the proposed penalty or penalties and offering an opportunity to the tax return preparer to request further administrative consideration

and a final administrative determination by the IRS concerning the assessment. If the tax return preparer then makes a timely request, assessment may not be made until the IRS makes a final administrative determination adverse to the tax return preparer.

(3) If the IRS assesses either of the two penalties described in section 6694(a) and section 6694(b), it will send to the tax return preparer a statement of notice and demand, separate from any notice of a tax deficiency, for payment of the amount assessed.

(4) Within 30 days after the day on which notice and demand of either of the two penalties described in section 6694(a) and section 6694(b) is made against the tax return preparer, the tax return preparer must either—

(i) Pay the entire amount assessed (and may file a claim for refund of the amount paid at any time not later than 3 years after the date of payment); or

(ii) Pay an amount which is not less than 15 percent of the entire amount assessed with respect to each return or claim for refund and file a claim for refund of the amount paid.

(5) If the tax return preparer pays an amount and files a claim for refund under paragraph (a)(4)(ii) of this section, the IRS may not make, begin, or prosecute a levy or proceeding in court for collection of the unpaid remainder of the amount assessed until the later of—

(i) A date which is more than 30 days after the earlier of—

(A) The day on which the tax return preparer's claim for refund is denied; or

(B) The expiration of 6 months after the day on which the tax return preparer filed the claim for refund; and

(ii) Final resolution of any proceeding begun as provided in paragraph (b) of this section.

(6) The IRS may counterclaim in any proceeding begun as provided in paragraph (b) of this section for the unpaid remainder of the amount assessed. Final resolution of a proceeding includes any settlement between the IRS and the tax return preparer, any final determination by a court (for which the period for appeal, if any, has expired) and, generally, the types of determinations provided under section 1313(a) (relating to taxpayer deficiencies). Notwithstanding section 7421(a) (relating to suits to restrain assessment or collection), the beginning of a levy or proceeding in court by the IRS in contravention of paragraph (a)(5) of this section may be enjoined by a proceeding in the proper court.

(b) *Preparer must bring suit in district court to determine liability for penalty*. The IRS may proceed with collection of the amount of the penalty not paid under paragraph (a)(4)(ii) of this section if the preparer fails to begin a proceeding for refund in the appropriate United States district court within 30 days after the earlier of—

(1) The day on which the preparer's claim for refund filed under paragraph (a)(4)(ii) of this section is denied; or

(2) The expiration of 6 months after the day on which the preparer filed the claim for refund.

(c) *Suspension of running of period of limitations on collection*. The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court of the unpaid amount of a penalty or penalties described in section 6694(a) or section 6694(b) is suspended for the period during which the IRS, under paragraph (a)(5) of this section, may not collect the unpaid amount of the penalty or penalties by levy or a proceeding in court.

(d) *Effective/applicability date*. This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78446, Dec. 22, 2008]

§ 1.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *Failure to furnish copy to taxpayer*. (1) A person who is a signing tax return preparer as described in § 301.7701–15(b)(1) of this chapter of any return of tax or claim for refund of tax under the Internal Revenue Code (Code), and who fails to satisfy the requirements imposed by section 6107(a) and § 1.6107–1(a) to furnish a copy of the return or claim for refund to the taxpayer (or nontaxable entity), shall be subject to a penalty of $50 for such failure, with a maximum penalty of $25,000 per person imposed with respect to each calendar year, unless it is shown that the failure

is due to reasonable cause and not due to willful neglect.

(2) No penalty may be imposed under section 6695(a) and paragraph (a)(1) of this section upon a tax return preparer who furnishes a copy of the return or claim for refund to taxpayers who—

(i) Hold an elected or politically appointed position with the government of the United States or a state or political subdivision thereof; and

(ii) In order faithfully to carry out their official duties, have so arranged their affairs that they have less than full knowledge of the property that they hold or of the debts for which they are responsible, if information is deleted from the copy in order to preserve or maintain this arrangement.

(b) *Failure to sign return.* (1) An individual who is a signing tax return preparer as described in § 301.7701–15(b)(1) of this chapter with respect to a return of tax or claim for refund of tax under the Code as described in § 301.7701–15(b)(4) that is not signed electronically shall sign the return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature. For rules covering electronically signed returns, see paragraph (b)(2) of this section. If the signing tax return preparer is unavailable for signature, another tax return preparer shall review the entire preparation of the return or claim for refund, and then shall sign the return or claim for refund. The tax return preparer shall sign the return in the manner prescribed by the Commissioner in forms, instructions, or other appropriate guidance.

(2) In the case of electronically signed tax returns, the signing tax return preparer need not sign the return prior to presenting a completed copy of the return to the taxpayer. The signing tax return preparer, however, must furnish all of the information that will be transmitted as the electronically signed tax return to the taxpayer contemporaneously with furnishing the Form 8879, ''IRS e-file Signature Authorization,'' or other similar Internal Revenue Service (IRS) e-file signature form. The information may be furnished on a replica of an official form. The signing tax return preparer shall electronically sign the return in the manner prescribed by the Commissioner in forms, instructions, or other appropriate guidance.

(3) An individual required by this paragraph (b) to sign a return or claim for refund shall be subject to a penalty of $50 for each failure to sign, with a maximum of $25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. If the tax return preparer asserts reasonable cause for failure to sign, the IRS will require a written statement to substantiate the tax return preparer's claim of reasonable cause. For purposes of this paragraph (b), reasonable cause is a cause that arises despite ordinary care and prudence exercised by the individual tax return preparer.

(4) *Examples.* The application of this paragraph (b) is illustrated by the following examples:

Example 1. Law Firm A employs B, a lawyer, to prepare for compensation estate tax returns and claims for refund of taxes. Firm A is engaged by C to prepare a Federal estate tax return. Firm A assigns B to prepare the return. B obtains the information necessary for completing the return from C and makes determinations with respect to the proper application of the tax laws to such information in order to determine the estate's tax liability. B then forwards such information to D, a computer tax service that performs the mathematical computations and prints the return by means of computer processing. D then sends the completed estate tax return to B who reviews the accuracy of the return. B is the individual tax return preparer who is primarily responsible for the overall accuracy of the estate tax return. B must sign the return as tax return preparer in order to not be subject to the section 6695(b) penalty.

Example 2. Partnership E is a national accounting firm that prepares returns and claims for refund of taxes for compensation. F and G, employees of Partnership E, are involved in preparing the Form 990–T, Exempt Organization Business Income Tax Return, for H, a tax exempt organization. After they complete the return, including the gathering of the necessary information, analyzing the proper application of the tax laws to such information, and the performance of the necessary mathematical computations, I, a supervisory employee of Partnership E, reviews the return. As part of this review, I reviews the information provided and the application of the tax laws to this information. The

mathematical computations and carried-forward amounts are reviewed by J, an employee of Partnership E. The policies and practices of Partnership E require that K, a partner, finally review the return. The scope of K's review includes reviewing the information provided and applying to this information his knowledge of H's affairs, observing that Partnership E's policies and practices have been followed, and making the final determination with respect to the proper application of the tax laws to determine H's tax liability. K may or may not exercise these responsibilities, or may exercise them to a greater or lesser extent, depending on the degree of complexity of the return, his confidence in I (or F and G), and other factors. K is the individual tax return preparer who is primarily responsible for the overall accuracy of H's return. K must sign the return as tax return preparer in order to not be subject to the section 6695(b) penalty.

Example 3. L corporation maintains an office in Seattle, Washington, for the purpose of preparing partnership returns for compensation. L makes compensatory arrangements with individuals (but provides no working facilities) in several states to collect information from partners of a partnership and to make decisions with respect to the proper application of the tax laws to the information in order to prepare the partnership return and calculate the partnership's distributive items. M, an individual, who has such an arrangement in Los Angeles with L, collects information from N, the general partner of a partnership, and completes a worksheet kit supplied by L that is stamped with M's name and an identification number assigned to M by L. In this process, M classifies this information in appropriate categories for the preparation of the partnership return. The completed worksheet kit signed by M is then mailed to L. O, an employee in L's office, reviews the worksheet kit to make sure it was properly completed. O does not review the information obtained from N for its validity or accuracy. O may, but did not, make the final decision with respect to the proper application of tax laws to the information provided. The data from the worksheet is entered into a computer and the return form is completed. The return is prepared for submission to N with filing instructions. M is the individual tax return preparer primarily responsible for the overall accuracy of the partnership return. M must sign the return as tax return preparer in order to not be subject to the section 6695(b) penalty.

Example 4. P employs R, S, and T to prepare gift tax returns for taxpayers. After R and S have collected the information from a taxpayer and applied the tax laws to the information, the return form is completed by a computer service. On the day the returns prepared by R and S are ready for their signatures, R is away from the city for 1 week on another assignment and S is on detail to another office in the same city for the day. T may sign the gift tax returns prepared by R, provided that T reviews the information obtained by R relative to the taxpayer, and T reviews the preparation of each return prepared by R. T may not sign the returns prepared by S because S is available.

(5) *Effective/applicability date.* This paragraph (b) is applicable to returns and claims for refund filed after December 31, 2008.

(c) *Failure to furnish identifying number.* (1) A person who is a signing tax return preparer as described in § 301.7701–15(b)(1) of this chapter of any return of tax under the Code or claim for refund of tax under the Code, and who fails to satisfy the requirement of section 6109(a)(4) and § 1.6109–2(a) to furnish one or more identifying numbers of signing tax return preparers or persons employing the signing tax return preparer (or with which the signing tax return preparer is associated) on a return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature shall be subject to a penalty of $50 for each failure, with a maximum of $25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) No more than one penalty of $50 may be imposed under section 6695(c) and paragraph (c)(1) of this section with respect to a single return or claim for refund.

(d) *Failure to retain copy or record.* (1) A person who is a signing tax return preparer as described in § 301.7701–15(b)(1) of this chapter of any return of tax under the Code or claim for refund of tax under the Code, and who fails to satisfy the requirements imposed upon him or her by section 6107(b) and § 1.6107–1(b) and (c) (other than the record requirement described in both § 1.6107–1(b)(2) and (3)) to retain and make available for inspection a copy of the return or claim for refund, or to include the return or claim for refund in a record of returns and claims for refund and make the record available for inspection, shall be subject to a penalty of $50 for the failure, unless it is

shown that the failure is due to reasonable cause and not due to willful neglect.

(2) A person may not, for returns or claims for refund presented to the taxpayers (or nontaxable entities) during each calendar year, be subject to more than $25,000 in penalties under section 6695(d) and paragraph (d)(1) of this section.

(e) *Failure to file correct information returns.* A person who is subject to the reporting requirements of section 6060 and § 1.6060–1 and who fails to satisfy these requirements shall pay a penalty of $50 for each such failure, with a maximum of $25,000 per person imposed for each calendar year, unless such failure was due to reasonable cause and not due to willful neglect.

(f) *Negotiation of check.* (1) No person who is a tax return preparer as described in § 301.7701–15 of this chapter may endorse or otherwise negotiate, directly or through an agent, a check (including an electronic version of a check) for the refund of tax under the Code that is issued to a taxpayer other than the tax return preparer if the person was a tax return preparer of the return or claim for refund which gave rise to the refund check. A tax return preparer will not be considered to have endorsed or otherwise negotiated a check for purposes of this paragraph (f)(1) solely as a result of having affixed the taxpayer's name to a refund check for the purpose of depositing the check into an account in the name of the taxpayer or in the joint names of the taxpayer and one or more other persons (excluding the tax return preparer) if authorized by the taxpayer or the taxpayer's recognized representative.

(2) Section 6695(f) and paragraphs (f)(1) and (3) of this section do not apply to a tax return preparer-bank that—

(i) Cashes a refund check and remits all of the cash to the taxpayer or accepts a refund check for deposit in full to a taxpayer's account, so long as the bank does not initially endorse or negotiate the check (unless the bank has made a loan to the taxpayer on the basis of the anticipated refund); or

(ii) Endorses a refund check for deposit in full to a taxpayer's account pursuant to a written authorization of the taxpayer (unless the bank has made a loan to the taxpayer on the basis of the anticipated refund).

(3) A tax return preparer-bank may also subsequently endorse or negotiate a refund check as a part of the check-clearing process through the financial system after initial endorsement or negotiation.

(4) The tax return preparer shall be subject to a penalty of $500 for each endorsement or negotiation of a check prohibited under section 6695(f) and paragraph (f)(1) of this section.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

[T.D. 9436, 73 FR 78447, Dec. 22, 2008, as amended at 74 FR 5104, Jan. 29, 2009]

§ 1.6695–2 Tax return preparer due diligence requirements for determining earned income credit eligibility.

(a) *Penalty for failure to meet due diligence requirements.* A person who is a signing tax return preparer of a tax return or claim for refund under the Internal Revenue Code with respect to determining the eligibility for, or the amount of, the earned income credit (EIC) under section 32 and who fails to satisfy the due diligence requirements of paragraph (b) of this section will be subject to a penalty of $100 for each such failure.

(b) *Due diligence requirements.* A preparer must satisfy the following due diligence requirements:

(1) *Completion of eligibility checklist.* (i) The preparer must either—

(A) Complete Form 8867, ''Paid Preparer's Earned Income Credit Checklist,'' or such other form and such other information as may be prescribed by the Internal Revenue Service (IRS) (Eligibility Checklist); or

(B) Otherwise record in the preparer's paper or electronic files the information necessary to complete the Eligibility Checklist (Alternative Eligibility Record). The Alternative Eligibility Record may consist of one or more documents containing the required information.

(ii) The preparer's completion of the Eligibility Checklist or Alternative

Eligibility Record must be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained by the preparer.

(2) *Computation of credit.* (i) The preparer must either—

(A) Complete the Earned Income Credit Worksheet in the Form 1040 instructions or such other form and such other information as may be prescribed by the IRS (Computation Worksheet); or

(B) Otherwise record in the preparer's paper or electronic files the preparer's EIC computation, including the method and information used to make the computation (Alternative Computation Record). The Alternative Computation Record may consist of one or more documents containing the required information.

(ii) The preparer's completion of the Computation Worksheet or Alternative Computation Record must be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained by the preparer.

(3) *Knowledge*—(i) *In general.* The tax return preparer must not know, or have reason to know, that any information used by the tax return preparer in determining the taxpayer's eligibility for, or the amount of, the EIC is incorrect. The tax return preparer may not ignore the implications of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. A tax return preparer must make reasonable inquiries if a reasonable and well-informed tax return preparer knowledgeable in the law would conclude that the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. The tax return preparer must also contemporaneously document in the files the reasonable inquiries made and the responses to these inquiries.

(ii) *Examples.* The provisions of paragraph (b)(3)(i) of this section are illustrated by the following examples:

Example 1. A 22 year-old taxpayer wants to claim two sons, ages 10 and 11, as qualifying children for purposes of the EIC. Preparer A must make additional reasonable inquiries regarding the relationship between the taxpayer and the children as the age of the taxpayer appears inconsistent with the ages of the children claimed as sons.

Example 2. An 18 year-old female taxpayer with an infant has $3,000 in earned income and states that she lives with her parents. Taxpayer wants to claim the infant as a qualifying child for the EIC. This information appears incomplete and inconsistent because the taxpayer lives with her parents and earns very little income. Preparer B must make additional reasonable inquires to determine if the taxpayer is the qualifying child of her parents and, therefore, ineligible to claim the EIC.

Example 3. Taxpayer asks Preparer C to prepare his tax return and wants to claim his niece and nephew as qualifying children for the EIC. Preparer C should make reasonable inquiries to determine whether the children meet EIC qualifying child requirements and ensure possible duplicate claim situations involving the parents or other relatives are properly considered.

Example 4. Taxpayer asks Preparer D to prepare her tax return and tells D that she has a Schedule C business, that she has two qualifying children and that she wants to claim the EIC. Taxpayer indicates that she earned $10,000 from her Schedule C business, but that she has no expenses. This information appears incomplete because it is very unlikely that someone who is self-employed has no business expenses. D must make additional reasonable inquiries regarding taxpayer's business to determine whether the information regarding both income and expenses is correct.

(4) *Retention of records.* (i) The preparer must retain—

(A) A copy of the completed Eligibility Checklist or Alternative Eligibility Record;

(B) A copy of the Computation Worksheet or Alternative Computation Record; and

(C) A record of how and when the information used to complete the Eligibility Checklist or Alternative Eligibility Record and the Computation Worksheet or Alternative Computation Record was obtained by the preparer, including the identity of any person furnishing the information.

(ii) The items in paragraph (b)(4)(i) of this section must be retained for three years after the June 30th following the date the return or claim for refund was presented to the taxpayer for signature, and may be retained on paper or electronically in the manner prescribed

in applicable regulations, revenue rulings, revenue procedures, or other appropriate guidance (see § 601.601(d)(2) of this chapter).

(c) *Exception to penalty*. The section 6695(g) penalty will not be applied with respect to a particular tax return or claim for refund if the tax return preparer can demonstrate to the satisfaction of the Internal Revenue Service that, considering all the facts and circumstances, the tax return preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of paragraph (b) of this section, and the failure to meet the due diligence requirements of paragraph (b) of this section with respect to the particular return or claim for refund was isolated and inadvertent.

(d) *Effective/applicability date*. This section is applicable to returns and claims for refund filed after December 31, 2008.

[T.D. 8905, 65 FR 61269, Oct. 17, 2000, as amended by T.D. 9436, 73 FR 78448, Dec. 22, 2008]

§ 1.6696–1 Claims for credit or refund by tax return preparers or appraisers.

(a) *Notice and demand*. (1) The Internal Revenue Service (IRS) shall issue to each tax return preparer or appraiser one or more statements of notice and demand for payment for all penalties assessed against the tax return preparer or appraiser under section 6694 and § 1.6694–1, under section 6695 and § 1.6695–1, or under section 6695A (and any subsequently issued regulations).

(2) For the definition of the term ''tax return preparer'', see section 7701(a)(36) and § 301.7701–15 of this chapter. A person who prepares a claim for credit or refund under this section for another person, however, is not, with respect to that preparation, a tax return preparer as defined in section 7701(a)(36) and § 301.7701–15 of this chapter.

(b) *Claim filed by tax return preparer or appraiser*. A claim for credit or refund of a penalty (or penalties) assessed against a tax return preparer or appraiser under section 6694 and § 1.6694–1, under section 6695 and § 1.6695–1, or under section 6695A (and any subsequently issued regulations) may be filed under this section only by the tax return preparer or the appraiser (or the tax return preparer's or appraiser's estate) against whom the penalty (or penalties) is assessed and not by, for example, the tax return preparer's or appraiser's employer. This paragraph (b) is not intended, however, to impose any restrictions on the preparation of this claim for credit or refund. The claim may be prepared by the tax return preparer's or appraiser's employer or by other persons. In all cases, however, the claim for credit or refund shall contain the information specified in paragraph (d) of this section and, as required by paragraph (d) of this section, shall be verified by a written declaration by the tax return preparer or appraiser that the information is provided under penalty of perjury.

(c) *Separation and consolidation of claims*. (1) Unless paragraph (c)(2) of this section applies, a tax return preparer shall file a separate claim for each penalty assessed in each statement of notice and demand issued to the tax return preparer.

(2) A tax return preparer may file one or more consolidated claims for any or all penalties imposed on the tax return preparer by a single IRS campus or office under section 6695(a) and § 1.6695–1(a) (relating to failure to furnish copy of return to taxpayer), section 6695(b) and § 1.6695–1(b) (relating to failure to sign), section 6695(c) and § 1.6695–1(c) (relating to failure to furnish identifying number), or under section 6695(d) and § 1.6695–1(d) (relating to failure to retain copy of return or record), whether the penalties are asserted on a single or on separate statements of notice and demand. In addition, a tax return preparer may file one consolidated claim for any or all penalties imposed on the tax return preparer by a single IRS campus or office under section 6695(e) and § 1.6695–1(e) (relating to failure to file correct information return), which are asserted on a single statement of notice and demand.

(d) *Content of claim*. Each claim for credit or refund for any penalty (or penalties) paid by a tax return preparer under section 6694 and § 1.6694–1, or under section 6695 and § 1.6695–1, or paid

by an appraiser under section 6695A (and any subsequently issued regulations) shall include the following information, verified by a written declaration by the tax return preparer or appraiser that the information is provided under penalty of perjury:

(1) The tax return preparer's or appraiser's name.

(2) The tax return preparer's or appraiser's identification number. If the tax return preparer or appraiser is—

(i) An individual (not described in paragraph (d)(2)(iii) of this section) who is a citizen or resident of the United States, the tax return preparer's or appraiser's social security account number (or such alternative number as may be prescribed by the IRS in forms, instructions, or other appropriate guidance) shall be provided;

(ii) An individual who is not a citizen or resident of the United States and also was not employed by another tax return preparer or appraiser to prepare the document (or documents) with respect to which the penalty (or penalties) was assessed, the tax return preparer's or appraiser's employer identification number shall be provided; or

(iii) A person (whether an individual, corporation, or partnership) that employed one or more persons to prepare the document (or documents) with respect to which the penalty (or penalties) was assessed, the tax return preparer's or appraiser's employer identification number shall be provided.

(3) The tax return preparer's or appraiser's address where the IRS mailed the statement (or statements) of notice and demand and, if different, the tax return preparer's or appraiser's address shown on the document (or documents) with respect to which the penalty (or penalties) was assessed.

(4)(i) The address of the IRS campus or office that issued the statement (or statements) of notice and demand for payment of the penalty (or penalties).

(ii) The date (or dates) and identifying number (or numbers) of the statement (or statements) of notice and demand.

(5)(i) The identification, by amount, type, and document to which related, of each penalty included in the claim. Each document referred to in the preceding sentence shall be identified by the form title or number, by the taxpayer's (or nontaxable entity's) name and taxpayer identification number, and by the taxable year to which the document relates.

(ii) The date (or dates) of payment of the amount (or amounts) of the penalty (or penalties) included in the claim.

(iii) The total amount claimed.

(6) A statement setting forth in detail—

(i) Each ground upon which each penalty overpayment claim is based; and

(ii) Facts sufficient to apprise the IRS of the exact basis of each such claim.

(e) *Form for filing claim.* Notwithstanding § 301.6402–2(c) of this chapter, Form 6118, ''Claim for Refund of Tax Return Preparer and Promoter Penalties,'' is the form prescribed for making a claim as provided in this section with respect to penalties under sections 6694 and 6695. Form 843, Claim for Refund and Request for Abatement, is the form prescribed for making a claim as provided in this section with respect to a penalty under section 6695A.

(f) *Place for filing claim.* A claim filed under this section shall be filed with the IRS campus or office that issued to the tax return preparer or appraiser the statement (or statements) of notice and demand for payment of the penalty (or penalties) included in the claim.

(g) *Time for filing claim.* (1)(i) Except as provided in section 6694(c)(1) and § 1.6694–4(a)(4)(ii) and (5), and in section 6694(d) and § 1.6694–1(d):

(A) A claim for a penalty paid by a tax return preparer under section 6694 and § 1.6694–1, or under section 6695 and § 1.6695–1, or by an appraiser under section 6695A (and any subsequently issued regulations) shall be filed within three years from the date the payment was made.

(B) A consolidated claim, permitted under paragraph (c)(2) of this section, shall be filed within three years from the first date of payment of any penalty included in the claim.

(ii) For purposes of this paragraph (g)(1), payment is considered made on the date payment is received by the IRS or, if applicable, on the date an amount is credited in satisfaction of the penalty.

(2) For purposes of determining whether a claim is timely filed, the rules under sections 7502 and 7503 and the provisions of §§1.7502–1, 1.7502–2, and 1.7503–1 apply.

(h) *Application of refund to outstanding liability of tax return preparer or appraiser*. The IRS may, within the applicable period of limitations, credit any amount of an overpayment by a tax return preparer or appraiser of a penalty (or penalties) paid under section 6694 and §1.6694–1, under section 6695 and §1.6695–1, or under section 6695A (and any subsequently issued regulations) against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the tax return preparer or appraiser making the overpayment. If a portion of an overpayment is so credited, only the balance will be refunded to the tax return preparer or appraiser.

(i) *Interest*. (1) Section 6611 and §301.6611–1 of this chapter apply to the payment by the IRS of interest on an overpayment by a tax return preparer or appraiser of a penalty (or penalties) paid under section 6694 and §1.6694–1, under section 6695 and §1.6695–1, or under section 6695A (and any subsequently issued regulations).

(2) Section 6601 and §301.6601–1 of this chapter apply to the payment of interest by a tax return preparer or appraiser to the IRS on any penalty (or penalties) assessed against the tax return preparer under section 6694 and §1.6694–1, under section 6695 and §1.6695–1, or under section 6695A (and any subsequently issued regulations).

(j) *Suits for refund of penalty*. (1) A tax return preparer or appraiser may not maintain a civil action for the recovery of any penalty paid under section 6694 and §1.6694–1, under section 6695 and §1.6695–1, or under section 6695A (and any subsequently issued regulations), unless the tax return preparer or appraiser has previously filed a claim for credit or refund of the penalty as provided in this section (and the court has jurisdiction of the proceeding). See sections 6694(c) and 7422.

(2)(i) Except as provided in section 6694(c)(2) and §1.6694–4(b), the periods of limitation contained in section 6532 and §301.6532–1 of this chapter apply to a tax return preparer's or appraiser's suit for the recovery of any penalty paid under section 6694 and §1.6694–1, under section 6695 and §1.6695–1, or under section 6695A (and any subsequently issued regulations).

(ii) The rules under section 7503 and §301.7503–1 of this chapter apply to the timely commencement by a tax return preparer or appraiser of a suit for the recovery of any penalty paid under section 6694 and §1.6694–1, under section 6695 and §1.6695–1, or under section 6695A (and any subsequently issued regulations).

(k) *Effective/applicability date*. This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78449, Dec. 22, 2008, as amended at 74 FR 5105, Jan. 29, 2009]

§1.6709–1T Penalties with respect to mortgage credit certificates (temporary).

(a) *Material misstatement*—(1) *Negligence*. If any person makes a material misstatement in any affidavit or other statement under a penalty of perjury made with respect to the issuance of a mortgage credit certificate and such misstatement is due to the negligence of that person, that person shall pay a penalty of $1,000 for each mortgage credti certificate with respect to which that misstatement was made.

(2) *Fraud*. If a misstatement described in subparagraph (1) is due to fraud on the part of the person making the misstatement, that person shall pay a penalty of $10,000 for each mortgage credit certificate with respect to which the fraudulent misstatement was made. The penalty imposed by this paragraph (a)(2) is in addition to any criminal penalty.

(b) *Reports*. (1) Any person required by §1.25–8T to file a report with respect to any mortgage credit certificate who fails to file the report at the time and in the manner required by §1.25–8T shall pay a penalty of $200 for each mortgage credit certificate with respect to which that failure occurred. The preceding sentence shall not apply if it is shown that such failure is due to reasonable cause and not to willful neglect.

(2) In the case of any report required under §1.25–8T(b), the aggregate amount of the penalty imposed by this paragraph shall not exceed $2,000.

[T.D. 8023, 50 FR 19355, May 8, 1985]

JEOPARDY, BANKRUPTCY, AND RECEIVERSHIPS

§ 1.6851–1 Termination assessments of income tax.

(a) *Authority for making*—(1) *In general*. This section applies to assessments authorized by a district director under section 6851(a) (hereinafter referred to as termination assessments). The district director shall immediately authorize a termination assessment of the income tax for the current or preceding taxable year if the district director finds that a taxpayer designs to do an act which would tend to prejudice proceedings to collect the income tax for such year or years unless such proceedings are brought without delay. In addition, the district director shall immediately authorize such a termination assessment if the district director determines that the taxpayer designs to do any act which would tend to render such proceedings wholly or partially ineffective unless brought without delay. A termination assessment will be made if collection is determined to be in jeopardy because at least one of the following conditions exists.

(i) The taxpayer is or appears to be designing quickly to depart from the United States or to conceal himself or herself.

(ii) The taxpayer is or appears to be designing quickly to place his, her, or its property beyond the reach of the Government either by removing it from the United States, by concealing it, by dissipating it, or by transferring it to other persons.

(iii) The taxpayer's financial solvency is or appears to be imperiled.

Paragraph (a)(1)(iii) of this section does not include cases where the taxpayer becomes insolvent by virtue of the accrual of the proposed assessment of tax, and penalty, if any. A tax assessed under this section shall become immediately due and payable and the district director shall serve upon such taxpayer notice and demand for immediate payment of such tax.

(2) *Computation of tax*. If a termination assessment of the income tax for the current year is made, the income tax for such year shall be computed for the period beginning on the first day of such year and ending on the day of the assessment. A credit shall be allowed for any tax for the taxable year previously assessed under section 6851. The taxpayer is entitled to a deduction for the personal exemptions (as limited in the case of certain non-resident aliens) without any proration for or because of the short taxable period.

(3) *Taxable year not affected by termination*. Notwithstanding any termination assessment a taxpayer shall file a return in accordance with section 6012 and the regulations thereunder for the taxpayer's full taxable year. The term ''full taxable year'' means the taxpayer's usual annual accounting period determined without regard to any action under section 6851 and this section. The return shall show all items of gross income, deductions, and credits for such taxable year. Any tax collected as a result of a termination assessment will be applied against the tax due for the taxpayer's full taxable year. Except as provided in §1.6851–2 (relating to departing aliens), no return is required to be filed for a terminated period other than a full taxable year.

(4) *Evidence of compliance with income tax obligations*. Citizens of the United States or of possessions of the United States departing from the United States or its possessions will not be required to procure certificates of compliance or to present any other evidence of compliance with income tax obligations. However, for the rules relating to the furnishing of evidence of compliance with the income tax obligations by certain departing aliens, see §1.6851–2.

(5) *Section 6851 inapplicable where section 6861 applies*. No termination assessment for the preceding taxable year shall be made after the due date of the taxpayer's return for such year (determined with regard to extensions of time to file such return).

(b) *Notice of deficiency*. Where notice and demand for payment (following a termination assessment) takes place

after February 28, 1977, the district director shall, within 60 days after the later of:

(1) The date the taxpayer files a return for the full taxable year; or

(2) The due date of such return (determined with regard to extensions); send the taxpayer a notice of deficiency under section 6212(a). The amount of the deficiency shall be computed in accordance with section 6211 and the regulations thereunder. In applying section 6211, the tax imposed and the amount shown upon the return shall be determined on the basis of the taxpayer's full taxable year. Thus, for example assume that on November 1, 1979, a termination assessment against A, a calendar year taxpayer, is made in the amount of $18,000. The termination assessment is for the period from January 1, 1979 through November 1, 1979. Further assume that on or before April 15, 1980, A files a form 1040 showing an income tax liability for the full year 1979 of $10,000. If the district director determines A's liability for tax for 1979 is $16,000, a notice of deficiency for $6,000 shall be sent to A on or before June 14, 1980. Assuming that the district director had collected the $18,000 assessed, $2,000 shall be refunded.

(c) *Immediate payment*. The district director shall make demand for immediate payment of the amount of the termination assessment, and the taxpayer shall immediately pay such amount or shall immediately file the bond provided in section 6863.

(d) *Abatement*. The provisions of §§ 301.6861–1(e) and 301.6861–1(f) relating to the abatement of jeopardy assessments, shall apply to assessments made under section 6851.

[T.D. 7575, 43 FR 58816, Dec. 18, 1978]

§ 1.6851–2 Certificates of compliance with income tax laws by departing aliens.

(a) *In general*—(1) *Requirement*. The rules of this section are applicable, except as otherwise expressly provided, to any alien who departs from the United States or any of its possessions after January 20, 1961. Except as provided in subparagraph (2) of this paragraph, no such alien, whether resident or nonresident, may depart from the United States unless he first procures a certificate that he has complied with all of the obligations imposed upon him by the income tax laws. In order to procure such a certificate, an alien who intends to depart from the United States (i) must file with the district director for the internal revenue district in which he is located the statements or returns required by paragraph (b) of this section to be filed before obtaining such certificate, (ii) must appear before such district director if the district director deems it necessary, and (iii) must pay any taxes required under paragraph (b) of this section to be paid before obtaining the certificate. Either such certificate of compliance, properly executed, or evidence that the alien is excepted under subparagraph (2) of this paragraph from obtaining the certificate must be presented at the point of departure. An alien who presents himself at the point of departure without a certificate of compliance, or evidence establishing that such a certificate is not required, will be subject at such departure point to examination by an internal revenue officer or employee and to the completion of returns and statements and payment of taxes as required by paragraph (b) of this section.

(2) *Exceptions*—(i) *Employees of foreign governments or international organizations—(a) Diplomatic representatives, their families and servants*. (*1*) Representatives of foreign governments bearing diplomatic passports, whether accredited to the United States or other countries, and members of their households shall not, upon departure from the United States or any of its possessions, be examined as to their liability for United States income tax or be required to obtain a certificate of compliance. If a foreign government does not issue diplomatic passports but merely indicates on passports issued to members of its diplomatic service the status of the bearer as a member of such service, such passports are considered as diplomatic passports for income tax purposes.

(*2*) Likewise, the servant of a diplomatic representative who accompanies any individual bearing a diplomatic passport upon departure from the United States or any of its possessions

shall not be required, upon such departure, to obtain a certificate of compliance or to submit to examination as to his liability for United States income tax. If the departure of such a servant from the United States or any of its possessions is not made in the company of an individual bearing a diplomatic passport, the servant is required to obtain a certificate of compliance. However, such certificate will be issued to him on Form 2063 without examination as to his income tax liability upon presentation to the district director for the internal revenue district in which the servant is located of a letter from the chief of the diplomatic mission to which the servant is attached certifying (*i*) that the name of the servant appears on the ''White List'', a list of employees of diplomatic missions, and (*ii*) that the servant is not obligated to the United States for any income tax, and will not be so obligated up to and including the intended date of departure.

(*b*) *Other employees*. Any employee of an international organization or of a foreign government (other than a diplomatic representative to whom (*a*) of this subdivision applies) whose compensation for official services rendered to such organization or government is excluded from gross income under section 893 and who has received no gross income from sources within the United States, and any member of his household who has received no gross income from sources within the United States, shall not, upon departure from the United States or any of its possessions after November 30, 1962, be examined as to his liability for United States income tax or be required to obtain a certificate of compliance.

(*c*) *Effect of waiver*. An alien who has filed with the Attorney General the waiver provided for under section 247(b) of the Immigration and Nationality Act (8 U.S.C. 1257(b)) is not entitled to the exception provided by this subdivision.

(ii) *Alien students, industrial trainees, and exchange visitors*. A certificate of compliance shall not be required, and examination as to United States income tax liability shall not be made, upon the departure from the United States or any of its possessions of—

(A) An alien student, industrial trainee, or exchange visitor, and any spouse and children of that alien, admitted solely on an F–1, F–2, H–3, H–4, J–1 or J–2 visa, who has received no gross income from sources inside the United States other than—

(*1*) Allowances to cover expenses incident to study or training in the United States (including expenses for travel, maintenance, and tuition);

(*2*) The value of any services or accommodations furnished incident to such study or training;

(*3*) Income derived in accordance with the employment authorizations in 8 CFR 274a.12(b) and (c) that apply to the alien's visa; or

(*4*) Interest on deposits described in section 871(i)(2)(A); or

(B) An alien student, and any spouse or children of that alien admitted solely on an M–1 or M–2 visa, who has received no gross income from sources inside the United States other than income derived in accordance with the employment authorization in 8 CFR 274a.12(c)(6) or interest on deposits described in section 871(i)(2)(A).

(iii) *Other aliens temporarily in the United States*. A certificate of compliance shall not be required, and examination as to United States income tax liability shall not be made, upon the departure from the United States or any of its possessions of an alien hereinafter described in this subdivision, unless the district director has reason to believe that such alien has received taxable income during the taxable year up to and including the date of departure or during the preceding taxable year and that collection of income tax from such alien will be jeopardized by his departure from the United States:

(*a*) An alien visitor for pleasure admitted solely on a B–2 visa;

(*b*) An alien visitor for business admitted on a B–1 visa, or on both a B–1 visa and a B–2 visa, who does not remain in the United States or a possession thereof for a period or periods exceeding a total of 90 days during the taxable year;

(*c*) An alien in transit through the United States or any of its possessions on a C–1 visa or under a contract, including a bond agreement, between a transportation line and the Attorney

General pursuant to section 238(d) of the Immigration and Nationality Act (8 U.S.C. 1228(d));

(*d*) An alien who is admitted to the United States on a border-crossing identification card or with respect to whom passports, visas, and border-crossing identification cards are not required, if such alien is a visitor for pleasure, or if such alien is a visitor for business who does not remain in the United States or a possession thereof for a period or periods exceeding a total of 90 days during the taxable year, or if such alien is in transit through the United States or any of its possessions;

(*e*) An alien military trainee admitted to the United States to pursue a course of instruction under the auspices of the Department of Defense who departs from the United States on official military travel orders; or

(*f*) An alien resident of Canada or Mexico who commutes between such country and the United States at frequent intervals for the purpose of employment and whose wages are subject to the withholding of tax.

(b) *Issuance of certificate of compliance*—(1) *In general.* (i) Upon the departure of an alien required to secure a certificate of compliance under paragraph (a) of this section, the district director shall determine whether the departure of such alien jeopardizes the collection of any income tax for the current or the preceding taxable year, but the district director may determine that jeopardy does not exist in some cases. If the district director finds that the departure of such an alien results in jeopardy, the taxable period of the alien will be terminated, and the alien will be required to file returns and make payment of tax in accordance with subparagraph (3)(iii) of this paragraph. On the other hand, if the district director finds that the departure of the alien does not result in jeopardy, the alien will be required to file the statement or returns required by subparagraph (2) or (3)(ii) of this paragraph, but will not be required to pay income tax before the usual time for payment.

(ii) The departure of an alien who is a resident of the United States or a possession thereof (or treated as a resident under section 6013 (g) or (h)) and who intends to continue such residence (or treatment as a resident) shall be treated as not resulting in jeopardy, and thus not requiring termination of his taxable period, except when the district director has information indicating that the alien intends by such departure to avoid the payment of his income tax. In the case of a nonresident alien (including a resident alien discontinuing residence), the fact that the alien intends to depart from the United States will justify termination of his taxable period unless the alien establishes to the satisfaction of the district director that he intends to return to the United States and that his departure will not jeopardize collection of the tax. The determination of whether the departure of the alien results in jeopardy will be made on examination of all the facts in the case. Evidence tending to establish that jeopardy does not result from the departure of the alien may be provided, for example, by information showing that the alien is engaged in trade or business in the United States or that he leaves sufficient property in the United States to secure payment of his income tax for the taxable year and of any income tax for the preceding year which remains unpaid.

(2) *Alien having no taxable income and resident alien whose taxable period is not terminated.* A statement on Form 2063 shall be filed with the district director by every alien required to obtain a certificate of compliance:

(i) Who is a resident of the United States and whose taxable period is not terminated either because he has had no taxable income for the taxable year up to and including the date of his departure (and for the preceding taxable year where the period for making the income tax return for such year has not expired) or because, although he has had taxable income for such period or periods, the district director has not found that this departure jeopardizes collection of the tax on such income; or

(ii) Who is not a resident of the United States and who has had no taxable income for the taxable year up to and including the date of his departure (and for the preceding taxable year

where the period for making the income tax return for such year has not expired).

Any alien described in subdivision (i) or (ii) of this subparagraph who is in default in making return of, or paying, income tax for any taxable year shall, in addition, file with the district director any returns which have not been made as required and pay to the district director the amount of any tax for which he is in default. Upon compliance by an alien with the foregoing requirements of this subparagraph, the district director shall execute and issue to the alien the certificate of compliance attached to Form 2063. The certificate of compliance so issued shall be effective for all departures of the alien during his current taxable year, subject to revocation upon any subsequent departure should the district director have reason to believe that such subsequent departure would result in jeopardy. The statement required of a resident alien under this subparagraph, if made before January 21, 1961, with respect to a departure after January 20, 1961, may be made on a Form 1040C in lieu of a Form 2063.

(3) *Nonresident alien having taxable income and resident alien whose taxable period is terminated*—(i) *Nonresident alien having taxable income.* Every nonresident alien required to obtain a certificate of compliance (but not described in subparagraph (2) of this paragraph) who wishes to establish that his departure does not result in jeopardy shall furnish to the district director such information as may be required for the purpose of determining whether the departure of the alien jeopardizes collection of the income tax and thus requires termination of his taxable period.

(ii) *Nonresident alien whose taxable period is not terminated.* Every nonresident alien described in subdivision (i) of this subparagraph whose taxable period is not terminated upon departure shall file with the district director:

(*a*) A return in duplicate on Form 1040C for the taxable year of his intended departure, showing income received, and reasonably expected to be received, during the entire taxable year within which the departure occurs; and

(*b*) Any income tax returns which have not been filed as required.

Upon compliance by the alien with the foregoing requirements of this subdivision, and the payment of any income tax for which he is in default, the district director shall execute and issue to the alien the certificate of compliance on the duplicate copy of Form 1040C. The certificate of compliance so issued shall be effective for all departures of the alien during his current taxable year, subject to revocation by the district director upon any subsequent departure if the taxable period of the alien is terminated on such subsequent departure.

(iii) *Alien (whether resident or nonresident) whose taxable period is terminated.* Every alien required to obtain a certificate of compliance, whether resident or nonresident, whose taxable period is terminated upon departure shall file with the district director:

(*a*) A return in duplicate on Form 1040C for the short taxable period resulting from such termination, showing income received, and reasonably expected to be received, during the taxable year up to and including the date of departure;

(*b*) Where the period for filing has not expired, the return required under section 6012 and § 1.6012–1 for the preceding taxable year; and

(*c*) Any other income tax returns which have not been filed as required.

Upon compliance with the foregoing requirements of this subdivision, and payment of the income tax required to be shown on the returns filed pursuant to (*a*) and (*b*) of this subdivision and of any income tax due and owing for prior years, the departing alien will be issued the certificate of compliance on the duplicate copy of Form 1040C. The certificate of compliance so issued shall be effective only for the specific departure with respect to which it is issued. A departing alien may postpone payment of the tax required to be shown on the returns filed in accordance with (*a*) and (*b*) of this subdivision until the usual time of payment by furnishing a bond as provided in § 301.6863–1.

(4) *Joint return on Form 1040C.* A departing alien may not file a joint return on Form 1040C unless:

(i) Such alien and his spouse may reasonably be expected to be eligible to file a joint return at the normal close of their taxable periods for which the return is made; and

(ii) If the taxable period of such alien is terminated, the taxable periods of both spouses are so terminated as to end at the same time.

(5) *Annual return.* Notwithstanding that Form 1040C has been filed for either the entire taxable year of departure or for a terminated period, the return required under section 6012 and § 1.6012–1 for such taxable year shall be filed. Any income tax paid on income shown on the return on Form 1040C shall be applied against the tax determined to be due on the income required to be shown on the subsequent return under section 6012 and § 1.6012–1.

[T.D. 6537, 26 FR 547, Jan. 20, 1961, as amended by T.D. 6620, 27 FR 11803, Nov. 30, 1962; T.D. 7575, 43 FR 58817, Dec. 18, 1978; T.D. 7670, 45 FR 6931, Jan. 31, 1980; T.D. 8332, 56 FR 3034, Jan. 28, 1991; T.D. 8526, 59 FR 10067, Mar. 3, 1994]

§ 1.6851–3 Furnishing of bond to insure payment; cross reference.

See section 6863 and § 301.6863–1 of this chapter (regulations on procedure and administration) for rules relating to the furnishing of bond to stay collection.

[T.D. 7575, 43 FR 58817, Dec. 18, 1978]

THE TAX COURT

DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

§ 1.7476–1 Interested parties.

(a) *In general*—(1) *Notice requirement.* Before the Internal Revenue Service can issue an advance determination as to the qualified status of certain retirement plans, the applicant must provide the Internal Revenue Service with satisfactory evidence that such applicant has notified the persons who qualify as interested parties, under regulations prescribed under section 7476(b)(1) of the Code, of the application for such determination. See section 3001(a) of the Employee Retirement Income Security Act of 1974 (88 Stat. 995). For the rules for giving notice to interested parties, see § 1.7476–2 and paragraph (o) of § 601.201 of this chapter (Statement of Procedural Rules).

(2) *Declaratory judgments.* Section 7476 provides a procedure for obtaining a declaratory judgment by the Tax Court with respect to the initial or continuing qualification under subchapter D of chapter 1 of the Code of a retirement plan defined in section 7476(d), in the case of an actual controversy involving:

(i) A determination by the Internal Revenue Service with respect to the initial qualification or continuing qualification under such subchapter of such a plan, or

(ii) A failure by the Internal Revenue Service to make a determination with respect to:

(A) Such initial qualification of such a plan, or

(B) Such continuing qualification of such a plan, if the controversy arises from a plan amendment or plan termination.

Under section 7476(d) the term ''retirement plan'' means a pension profitsharing, or stock bonus plan described in section 401(a), or a trust which is part of such a plan, an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a). This procedure is available only to the employer, the plan administrator as defined in section 414(g), an employee who qualifies as an interested party as defined in this section, or the Pension Benefit Guaranty Corporation, where such person has an actual controversy involving a determination described in paragraph (a)(2)(ii) of this section. In the case of an application for such a determination, this procedure is available only if such determination or failure to make such determination is with respect to an application described in paragraph (b)(7) of this section. In addition, in the case of such an application, if a petitioner was the applicant for the determination, the Tax Court may hold, under section 7476(b)(2), the filing of a pleading for a declaratory judgment to be premature unless the petitioner establishes to the satisfaction of the Tax

Court that such petitioner has caused the interested parties to be notified in accordance with this section and § 1.7476.2

(b) *Interested parties*—(1) *In general.* If paragraphs (b) (2), (3), (4), and (5) of this section do not apply, then, except as otherwise provided in paragraphs (b)(6) (i), (ii), and (iii) of this section, the following persons shall be interested parties with respect to an application for an advance determination as to the qualified status of a retirement plan:

(i) All present employees of the employer who are eligible to participate in the plan (as defined in paragraph (d)(2) of this section), and

(ii) All other present employees of the employer whose principal place of employment (as defined in paragraph (d)(3) of this section) is the same as the principal place of employment of any employee described in paragraph (b)(1)(i) of this section.

(2) *Certain plans covering a principal owner.* Notwithstanding paragraph (b)(1) of this section, where:

(i) A principal owner (within the meaning of paragraph (d)(2) of § 1.414(c)–3) of the employer or of a common parent of the employer (where the employer is a member of a parent-subsidiary group of trades or businesses under common control under section 414 (b) or (c)) is eligible to participate in the plan, and

(ii) The number of employees employed by such employer (including all employees who by reason of section 414 (b) or (c) are treated as employees of such employer) is 100 or less then except as otherwise provided in paragraphs (b)(6) (i), (ii), and (iv) of this section, all present employees of the employer shall be interested parties with respect to an application for an advance determinations as to the qualified status of the retirement plan.

(3) *Certain plan amendments.* In the case of an application for an advance determination as to whether a plan amendment affects the continuing qualification of a plan, if:

(i) There is outstanding a favorable determination letter for a plan year to which section 410 applies, and

(ii) The amendment does not alter the participation provisions of the plan, then paragraphs (b) (1) and (2) of this section shall not apply, and all present employees of the employer who are eligible to participate in the plan (as defined in paragraph (d)(2) of this section), shall be interested parties. For the purpose of this paragraph (b)(3), if qualification of the plan is dependent upon benefits under the plan integrating with those benefits provided under the Social Security Act or a similar program, and if such integration results in excluding any employee or could possibly result in any participant's benefit being reduced to zero and the amendment alters contributions to or the amount of benefits payable under the plan, then the amendment shall be considered to alter the participation provisions of the plan.

(4) *Collectively bargained plans.* In the case of an application with respect to a plan described in section 413(a) (relating to collectively bargained plans), paragraphs (b) (1), (2) and (3) of this section shall not apply and all present employees covered by a collective-bargaining agreement pursuant to which the plan is maintained shall be interested parties.

(5) *Plan terminations.* In the case of an application for an advance determination with respect to whether a plan termination affects the continuing qualification of a retirement plan, paragraphs (b) (1), (2), (3) and (4) of this section shall not apply, and all present employees with accrued benefits under the plan, all former employees with vested benefits under the plan, and all beneficiaries of decreased former employees currently receiving benefits under the plan, shall be interested parties.

(6) *Exceptions.* (i) In the case of an application to which paragraph (b) (1) or (2) of this section applies, an employee who is not eligible to participate in the plan shall not be an interested party if such employee is excluded from consideration for purposes of section 410(b)(1) by reason of section 410(b)(2) (B) or (C).

(ii) In the case of an application to which paragraph (b) (1) or (2) of this section applies, an application to which paragraph (b) (1) or (2) of this section applies, an employee who is not eligible to participate in the plan shall not be an interested party if such plan

meets the eligibility standards of section 410(b)(1)(A).

(iii) In the case of an application to which paragraph (b)(1) of this section applies, an employee who is not eligible to participate in the plan shall not be an interested party with respect to such plan if such employee is eligible to participate in any other plan of the employer with respect to which a favorable determination letter is outstanding (whether or not issued pursuant to an application to which this section applies), or in such a plan of another employer whose employees, by reason of section 414 (b) or (c), are treated as employees of the employer making the application.

(iv) In the case of an application to which paragraph (b)(2) of this section applies, an employee who is not eligible to participate in the plan shall not be an interested party with respect to such plan if such employee is eligible to participate in a plan described in section 413(a) (relating to collectively bargained plans) maintained by the employer with respect to which a favorable determination letter is outstanding (whether or not issued pursuant to an application to which this section applies), or in such a plan of another employer whose employees by reason of section 414 (b) or (c), are treated as employees of the employer making the application.

(7) *Applicability*. Paragraph (b) of this section shall only apply in the case of an application made to the internal Revenue Service requesting an advance determination that a retirement plan as defined in section 7476(d) and paragraph (a) of this section meets the requirements for qualification for a plan year or years to which section 410 applies to such plan. See paragraphs (c)(4) and (5) of this section for special rules in respect of years to which section 410 applies.

(c) *Special rules*. For purposes of paragraph (b) of this section and § 1.7476–2:

(1) *Time of determination*. The status of an individual as an interested party and as a present employee or former employee shall be determined as of a date determined by the applicant, which date shall not be earlier than five business days before the first date on which the notice of the application is given to interested parties pursuant to § 1.7476–2 nor later than the date on which such notice is given.

(2) *Controlled groups, etc*. An individual shall be considered to be an employee of an employer if such employee is treated as that employer's employee under section 414 (b) or (c).

(3) *Self-employed individuals*. A self-employed individual shall be considered an employee.

(4) *Years to which section 410 relates*. For purposes of paragraph (b)(7) of this section, section 410 shall be considered to apply to a plan year if an election has been made under section 1017(d) of the Employee Retirement Income Security Act of 1974 to have section 410 apply to such plan year, whether or not the election is conditioned upon the issuance by the Commissioner of a favorable determination letter.

(5) *Government, church plans, etc*. In the case of an organization described in section 410(c)(1), section 410 will be considered to apply to a plan year of such organization for any plan year to which section 410(c)(2) applies to such plan.

(d) *Definitions*. For the purposes of paragraph (b) of this section and § 1.7476–2:

(1) *Employer*. The term ''employer'' includes all employers who maintain the plan with respect to which an advance determination applies. A sole proprietor shall be considered such person's own employer and a partnership is considered to be the employer of each of the partners.

(2) *Eligible to participate*. For purposes of this section, an employee is eligible to participate in a plan if such employee:

(i) Is a participant in the plan,

(ii) Would be a participant in the plan if such employee met the minimum age and service requirements of the plan or

(iii) Would be a participant in the plan upon making mandatory employee contributions.

In applying this paragraph (d)(2), plan provisions (with respect to which the determination regarding qualification is to be based) not in effect on the first date on which notice is given to interested parties shall be treated as though they were in effect on such date.

(3) *Place of employment.* A place of employment includes all worksites within a plant, installation, store, office, or similar facility. Any employee who has no principal place of employment shall be treated as though such employee's principal place of employment is that place to which such employee regularly reports to the employer.

(e) *Effective date.* The provisions of this section apply to applications referred to in paragraph (a) of this section made on or after June 21, 1976.

[T.D. 7421, 41 FR 20876, May 21, 1976; 41 FR 22561, June 4, 1976, as amended by T.D. 8179, 53 FR 6613, Mar. 2, 1988; T.D. 9006, 67 FR 47456, July 19, 2002]

§ 1.7476–2 Notice to interested parties.

(a) *In general.* Any person applying to a district director for a determination described in paragraph (b)(7) of § 1.7476–1 shall cause notice of the application to be given to persons who qualify as interested parties under § 1.7476–1 with respect to the application, whether or not such application is received by the Internal Revenue Service before the date on which section 410 applies to the plan.

(b) *Nature of notice.* The notice required by this section shall—

(1) Contain the information and be given within the time period prescribed in § 601.201(o)(3) of this chapter; and

(2) Be given in a manner prescribed in paragraph (c) of this section.

(c) *Method of giving notice.* (1) In the case of a present employee, former employee, or beneficiary who is an interested party, the notice may be provided by any method reasonably calculated to ensure that each interested party is notified of the application for a determination. If an interested party who is a present employee is in a unit of employees covered by a collective-bargaining agreement between employee representatives and one or more employers, notice shall also be given to the collective-bargaining representative of such interested party by any method that satisfies this paragraph. Whether the notice is provided in a manner that satisfies the requirements of this paragraph is determined on the basis of all the relevant facts and circumstances. Because the facts and circumstances differ depending on the interested party, it may be necessary to use more than one method of delivery in order to ensure timely and adequate notice to all interested parties.

(2) If the notice to interested parties is delivered using an electronic medium under an electronic system that satisfies the applicable notice requirements of § 1.401(a)–21 of this chapter, the notice is deemed to be provided in a manner that satisfies the requirements of paragraph (c)(1) of this section.

(d) *Examples.* The principles of this section are illustrated by the following examples:

Example 1. (i) Employer A is amending Plan C and applying for a determination letter. Plan C is not maintained pursuant to one or more collective bargaining agreements and is not being terminated. As part of the determination letter application process, Employer A provides the notice required under this section to interested parties. For present employees, Employer A provides the notice by posting the notice at those locations within the principal places of employment of the interested parties which are customarily used for employer notices to employees with regard to employment and employee benefit matters.

(ii) In this *Example 1*, Employer A satisfies the notice to interested parties requirement described in this section.

Example 2. (i) Employer B is amending Plan D and applying for a determination letter. As part of the determination letter application process, Employer B provides the notice required under this section to interested parties.

(ii) Employer B has multiple worksites. Employer B's employees located at worksites 1 through 4 have reasonable access to computers at their workplace. However, Employer B's employees located at worksite 5 do not have access to computers.

(iii) For present employees with reasonable access to computers (worksites 1 through 4), Employer B provides the notice by posting the notice on Employer B's web site (Internet or intranet). Employees at worksites 1 through 4 customarily receive employer notification with regard to employment and employee benefit matters from the Employer B's web site. For present employees without access to computers (worksite 5), Employer B provides the notice by posting the notice at worksite 5 in a location that is customarily used for employer notices to employees with regard to employment and employee benefit matters.

(iv) Employer B also sends the notice by e-mail to each collective-bargaining representative of interested parties who are present

employees of Employer B covered by a collective-bargaining agreement between employee representatives and Employer B, using the e-mail address previously provided to Employer B by such collective-bargaining representative.

(v) In this *Example 2*, Employer B satisfies the notice to interested parties requirement described in this section.

Example 3. (i) Employer C is terminating Plan E and applying for a determination letter as to whether the plan termination affects the continuing qualification of Plan E. As part of the determination letter application process, Employer C provides the notice required under this section to interested parties.

(ii) All of Employer C's employees have reasonable access to computers. Each employee has an e-mail address where he or she can receive messages from Employer C. Employees of Employer C customarily receive employer notices regarding employment and employee benefit matters by e-mail.

(iii) For present employees, Employer C provides the notice by sending the notice by e-mail.

(iv) Employer C also sends the notice by e-mail to each collective-bargaining representative of interested parties who are present employees of Employer C covered by a collective-bargaining agreement between employee representatives and Employer C, using the e-mail address previously provided to Employer C by such collective-bargaining representative.

(v) In addition, Employer C sends the notice by e-mail to each interested party who is a former employee or beneficiary, using the e-mail address previously provided to Employer C by such interested party. For any former employee or beneficiary who did not provide an e-mail address, Employer C sends the notice by regular mail to the last known address of such former employee or beneficiary.

(vi) In this *Example 3*, Employer C satisfies the notice to interested parties requirement described in this section.

(e) *Effective date.* (1) The provisions of this section shall apply to applications referred to in §1.7476–1(a) made on or after January 1, 2003.

(2) For applications made on or after June 21, 1976 and before January 1, 2003, §1.7476–2 (as it appeared in the April 1, 2002 edition of 26 CFR part 1) applies.

[T.D. 7421, 41 FR 20876, May 21, 1976, as amended at T.D. 9006, 67 FR 47456, July 19, 2002; T.D. 9294, 71 FR 61888, Oct. 20, 2006]

§1.7476–3 Notice of determination.

(a) *In general.* Under section 7476(b)(5) if a district director sends to the employer, the plan administrator, an interested party with respect to the plan, or the Pension Benefit Guaranty Corporation (or in the case of certain individuals who qualify as interested parties under paragraph (b) of §1.7476–1, to the person described under paragraph (c) of this section as the representative of such individuals) by certified or registered mail a notice of determination with respect to the qualification of a retirement plan described in section 7476(d), no proceeding for a declaratory judgment by the United States Tax Court with respect to the qualification of such plan may be initiated by such person unless the pleading initiating such proceeding is filed by such person with such Court before the ninety-first day after the day after such notice is mailed.

(b) *Address for notice of determination*—(1) *Applicant.* In the case of the applicant for a determination, a notice of determination referred to in section 7476(b)(5) shall be sufficient if mailed to such person at the address set forth on the application for the determination.

(2) *Interested party.* In the case of an interested party or parties who, pursuant to section 3001(b) of the Employee Retirement Income Security Act of 1974 (88 Stat. 995), submitted a comment to a district director with respect to the qualification of the plan, a notice of determination referred to in section 7476(b)(5) shall be sufficient if mailed to the address designated in the comment as the address to which correspondence should be sent.

(c) *Representative of interested parties.* (1) In the case of an interested party who, in accordance with section 3001(b) of the Employee Retirement Income Security Act of 1974 (88 Stat. 995), requests the Secretary of Labor to submit a comment to a district director on matters respecting the qualification of the plan, where pursuant to such request such Secretary does in fact submit such a comment, the Administrator of Pension and Welfare Benefit Programs, Department of Labor, shall be the representative of such interested party for purposes of receiving the notice referred to in section 7476(b)(5) with respect to those matters on which the Secretary of Labor commented.

(2) In the event a single comment with respect to the qualification of the plan is submitted to a district director by two or more interested parties, the representative designated in the comment for receipt of correspondence shall be the representative of all the interested parties submitting the comment for purposes of receiving the notice referred to in section 7476(b)(5) on behalf of all of them. Such designated representative must be either one of the interested parties who submitted the comment or a person described in paragraph (e)(6) (i), (ii) or (iii) of § 601.201 of this chapter (Statement of Procedural Rules). If one person is not designated in the comment as the representative for receipt of correspondence, a notice of determination mailed to any interested party who submitted the comment shall be notice to all the interested parties who submitted the comment for purposes of section 7476(b)(5).

[T.D. 7421, 41 FR 20877, May 21, 1976]

§ 1.7519–0T Table of contents (temporary).

This section lists the captions that appear in the temporary regulations under section 7519.

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§ 1.7519.3T Effective date (temporary).

§ 1.7519–1T Required payments for entities electing not to have required year (temporary).

(a) *In general*—(1) *Applicability*. This section applies to any taxable year that a partnership or S corporation has an election under section 444 in effect (an ''applicable election year'').

(2) *Returns and required payments*. For each applicable election year, a partnership or S corporation must—

(i) File a return as provided in § 1.7519–2T(a)(2), and

(ii) Make a required payment (as defined in paragraph (a)(3) of this section) as provided in § 1.7519–2T.

However, if the required payment for an applicable election year is not more than $500 and the partnership or S corporation has not been required to make a required payment for a prior year, the partnership or S corporation should not make a required payment for such applicable election year.

(3) *Required payment*. The term ''required payment'' means, with respect to any applicable election year, an amount equal to the excess of—

(i) The product of the applicable percentage of the adjusted highest section 1 rate, multiplied by the net base year income (as defined in paragraph (b)(5) of this section) of the entity over

(ii) The cumulative amount of required payments actually made for all preceding applicable election years (reduced by the cumulative amount of such payments refundable under section 7519(c) for all such preceding years).

Furthermore, the amount of the required payment is determined without regard to the required payment of any other partnership or S corporation. See example (3) in paragraph (d) of this section.

(4) *Examples*. The provisions of paragraph (a) of this section may be illustrated by the following examples.

Example 1. A, a partnership, makes a section 444 election to retain its taxable year ending September 30. For A's first applicable election year, A's required payment, as defined in paragraph (a)(3) of this section, is $400. Thus, A does not have to make a required payment for that year. However, A is required to file the return prescribed by § 1.7519–2T(a)(2).

Example 2. The facts are the same as in example (1), and, in addition to those facts, for A's second applicable election year, the amount determined under paragraph (a)(3)(i) of this section is $800. Because A did not actually make a required payment for A's first applicable election year, A's required payment is $800 for its second applicable election year. Since the required payment is greater than $500, A must make a required payment for its second applicable election year. Furthermore, A must file the return prescribed by § 1.7519–2T(a)(2).

Example 3. The facts are the same as in example (2), and, in addition to those facts, for A's third applicable election year, the amount determined under paragraph (a)(3)(i) of this section is $1,200. Thus, A's required payment is $400 ($1,200 determined under paragraph (a)(3)(i) of this section less $800 determined under paragraph (a)(3)(ii) of this section). Although A's required payment for its third applicable election year is not more than $500, A must make its required payment for such year because the required payment for a preceding applicable election year exceeded $500. A must also file the return prescribed by § 1.7519–2T(a)(2) for its third applicable election year.

(b) *Definitions and special rules*—(1) *Applicable percentage*—(i) *In general*. Except as provided in paragraph (b)(1)(ii) of this section, the term ''applicable percentage'' means the percentage determined in accordance with the following table:

If the applicable election year of the partnership or S corporation begins during—	The applicable percentage is—
1987	.25
1988	.50
1989	.75
1990 or thereafter	100

(ii) *Exception for certain applicable election years beginning after 1987*. [Reserved]

(iii) *Example*. The provisions of paragraph (b)(1) of this section may be illustrated by the following example.

Example. B is a corporation that has historically used a June 30 taxable year. For its taxable year beginning July 1, 1987, B elects to be an S corporation and elects under § 1.444–1T(b)(3) to retain its June 30 taxable year. Had B changed to a calendar year, its required year under section 1378, B's shareholders would not have been entitled to the 4-year spread under section 806(e)(2)(C) of the Tax Reform Act of 1986 because B was not an S corporation for its taxable year beginning

in 1986. Nevertheless, for purposes of determining the required payment for B's applicable election year beginning July 1, 1987, the applicable percentage is 25 percent.

(2) *Adjusted highest section 1 rate*—(i) *General rule*. For any applicable election year, the term ''adjusted highest section 1 rate'' means the highest rate of tax under section 1 applicable to the period defined in paragraph (b)(2)(ii) of this section, plus 1 percentage point. Notwithstanding the preceding sentence, the adjusted highest section 1 rate is 36 percent for applicable election years beginning in 1987. For purposes of this section, the highest rate of tax is determined without regard to the effect of section 1(g), relating to the phaseout of the 15-percent rate and personal exemptions.

(ii) *Period for determining highest section 1 rate*. For purposes of paragraph (b)(2)(i) of this section, the period for determining the highest rate of tax under section 1 is the 12 month period that—

(A) Ends with the required taxable year for the applicable election year, and

(B) Includes the end of the base year.

For example, assume that a partnership's applicable election year begins on October 1, 1988 and that the required taxable year for such applicable election year is December 31. Based upon these facts, the period for determining the highest section 1 rate is the 12-month period ending December 31, 1988.

(3) *Base year*. The term ''base year'' means, with respect to any applicable election year, the taxable year of the partnership or S corporation preceding such applicable election year.

(4) *Special rules for certain applicable election years*—(i) *First applicable election year of new entities*. If an applicable election year is a partnership's or S corporation's first year in existence (*i.e.*, the partnership or S corporation is newly formed and therefore does not have a base year), the required payment for such applicable election year is zero.

(ii) *Applicable election years ending prior to the required taxable year*. If a partnership or S corporation makes a section 444 election and the resulting applicable election year (the ''first applicable election year'') of the partnership or S corporation ends prior to the last day of the required year, the required payment for the first applicable election year is zero. See example (5) in paragraph (b)(5)(vi) of this section.

(5) *Net base year income*—(i) *In general*. Except as provided in paragraph (b)(5)(v) of this section (relating to short base years), the net base year income of a partnership or S corporation is the sum of—

(A) The deferral ratio multiplied by the partnership's or S corporation's net income for the base year, plus

(B) The excess (if any) of—

(*1*) The deferral ratio multiplied by the aggregate amount of applicable payments made by the partnership or S corporation during the base year, over

(*2*) The aggregate amount of such applicable payments made during the deferral period of the base year.

The term ''deferral ratio'' means the ratio which the number of months in the deferral period (as defined in § 1.444–1T (b)(4)) of the applicable election year bears to 12 months.

(ii) *Partnership net income*. For purposes of paragraph (b)(5)(i) of this section—

(A) *In general*. The net income of the partnership is the amount (not below zero) determined by taking into account the aggregate amount of the partnership's items described in section 702(a), except for—

(*1*) Credits,

(*2*) Tax-exempt income, and

(*3*) Guaranteed payments under section 707(c).

(B) *Treatment of deductions and losses*. For purposes of determining the aggregate amount of partnership items, deductions and losses are treated as negative income. Thus, for example, if under section 702(a) a partnership has $1,000 of ordinary taxable income, $500 of specially allocated deductions, and $300 of capital loss, the net income of the partnership is $200 ($1,000–$500–$300).

(C) *Partner limitations disregarded*. Any limitation on the amount of a partnership item described in section 702(a) which may be taken into account for purposes of computing the taxable income of a partner shall be disregarded in computing the net income of the partnership.

(iii) *S corporation net income.* For purposes of paragraph (b)(5)(i) of this section—

(A) *In general.* The net income of an S corporation is the amount (not below zero) determined by taking into account the aggregate amount of the S corporation's items described in section 1366(a) (other than credits and tax-exempt income). If the S corporation was a C corporation for the base year, the taxable income of the C corporation shall be treated as the net income of the S corporation for such year.

(B) *Treatment of deductions and losses.* For purposes of determining the aggregate amount of S corporation items, deductions and losses are treated as negative income. Thus, for example, if under section 1366(a) an S corporation has $2,000 of ordinary taxable income, $1,000 of deductions described in section 1366(a)(1)(A) of the Code, and $500 of capital loss, the net income of the S corporation is $500 ($2,000–$1,000–$500).

(C) *Shareholder limitations disregarded.* Any limitation on any amount described in section 1366(a) which may be taken into account for purposes of computing the taxable income of a shareholder shall be disregarded in computing the net income of the S corporation.

(iv) *Applicable payments*—(A) *In general.* The term *applicable payment* means any amount deductible in the base year that is includable at any time, directly or indirectly, in the gross income of a taxpayer that during the base year is a partner or shareholder.

(B) *Exceptions.* The term *applicable payment* does not include any guaranteed payments under section 707(c).

(C) *Special rule for corporation electing S status.* If an S corporation was a C corporation for the base year, the corporation shall be treated as if it were an S corporation for the base year for purposes of determining the amount of applicable payments under this section. Thus, amounts deductible by the C corporation in the base year that are includable at any time in the gross income of a taxpayer that is a shareholder during the base year are treated as if from an S corporation, and therefore within the meaning of the term ''applicable payments.''

(D) *Special rules for certain payments*—(*1*) *Certain indirect payments.* For purposes of paragraph (b)(5)(iv)(A) of this section, an amount is indirectly includable in the gross income of a partner or shareholder of a partnership or S corporation that has a section 444 election in effect (an electing partnership or S corporation) if the amount is includable in the gross income of—

(*i*) The spouse (other than a spouse who is legally separated from the partner or shareholder under a decree of divorce or separate maintenance) or child (under age 14) of such partner or shareholder, or

(*ii*) A corporation more than 50 percent (measured by fair market value) of which is owned in the aggregate by partners or shareholders (and individuals related under paragraph (b)(5)(iv)(D)(*1*)(*i*) of this section to any such partners or shareholders), of the electing partnership or S corporation, or

(*iii*) A partnership more than 50 percent of the profits and capital of which is owned in the aggregate by partners or shareholders (and individuals related under paragraph (b)(5)(iv)(D)(*1*)(*i*) of this section to any such partners or shareholders) of the electing partnership or S corporation, or

(*iv*) A trust more than 50 percent of the beneficial ownership of which is owned in the aggregate by partners or shareholders (and individuals related under paragraph (b)(5)(iv)(D)(*1*)(*i*) of this section to any such partners or shareholders), of the electing partnership or S corporation.

For purposes of this paragraph (b)(5)(iv)(D)(*1*), ownership by any person described in this paragraph (b)(5)(iv)(D)(*1*) shall be treated as ownership by the partners or shareholders of the electing partnership or S corporation. This paragraph (b)(5)(iv)(D)(*1*) does not apply to amounts deductible by a partnership or S corporation that has made a section 444 election (the ''deducting partnership'') and included in the gross income of a partnership or S corporation defined in paragraphs (b)(5)(iv)(D)(*1*) (*ii*) or (*iii*) of this section (the ''including partnership''), if the including partnership has the same taxable year as the deducting partnership and the including partnership has a

section 444 election in effect. Furthermore, notwithstanding the general effective date provided in § 1.7519–3T, this paragraph (b)(5)(iv)(D)(*1*) is effective for amounts deductible on or after June 1, 1988.

(*2*) *Payments by a downstream controlled partnership*—(*i*) *In general*. If a partnership or S corporation has made a section 444 election, any amounts deducted by a downstream controlled partnership will be considered deducted by the partnership or S corporation that has made the section 444 election for purposes of determining the applicable payments of the partnership or S corporation that has made the section 444 election.

(*ii*) *Definition of a downstream controlled partnership*. If a partnership or S corporation that has made a section 444 election owns more than 50 percent of a partnership's profits and capital, such owned partnership is considered a downstream controlled partnership for purposes of paragraph (b)(5)(iv)(D)(*2*)(*i*) of this section. Furthermore, if more than 50 percent of a partnership's profits and capital are owned by a downstream controlled partnership, such owned partnership is considered a downstream controlled partnership for purposes of paragraph (b)(5)(iv)(D)(*2*)(*i*) of this section.

(*3*) *Examples*. The provisions of this paragraph (b)(5)(iv)(D) may be illustrated by the following examples.

Example 1. I1 and I2, calendar year individuals, own 100 percent of the profits and capital of C1, a partnership. In addition to owning C1, I1 and I2 also own 100 percent of the profits and capital of C2, a calendar year partnership. For its taxable years beginning February 1, 1987, 1988, and 1989, C1 has a section 444 election in effect to use a January 31 taxable year. During its base years beginning February 1, 1986, 1987, and 1988, C1 deducted $10,000, $11,000, and $12,000, respectively that was included in C2's gross income. Furthermore, of the $12,000 deducted by C1 for its taxable year beginning February 1, 1988, $7,000 was deducted during the period June 1, 1988 to January 31, 1989. Pursuant to paragraph (b)(5)(iv)(D)(*1*) of this section, the $7,000 deducted by C1 on or after June 1, 1988, and included in C2's gross income is considered an applicable payment for C1's base year beginning February 1, 1988. Amounts deducted by C1 prior to June 1, 1988, are not subject to paragraph (b)(5)(iv)(D)(*1*) of this section.

Example 2. The facts are the same as in example (1), except that I1 and I2 own only 51 percent of C2's profits and capital. Since the two partners in C1 (*i.e.*, I1 and I2) own more than 50 percent of C2's profits and capital, C2 is considered controlled by the partners of C1 pursuant to paragraph (b)(5)(iv)(D)(*1*)(*iii*) of this section. Thus, the conclusions in example (1) are unchanged. Furthermore, if the $7,000 deducted by C1 was included in the income of a partnership more than 50 percent of the profits and capital of which is owned by C2, such $7,000 would be considered an applicable payment for its base year beginning February 1, 1988.

Example 3. The facts are the same as in example (1), except that for its taxable years beginning February 1, 1987, 1988, and 1989, C2 has a section 444 election in effect to use a January 31 taxable year. Since both C1 and C2 have the same taxable year and both have section 444 elections in effect, paragraph (b)(5)(iv)(D)(*1*) of this section does not apply to the $7,000 deducted by C1 for its base year beginning February 1, 1988.

Example 4. I3 and I4, calendar year individuals, own 100 percent of the profits and capital of C3, a partnership. C3 has made a section 444 election to retain a year ending June 30 for its taxable year beginning July 1, 1987. Furthermore, C3 owns more than 50 percent of the profits and capital of C4, a partnership that historically used a June 30 taxable year. Pursuant to § 1.706–3T(b), C4 retains its year ending June 30 for its taxable year beginning July 1, 1987. For its taxable year beginning July 1, 1986, C4 deducted $20,000 that was included in I3's gross income. Pursuant to paragraph (b)(5)(iv)(D)(*2*) of this section, the $20,000 deducted by C4 is considered an applicable payment by C3 for its base year beginning July 1, 1986.

Example 5. The facts are the same as in example (4), except that the $20,000 deducted by C4 is included in the gross income of a calendar year partnership 100 percent owned by I3 and I4. Pursuant to paragraphs (b)(5)(v)(D)(*1*) and (*2*) of this section, the $20,000 deducted by C4 is considered an applicable payment by C3 for its base year beginning July 1, 1986.

Example 6. The facts are the same as in example (4), except that instead of directly owning a portion of C4, C3 owns more than 50 percent of the profits and capital of C5. Furthermore, C5 owns more than 50 percent of the profits and capital of C4. Pursuant to paragraph (b)(5)(iv)(D)(*2*)(*ii*) of this section, both C5 and C4 are considered downstream controlled partnerships of C3. Thus, pursuant to paragraph (b)(5)(iv)(D)(*2*)(*i*) of this section, the $20,000 deducted by C4 is considered an applicable payment by C3 for its base year beginning July 1, 1986.

(v) *Special rule for base year of less than twelve months*—(A) *In general*. If a

base year is a taxable year of less than twelve months (a ''short base year''), net base year income for such year is an amount equal to the excess, if any, of—

(*1*) The deferral ratio multiplied by the annualized short base year income, over

(*2*) Applicable payments made during the deferral period of the applicable election year following the base year.

(B) *Annualized short base year income.* The annualized short base year income is determined by—

(*1*) Increasing the net income for the short base year by applicable payments deductible in the short base year, and

(*2*) Multiplying the short base year income as increased in paragraph (b)(5)(v)(B)(*1*) of this section by twelve, and dividing the result by the number of months in the short base year.

(vi) *Examples.* The provisions of paragraph (b)(5) of this section may be illustrated by the following examples.

Example 1. D, a partnership, is owned 10 percent by a C corporation with a September 30 taxable year and 90 percent by calendar year individuals. D has historically used a September 30 taxable year. For its taxable year beginning October 1, 1987, D makes a section 444 election to retain its September 30 taxable year. For the base year from October 1, 1986 to September 30, 1987, D has net income of $200,000 and no applicable payments. D's deferral ratio is 3/12 (the ratio of the number of months in the deferral period to 12 months). Based upon these facts, D has net base year income of $50,000 ($200,000 × 3/12).

Example 2. The facts are the same as in example (1) except that D's net income for the base year is $140,000, after applicable payments of $60,000. Of the applicable payments $15,000 were deductible during the deferral period of the base year. Based upon these facts, D has net base year income of $35,000, determined as follows:

Net income multiplied by deferral ratio	$140,000 × 3/12		
			$35,000
Plus the excess, if any, of applicable payments multiplied by deferral ratio	$60,000 × 3/12		
		$15,000	
Over aggregate amount of applicable payments deductible during deferral period of base year		$15,000	0
Net base year income			$35,000

Example 3. The facts are the same as in example (2) except that of the $60,000 applicable payments only $10,000 are deductible during the deferral period of the base year. Based on these facts, D has net base year income of $40,000, determined as follows:

Net income multiplied by deferral ratio	$140,000 x 3/12		
			$35,000
Plus the excess, if any, of applicable payments multiplied by deferral ratio	$60,000 x 3/12		
		$15,000	.....
Over aggregate amount of applicable payments deductible during deferral period of base year		$10,000	
			$5,000
Net base year income			$40,000

Example 4. E is a C corporation that has historically used a January 31 taxable year. For its taxable year beginning February 1, 1987, E makes an election to be an S corporation and also makes a section 444 election to retain its January 31 taxable year. E's taxable income for the taxable year beginning February 1, 1986 to January 31, 1987 is $120,000. Pursuant to paragraph (b)(5)(iii)(A) of this section, the base year for X's first applicable election year is the taxable year beginning February 1, 1986 and ending January 31, 1987. Thus, E's net income for the base year is $120,000. During the base year, E pays its sole shareholder, A, a salary of $5,000 a month plus a $30,000 bonus on January 15, 1987. Thus, under paragraph (b)(5)(iv)(C) of this section, E's applicable payments for the base year are $90,000, of which $55,000 are applicable payments deductible during the deferral period of the base year (February 1 to December 31, 1986). Based upon these facts, E's net base year income is $137,500, determined as follows:

Net income multiplied by deferral ratio	$120,000 x 11/12	
		$110,000
Plus the excess, if any, of applicable payments multiplied by the deferral ratio	$90,000 x11/12	

		$82,500	
Over aggregate amount of applicable payments deductible during deferral period of base year ...		$55,000	$27,500
Net base year income			$137,500

Example 5. E, a corporation that has historically used a taxable year ending July 31, makes an election to be an S corporation for its taxable year beginning August 1, 1987. For that year, E also makes a section 444 election to use a taxable year ending September 30. Thus, E has two applicable election years beginning in 1987, the first beginning August 1, 1987 and ending September 30, 1987, and the second beginning October 1, 1987 and ending September 30, 1988. E's required year under section 1378 is the calendar year. Because E's first applicable election year ends prior to the last day of E's required year (*i.e.*, December 31, 1987), the required payment for E's first applicable election year is zero. However, E is required to file a return for such year as provided in § 1.7519–2T.

Example 6. The facts are the same as in example (5). E's second applicable election year is the year from October 1, 1987 to September 30, 1988, and the base year for the second applicable election year is a period of less than 12 months (i.e., August 1, 1987 to September 30, 1987). Thus, E must compute its net base year income using the special rule for short base years provided in paragraph (b)(5)(v) of this section. Assume E's net income for the short base year is $50,000, and E's applicable payments for the short base year are $15,000. Pursuant to paragraph (b)(5)(v)(B) of this section, E's annualized short base year net income is $390,000 ($65,000 × 12/2). Furthermore, assume E's applicable payments for the deferral period of its second applicable election year are $20,000. Based on these facts, the net base year income for the applicable election year beginning October 1, 1987 is $77,500, computed as follows:

Annualized short base year income multiplied by deferral ratio	$390,000 x 3/12	
		$97,500
Less:		
Applicable payments for deferral period		$20,000
Net base year income		$77,500

(c) *Refunds of required payments*. A partnership of S corporation is entitled to make a claim for refund, in accordance with the procedures provided in § 1.7519–2T(a)(6), if—

(1) The amount specified in paragraph (a)(3)(i) of this section is less than the amount specified in paragraph (a)(3)(ii) of this section; or

(2) The partnership or S corporation terminates its section 444 election, within the meaning of § 1.444–1T(a)(5).

(d) *Example*. The provisions of this section may be illustrated by the following examples.

Example 1. G, a partnership, is owned 10 percent by a C corporation with a June 30 taxable year, and 90 percent by calendar year individuals. G has historically used a June 30 taxable year. For its taxable year beginning July 1, 1987, G makes a section 444 election to retain its June 30 taxable year. For the base year from July 1, 1986 to June 30, 1987, G has net income of $300,000 and no applicable payments. G's deferral ratio is 6/12 (the ratio of the number of months in the deferral period to 12 months). Based on these facts, G's net base year income is $150,000 ($300,000×6/12). Thus, G's required payment for its first applicable election year is $13,500 ($150,000 of net base year income multiplied by 9 percent (the product of the applicable percentage for 1987, 25 percent, and the highest section 1 rate for 1987, 36 percent)).

Example 2. The facts are the same as in example (1). In addition, G continues its section 444 election for the taxable year beginning July 1, 1988, and G's net base year income for the year beginning July 1, 1987 is $150,000. The required payment for G's second applicable election year is $8,250 ($150,000 of net base year income multiplied by 14.5 percent (the product of the applicable percentage for 1988 applicable election years, 50 percent, and the adjusted highest section 1 rate for 1988, 29 percent) less G's $13,500 required payment for the first applicable election year).

Example 3. H, a partnership with a taxable year ending September 30, desires to make a section 444 election for its taxable year beginning October 1, 1987. H is 15 percent owned by I, a partnership with a taxable year ending September 30, and 85 percent owned by calendar year individuals. Assume H and I are qualified to make section 444 elections as a result of the ''same taxable year exception'' provided in § 1.444–2T(e). If H and I make section 444 elections, they must each make a required payment (assuming the amount computed under paragraph (a)(3) of this section is greater than $500). Pursuant to paragraph (a)(3) of this section, the required payments of H and I are calculated independent of each other. Thus, in determining the amount of its required payment, I may not exclude its income attributable to

H, even though H must also make a required payment on the same income.

Example 4. The facts are the same as in example (1) except that H is 90 percent owned by I and 10 percent owned by calendar year individuals. Pursuant to § 1.706–3T, if I makes a section 444 election to retain its taxable year ending September 30, H's required year will be September 30, because H's majority interest partner will have a September 30 taxable year. Thus, H is not required to make a section 444 election and a required payment in order to use a September 30 taxable year. I, however, must make a required payment.

[T.D. 8205, 53 FR 19706, May 27, 1988]

§ 1.7519–2T Required payments—procedures and administration (temporary).

(a) *Payment and return required*—(1) *In general.* With respect to any taxable year for which a partnership or S corporation has a section 444 election in effect (an ''applicable election year''), the partnership or S corporation shall file a return as provided in paragraphs (a) (2) and (3) of this section and make a payment, if required, as provided in paragraph (a)(4) of this section.

(2) *Return required*—(i) *In general.* A return showing the required payment shall be made, even if the required payment for the applicable election year is zero. For an applicable election year beginning in 1987, the return shall be made on Form 720, ''Quarterly Federal Excise Tax Return.'' For an applicable election year beginning after 1987, the return shall also be made on Form 720 unless another form is prescribed by the Commissioner.

(ii) *Procedure if amount for applicable election year (and all proceeding years) is not greater than $500.* If a partnership or S corporation is not required to make a payment under section 7519 for an applicable election year, the partnership or S corporation should type or legibly print ''zero'' on the appropriate line of the prescribed form.

(3) *Time and place for filing return*—(i) *Applicable election years beginning in 1987.* For an applicable election year beginning in 1987, the Form 720 must be filed with the Service Center indicated by the instructions for the Form 720. The date for filing such form is as follows—

(A) *Taxpayers that would otherwise file Form 720 for the second quarter of 1988.* Taxpayers that are required, without regard to this section, to file Form 720 for the second quarter of 1988 (e.g., taxpayers reporting liability for manufacturers excise tax) must file Form 720 by the normal due date of such form for the second quarter of 1988. Thus, such taxpayers must generally file Form 720 on or before July 31, 1988. However, if such taxpayers must also report tax imposed by section 4251 (relating to communications services tax), sections 4261 and 4271 (relating to air transportation tax), or section 4986 (relating to windfall profits tax) for the second quarter of 1988, they must file Form 720 on or before August 31, 1988.

(B) *Other taxpayers.* Taxpayers that are not described in paragraph (a)(3)(i)(A) of this section (*i.e.*, taxpayers that but for this section would not be required to file Form 720 for the second quarter of 1988) must file Form 720 on or before July 31, 1988.

(ii) *Applicable election years beginning after 1987*—(A) *Return made on Form 720.* [Reserved]

(B) *Return made on form other than Form 720.* For an applicable election year beginning after 1987, the return showing the required payment is to be filed with the Service Center indicated by the instructions for the form prescribed for payment. The return must be filed on or before the date prescribed by the instructions to the form.

(iii) *Special rule for back-up section 444 election.* See § 1.444–3T(b)(4)(iii) for a special rule that may extend the due date for filing a return required by paragraph (a)(2) of this section.

(4) *Time and place for making required payment*—(i) *Applicable election years beginning in 1987.* For an applicable election year beginning in 1987, the required payment is due and payable without assessment and notice on or before the date the taxpayer's Form 720 for the second quarter is due (as specified in paragraph (a)(3) of this section). The required payment must be paid by check or money order, and such check or money order must indicate the partnership's or S corporation's taxpayer identification number and must include the statement: ''IRS NO. 11 PAYMENT.'' The check or money order must be sent, together with Form 720,

to the Service Center indicated by the instructions for the Form 720.

(ii) *Applicable election years beginning after 1987.* For an applicable election year beginning after 1987, the required payment is due and payable without assessment or notice, on or before May 15 of the calendar year following the calendar year in which the applicable election year begins.

(iii) *Special rule for back-up section 444 election.* See §1.444–3T(b)(4)(iii) for a special rule that may extend the due date for making a required payment.

(5) *Penalties for failure to pay.* In the case of any failure by a partnership or S corporation to pay the required payment on or before the date prescribed in paragraph (a)(4) of this section, there shall be assessed on such partnership or S corporation a penalty of 10 percent of the underpayment. For purposes of this section, the term ''underpayment'' means the excess of the amount of the payment required under this section over the amount (if any) of such payment paid on or before the date prescribed in paragraph (a)(4) of this section.

(6) *Refund of required payment*—(i) *In general.* If a partnership or S corporation is entitled to make a claim for refund pursuant to §1.7519–1T(c), such partnership or S corporation should file a claim for refund, as provided in paragraph (a)(6)(ii) of this section. However, in no event shall a refund be made prior to April 15 of the second calendar year that follows the calendar year in which an applicable election year begins. For example, assume a partnership made a section 444 election to retain its taxable year for its taxable year beginning October 1, 1987, and as a result made a required payment for such year. Further assume that the partnership terminates its election for its taxable year beginning October 1, 1988. Based on these facts, the partnership will be entitled to a refund, but no earlier than April 15, 1989.

(ii) *Procedures for claiming refund.* [Reserved]

(iii) *Interest on refund.* No interest shall be allowed with respect to any refund of a required payment under §1.7519–1T(C).

(b) *Assessment and collection of payment.* A required payment shall be assessed and collected in the same manner as if it were a tax imposed by subtitle C. Furthermore, no deduction shall be allowable to a partnership or S corporation (or their owners) with respect to the required payment.

(c) *Termination due to willful failure.* See §1.444–1T(a)(5)(i)(C), which provides that willful failure to comply with the requirements of this section will result in the termination of the section 444 election.

(d) *Negligence and fraud penalties made applicable.* For purposes of section 6653, relating to additions to tax for negligence and fraud, any payment required by this section shall be treated as a tax.

[T.D. 8205, 53 FR 19709, May 27, 1988]

§ 1.7519–3T Effective date (temporary).

The provisions of §§1.7519–1T through §1.7519–3T are effective for taxable years beginning after December 31, 1986.

[T.D. 8205, 53 FR 19710, May 27, 1988]

GENERAL ACTUARIAL VALUATIONS

§ 1.7520–1 Valuation of annuities, unitrust interests, interests for life or terms of years, and remainder or reversionary interests.

(a) *General actuarial valuations.* (1) Except as otherwise provided in this section and in §1.7520–3 (relating to exceptions to the use of prescribed tables under certain circumstances), in the case of certain transactions after April 30, 1989, subject to income tax, the fair market value of annuities, interests for life or for a term of years (including unitrust interests), remainders, and reversions is their present value determined under this section. See §20.2031–7(d) (and, for certain prior periods, §20.2031–7A) of this chapter, Estate Tax Regulations, for the computation of the value of annuities, unitrust interests, life estates, terms for years, remainders, and reversions, other than interests described in paragraphs (a)(2) and (a)(3) of this section.

(2) For a transfer to a pooled income fund after April 30, 1999, see §1.642(c)–6(e) (or, for certain prior periods, §1.642(c)–6A) with respect to the valuation of the remainder interest.

(3) For a transfer to a charitable remainder annuity trust after April 30, 1989, see §1.664–2 with respect to the valuation of the remainder interest. See §1.664–4 with respect to the valuation of the remainder interest in property transferred to a charitable remainder unitrust.

(b) *Components of valuation*—(1) *Interest rate component*—(i) *Section 7520 Interest rate*. The section 7520 interest rate is the rate of return, rounded to the nearest two-tenths of one percent, that is equal to 120 percent of the applicable Federal mid-term rate, compounded annually, for purposes of section 1274(d)(1), for the month in which the valuation date falls. In rounding the rate to the nearest two-tenths of a percent, any rate that is midway between one two-tenths of a percent and another is rounded up to the higher of those two rates. For example, if 120 percent of the applicable Federal mid-term rate is 10.30, the section 7520 interest rate component is 10.4. The section 7520 interest rate is published monthly by the Internal Revenue Service in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(*b*) of this chapter).

(ii) *Valuation date*. Except as provided in §1.7520–2, the valuation date is the date on which the transaction takes place.

(2) *Mortality component*. The mortality component reflects the mortality data most recently available from the United States census. As new mortality data becomes available after each decennial census, the mortality component described in this section will be revised periodically and the revised mortality component tables will be published in the regulations at that time. For transactions with valuation dates after April 30, 1999, the mortality component table (Table 90CM) is contained in §20.2031–7(d)(7) of this chapter. See §20.2031–7A of this chapter for mortality component tables applicable to transactions for which the valuation date falls before May 1, 1999.

(c) *Tables*. The present value on the valuation date of an annuity, life estate, term of years, remainder, or reversion is computed by using the section 7520 interest rate component that is described in paragraph (b)(1) of this section and the mortality component that is described in paragraph (b)(2) of this section. Actuarial factors for determining these present values are included in tables in these regulations and in publications by the Internal Revenue Service. If a special factor is required in order to value an interest, the Internal Revenue Service will furnish the factor upon a request for a ruling. The request for a ruling must be accompanied by a recitation of the facts, including the date of birth for each measuring life and copies of relevant instruments. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (see Rev. Proc. 94–1, 1994–1 I.R.B. 10, and subsequent updates, and §§601.201 and 601.601(d)(2)(ii)(*b*) of this chapter) and include payment of the required user fee.

(1) *Regulation sections containing tables with interest rates between 4.2 and 14 percent for valuation dates after April 30, 1999*. Section 1.642(c)–6(e)(6) contains Table S used for determining the present value of a single life remainder interest in a pooled income fund as defined in §1.642(c)–5. See §1.642(c)–6A for actuarial factors for one life applicable to valuation dates before May 1, 1999. Section 1.664–4(e)(6) contains Table F (payout factors) and Table D (actuarial factors used in determining the present value of a remainder interest postponed for a term of years). Section 1.664–4(e)(7) contains Table U(1) (unitrust single life remainder factors). These tables are used in determining the present value of a remainder interest in a charitable remainder unitrust as defined in §1.664–3. See §1.664–4A for unitrust single life remainder factors applicable to valuation dates before May 1, 1999. Section 20.2031–7(d)(6) of this chapter contains Table B (actuarial factors used in determining the present value of an interest for a term of years), Table K (annuity end-of-interval adjustment factors), and Table J (term certain annuity beginning-of-interval adjustment factors). Section 20.2031–7(d)(7) of this chapter contains Table S (single life remainder factors), and Table 90CM (mortality components). These tables are used in determining the present value of annuities,

life estates, remainders, and reversions. See § 20.2031–7A of this chapter for single life remainder factors and mortality components applicable to valuation dates before May 1, 1999.

(2) *Internal Revenue Service publications containing tables with interest rates between 2.2 and 22 percent for valuation dates after April 30, 1999.* The following documents are available for purchase from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402:

(i) Internal Revenue Service Publication 1457, ''Actuarial Values, Book Aleph,'' (7–1999). This publication includes tables of valuation factors, as well as examples that show how to compute other valuation factors, for determining the present value of annuities, life estates, terms of years, remainders, and reversions, measured by one or two lives. These factors may also be used in the valuation of interests in a charitable remainder annuity trust as defined in § 1.664–2 and a pooled income fund as defined in § 1.642(c)–5. See § 20.2031–7A of this chapter for publications containing tables for valuation dates before May 1, 1999.

(ii) Internal Revenue Service Publication 1458, ''Actuarial Values, Book Beth,'' (7–1999). This publication includes term certain tables and tables of one and two life valuation factors for determining the present value of remainder interests in a charitable remainder unitrust as defined in § 1.664–3. See § 1.664–4A for publications containing tables for valuation dates before May 1, 1999.

(iii) Internal Revenue Service Publication 1459, ''Actuarial Values, Book Gimel,'' (7–1999). This publication includes tables for computing depreciation adjustment factors. See § 1.170A–12.

(d) *Effective date.* This section applies after April 30, 1989.

[T.D. 8540, 59 FR 30149, June 10, 1994, as amended by T.D. 8819, 64 FR 23210, 23229, Apr. 30, 1999; T.D. 8886, 65 FR 36928, 36943, June 12, 2000]

§ 1.7520–2 Valuation of charitable interests.

(a) *In general*—(1) *Valuation.* Except as otherwise provided in this section and in § 1.7520–3 (relating to exceptions to the use of prescribed tables under certain circumstances), the fair market value of annuities, interests for life or for a term of years, remainders, and reversions for which an income tax charitable deduction is allowable is the present value of such interests determined under § 1.7520–1.

(2) *Prior-month election rule.* If any part of the property interest transferred qualifies for an income tax charitable deduction under section 170(c), the taxpayer may elect (under paragraph (b) of this section) to compute the present value of the interest transferred by use of the section 7520 interest rate for the month during which the interest is transferred or the section 7520 interest rate component for either of the 2 months preceding the month during which the interest is transferred. Paragraph (b) of this section explains how a prior-month election is made. The interest rate for the month so elected is the applicable section 7520 interest rate. If the actuarial factor for either or both of the 2 months preceding the month during which the interest is transferred is based on a mortality experience that is different from the mortality experience at the date of the transfer and if the taxpayer elects to use the section 7520 rate for a prior month with the different mortality experience, the taxpayer must use the actuarial factor derived from the mortality experience in effect during the month of the section 7520 rate elected. All actuarial computations relating to the transfer must be made by applying the interest rate component and the mortality component of the month elected by the taxpayer.

(3) *Transfers of more than one interest in the same property.* If a taxpayer transfers more than one interest in the same property at the same time, for purposes of valuing the transferred interests, the taxpayer must use the same interest rate and mortality component for each interest in the property transferred. If more than one interest in the same property is transferred in two or more separate transfers at different times, the value of each interest is determined by the use of the interest rate component and mortality component in effect during

the month of the transfer of that interest or, if applicable under paragraph (a)(2) of this section, either of the two months preceding the month of the transfer.

(4) *Information required with tax return.* The following information must be attached to the income tax return (or to the amended return) if the taxpayer claims a charitable deduction for the present value of a temporary or remainder interest in property—

(i) A complete description of the interest that is transferred, including a copy of the instrument of transfer;

(ii) The valuation date of the transfer;

(iii) The names and identification numbers of the beneficiaries of the transferred interest;

(iv) The names and birthdates of any measuring lives, a description of any relevant terminal illness condition of any measuring life, and (if applicable) an explanation of how any terminal illness condition was taken into account in valuing the interest; and

(v) A computation of the deduction showing the applicable section 7520 interest rate that is used to value the transferred interest.

(5) *Place for filing returns.* See section 6091 of the Internal Revenue Code and the regulations thereunder for the place for filing the return or other document required by this section.

(b) *Election of interest rate component*—(1) *Time for making election.* A taxpayer makes a prior-month election under paragraph (a)(2) of this section by attaching the information described in paragraph (b)(2) of this section to the taxpayer's income tax return or to an amended return for that year that is filed within 24 months after the later of the date the original return for the year was filed or the due date for filing the return.

(2) *Manner of making election.* A statement that the prior-month election under section 7520(a) of the Internal Revenue Code is being made and that identifies the elected month must be attached to the income tax return (or to the amended return).

(3) *Revocability.* The prior-month election may be revoked by filing an amended return within 24 months after the later of the date the original return of tax for the year was filed or the due date for filing the return. The revocation must be filed in the place referred to in paragraph (a)(5) of this section.

(c) *Effective dates.* Paragraph (a) of this section is effective as of May 1, 1989. Paragraph (b) of this section is effective for elections made after June 10, 1994.

[T.D. 8540, 59 FR 30149, June 10, 1994]

§ 1.7520–3 Limitation on the application of section 7520.

(a) *Internal Revenue Code sections to which section 7520 does not apply.* Section 7520 of the Internal Revenue Code does not apply for purposes of—

(1) Part I, subchapter D of subtitle A (section 401 et. seq.), relating to the income tax treatment of certain qualified plans. (However, section 7520 does apply to the estate and gift tax treatment of certain qualified plans and for purposes of determining excess accumulations under section 4980A);

(2) Sections 72 and 101(b), relating to the income taxation of life insurance, endowment, and annuity contracts, unless otherwise provided for in the regulations under sections 72, 101, and 1011 (see, particularly, §§ 1.101–2(e)(1)(iii)(*b*)(*2*), and 1.1011–2(c), *Example 8*);

(3) Sections 83 and 451, unless otherwise provided for in the regulations under those sections;

(4) Section 457, relating to the valuation of deferred compensation, unless otherwise provided for in the regulations under section 457;

(5) Sections 3121(v) and 3306(r), relating to the valuation of deferred amounts, unless otherwise provided for in the regulations under those sections;

(6) Section 6058, relating to valuation statements evidencing compliance with qualified plan requirements, unless otherwise provided for in the regulations under section 6058;

(7) Section 7872, relating to income and gift taxation of interest-free loans and loans with below-market interest rates, unless otherwise provided for in the regulations under section 7872; or

(8) Section 2702(a)(2)(A), relating to the value of a nonqualified retained interest upon a transfer of an interest in trust to or for the benefit of a member of the transferor's family; and

(9) Any other sections of the Internal Revenue Code to the extent provided by the Internal Revenue Service in revenue rulings or revenue procedures. (See §§ 601.201 and 601.601 of this chapter).

(b) *Other limitations on the application of section 7520*—(1) *In general*—(i) *Ordinary beneficial interests.* For purposes of this section:

(A) An *ordinary annuity interest* is the right to receive a fixed dollar amount at the end of each year during one or more measuring lives or for some other defined period. A standard section 7520 annuity factor for an ordinary annuity interest represents the present worth of the right to receive $1.00 per year for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. If an annuity interest is payable more often than annually or is payable at the beginning of each period, a special adjustment must be made in any computation with a standard section 7520 annuity factor.

(B) An *ordinary income interest* is the right to receive the income from, or the use of, property during one or more measuring lives or for some other defined period. A standard section 7520 income factor for an ordinary income interest represents the present worth of the right to receive the use of $1.00 for a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(C) An *ordinary remainder or reversionary interest* is the right to receive an interest in property at the end of one or more measuring lives or some other defined period. A standard section 7520 remainder factor for an ordinary remainder or reversionary interest represents the present worth of the right to receive $1.00 at the end of a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(ii) *Certain restricted beneficial interests.* A *restricted beneficial interest* is an annuity, income, remainder, or reversionary interest that is subject to a contingency, power, or other restriction, whether the restriction is provided for by the terms of the trust, will, or other governing instrument or is caused by other circumstances. In general, a standard section 7520 annuity, income, or remainder factor may not be used to value a restricted beneficial interest. However, a special section 7520 annuity, income, or remainder factor may be used to value a restricted beneficial interest under some circumstances. See paragraph (b)(4) *Example 2* of this section, which illustrates a situation where a special section 7520 actuarial factor is needed to take into account the shorter life expectancy of the terminally ill measuring life. See § 1.7520–1(c) for requesting a special factor from the Internal Revenue Service.

(iii) *Other beneficial interests.* If, under the provisions of this paragraph (b), the interest rate and mortality components prescribed under section 7520 are not applicable in determining the value of any annuity, income, remainder, or reversionary interest, the actual fair market value of the interest (determined without regard to section 7520) is based on all of the facts and circumstances if and to the extent permitted by the Internal Revenue Code provision applicable to the property interest.

(2) *Provisions of governing instrument and other limitations on source of payment*—(i) *Annuities.* A standard section 7520 annuity factor may not be used to determine the present value of an annuity for a specified term of years or the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to ensure that the annuity will be paid for the entire defined period. In the case of an annuity payable from a trust or other limited fund, the annuity is not considered payable for the entire defined period if, considering the applicable section 7520 interest rate at the valuation date of the transfer, the annuity is expected to exhaust the fund before the last possible annuity payment is made in full. For this purpose, it must be assumed that it is possible for each measuring life to survive until age 110. For example, for a fixed annuity payable annually at the end of each year, if the amount of the annuity payment (expressed as a percentage of the initial corpus) is less than or equal to the applicable section 7520 interest rate at the date of the transfer, the corpus is assumed to be sufficient to make all

payments. If the percentage exceeds the applicable section 7520 interest rate and the annuity is for a definite term of years, multiply the annual annuity amount by the Table B term certain annuity factor, as described in § 1.7520–1(c)(1), for the number of years of the defined period. If the percentage exceeds the applicable section 7520 interest rate and the annuity is payable for the life of one or more individuals, multiply the annual annuity amount by the Table B annuity factor for 110 years minus the age of the youngest individual. If the result exceeds the limited fund, the annuity may exhaust the fund, and it will be necessary to calculate a special section 7520 annuity factor that takes into account the exhaustion of the trust or fund. This computation would be modified, if appropriate, to take into account annuities with different payment terms. See § 25.7520–3(b)(2)(v) *Example 5* of this chapter, which provides an illustration involving an annuity trust that is subject to exhaustion.

(ii) *Income and similar interests*—(A) *Beneficial enjoyment.* A standard section 7520 income factor for an ordinary income interest may not be used to determine the present value of an income or similar interest in trust for a term of years or for the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to provide the income beneficiary with that degree of beneficial enjoyment of the property during the term of the income interest that the principles of the law of trusts accord to a person who is unqualifiedly designated as the income beneficiary of a trust for a similar period of time. This degree of beneficial enjoyment is provided only if it was the transferor's intent, as manifested by the provisions of the governing instrument and the surrounding circumstances, that the trust provide an income interest for the income beneficiary during the specified period of time that is consistent with the value of the trust corpus and with its preservation. In determining whether a trust arrangement evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for in the administration of the subject trust. Similarly, in determining the present value of the right to use tangible property (whether or not in trust) for one or more measuring lives or for some other specified period of time, the interest rate component prescribed under section 7520 and § 1.7520–1 may not be used unless, during the specified period, the effect of the trust, will or other governing instrument is to provide the beneficiary with that degree of use, possession, and enjoyment of the property during the term of interest that applicable state law accords to a person who is unqualifiedly designated as a life tenant or term holder for a similar period of time.

(B) *Diversions of income and corpus.* A standard section 7520 income factor for an ordinary income interest may not be used to value an income interest or similar interest in property for a term of years or for one or more measuring lives if—

(*1*) The trust, will, or other governing instrument requires or permits the beneficiary's income or other enjoyment to be withheld, diverted, or accumulated for another person's benefit without the consent of the income beneficiary; or

(*2*) The governing instrument requires or permits trust corpus to be withdrawn from the trust for another person's benefit during the income beneficiary's term of enjoyment without the consent of and accountability to the income beneficiary for such diversion.

(iii) *Remainder and reversionary interests.* A standard section 7520 remainder interest factor for an ordinary remainder or reversionary interest may not be used to determine the present value of a remainder or reversionary interest (whether in trust or otherwise) unless, consistent with the preservation and protection that the law of trusts would provide for a person who is unqualifiedly designated as the remainder beneficiary of a trust for a similar duration, the effect of the administrative and dispositive provisions for the interest or interests that precede the remainder or reversionary interest is to assure that the property

will be adequately preserved and protected (e.g., from erosion, invasion, depletion, or damage) until the remainder or reversionary interest takes effect in possession and enjoyment. This degree of preservation and protection is provided only if it was the transferor's intent, as manifested by the provisions of the arrangement and the surrounding circumstances, that the entire disposition provide the remainder or reversionary beneficiary with an undiminished interest in the property transferred at the time of the termination of the prior interest.

(iv) *Pooled income fund interests.* In general, pooled income funds are created and administered to achieve a special rate of return. A beneficial interest in a pooled income fund is not ordinarily valued using a standard section 7520 income or remainder interest factor. The present value of a beneficial interest in a pooled income fund is determined according to rules and special remainder factors prescribed in §1.642(c)–6 and, when applicable, the rules set forth in paragraph (b)(3) of this section, if the individual who is the measuring life is terminally ill at the time of the transfer.

(3) *Mortality component.* The mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life is terminally ill at the time of the transaction. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent probability that the individual will die within 1 year. However, if the individual survives for eighteen months or longer after the date of the transaction, that individual shall be presumed to have not been terminally ill at the time of the transaction unless the contrary is established by clear and convincing evidence.

(4) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

Example 1. Annuity funded with unproductive property. The taxpayer transfers corporation stock worth $1,000,000 to a trust. The trust provides for a 6 percent ($60,000 per year) annuity in cash or other property to be paid to a charitable organization for 25 years and for the remainder to be distributed to the donor's child. The trust specifically authorizes, but does not require, the trustee to retain the shares of stock. The section 7520 interest rate for the month of the transfer is 8.2 percent. The corporation has paid no dividends on this stock during the past 5 years, and there is no indication that this policy will change in the near future. Under applicable state law, the corporation is considered to be a sound investment that satisfies fiduciary standards. Therefore, the trust's sole investment in this corporation is not expected to adversely affect the interest of either the annuitant or the remainder beneficiary. Considering the 6 percent annuity payout rate and the 8.2 percent section 7520 interest rate, the trust corpus is considered sufficient to pay this annuity for the entire 25-year term of the trust, or even indefinitely. Although it appears that neither beneficiary would be able to compel the trustee to make the trust corpus produce investment income, the annuity interest in this case is considered to be an ordinary annuity interest, and the standard section 7520 annuity factor may be used to determine the present value of the annuity. In this case, the section 7520 annuity factor would represent the right to receive $1.00 per year for a term of 25 years.

Example 2. Terminal illness. The taxpayer transfers property worth $1,000,000 to a charitable remainder unitrust described in section 664(d)(2) and §1.664–3. The trust provides for a fixed-percentage 7 percent unitrust benefit (each annual payment is equal to 7 percent of the trust assets as valued at the beginning of each year) to be paid quarterly to an individual beneficiary for life and for the remainder to be distributed to a charitable organization. At the time the trust is created, the individual beneficiary is age 60 and has been diagnosed with an incurable illness and there is at least a 50 percent probability of the individual dying within 1 year. Assuming the presumption in paragraph (b)(3) of this section does not apply, because there is at least a 50 percent probability that this beneficiary will die within 1 year, the standard section 7520 unitrust remainder factor for a person age 60 from the valuation tables may not be used to determine the present value of the charitable remainder interest. Instead, a special unitrust remainder factor must be computed that is based on the section 7520 interest rate and that takes into account the projection of the individual beneficiary's actual life expectancy.

(5) *Additional limitations.* Section 7520 does not apply to the extent as may otherwise be provided by the Commissioner.

(c) *Effective date*. Section 1.7520–3(a) is effective as of May 1, 1989. The provisions of paragraph (b) of this section are effective with respect to transactions after December 13, 1995.

[T.D. 8540, 59 FR 30150, June 10, 1994, as amended by T.D. 8630, 60 FR 63915, Dec. 13, 1995]

§ 1.7520–4 Transitional rules.

(a) *Reliance*. If the valuation date is after April 30, 1989, and before June 10, 1994, a taxpayer can rely on Notice 89–24, 1989–1 C.B. 660, or Notice 89–60, 1989–1 C.B. 700 (See § 601.601(d)(2)(ii)(*b*) of this chapter), in valuing the transferred interest.

(b) *Effective date*. This section is effective as of May 1, 1989.

[T.D. 8540, 59 FR 30150, June 10, 1994]

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This section lists captions that appear in §§ 1.7701(l)–1 and 1.7701(l)–3:

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[T.D. 8853, 65 FR 1313, Jan. 10, 2000]

§ 1.7701(l)–1 Conduit financing arrangements.

Section 7701(l) authorizes the issuance of regulations that recharacterize any multiple-party financing transaction as a transaction directly among any two or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by title 26 of the United States Code.

[T.D. 8611, 60 FR 41015, Aug. 11, 1995, as amended by T.D. 8735, 62 FR 53502, Oct. 14, 1997]

§ 1.7701(l)–3 Recharacterizing financing arrangements involving fast-pay stock.

(a) *Purpose and scope*. This section is intended to prevent the avoidance of tax by persons participating in fast-pay arrangements (as defined in paragraph (b)(1) of this section) and should be interpreted in a manner consistent with this purpose. This section applies to all fast-pay arrangements. Paragraph (c) of this section recharacterizes certain fast-pay arrangements to ensure the participants are taxed in a manner reflecting the economic substance of the arrangements. Paragraph (f) of this section imposes reporting requirements on certain participants.

(b) *Definitions*—(1) *Fast-pay arrangement*. A fast-pay arrangement is any arrangement in which a corporation has fast-pay stock outstanding for any part of its taxable year.

(2) *Fast-pay stock*—(i) *Defined*. Stock is fast-pay stock if it is structured so that dividends (as defined in section 316) paid by the corporation with respect to the stock are economically (in

whole or in part) a return of the holder's investment (as opposed to only a return on the holder's investment). Unless clearly demonstrated otherwise, stock is presumed to be fast-pay stock if—

(A) It is structured to have a dividend rate that is reasonably expected to decline (as opposed to a dividend rate that is reasonably expected to fluctuate or remain constant); or

(B) It is issued for an amount that exceeds (by more than a de minimis amount, as determined under the principles of §1.1273–1(d)) the amount at which the holder can be compelled to dispose of the stock.

(ii) *Determination*. The determination of whether stock is fast-pay stock is based on all the facts and circumstances, including any related agreements such as options or forward contracts. A related agreement includes any direct or indirect agreement or understanding, oral or written, between the holder of the stock and the issuing corporation, or between the holder of the stock and one or more other shareholders in the corporation. To determine if it is fast-pay stock, stock is examined when issued, and, for stock that is not fast-pay stock when issued, when there is a significant modification in the terms of the stock or the related agreements or a significant change in the relevant facts and circumstances. Stock is not fast-pay stock solely because a redemption is treated as a dividend as a result of section 302(d) unless there is a principal purpose of achieving the same economic and tax effect as a fast-pay arrangement.

(3) *Benefited stock*. With respect to any fast-pay stock, all other stock in the corporation (including other fast-pay stock having any significantly different characteristics) is benefited stock.

(c) *Recharacterization of certain fast-pay arrangements*—(1) *Scope*. This paragraph (c) applies to any fast-pay arrangement—

(i) In which the corporation that has outstanding fast-pay stock is a regulated investment company (RIC) (as defined in section 851) or a real estate investment trust (REIT) (as defined in section 856); or

(ii) If the Commissioner determines that a principal purpose for the structure of the fast-pay arrangement is the avoidance of any tax imposed by the Internal Revenue Code. Application of this paragraph (c)(1)(ii) is at the Commissioner's discretion, and a determination under this paragraph (c)(1)(ii) applies to all parties to the fast-pay arrangement, including transferees.

(2) *Recharacterization*. A fast-pay arrangement described in paragraph (c)(1) of this section is recharacterized as an arrangement directly between the benefited shareholders and the fast-pay shareholders. The inception and resulting relationships of the recharacterized arrangement are deemed to be as follows:

(i) *Relationship between benefited shareholders and fast-pay shareholders*. The benefited shareholders issue financial instruments (the financing instruments) directly to the fast-pay shareholders in exchange for cash equal to the fair market value of the fast-pay stock at the time of issuance (taking into account any related agreements). The financing instruments have the same terms (other than issuer) as the fast-pay stock. Thus, for example, the timing and amount of the payments made with respect to the financing instruments always match the timing and amount of the distributions made with respect to the fast-pay stock.

(ii) *Relationship between benefited shareholders and corporation*. The benefited shareholders contribute to the corporation the cash they receive for issuing the financing instruments. Distributions made with respect to the fast-pay stock are distributions made by the corporation with respect to the benefited shareholders' benefited stock.

(iii) *Relationship between fast-pay shareholders and corporation*. For purposes of determining the relationship between the fast-pay shareholders and the corporation, the fast-pay stock is ignored. The corporation is the paying agent of the benefited shareholders with respect to the financing instruments.

(3) *Other rules*—(i) *Character of the financing instruments*. The character of a financing instrument (for example,

stock or debt) is determined under general tax principles and depends on all the facts and circumstances.

(ii) *Multiple types of benefited stock*. If any benefited stock has any significantly different characteristics from any other benefited stock, the recharacterization rules of this paragraph (c) apply among the different types of benefited stock as appropriate to match the economic substance of the fast-pay arrangement.

(iii) Transactions affecting benefited stock—(A) Sale of benefited stock. If one person sells benefited stock to another—

(*1*) In addition to any consideration actually paid and received for the benefited stock, the buyer is deemed to pay and the seller is deemed to receive the amount necessary to terminate the seller's position in the financing instruments at fair market value; and

(*2*) The buyer is deemed to issue financing instruments to the fast-pay shareholders in exchange for the amount necessary to terminate the seller's position in the financing instruments.

(B) *Transactions other than sales*. Except for transactions subject to paragraph (c)(3)(iii)(A) of this section, in the case of any transaction affecting benefited stock, the parties to the transaction must make appropriate adjustments to properly take into account the fast-pay arrangement as characterized under paragraph (c)(2) of this section.

(iv) *Adjustment to basis for amounts accrued or paid in taxable years ending before February 27, 1997*. In the case of a fast-pay arrangement involving amounts accrued or paid in taxable years ending before February 27, 1997, and recharacterized under this paragraph (c), a benefited shareholder must decrease its basis in any benefited stock (as determined under paragraph (c)(2)(ii) of this section) by the amount (if any) that—

(A) Its income attributable to the benefited stock (reduced by deductions attributable to the financing instruments) for taxable years ending before February 27, 1997, computed by recharacterizing the fast-pay arrangement under this paragraph (c) and by treating the financing instruments as debt; exceeds

(B) Its income attributable to such stock for taxable years ending before February 27, 1997, computed without applying the rules of this paragraph (c).

(d) *Prohibition against affirmative use of recharacterization by taxpayers*. A taxpayer may not use the rules of paragraph (c) of this section if a principal purpose for using such rules is the avoidance of any tax imposed by the Internal Revenue Code. Thus, with respect to such taxpayer, the Commissioner may depart from the rules of this section and recharacterize (for all purposes of the Internal Revenue Code) the fast-pay arrangement in accordance with its form or its economic substance. For example, if a foreign person acquires fast-pay stock in a REIT and a principal purpose for acquiring such stock is to reduce United States withholding taxes by applying the rules of paragraph (c) of this section, the Commissioner may, for purposes of determining the foreign person's United States tax consequences (including withholding tax), depart from the rules of paragraph (c) of this section and treat the foreign person as holding fast-pay stock in the REIT.

(e) *Examples*. The following examples illustrate the rules of paragraph (c) of this section:

Example 1. Decline in dividend rate. (i) *Facts*. Corporation X issues 100 shares of A Stock and 100 shares of B Stock for $1,000 per share. By its terms, a share of B Stock is reasonably expected to pay a $110 dividend in years 1 through 10 and a $30 dividend each year thereafter. If X liquidates, the holder of a share of B Stock is entitled to a preference equal to the share's issue price. Otherwise, the B Stock cannot be redeemed at either X's or the shareholder's option.

(ii) *Analysis*. When issued, the B Stock has a dividend rate that is reasonably expected to decline from an annual rate of 11 percent of its issue price to an annual rate of 3 percent of its issue price. Since the B Stock is structured to have a declining dividend rate, the B Stock is fast-pay stock, and the A Stock is benefited stock.

Example 2. Issued at a premium. (i) *Facts*. The facts are the same as in *Example 1* of this paragraph (e) except that a share of B Stock is reasonably expected to pay an annual $110 dividend as long as it is outstanding, and Corporation X has the right to redeem the B Stock for $400 a share at the end of year 10.

(ii) *Analysis.* The B Stock is structured so that the issue price of the B Stock ($1,000) exceeds (by more than a de minimis amount) the price at which the holder can be compelled to dispose of the stock ($400). Thus, the B Stock is fast-pay stock, and the A Stock is benefited stock.

Example 3. Planned section 302(d) redemptions. (i) *Facts.* Corporation L, a subchapter C corporation, issues 220 shares of common stock for $1,000 per share. No other stock is authorized, but L can issue warrants entitling the holder to acquire L common stock for $3,000 per share until such time as L adopts a plan of liquidation. L can adopt a plan of liquidation if approved by 90 percent of its shareholders. Half of L's stock is purchased by Corporation M, and half by Organization N, which is tax exempt. At the time of purchase, M and N agree that for a period of ten years L will annually redeem (and N will tender) ten shares of stock in exchange for $12,100 and ten warrants. It is anticipated that, under sections 302 and 301, the annual payment to N will be a distribution of property that is a dividend.

(ii) *Analysis.* Considering all the facts and circumstances, including the agreement between M and N, L's redemption of N's stock is undertaken with a principal purpose of achieving the same economic and tax effect as a fast-pay arrangement. Thus, N's stock is fast-pay stock, M's stock is benefited stock, and the parties have entered into a fast-pay arrangement. Because L is neither a RIC nor a REIT, whether this fast-pay arrangement is recharacterized under paragraph (c) of this section depends on whether the Commissioner determines, under paragraph (c)(1)(ii) of this section, that a principal purpose for the structure of the fast-pay arrangement is the avoidance of any tax imposed by the Internal Revenue Code.

Example 4. Recharacterization illustrated. (i) *Facts.* On formation, REIT Y issues 100 shares of C Stock and 100 shares of D Stock for $1,000 per share. By its terms, a share of D Stock is reasonably expected to pay a $110 dividend in years 1 through 10 and a $30 dividend each year thereafter. In years 1 through 10, persons holding a majority of the D Stock must consent before Y may take any action that would result in Y liquidating or dissolving, merging or consolidating, losing its REIT status, or selling substantially all of its assets. Thereafter, Y may take these actions without consent so long as the D Stock shareholders receive $400 in exchange for their D Stock.

(ii) *Analysis.* When issued, the D Stock has a dividend rate that is reasonably expected to decline from an annual rate of 11 percent of its issue price to an annual rate of 3 percent of its issue price. In addition, the $1,000 issue price of a share of D Stock exceeds the price at which the shareholder can be compelled to dispose of the stock ($400). Thus, the D Stock is fast-pay stock, and the C Stock is benefited stock. Because Y is a REIT, the fast-pay arrangement is recharacterized under paragraph (c) of this section.

(iii) *Recharacterization.* The fast-pay arrangement is recharacterized as follows:

(A) Under paragraph (c)(2)(i) of this section, the C Stock shareholders are treated as issuing financing instruments to the D Stock shareholders in exchange for $100,000 ($1,000, the fair market value of each share of D Stock, multiplied by 100, the number of shares).

(B) Under paragraph (c)(2)(ii) of this section, the C Stock shareholders are treated as contributing $200,000 to Y (the $100,000 received for the financing instruments, plus the $100,000 actually paid for the C Stock) in exchange for the C Stock.

(C) Under paragraph (c)(2)(ii) of this section, each distribution with respect to the D Stock is treated as a distribution with respect to the C Stock.

(D) Under paragraph (c)(2)(iii) of this section, the C Stock shareholders are treated as making payments with respect to the financing instruments, and Y is treated as the paying agent of the financing instruments for the C Stock shareholders.

Example 5. Transfer of benefited stock illustrated. (i) *Facts.* The facts are the same as in Example 4 of this paragraph (e). Near the end of year 5, a person holding one share of C Stock sells it for $1,300. The buyer is unrelated to REIT Y or to any of the D Stock shareholders. At the time of the sale, the amount needed to terminate the seller's position in the financing instruments at fair market value is $747.

(ii) *Benefited shareholder's treatment on sale.* Under paragraph (c)(3)(iii)(A) of this section, the seller's amount realized is $2,047 ($1,300, the amount actually received, plus $747, the amount necessary to terminate the seller's position in the financing instruments at fair market value). The seller's gain on the sale of the common stock is $47 ($2,047, the amount realized, minus $2,000, the seller's basis in the common stock). The seller has no income or deduction with respect to terminating its position in the financing instruments.

(iii) *Buyer's treatment on purchase.* Under paragraph (c)(3)(iii)(A) of this section, the buyer's basis in the share of D Stock is $2,047 ($1,300, the amount actually paid, plus $747, the amount needed to terminate the seller's position in the financing instruments at fair market value). Under paragraph (c)(3)(iii)(B) of this section, simultaneous with the sale, the buyer is treated as issuing financing instruments to the fast-pay shareholders in exchange for $747, the amount necessary to terminate the seller's position in the financing instruments at fair market value.

Example 6. Fast-pay arrangement involving amounts accrued or paid in a taxable year ending before February 27, 1997. (i) *Facts.* Y is a calendar year taxpayer. In June 1996, Y acquires shares of REIT T benefited stock for $15,000. In December 1996, Y receives dividends of $100. Under the recharacterization rules of paragraph (c)(2) of this section, Y's 1996 income attributable to the benefited stock is $1,200, Y's 1996 deduction attributable to the financing instruments is $500, and Y's basis in the benefited stock is $25,000.

(ii) *Analysis.* Under paragraph (c)(3)(iv) of this section, Y's basis in the benefited stock is reduced by $600. This is the amount by which Y's 1996 income from the fast-pay arrangement as recharacterized under this section ($1,200 of income attributable to the benefited stock less $500 of deductions attributable to the financing instruments), exceeds Y's 1996 income from the fast-pay arrangement as not recharacterized under this section ($100 of income attributable to the benefited stock). Thus, in 1997 when the fast-pay arrangement is recharacterized, Y's basis in the benefited stock is $24,400.

(f) *Reporting requirement*—(1) *Filing requirements*—(i) *In general.* A corporation that has fast-pay stock outstanding at any time during the taxable year must attach the statement described in paragraph (f)(2) of this section to its federal income tax return for such taxable year. This paragraph (f)(1)(i) does not apply to a corporation described in paragraphs (f)(1)(ii), (iii), or (iv) of this section.

(ii) *Controlled foreign corporation.* In the case of a controlled foreign corporation (CFC), as defined in section 957, that has fast-pay stock outstanding at any time during its taxable year (during which time it was a CFC), each controlling United States shareholder (within the meaning of § 1.964–1(c)(5)) must attach the statement described in paragraph (f)(2) of this section to the shareholder's Form 5471 for the CFC's taxable year. The provisions of section 6038 and the regulations under section 6038 apply to any statement required by this paragraph (f)(1)(ii).

(iii) *Foreign personal holding company.* In the case of a foreign personal holding company (FPHC), as defined in section 552, that has fast-pay stock outstanding at any time during its taxable year (during which time it was a FPHC), each United States citizen or resident who is an officer, director, or 10-percent shareholder (within the meaning of section 6035(e)(1)) of such FPHC must attach the statement described in paragraph (f)(2) of this section to his or her Form 5471 for the FPHC's taxable year. The provisions of sections 6035 and 6679 and the regulations under sections 6035 and 6679 apply to any statement required by this paragraph (f)(1)(iii).

(iv) *Passive foreign investment company.* In the case of a passive foreign investment company (PFIC), as defined in section 1297, that has fast-pay stock outstanding at any time during its taxable year (during which time it was a PFIC), each shareholder that has elected (under section 1295) to treat the PFIC as a qualified electing fund and knows or has reason to know that the PFIC has outstanding fast-pay stock must attach the statement described in paragraph (f)(2) of this section to the shareholder's Form 8621 for the PFIC's taxable year. Each shareholder owning 10 percent or more of the shares of the PFIC (by vote or value) is presumed to know that the PFIC has issued fast-pay stock. The provisions of sections 1295(a)(2) and 1298(f) and the regulations under those sections (including § 1.1295–1T(f)(2)) apply to any statement required by this paragraph (f)(1)(iv).

(2) *Statement.* The statement required under this paragraph (f) must say, ''This fast-pay stock disclosure statement is required by § 1.7701(l)–3(f) of the income tax regulations.'' The statement must also identify the corporation that has outstanding fast-pay stock and must contain the date on which the fast-pay stock was issued, the terms of the fast-pay stock, and (to the extent the filing person knows or has reason to know such information) the names and taxpayer identification numbers of the shareholders of any stock that is not traded on an established securities market (as described in § 1.7704–1(b)).

(g) *Effective date*—(1) *In general.* Except as provided in paragraph (g)(4) of this section (relating to reporting requirements), this section applies to taxable years ending after February 26, 1997. Thus, all amounts accrued or paid during the first taxable year ending after February 26, 1997, are subject to this section.

(2) *Election to limit taxable income attributable to a recharacterized fast-pay arrangement for periods before April 1, 2000*—(i) *Limit*. For periods before April 1, 2000, provided the shareholder recharacterizes the fast-pay arrangement consistently for all such periods, a shareholder may limit its taxable income attributable to a fast-pay arrangement recharacterized under paragraph (c) of this section to the taxable income that results if the fast-pay arrangement is recharacterized under either—

(A) Notice 97–21, 1997–1 C.B. 407, see § 601.601(d)(2) of this chapter; or

(B) Paragraph (c) of this section, computed by assuming the financing instruments are debt.

(ii) *Adjustment and statement*. A shareholder that limits its taxable income to the amount determined under paragraph (g)(2)(i)(A) of this section must include as an adjustment to taxable income the excess, if any, of the amount determined under paragraph (g)(2)(i)(B) of this section, over the amount determined under paragraph (g)(2)(i)(A) of this section. This adjustment to taxable income must be made in the shareholder's first taxable year that includes April 1, 2000. A shareholder to which this paragraph (g)(2)(ii) applies must include a statement in its books and records identifying each fast-pay arrangement for which an adjustment must be made and providing the amount of the adjustment for each such fast-pay arrangement.

(iii) *Examples*. The following examples illustrate the rules of this paragraph (g)(2). For purposes of these examples, assume that a shareholder may limit its taxable income under this paragraph (g)(2) for periods before January 1, 2000.

Example 1. Fast-pay arrangement recharacterized under Notice 97–21; REIT holds third-party debt. (i) *Facts*. (A) REIT Y is formed on January 1, 1997, at which time it issues 1,000 shares of fast-pay stock and 1,000 shares of benefited stock for $100 per share. Y and all of its shareholders are U.S. persons and have calendar taxable years. All shareholders of Y have elected to accrue market discount based on a constant interest rate, to include the market discount in income as it accrues, and to amortize bond premium.

(B) For years 1 through 5, the fast-pay stock has an annual dividend rate of $17 per share ($17,000 for all fast-pay stock); in later years, the fast-pay stock has an annual dividend rate of $1 per share ($1,000 for all fast-pay stock). At the end of year 5, and thereafter, a share of fast-pay stock can be acquired by Y in exchange for $50 ($50,000 for all fast-pay stock).

(C) On the day Y is formed, it acquires a five-year mortgage note (the note) issued by an unrelated third party for $200,000. The note provides for annual interest payments on December 31 of $18,000 (a coupon interest rate of 9.00 percent, compounded annually), and one payment of principal at the end of 5 years. The note can be prepaid, in whole or in part, at any time.

(ii) *Recharacterization under Notice 97–21*—(A) *In general*. One way to recharacterize the fast-pay arrangement under Notice 97–21 is to treat the fast-pay shareholders and the benefited shareholders as if they jointly purchased the note from the issuer with the understanding that over the five-year term of the note the benefited shareholders would use their share of the interest to buy (on a dollar-for-dollar basis) the fast-pay shareholders' portion of the note. The benefited shareholders' and the fast-pay shareholders' yearly taxable income under Notice 97–21 can then be calculated after determining their initial portions of the note and whether those initial portions are purchased at a discount or premium.

(B) *Determining initial portions of the debt instrument*. The fast-pay shareholders' and the benefited shareholders' initial portions of the note can be determined by comparing the present values of their expected cash flows. As a group, the fast-pay shareholders expect to receive cash flows of $135,000 (five annual payments of $17,000, plus a final payment of $50,000). As a group, the benefited shareholders expect to receive cash flows of $155,000 (five annual payments of $1,000, plus a final payment of $150,000). Using a discount rate equal to the yield to maturity (as determined under § 1.1272–1(b)(1)(i)) of the mortgage note (9.00 percent, compounded annually), the present value of the fast-pay shareholders' cash flows is $98,620, and the present value of the benefited shareholders' cash flows is $101,380. Thus, the fast-pay shareholders initially acquire 49 percent of the note at a $1,380 premium (that is, they paid $100,000 for $98,620 of principal in the note). The benefited shareholders initially acquire 51 percent of the note at a $1,380 discount (that is, they paid $100,000 for $101,380 of principal in the note). Under section 171, the fast-pay shareholders' premium is amortizable based on their yield in their initial portion of the note (8.574 percent, compounded annually). The benefited shareholders' discount accrues based on the yield in their initial portion of the note (9.353 percent, compounded annually).

(C) *Taxable income under Notice 97–21—(1) Fast-pay shareholders.* Under Notice 97–21, the fast-pay shareholders compute their taxable income attributable to the fast-pay arrangement for periods before January 1, 2000, by subtracting the amortizable premium from the accrued interest on the fast-pay shareholders' portion of the note. For purposes of paragraph (g)(2)(i)(A) of this section, the fast-pay shareholders' taxable income as a group is as follows:

Taxable period	Interest income	Amortizable premium	Taxable income
1/1/97–12/31/97	$8,876	($302)	$8,574
1/1/98–12/31/98	8,145	(293)	7,852
1/1/99–12/31/99	7,348	(281)	7,067
Total	24,369	(876)	23,493

(2) *Benefited shareholders.* Under Notice 97–21, the benefited shareholders compute their taxable income attributable to the fast-pay arrangement for periods before January 1, 2000, by adding the accrued discount to the accrued interest on the benefited shareholders' portion of the note. For purposes of paragraph (g)(2)(i)(A) of this section, the benefited shareholders' taxable income as a group is as follows:

Taxable period	Interest income	Accrued discount	Taxable income
1/1/97–12/31/97	$9,124	$229	$9,353
1/1/98–12/31/98	9,855	251	10,106
1/1/99–12/31/99	10,652	274	10,926
Total	29,631	754	30,385

(iii) *Taxable income under the recharacterization of this section*—(A) *Fast-pay shareholders.* Under paragraphs (c) and (g)(2)(i)(B) of this section, the fast-pay shareholders' taxable income attributable to the fast-pay arrangement for periods before January 1, 2000, is the interest deemed paid on the financing instruments. For purposes of paragraph (g)(2)(i)(B) of this section, the fast-pay shareholders' taxable income as a group is as follows:

Taxable period	Taxable income
1/1/97–12/31/97	$8,574
1/1/98–12/31/98	7,852
1/1/99–12/31/99	7,067
Total	23,493

(B) *Benefited shareholders.* Under paragraphs (c) and (g)(2)(i)(B) of this section, the benefited shareholders compute their taxable income attributable to the fast-pay arrangement for periods before January 1, 2000, by subtracting the interest deemed paid on the financing instruments from the dividends actually and deemed paid on the benefited stock. For purposes of paragraph (g)(2)(i)(B) of this section, the benefited shareholders' taxable income as a group is as follows:

Taxable period	Dividends paid on benefited stock	Interest paid on financing instruments	Taxable income
1/1/97–12/31/97	$18,000	($8,574)	$9,426
1/1/98–12/31/98	18,000	(7,852)	10,148
1/1/99–12/31/99	18,000	(7,067)	10,933
Total	54,000	(23,493)	30,507

(iv) *Limit on taxable income under paragraph (g)(2)(i) of this section*—(A) *Fast-pay shareholders.* For periods before January 1, 2000, the fast-pay shareholders have the same taxable income under the recharacterization of Notice 97–21 and paragraph (g)(2)(i)(A) of this section ($23,493) as they have under the recharacterization of paragraphs (c) and (g)(2)(i)(B) of this section ($23,493). Thus, under paragraph (g)(2)(i) of this section, the

fast-pay shareholders may limit their taxable income attributable to the fast-pay arrangement for periods before January 1, 2000, to $23,493 (as a group).

(B) *Benefited shareholders.* For periods before January 1, 2000, the benefited shareholders have taxable income attributable to the fast-pay arrangement of $30,385 under the recharacterization of Notice 97–21 and paragraph (g)(2)(i)(A) of this section, and taxable income of $30,507 under the recharacterization of paragraphs (c) and (g)(2)(i)(B) of this section. Thus, under paragraph (g)(2)(i) of this section, the benefited shareholders may limit their taxable income attributable to the fast-pay arrangement for periods before January 1, 2000, to either $30,385 (as a group) or $30,507 (as a group).

(v) *Adjustment to taxable income under paragraph (g)(2)(ii) of this section.* Under paragraph (g)(2)(ii) of this section, any benefited shareholder that limited its taxable income to the amount determined under paragraph (g)(2)(i)(A) of this section must include as an adjustment to taxable income the excess, if any, of the amount determined under paragraph (g)(2)(i)(B) of this section, over the amount determined under paragraph (g)(2)(i)(A) of this section. If all benefited shareholders limited their taxable income to the amount determined under paragraph (g)(2)(i)(A) of this section, then as a group their adjustment to income is $122 ($30,507, minus $30,385). Each shareholder must include its adjustment in income for the taxable year that includes January 1, 2000.

Example 2. REIT holds debt issued by a benefited shareholder. (i) *Facts.* The facts are the same as in *Example 1* of this paragraph (g)(2) except that corporation Z holds 800 shares (80 percent) of the benefited stock, and Z, instead of a third party, issues the mortgage note acquired by Y.

(ii) *Recharacterization under Notice 97–21.* Because Y holds a debt instrument issued by Z, the fast-pay arrangement is recharacterized under Notice 97–21 as an arrangement in which Z issued one or more instruments directly to the fast-pay shareholders and the other benefited shareholders.

(A) *Fast-pay shareholders.* Consistent with this recharacterization, Z is treated as issuing a debt instrument to the fast-pay shareholders for $100,000. The debt instrument provides for five annual payments of $17,000 and an additional payment of $50,000 in year five. Thus, the debt instrument's yield to maturity is 8.574 percent per annum, compounded annually.

(B) *Benefited shareholders.* Z is also treated as issuing a debt instrument to the other benefited shareholders for $20,000 (200 shares multiplied by $100, or 20 percent of the $100,000 paid to Y by the benefited shareholders as a group). This debt instrument provides for five annual payments of $200 and an additional payment of $30,000 in year five. The debt instrument's yield to maturity is 9.304 percent per annum, compounded annually.

(C) *Issuer's interest expense under Notice 97–21.* Under Notice 97–21, Z's interest expense attributable to the fast-pay arrangement for periods before January 1, 2000, equals the interest accrued on the debt instrument held by the fast-pay shareholders, plus the interest accrued on the debt instrument held by the benefited shareholders other than Z. For purposes of paragraph (g)(2)(i)(A) of this section, Z's interest expense is as follows:

Taxable period	Accrued interest fast-pay shareholders	Accrued interest other benefited shareholders	Total interest expense
1/1/97–12/31/97	($8,574)	($1,861)	($10,435)
1/1/98–12/31/98	(7,852)	(2,015)	(9,867)
1/1/99–12/31/99	(7,067)	(2,184)	(9,251)
Total	(23,493)	(6,060)	(29,553)

(iii) *Recharacterization under this section.* Under paragraphs (c) and (g)(2)(i)(B) of this section, Z's taxable income attributable to the fast-pay arrangement for periods before January 1, 2000, equals Z's share of the dividends actually and deemed paid on the benefited stock (80 percent of the outstanding benefited stock), reduced by the sum of the interest accrued on the note held by Y and the interest accrued on the financing instruments deemed to have been issued by Z. For purposes of paragraph (g)(2)(i)(B) of this section, Z's taxable income is as follows:

Taxable period	Dividends benefited stock	Accrued interest on debt held by Y	Accrued interest financing instruments	Taxable expense
1/1/97–12/31/97	$14,400	($18,000)	($6,859)	($10,459)
1/1/98–12/31/98	14,400	(18,000)	(6,281)	(9,881)

Taxable period	Dividends benefited stock	Accrued interest on debt held by Y	Accrued interest financing instruments	Taxable expense
1/1/99–12/31/99	14,400	(18,000)	(5,654)	(9,254)
Total	43,200	(54,000)	(18,794)	(29,594)

(iv) *Limit on taxable income under this paragraph (g)(2).* For periods before January 1, 2000, Z has a taxable loss attributable to the fast-pay arrangement of $29,553 under the recharacterization of Notice 97–21 and paragraph (g)(2)(i)(A) of this section, and a taxable loss of $29,594 under the recharacterization of paragraphs (c) and (g)(2)(i)(B) of this section. Thus, under paragraph (g)(2)(i) of this section, Z may report a taxable loss attributable to the fast-pay arrangement for periods before January 1, 2000, of either $29,553 or $29,594. Under paragraph (g)(2)(ii), Z has no adjustment to its taxable income for its taxable year that includes January 1, 2000.

(3) *Rule to comply with this section.* To comply with this section for each taxable year in which it failed to do so, a taxpayer should file an amended return. For taxable years ending before Janaury 10, 2000, a taxpayer that has complied with Notice 97–21, 1997–1 C.B. 407 (see § 601.601(d)(2) of this chapter), for all such taxable years is considered to have complied with this section and limited its taxable income under paragraph (g)(2)(i)(A) of this section.

(4) *Reporting requirements.* The reporting requirements of paragraph (f) of this section apply to taxable years (of the person required to file the statement) ending after January 10, 2000.

[T.D. 8853, 65 FR 1313, Jan. 10, 2000; 65 FR 16317, Mar. 28, 2000]

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[T.D. 9287, 71 FR 53970, Sept. 13, 2006]

§ 1.7702–2 Attained age of the insured under a life insurance contract.

(a) *In general.* This section provides guidance on determining the attained age of an insured under a contract that is a life insurance contract under the applicable law, for purposes of determining the guideline level premium of the contract under section 7702(c)(4), applying the cash value corridor of section 7702(d) or applying the computational rules of section 7702(e), as applicable.

(b) *Contract insuring a single life.* (1) If a contract insures the life of a single individual, either of the following two ages may be treated as the attained age of the insured with respect to that contract—

(i) The insured's age determined by reference to the individual's actual birthday as of the date of determination (actual age); or

(ii) The insured's age determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the age assumed under the contract (contract age) is within 12 months of the actual age as of that date.

(2) Once determined under paragraph (b)(1) of this section, the attained age with respect to an individual insured under a contract changes annually. Moreover, the same attained age must be used for purposes of applying sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

(c) *Contract insuring multiple lives on a last-to-die basis*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, if a contract insures the lives of more than one individual on a last-to-die basis, the attained age of the insured is determined by applying paragraph (b) of this section as if the youngest individual were the only insured under the contract for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

(2) *Modifications to cash value and future mortality charges upon the death of insured.* If both the cash value and future mortality charges under a contract change by reason of the death of one or more insureds to no longer take into account the attained age of the deceased insured or insureds, the youngest surviving insured shall thereafter be treated as the only insured under the contract.

(d) *Contract insuring multiple lives on a first-to-die basis.* If a contract insures the lives of more than one individual on a first-to-die basis, the attained age of the insured is determined by applying paragraph (b) of this section as if the oldest individual were the only insured under the contract for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

(e) *Examples.* The following examples illustrate the determination of the attained age of the insured for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable. The examples are as follows:

Example 1. (i) X was born on May 1, 1947. X became 60 years old on May 1, 2007. On January 1, 2008, X purchases from IC a contract insuring X's life. January 1 is the contract anniversary date for all future years. IC determines X's annual premiums on an age-last-birthday basis. Based on the method used by IC to determine age, X has an attained age of 60 for the first contract year, 61 for the second contract year, and so on.

(ii) Section 1.7702–2(b)(1) permits the determination of attained age under either of two alternative approaches. Section 1.7702–2(b)(1)(i) provides that, if a contract insures the life of a single insured individual, the attained age may be determined by reference to the individual's actual birthday as of the date of determination. Under this provision, X has an attained age of 60 for the first contract year, 61 for the second contract year, and so on. Alternatively, §1.7702–2(b)(1)(ii) provides that the insured's age may be determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the age assumed under the contract is within 12 months of the actual age as of that date. If IC determines X's attained age under §1.7702–2(b)(1)(ii), X likewise has an attained age of 60 for the first contract year, 61 for the second contract year, and so on. Whichever provision IC uses to determine X's attained age must be used consistently from year to year for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

Example 2. (i) The facts are the same as in *Example 1* except that, under the contract, X's annual premiums are determined on an age-nearest-birthday basis. X's nearest birthday to January 1, 2008, is May 1, 2008, when X will become 61 years old. Based on the method used by IC to determine age, X has

an attained age of 61 for the first contract year, 62 for the second contract year, and so on.

(ii) Section 1.7702–2(b)(1) permits the determination of attained age under either of two alternative approaches. Section 1.7702–2(b)(1)(i) provides that, if a contract insures the life of a single insured individual, the attained age may be determined by reference to the individual's actual birthday as of the date of determination. Under this provision, X has an attained age of 60 for the first contract year, 61 for the second contract year, and so on. Alternatively, §1.7702–2(b)(1)(ii) provides that the insured's age may be determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the age assumed under the contract is within 12 months of the actual age as of that date. If IC determines X's attained age under §1.7702–2(b)(1)(ii), X has an attained age of 61 for the first contract year, 62 for the second contract year, and so on. Whichever provision IC uses to determine X's attained age must be used consistently from year to year for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

Example 3. (i) The facts are the same as in *Example 1* except that the face amount of the contract is increased on May 15, 2011. During the contract year beginning January 1, 2011, the age assumed under the contract on an age-last-birthday basis is 63 years. However, X has an actual age of 64 as of the date the face amount of the contract is increased.

(ii) Section 1.7702–2(b)(1)(ii) provides that the insured's age may be determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the age assumed under the contract is within 12 months of the actual age. Section 1.7702–2(b)(2) provides that, once determined under paragraph (b)(1) of this section, the attained age with respect to an individual insured under a contract changes annually. Accordingly, X continues to be 63 years old throughout the contract year beginning January 1, 2011, for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

Example 4. (i) The facts are the same as in *Example 1* except that in addition to X (born in 1947), the insurance contract also insures the life of Y, born on September 1, 1942. The death benefit will be paid when the second of the two insureds dies.

(ii) Section 1.7702–2(c)(1) provides that if a life insurance contract insures the lives of more than one individual on a last-to-die basis, the attained age of the insured is determined by applying §1.7702–2(b) as if the youngest individual were the only insured under the contract. Because X is younger than Y, the attained age of X must be used for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

Example 5. (i) The facts are the same as *Example 4* except that X (the younger of the two insureds) dies in 2012. After X's death, both the cash value and mortality charges of the life insurance contract are adjusted to take into account only the life of Y.

(ii) Section 1.7702–2(c)(1) provides that if a life insurance contract insures the lives of more than one individual on a last-to-die basis, the attained age of the insured is determined by applying §1.7702–2(b) as if the youngest individual were the only insured under the contract. Paragraph (c)(2) of this section provides that if both the cash value and future mortality charges under a contract change by reason of the death of an insured to no longer take into account the attained age of the deceased insured, the youngest surviving insured is thereafter treated as the only insured under the contract. Because both the cash value and mortality charges are adjusted after X's death to take into account only the life of Y, only the attained age of Y is taken into account after X's death for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

Example 6. (i) The facts are the same as *Example 1* except that in addition to X (born in 1947), the insurance contract also insures the life of Z, born on September 1, 1952. The death benefit will be paid when the first of the two insureds dies.

(ii) Section 1.7702–2(d) provides that if a life insurance contract insures the lives of more than one individual on a first-to-die basis, the attained age of the insured is determined by applying §1.7702–2(b) as if the oldest individual were the only insured under the contract. Because X is older than Z, the attained age of X must be used for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

(f) *Effective dates*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, these regulations apply to all life insurance contracts that are either—

(i) Issued after December 31, 2008; or

(ii) Issued on or after October 1, 2007 and based upon the 2001 CSO tables.

(2) *Contracts issued before the general effective date.* Pursuant to section 7805(b)(7), a taxpayer may apply these regulations retroactively for contracts issued before October 1, 2007, provided that the taxpayer does not later determine qualification of those contracts in a manner that is inconsistent with these regulations.

[T.D. 9287, 71 FR 53970, Sept. 13, 2006]

§1.7702B–1 Consumer protection provisions.

(a) *In general.* Under sections 7702B(b)(1)(F), 7702B(g), and 4980C,

qualified long-term care insurance contracts and issuers of those contracts are required to satisfy certain provisions of the Long-Term Care Insurance Model Act (Model Act) and Long-Term Care Insurance Model Regulation (Model Regulation) promulgated by the National Association of Insurance Commissioners (NAIC), as adopted as of January 1993. The requirements for qualified long-term care insurance contracts under section 7702B(b)(1)(F) and (g) relate to guaranteed renewal or noncancellability, prohibitions on limitations and exclusions, extension of benefits, continuation or conversion of coverage, discontinuance and replacement of policies, unintentional lapse, disclosure, prohibitions against post-claims underwriting, minimum standards, inflation protection, prohibitions against pre-existing conditions exclusions and probationary periods, and prior hospitalization. The requirements for qualified long-term care insurance contracts under section 4980C relate to application forms and replacement coverage, reporting requirements, filing requirements for marketing, standards for marketing, appropriateness of recommended purchase, standard format outline of coverage, delivery of a shopper's guide, right to return, outline of coverage, certificates under group plans, policy summary, monthly reports on accelerated death benefits, and incontestability period.

(b) *Coordination with State requirements*—(1) *Contracts issued in a State that imposes more stringent requirements.* If a State imposes a requirement that is more stringent than the analogous requirement imposed by section 7702B(g) or 4980C, then, under section 4980C(f), compliance with the more stringent requirement of State law is considered compliance with the parallel requirement of section 7702B(g) or 4980C. The principles of paragraph (b)(3) of this section apply to any case in which a State imposes a requirement that is more stringent than the analogous requirement imposed by section 7702B(g) or 4980C (as described in this paragraph (b)(1)), but in which there has been a failure to comply with that State requirement.

(2) *Contracts issued in a State that has adopted the model provisions.* If a State imposes a requirement that is the same as the parallel requirement imposed by section 7702B(g) or 4980C, compliance with that requirement of State law is considered compliance with the parallel requirement of section 7702B(g) or 4980C, and failure to comply with that requirement of State law is considered failure to comply with the parallel requirement of section 7702B(g) or 4980C.

(3) *Contracts issued in a State that has not adopted the model provisions or more stringent requirements.* If a State has not adopted the Model Act, the Model Regulation, or a requirement that is the same as or more stringent than the analogous requirement imposed by section 7702B(g) or 4980C, then the language, caption, format, and content requirements imposed by sections 7702B(g) and 4980C with respect to contracts, applications, outlines of coverage, policy summaries, and notices will be considered satisfied for a contract subject to the law of that State if the language, caption, format, and content are substantially similar to those required under the parallel provision of the Model Act or Model Regulation. Only nonsubstantive deviations are permitted in order for language, caption, format, and content to be considered substantially similar to the requirements of the Model Act or Model Regulation.

(c) *Effective date.* This section applies with respect to contracts issued after December 10, 1999.

[T.D. 8792, 63 FR 68186, Dec. 10, 1998]

§ 1.7702B–2 Special rules for pre-1997 long-term care insurance contracts.

(a) *Scope.* The definitions and special provisions of this section apply solely for purposes of determining whether an insurance contract (other than a qualified long-term care insurance contract described in section 7702B(b) and any regulations issued thereunder) is treated as a qualified long-term care insurance contract for purposes of the Internal Revenue Code under section 321(f)(2) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191).

(b) *Pre-1997 long-term care insurance contracts*—(1) *In general.* A pre-1997 long-term care insurance contract is treated as a qualified long-term care

insurance contract, regardless of whether the contract satisfies section 7702B(b) and any regulations issued thereunder.

(2) *Pre-1997 long-term care insurance contract defined.* A pre-1997 long-term care insurance contract is any insurance contract with an issue date before January 1, 1997, that met the long-term care insurance requirements of the State in which the contract was sitused on the issue date. For this purpose, the long-term care insurance requirements of the State are the State laws (including statutory and administrative law) that are intended to regulate insurance coverage that constitutes ''long-term care insurance'' (as defined in section 4 of the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Act, as in effect on August 21, 1996), regardless of the terminology used by the State in describing the insurance coverage.

(3) *Issue date of a contract*—(i) *In general.* Except as otherwise provided in this paragraph (b)(3), the issue date of a contract is the issue date assigned to the contract by the insurance company. In no event is the issue date earlier than the date the policyholder submitted a signed application for coverage to the insurance company. If the period between the date the signed application is submitted to the insurance company and the date coverage under which the contract actually becomes effective is substantially longer than under the insurance company's usual business practice, then the issue date is the later of the date coverage under which the contract becomes effective or the issue date assigned to the contract by the insurance company. A policyholder's right to return a contract within a free-look period following delivery for a full refund of any premiums paid is not taken into account in determining the contract's issue date.

(ii) *Special rule for group contracts.* The issue date of a group contract (including any certificate issued thereunder) is the date on which coverage under the group contract becomes effective.

(iii) *Exchange of contract or certain changes in a contract treated as a new issuance.* For purposes of this paragraph (b)(3)—

(A) A contract issued in exchange for an existing contract after December 31, 1996, is considered a contract issued after that date;

(B) Any change described in paragraph (b)(4) of this section is treated as the issuance of a new contract with an issue date no earlier than the date the change goes into effect; and

(C) If a change described in paragraph (b)(4) of this section occurs with regard to one or more, but fewer than all, of the certificates evidencing coverage under a group contract, then the insurance coverage under the changed certificates is treated as coverage under a newly issued group contract (and the insurance coverage provided by any unchanged certificate continues to be treated as coverage under the original group contract).

(4) *Changes treated as the issuance of a new contract*—(i) *In general.* For purposes of paragraph (b)(3) of this section, except as provided in paragraph (b)(4)(ii) of this section, the following changes are treated as the issuance of a new contract—

(A) A change in the terms of a contract that alters the amount or timing of an item payable by either the policyholder (or certificate holder), the insured, or the insurance company;

(B) A substitution of the insured under an individual contract; or

(C) A change (other than an immaterial change) in the contractual terms, or in the plan under which the contract was issued, relating to eligibility for membership in the group covered under a group contract.

(ii) *Exceptions.* For purposes of this paragraph (b)(4), the following changes are not treated as the issuance of a new contract—

(A) A policyholder's exercise of any right provided under the terms of the contract as in effect on December 31, 1996, or a right required by applicable State law to be provided to the policyholder;

(B) A change in the mode of premium payment (for example, a change from monthly to quarterly premiums);

(C) In the case of a policy that is guaranteed renewable or

noncancellable, a classwide increase or decrease in premiums;

(D) A reduction in premiums due to the purchase of a long-term care insurance contract by a family member of the policyholder;

(E) A reduction in coverage (with a corresponding reduction in premiums) made at the request of a policyholder;

(F) A reduction in premiums as a result of extending to an individual policyholder a discount applicable to similar categories of individuals pursuant to a premium rate structure that was in effect on December 31, 1996, for the issuer's pre-1997 long-term care insurance contracts of the same type;

(G) The addition, without an increase in premiums, of alternative forms of benefits that may be selected by the policyholder;

(H) The addition of a rider (including any similarly identifiable amendment) to a pre-1997 long-term care insurance contract in any case in which the rider, if issued as a separate contract of insurance, would itself be a qualified long-term care insurance contract under section 7702B and any regulations issued thereunder (including the consumer protection provisions in section 7702B(g) to the extent applicable to the addition of a rider);

(I) The deletion of a rider or provision of a contract that prohibited coordination of benefits with Medicare (often referred to as an HHS (Health and Human Services) rider);

(J) The effectuation of a continuation or conversion of coverage right that is provided under a pre-1997 group contract and that, in accordance with the terms of the contract as in effect on December 31, 1996, provides for coverage under an individual contract following an individual's ineligibility for continued coverage under the group contract; and

(K) The substitution of one insurer for another insurer in an assumption reinsurance transaction.

(5) *Examples*. The following examples illustrate the principles of this paragraph (b):

Example 1. (i) On December 3, 1996, A, an individual, submits a signed application to an insurance company to purchase a nursing home contract that meets the long-term care insurance requirements of the State in which the contract is sitused. The insurance company decides on December 20, 1996, that it will issue the contract, and assigns December 20, 1996, as the issue date for the contract. Under the terms of the contract, A's insurance coverage becomes effective on January 1, 1997. The company delivers the contract to A on January 3, 1997. A has the right to return the contract within 15 days following delivery for a refund of all premiums paid.

(ii) Under paragraph (b)(3)(i) of this section, the issue date of the contract is December 20, 1996. Thus, the contract is a pre-1997 long-term care insurance contract that is treated as a qualified long-term care insurance contract.

Example 2. (i) The facts are the same as in *Example 1*, except that the insurance coverage under the contract does not become effective until March 1, 1997. Under the insurance company's usual business practice, the period between the date of the application and the date the contract becomes effective is 30 days or less.

(ii) Under paragraph (b)(3)(i) of this section, the issue date of the contract is March 1, 1997. Thus, the contract is not a pre-1997 long-term care insurance contract, and, accordingly, the contract must meet the requirements of section 7702B(b) and any regulations issued thereunder to be a qualified long-term care insurance contract.

Example 3. (i) B, an individual, is the policyholder under a long-term care insurance contract purchased in 1995. On June 15, 2000, the insurance coverage and premiums under the contract are increased by agreement between B and the insurance company.

(ii) Under paragraph (b)(4)(i)(A) of this section, a change in the terms of a contract that alters the amount or timing of an item payable by the policyholder or the insurance company is treated as the issuance of a new contract. Thus, B's coverage is treated as coverage under a contract issued on June 15, 2000, and, accordingly, the contract must meet the requirements of section 7702B(b) and any regulations issued thereunder in order to be a qualified long-term care insurance contract.

Example 4. (i) C, an individual, is the policyholder under a long-term care insurance contract purchased in 1994. At that time and through December 31, 1996, the contract met the long-term care insurance requirements of the State in which the contract was sitused. In 1996, the policy was amended to add a provision requiring the policyholder to be offered the right to increase dollar limits for inflation every three years (without the policyholder being required to pass a physical or satisfy any other underwriting requirements). During 2002, C elects to increase the amount of insurance coverage (with a resulting premium increase) pursuant to the inflation provision.

(ii) Under paragraph (b)(4)(ii)(A) of this section, an increase in the amount of insurance coverage at the election of the policyholder (without the insurance company's consent and without underwriting or other limitations on the policyholder's rights) pursuant to a pre-1997 inflation provision is not treated as the issuance of a new contract. Thus, C's contract continues to be a pre-1997 long-term care insurance contract that is treated as a qualified long-term care insurance contract.

(c) *Effective date*. This section is applicable January 1, 1999.

[T.D. 8792, 63 FR 68187, Dec. 10, 1998]

§ 1.7703–1 Determination of marital status.

(a) *General rule*. The determination of whether an individual is married shall be made as of the close of his taxable year unless his spouse dies during his taxable year, in which case such determination shall be made as of the time of such death; and, except as provided in paragraph (b) of this section, an individual shall be considered as married even though living apart from his spouse unless legally separated under a decree of divorce or separate maintenance. The provisions of this paragraph may be illustrated by the following examples:

Example 1. Taxpayer A and his wife B both make their returns on a calendar year basis. In July 1954, they enter into a separation agreement and thereafter live apart, but no decree of divorce or separate maintenance is issued until March 1955. If A itemizes and claims his actual deductions on his return for the calendar year 1954, B may not elect the standard deduction on her return since B is considered as married to A (although permanently separated by agreement) on the last day of 1954.

Example 2. Taxpayer A makes his returns on the basis of a fiscal year ending June 30. His wife B makes her returns on the calendar year basis. A died in October 1954. In such case, since A and B were married as of the date of death, B may not elect the standard deduction for the calendar year 1954 if the income of A for the short taxable year ending with the date of his death is determined without regard to the standard deduction.

(b) *Certain married individuals living apart*. (1) For purposes of Part IV of Subchapter B of Chapter 1 of the Code, an individual is not considered as married for taxable years beginning after December 31, 1969, if (i) such individual is married (within the meaning of paragraph (a) of this section) but files a separate return; (ii) such individual maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a dependent (*a*) who (within the meaning of section 152 and the regulations thereunder) is a son, stepson, daughter, or stepdaughter of the individual, and (*b*) with respect to whom such individual is entitled to a deduction for the taxable year under section 151; (iii) such individual furnishes over half of the cost of maintaining such household during the taxable year; and (iv) during the entire taxable year such individual's spouse is not a member of such household.

(2) For purposes of subparagraph (1)(ii)(*a*) of this paragraph, a legally adopted son or daughter of an individual, a child (described in paragraph (c)(2) of § 1.152–2) who is a member of an individual's household if placed with such individual by an authorized placement agency (as defined in paragraph (c)(2) of § 1.152–2) for legal adoption by such individual, or a foster child (described in paragraph (c)(4) of § 1.152–2) of an individual if such child satisfies the requirements of section 152(a)(9) of the Code and paragraph (b) of § 1.152–1 with respect to such individual, shall be treated as a son or daughter of such individual by blood.

(3) For purposes of subparagraph (1)(ii) of this paragraph, the household must actually constitute the home of the individual for his taxable year. However, a physical change in the location of such home will not prevent an individual from qualifying for the treatment provided in subparagraph (1) of this paragraph. It is not sufficient that the individual maintain the household without being its occupant. The individual and the dependent described in subparagraph (1)(ii)(*a*) of this paragraph must occupy the household for more than one-half of the taxable year of the individual. However, the fact that such dependent is born or dies within the taxable year will not prevent an individual from qualifying for such treatment if the household constitutes the principal place of abode of such dependent for the remaining or preceding part of such taxable year.

The individual and such dependent will be considered as occupying the household during temporary absences from the household due to special circumstances. A nonpermanent failure to occupy the common abode by reason of illness, education, business, vacation, military service, or a custody agreement under which a child or stepchild is absent for less than 6 months in the taxable year of the taxpayer, shall be considered a temporary absence due to special circumstances. Such absence will not prevent an individual from qualifying for the treatment provided in subparagraph (1) of this paragraph if (i) it is reasonable to assume that such individual or the dependent will return to the household and (ii) such individual continues to maintain such household or a substantially equivalent household in anticipation of such return.

(4) An individual shall be considered as maintaining a household only if he pays more than one-half of the cost thereof for his taxable year. The cost of maintaining a household shall be the expenses incurred for the mutual benefit of the occupants thereof by reason of its operation as the principal place of abode of such occupants for such taxable year. The cost of maintaining a household shall not include expenses otherwise incurred. The expenses of maintaining a household include property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance, and food consumed on the premises. Such expenses do not include the cost of clothing, education, medical treatment, vacations, life insurance, and transportation. In addition, the cost of maintaining a household shall not include any amount which represents the value of services rendered in the household by the taxpayer or by a dependent described in subparagraph (1)(ii)(*a*) of this paragraph.

(5) For purposes of subparagraph (1)(iv) of this paragraph, an individual's spouse is not a member of the household during a taxable year if such household does not constitute such spouse's place of abode at any time during such year. An individual's spouse will be considered to be a member of the household during temporary absences from the household due to special circumstances. A nonpermanent failure to occupy such household as his abode by reason of illness, education, business, vacation, or military service shall be considered a mere temporary absence due to special circumstances.

(6) The provisions of this paragraph may be illustrated by the following example:

Example. Taxpayer A, married to B at the close of the calendar year 1971, his taxable year, is living apart from B, but A is not legally separated from B under a decree of divorce or separate maintenance. A maintains a household as his home which is for 7 months of 1971 the principal place of abode of C, his son, with respect to whom A is entitled to a deduction under section 151. A pays for more than one-half the cost of maintaining that household. At no time during 1971 was B a member of the household occupied by A and C. A files a separate return for 1971. Under these circumstances, A is considered as not married under section 143(b) for purposes of the standard deduction. Even though A is married and files a separate return A may claim for 1971 as his standard deduction the larger of the low income allowance up to a maximum of $1,050 consisting of both the basic allowance and additional allowance (rather than the basic allowance only subject to the $500 limitation applicable to a separate return of a married individual) or the percentage standard deduction subject to the $1,500 limitation (rather than the $750 limitation applicable to a separate return of a married individual). See §1.141–1. For purposes of the provisions of part IV of subchapter B of chapter 1 of the Code and the regulations thereunder, A is treated as unmarried.

[T.D. 7123, 36 FR 11086, June 9, 1971. Redesignated by T.D. 8712, 62 FR 2283, Jan. 16, 1997]

§ 1.7704–1 Publicly traded partnerships.

(a) *In general*—(1) *Publicly traded partnership.* A domestic or foreign partnership is a publicly traded partnership for purposes of section 7704(b) and this section if—

(i) Interests in the partnership are traded on an established securities market; or

(ii) Interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof.

(2) *Partnership interest*—(i) *In general.* For purposes of section 7704(b) and this

section, an interest in a partnership includes—

(A) Any interest in the capital or profits of the partnership (including the right to partnership distributions); and

(B) Any financial instrument or contract the value of which is determined in whole or in part by reference to the partnership (including the amount of partnership distributions, the value of partnership assets, or the results of partnership operations).

(ii) *Exception for non-convertible debt.* For purposes of section 7704(b) and this section, an interest in a partnership does not include any financial instrument or contract that—

(A) Is treated as debt for federal tax purposes; and

(B) Is not convertible into or exchangeable for an interest in the capital or profits of the partnership and does not provide for a payment of equivalent value.

(iii) *Exception for tiered entities.* For purposes of section 7704(b) and this section, an interest in a partnership or a corporation (including a regulated investment company as defined in section 851 or a real estate investment trust as defined in section 856) that holds an interest in a partnership (lower-tier partnership) is not considered an interest in the lower-tier partnership.

(3) *Definition of transfer.* For purposes of section 7704(b) and this section, a transfer of an interest in a partnership means a transfer in any form, including a redemption by the partnership or the entering into of a financial instrument or contract described in paragraph (a)(2)(i)(B) of this section.

(b) *Established securities market.* For purposes of section 7704(b) and this section, an established securities market includes—

(1) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);

(2) A national securities exchange exempt from registration under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) because of the limited volume of transactions;

(3) A foreign securities exchange that, under the law of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements under the Securities Exchange Act of 1934 described in paragraph (b) (1) or (2) of this section (such as the London International Financial Futures Exchange; the Marche a Terme International de France; the International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited; the Frankfurt Stock Exchange; and the Tokyo Stock Exchange);

(4) A regional or local exchange; and

(5) An interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise.

(c) *Readily tradable on a secondary market or the substantial equivalent thereof*—(1) *In general.* For purposes of section 7704(b) and this section, interests in a partnership that are not traded on an established securities market (within the meaning of section 7704(b) and paragraph (b) of this section) are readily tradable on a secondary market or the substantial equivalent thereof if, taking into account all of the facts and circumstances, the partners are readily able to buy, sell, or exchange their partnership interests in a manner that is comparable, economically, to trading on an established securities market.

(2) *Secondary market or the substantial equivalent thereof.* For purposes of paragraph (c)(1) of this section, interests in a partnership are readily tradable on a secondary market or the substantial equivalent thereof if—

(i) Interests in the partnership are regularly quoted by any person, such as a broker or dealer, making a market in the interests;

(ii) Any person regularly makes available to the public (including customers or subscribers) bid or offer quotes with respect to interests in the partnership and stands ready to effect buy or sell transactions at the quoted prices for itself or on behalf of others;

(iii) The holder of an interest in the partnership has a readily available, regular, and ongoing opportunity to sell or exchange the interest through a public means of obtaining or providing

information of offers to buy, sell, or exchange interests in the partnership; or

(iv) Prospective buyers and sellers otherwise have the opportunity to buy, sell, or exchange interests in the partnership in a time frame and with the regularity and continuity that is comparable to that described in the other provisions of this paragraph (c)(2).

(3) *Secondary market safe harbors.* The fact that a transfer of a partnership interest is not within one or more of the safe harbors described in paragraph (e), (f), (g), (h), or (j) of this section is disregarded in determining whether interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof.

(d) *Involvement of the partnership required.* For purposes of section 7704(b) and this section, interests in a partnership are not traded on an established securities market within the meaning of paragraph (b)(5) of this section and are not readily tradable on a secondary market or the substantial equivalent thereof within the meaning of paragraph (c) of this section (even if interests in the partnership are traded or readily tradable in a manner described in paragraph (b)(5) or (c) of this section) unless—

(1) The partnership participates in the establishment of the market or the inclusion of its interests thereon; or

(2) The partnership recognizes any transfers made on the market by—

(i) Redeeming the transferor partner (in the case of a redemption or repurchase by the partnership); or

(ii) Admitting the transferee as a partner or otherwise recognizing any rights of the transferee, such as a right of the transferee to receive partnership distributions (directly or indirectly) or to acquire an interest in the capital or profits of the partnership.

(e) *Transfers not involving trading*—(1) *In general.* For purposes of section 7704(b) and this section, the following transfers (private transfers) are disregarded in determining whether interests in a partnership are readily tradable on a secondary market or the substantial equivalent thereof—

(i) Transfers in which the basis of the partnership interest in the hands of the transferee is determined, in whole or in part, by reference to its basis in the hands of the transferor or is determined under section 732;

(ii) Transfers at death, including transfers from an estate or testamentary trust;

(iii) Transfers between members of a family (as defined in section 267(c)(4));

(iv) Transfers involving the issuance of interests by (or on behalf of) the partnership in exchange for cash, property, or services;

(v) Transfers involving distributions from a retirement plan qualified under section 401(a) or an individual retirement account;

(vi) Block transfers (as defined in paragraph (e)(2) of this section);

(vii) Transfers pursuant to a right under a redemption or repurchase agreement (as defined in paragraph (e)(3) of this section) that is exercisable only—

(A) Upon the death, disability, or mental incompetence of the partner; or

(B) Upon the retirement or termination of the performance of services of an individual who actively participated in the management of, or performed services on a full-time basis for, the partnership;

(viii) Transfers pursuant to a closed end redemption plan (as defined in paragraph (e)(4) of this section);

(ix) Transfers by one or more partners of interests representing in the aggregate 50 percent or more of the total interests in partnership capital and profits in one transaction or a series of related transactions; and

(x) Transfers not recognized by the partnership (within the meaning of paragraph (d)(2) of this section).

(2) *Block transfers.* For purposes of paragraph (e)(1)(vi) of this section, a block transfer means the transfer by a partner and any related persons (within the meaning of section 267(b) or 707(b)(1)) in one or more transactions during any 30 calendar day period of partnership interests representing in the aggregate more than 2 percent of the total interests in partnership capital or profits.

(3) *Redemption or repurchase agreement.* For purposes of section 7704(b) and this section, a redemption or repurchase agreement means a plan of redemption or repurchase maintained by a partnership whereby the partners

may tender their partnership interests for purchase by the partnership, another partner, or a person related to another partner (within the meaning of section 267(b) or 707(b)(1)).

(4) *Closed end redemption plan.* For purposes of paragraph (e)(1)(viii) of this section, a redemption or repurchase agreement (as defined in paragraph (e)(3) of this section) is a closed end redemption plan only if—

(i) The partnership does not issue any interest after the initial offering (other than the issuance of additional interests prior to August 5, 1988); and

(ii) No partner or person related to any partner (within the meaning of section 267(b) or 707(b)(1)) provides contemporaneous opportunities to acquire interests in similar or related partnerships which represent substantially identical investments.

(f) *Redemption and repurchase agreements.* For purposes of section 7704(b) and this section, the transfer of an interest in a partnership pursuant to a redemption or repurchase agreement (as defined in paragraph (e)(3) of this section) that is not described in paragraph (e)(1) (vii) or (viii) of this section is disregarded in determining whether interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof only if—

(1) The redemption or repurchase agreement provides that the redemption or repurchase cannot occur until at least 60 calendar days after the partner notifies the partnership in writing of the partner's intention to exercise the redemption or repurchase right;

(2) Either—

(i) The redemption or repurchase agreement requires that the redemption or repurchase price not be established until at least 60 calendar days after receipt of such notification by the partnership or the partner; or

(ii) The redemption or repurchase price is established not more than four times during the partnership's taxable year; and

(3) The sum of the percentage interests in partnership capital or profits transferred during the taxable year of the partnership (other than in private transfers described in paragraph (e) of this section) does not exceed 10 percent of the total interests in partnership capital or profits.

(g) *Qualified matching services*—(1) *In general.* For purposes of section 7704(b) and this section, the transfer of an interest in a partnership through a qualified matching service is disregarded in determining whether interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof.

(2) *Requirements.* A matching service is a qualified matching service only if—

(i) The matching service consists of a computerized or printed listing system that lists customers' bid and/or ask quotes in order to match partners who want to sell their interests in a partnership (the selling partner) with persons who want to buy those interests;

(ii) Matching occurs either by matching the list of interested buyers with the list of interested sellers or through a bid and ask process that allows interested buyers to bid on the listed interest;

(iii) The selling partner cannot enter into a binding agreement to sell the interest until the 15th calendar day after the date information regarding the offering of the interest for sale is made available to potential buyers and such time period is evidenced by contemporaneous records ordinarily maintained by the operator at a central location;

(iv) The closing of the sale effected by virtue of the matching service does not occur prior to the 45th calendar day after the date information regarding the offering of the interest for sale is made available to potential buyers and such time period is evidenced by contemporaneous records ordinarily maintained by the operator at a central location;

(v) The matching service displays only quotes that do not commit any person to buy or sell a partnership interest at the quoted price (nonfirm price quotes) or quotes that express interest in a partnership interest without an accompanying price (nonbinding indications of interest) and does not display quotes at which any person is committed to buy or sell a partnership interest at the quoted price (firm quotes);

(vi) The selling partner's information is removed from the matching service within 120 calendar days after the date information regarding the offering of the interest for sale is made available to potential buyers and, following any removal (other than removal by reason of a sale of any part of such interest) of the selling partner's information from the matching service, no offer to sell an interest in the partnership is entered into the matching service by the selling partner for at least 60 calendar days; and

(vii) The sum of the percentage interests in partnership capital or profits transferred during the taxable year of the partnership (other than in private transfers described in paragraph (e) of this section) does not exceed 10 percent of the total interests in partnership capital or profits.

(3) *Closing*. For purposes of paragraph (g)(2)(iv) of this section, the closing of a sale occurs no later than the earlier of—

(i) The passage of title to the partnership interest;

(ii) The payment of the purchase price (which does not include the delivery of funds to the operator of the matching service or other closing agent to hold on behalf of the seller pending closing); or

(iii) The date, if any, that the operator of the matching service (or any person related to the operator within the meaning of section 267(b) or 707(b)(1)) loans, advances, or otherwise arranges for funds to be available to the seller in anticipation of the payment of the purchase price.

(4) *Optional features*. A qualified matching service may be sponsored or operated by a partner of the partnership (either formally or informally), the underwriter that handled the issuance of the partnership interests, or an unrelated third party. In addition, a qualified matching service may offer the following features—

(i) The matching service may provide prior pricing information, including information regarding resales of interests and actual prices paid for interests; a description of the business of the partnership; financial and reporting information from the partnership's financial statements and reports; and information regarding material events involving the partnership, including special distributions, capital distributions, and refinancings or sales of significant portions of partnership assets;

(ii) The operator may assist with the transfer documentation necessary to transfer the partnership interest;

(iii) The operator may receive and deliver funds for completed transactions; and

(iv) The operator's fee may consist of a flat fee for use of the service, a fee or commission based on completed transactions, or any combination thereof.

(h) *Private placements*—(1) *In general*. For purposes of section 7704(b) and this section, except as otherwise provided in paragraph (h)(2) of this section, interests in a partnership are not readily tradable on a secondary market or the substantial equivalent thereof if—

(i) All interests in the partnership were issued in a transaction (or transactions) that was not required to be registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*); and

(ii) The partnership does not have more than 100 partners at any time during the taxable year of the partnership.

(2) *Exception for certain offerings outside of the United States*. Paragraph (h)(1) of this section does not apply to the offering and sale of interests in a partnership that was not required to be registered under the Securities Act of 1933 by reason of Regulation S (17 CFR 230.901 through 230.904) unless the offering and sale of the interests would not have been required to be registered under the Securities Act of 1933 if the interests had been offered and sold within the United States.

(3) *Anti-avoidance rule*. For purposes of determining the number of partners in the partnership under paragraph (h)(1)(ii) of this section, a person (beneficial owner) owning an interest in a partnership, grantor trust, or S corporation (flow-through entity), that owns, directly or through other flow-through entities, an interest in the partnership, is treated as a partner in the partnership only if—

(i) Substantially all of the value of the beneficial owner's interest in the flow-through entity is attributable to

the flow-through entity's interest (direct or indirect) in the partnership; and

(ii) A principal purpose of the use of the tiered arrangement is to permit the partnership to satisfy the 100-partner limitation in paragraph (h)(1)(ii) of this section.

(i) [Reserved]

(j) *Lack of actual trading*—(1) *General rule*. For purposes of section 7704(b) and this section, interests in a partnership are not readily tradable on a secondary market or the substantial equivalent thereof if the sum of the percentage interests in partnership capital or profits transferred during the taxable year of the partnership (other than in transfers described in paragraph (e), (f), or (g) of this section) does not exceed 2 percent of the total interests in partnership capital or profits.

(2) *Examples*. The following examples illustrate the rules of this paragraph (j):

Example 1. Calculation of percentage interest transferred. (i) ABC, a calendar year limited partnership formed in 1996, has 9,000 units of limited partnership interests outstanding at all times during 1997, representing in the aggregate 95 percent of the total interests in capital and profits of ABC. The remaining 5 percent is held by the general partner.

(ii) During 1997, the following transactions occur with respect to the units of ABC's limited partnership interests—

(A) 800 units are sold through the use of a qualified matching service that meets the requirements of paragraph (g) of this section;

(B) 50 units are sold through the use of a matching service that does not meet the requirements of paragraph (g) of this section; and

(C) 500 units are transferred as a result of private transfers described in paragraph (e) of this section.

(iii) The private transfers of 500 units and the sale of 800 units through a qualified matching service are disregarded under paragraph (j)(1) of this section for purposes of applying the 2 percent rule. As a result, the total percentage interests in partnership capital and profits transferred for purposes of the 2 percent rule is .528 percent, determined by—

(A) Dividing the number of units sold through a matching service that did not meet the requirements of paragraph (g) of this section (50) by the total number of outstanding limited partnership units (9,000); and

(B) Multiplying the result by the percentage of total interests represented by limited partnership units (95 percent)

([50 / 9,000] ×.95 =.528 percent).

Example 2. Application of the 2 percent rule. (i) ABC operates a service consisting of computerized video display screens on which subscribers view and publish nonfirm price quotes that do not commit any person to buy or sell a partnership interest and unpriced indications of interest in a partnership interest without an accompanying price. The ABC service does not provide firm quotes at which any person (including the operator of the service) is committed to buy or sell a partnership interest. The service may provide prior pricing information, including information regarding resales of interests and actual prices paid for interests; transactional volume information; and information on special or capital distributions by a partnership. The operator's fee may consist of a flat fee for use of the service; a fee based on completed transactions, including, for example, the number of nonfirm quotes or unpriced indications of interest entered by users of the service; or any combination thereof.

(ii) The ABC service is not an established securities market for purposes of section 7704(b) and this section. The service is not an interdealer quotation system as defined in paragraph (b)(5) of this section because it does not disseminate firm buy or sell quotations. Therefore, partnerships whose interests are listed and transferred on the ABC service are not publicly traded for purposes of section 7704(b) and this section as a result of such listing or transfers if the sum of the percentage interests in partnership capital or profits transferred during the taxable year of the partnership (other than in transfers described in paragraph (e), (f), or (g) of this section) does not exceed 2 percent of the total interests in partnership capital or profits. In addition, assuming the ABC service complies with the necessary requirements, the service may qualify as a matching service described in paragraph (g) of this section.

(k) *Percentage interests in partnership capital or profits*—(1) *Interests considered*—(i) *General rule*. Except as otherwise provided in this paragraph (k), for purposes of this section, the total interests in partnership capital or profits are determined by reference to all outstanding interests in the partnership.

(ii) *Exceptions*—(A) *General partner with greater than 10 percent interest*. If the general partners and any person related to the general partners (within the meaning of section 267(b) or 707(b)(1)) own, in the aggregate, more than 10 percent of the outstanding interests in partnership capital or profits at any one time during the taxable

year of the partnership, the total interests in partnership capital or profits are determined without reference to the interests owned by such persons.

(B) *Derivative interests.* Any partnership interests described in paragraph (a)(2)(i)(B) of this section are taken into account for purposes of determining the total interests in partnership capital or profits only if and to the extent that the partnership satisfies paragraph (d) (1) or (2) of this section.

(2) *Monthly determination.* For purposes of this section, except in the case of block transfers (as defined in paragraph (e)(2) of this section), the percentage interests in partnership capital or profits represented by partnership interests that are transferred during a taxable year of the partnership is equal to the sum of the percentage interests transferred for each calendar month during the taxable year of the partnership in which a transfer of a partnership interest occurs (other than a private transfer as described in paragraph (e) of this section). The percentage interests in capital or profits of interests transferred during a calendar month is determined by reference to the partnership interests outstanding during that month.

(3) *Monthly conventions.* For purposes of paragraph (k)(2) of this section, a partnership may use any reasonable convention in determining the interests outstanding for a month, provided the convention is consistently used by the partnership from month to month during a taxable year and from year to year. Reasonable conventions include, but are not limited to, a determination by reference to the interests outstanding at the beginning of the month, on the 15th day of the month, or at the end of the month.

(4) *Block transfers.* For purposes of paragraph (e)(2) of this section (defining block transfers), the partnership must determine the percentage interests in capital or profits for each transfer of an interest during the 30 calendar day period by reference to the partnership interests outstanding immediately prior to such transfer.

(5) *Example.* The following example illustrates the rules of this paragraph (k):

Example. Conventions. (i) ABC limited partnership, a calendar year partnership formed in 1996, has 1,000 units of limited partnership interests outstanding on January 1, 1997, representing in the aggregate 95 percent of the total interests in capital and profits of ABC. The remaining 5 percent is held by the general partner.

(ii) The following transfers take place during 1997—

(A) On January 15, 10 units of limited partnership interests are sold in a transaction that is not a private transfer;

(B) On July 10, 1,000 additional units of limited partnership interests are issued by the partnership (the general partner's percentage interest is unchanged); and

(C) On July 20, 15 units of limited partnership interests are sold in a transaction that is not a private transfer.

(iii) For purposes of determining the sum of the percentage interests in partnership capital or profits transferred, ABC chooses to use the end of the month convention. The percentage interests in partnership capital and profits transferred during January is .95 percent, determined by dividing the number of transferred units (10) by the total number of limited partnership units (1,000) and multiplying the result by the percentage of total interests represented by limited partnership units ([10/1,000]×.95). The percentage interests in partnership capital and profits transferred during July is .7125 percent ([15/2,000]×.95). ABC is not required to make determinations for the other months during the year because no transfers of partnership interests occurred during such months. ABC may qualify for the 2 percent rule for its 1997 taxable year because less than 2 percent (.95 percent+.7125 percent=1.6625 percent) of its total interests in partnership capital and profits was transferred during that year.

(iv) If ABC had chosen to use the beginning of the month convention, the interests in capital or profits sold during July would have been 1.425 percent ([15/1,000]×.95) and ABC would not have satisfied the 2 percent rule for its 1997 taxable year because 2.375 percent (.95 + 1.425) of ABC's interests in partnership capital and profits was transferred during that year.

(l) *Effective date*—(1) *In general.* Except as provided in paragraph (l)(2) of this section, this section applies to taxable years of a partnership beginning after December 31, 1995.

(2) *Transition period.* For partnerships that were actively engaged in an activity before December 4, 1995, this section applies to taxable years beginning after December 31, 2005, unless the partnership adds a substantial new line of business after December 4, 1995, in

which case this section applies to taxable years beginning on or after the addition of the new line of business. Partnerships that qualify for this transition period may continue to rely on the provisions of Notice 88–75 (1988–2 C.B. 386) (see § 601.601(d)(2) of this chapter) for guidance regarding the definition of readily tradable on a secondary market or the substantial equivalent thereof for purposes of section 7704(b).

(3) *Substantial new line of business.* For purposes of paragraph (l)(2) of this section—

(i) Substantial is defined in § 1.7704–2(c); and

(ii) A new line of business is defined in § 1.7704–2(d), except that the applicable date is ''December 4, 1995'' instead of ''December 17, 1987''.

(4) *Termination under section 708(b)(1)(B).* The termination of a partnership under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits is disregarded in determining whether a partnership qualifies for the transition period provided in paragraph (l)(2) of this section.

[T.D. 8629, 60 FR 62029, Dec. 4, 1995]

§ 1.7704–2 Transition provisions.

(a) *Transition rule*—(1) *Statutory dates.* Section 7704 generally applies to taxable years beginning after December 31, 1987. In the case of an existing partnership, however, section 7704 and the regulations thereunder apply to taxable years beginning after December 31, 1997.

(2) *Effective date of regulations.* These regulations are effective for taxable years beginning after December 31, 1991.

(b) *Existing partnership*—(1) *In general.* For purposes of § 1.7704–2, the term ''existing partnership'' means any partnership if—

(i) The partnership was a publicly traded partnership (within the meaning of section 7704(b)) on December 17, 1987;

(ii) A registration statement indicating that the partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission (SEC) with respect to the partnership on or before December 17, 1987; or

(iii) With respect to the partnership, an application was filed with a state regulatory commission on or before December 17, 1987, seeking permission to restructure a portion of a corporation as a publicly traded partnership.

(2) *Changed status of an existing partnership.* A partnership will not qualify as an existing partnership after a new line of business is substantial.

(c) *Substantial*—(1) *In general.* A new line of business is substantial as of the earlier of—

(i) The taxable year in which the partnership derives more than 15 percent of its gross income from that line of business; or

(ii) The taxable year in which the partnership directly uses in that line of business more than 15 percent (by value) of its total assets.

(2) *Timing rule.* If a substantial new line of business is added during the taxable year (e.g., by acquisition), the line of business is treated as substantial as of the date it is added; otherwise a substantial new line of business is treated as substantial as of the first day of the taxable year in which it becomes substantial.

(d) *New line of business*—(1) *In general.* A new line of business is any business activity of the partnership not closely related to a pre-existing business of the partnership to the extent that the activity generates income other than ''qualifying income'' within the meaning of section 7704 and the regulations thereunder.

(2) *Pre-existing business.* A business activity is a pre-existing business of the partnership if—

(i) The partnership was actively engaged in the activity on or before December 17, 1987; or

(ii) The partnership is actively engaged in the business activity that was specifically described as a proposed business activity of the partnership in a registration statement or amendment thereto filed on behalf of the partnership with the SEC on or before December 17, 1987. For this purpose, a specific description does not include a general grant of authority to conduct any business.

(3) *Closely related.* All of the facts and circumstances will determine whether

a new business activity is closely related to a pre-existing business of the partnership. The following factors, among others, will help to establish that a new business activity is closely related to a pre-existing business of the partnership and therefore is not a new line of business:

(i) The activity provides products or services very similar to the products or services provided by the pre-existing business.

(ii) The activity markets products and services to the same class of customers as that of the pre-existing business.

(iii) The activity is of a type that is normally conducted in the same business location as the pre-existing business.

(iv) The activity requires the use of similar operating assets as those used in the pre-existing business.

(v) The activity's economic success depends on the success of the pre-existing business.

(vi) The activity is of a type that would normally be treated as a unit with the pre-existing business in the business' accounting records.

(vii) If the activity and the pre-existing business are regulated or licensed, they are regulated or licensed by the same or similar governmental authority.

(viii) The United States Bureau of the Census assigns the activity the same four-digit Industry Number Standard Identification Code (Industry SIC Code) as the pre-existing business. Such codes are set forth in the Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual, prepared, and from time to time revised, by the Statistical Policy Division of the United States Office of Management and Budget. For example, if a partnership's pre-existing business is manufacturing steam turbines and then the partnership begins an activity manufacturing hydraulic turbines, both activities would be assigned the same Industry SIC Code, 3511—Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units. In the case of a pre-existing business or activity that is listed under the Industry SIC Code, 9999—Nonclassifiable Establishments—or under a miscellaneous category (e.g., most Industry SIC Codes ending in a ''9'' are miscellaneous categories), the similarity of the SIC Codes is ignored as a factor in determining whether the activity is closely related to the pre-existing business. The dissimilarity of the SIC Codes is considered in determining whether the business activity is closely related to the pre-existing line of business.

(e) *Activities conducted through controlled corporations*—(1) *In general.* An activity conducted by a corporation controlled by an existing partnership may be treated as an activity of the existing partnership if the effect of the arrangement is to permit the partnership to engage in an activity the income from which is not subject to a corporate-level tax and which would be a new line of business if conducted directly by the partnership. This determination is based upon all facts and circumstances.

(2) *Safe harbor*—(i) *In general.* This paragraph (e)(2) provides a safe harbor for activities of a corporation controlled by an existing partnership. An activity conducted by a corporation controlled by an existing partnership is not deemed to be an activity of the partnership for purposes of determining whether an existing partnership has added a new line of business if no more than 10% of the gross income that the partnership derives from the corporation during the taxable year is section 7704(d) qualifying income that is recharacterized as nonqualifying income under paragraphs (e)(2) (ii) and (iii) of this section. The Internal Revenue Service will not presume that an activity conducted through a corporation controlled by an existing partnership is an activity of the partnership solely because the partnership fails to satisfy the requirements of this paragraph (e)(2)(i).

(ii) *Recharacterization of qualifying income.* Gross income received by a partnership from a controlled corporation that would be qualifying income under section 7704(d) is subject to recharacterization as nonqualifying income if the amount is deductible in computing the income of the controlled corporation.

(iii) *Extent of recharacterization*. The amount of income described in paragraph (e)(2)(ii) of this section that is recharacterized as nonqualifying income is—

(A) The amount described in paragraph (e)(2)(ii) of this section; multiplied by

(B) The controlled corporation's taxable income (determined without regard to deductions for amounts paid to the partnership) that would not be qualifying income within the meaning of section 7704(d) if earned directly by the partnership; divided by

(C) The controlled corporation's taxable income (determined without regard to deductions for amounts paid to the partnership).

(3) *Control*. For purposes of paragraphs (e) (1) and (2) of this section, control of a corporation is determined generally under the rules of section 304(c). However, the application of section 304(c) is modified to apply only to partners who own five percent or more by value (directly or indirectly) of the existing partnership unless a principal purpose of the arrangement is to avoid tax at the corporate level.

(4) *Example*. The following example illustrates the application of the this paragraph (e):

Example. (i) PTP, an existing partnership, acquired all the stock of X corporation on January 1, 1993. During PTP's 1993 taxable year it received $185,000 of dividends and $15,000 of interest from X. Determined without regard to interest paid to PTP, X's taxable income during that period was $500,000 none of which was ''qualifying income'' within the meaning of section 7704 and the regulations thereunder. In computing the income of X, the $15,000 of interest paid to PTP is deductible.

(ii) Under paragraph (e)(2)(ii) of section, all $15,000 of PTP's interest income was nonqualifying income ($15,000×500,000/500,000). Under paragraph (e)(2) of this section, however, the activities of X will not be considered to be activities of PTP for the 1993 taxable year because no more than 10 percent of the gross income that PTP derived from X would be treated as other than qualifying income (15,000/200,000=7.5%).

(f) *Activities conducted through tiered partnerships*. An activity conducted by a partnership in which an existing partnership holds an interest (directly or through another partnership) will be considered an activity of the existing partnership.

(g) *Exceptions*—(1) *Coordination with gross income requirements of section 7704(c)(2)*. A partnership that is either an existing partnership as of December 31, 1997, or an existing partnership that ceases to qualify as an existing partnership is subject to section 7704 and the regulations thereunder. Section 7704(a) does not apply to these partnerships, however, if these partnerships meet the gross income requirements of paragraphs (c) (1) and (2) of section 7704. For purposes of applying section 7704(c) (1) and (2) to these partnerships, the only taxable years that must be tested are those beginning on and after the earlier of—

(i) January 1, 1998; or

(ii) The day on which the partnership ceases to qualify as an existing partnership because of the addition of a new line of business; or

(iii) The first day of the first taxable year in which a new line of business becomes substantial (if the new line of business becomes substantial after the year in which it is added).

(2) *Specific exceptions*. In determining whether a partnership is an existing partnership for purposes of section 7704, the following events do not in themselves terminate the status of existing partnerships—

(i) Termination of the partnership under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits;

(ii) Issuance of additional partnership units; and

(iii) Dropping a line of business. This event, however, could affect an existing partnership's status indirectly. For example, dropping one line of business could change the composition of the partnership's gross income. The change in composition could make a new line of business ''substantial,'' under paragraph (c) of this section, and terminate the partnership's status. See paragraph (b)(2) of this section.

(h) *Examples*. The following examples illustrate the application of this section:

Example 1. (i) On December 17, 1987, PTP, a calendar-year publicly traded partnership, owned and operated citrus groves. On March

1, 1993, PTP purchased a processing business involving frozen citrus products. In the partnership's 1993 taxable year, the partnership directly used in the processing business more than 15 percent (by value) of its total assets.

(ii) The citrus grove activities provide different products from the processing activities, are marketed to customers different from the customers of the processing activities, require different types of operating assets, are not commonly conducted at the same location, are not commonly treated as a unit in accounting records, do not depend upon one another for economic success, and do not have the same Industry SIC Code. Under the facts and circumstances, the processing business is not closely related to the citrus grove operation and is a new line of business under paragraph (d)(1) of this section.

(iii) The assets of the partnership used in the new line of business are substantial under paragraph (c)(2) of this section. Because PTP added a substantial new line of business after December 17, 1987, paragraph (b)(2) of this section terminates PTP's status as an existing partnership on March 1, 1993.

Example 2. (i) On December 17, 1987, PTP, a calendar-year publicly traded partnership, owned and operated retirement centers that serve the elderly. Each center contains three sections—

(A) A residential section, which includes suites of rooms, dining facilities, lounges, and gamerooms;

(B) An assisted-living section, which provides laundry and housekeeping services, health monitoring, and emergency care; and

(C) A nursing section, which provides private and semiprivate rooms, dining facilities, examination and treatment rooms, drugs, medical equipment, and physical, speech, and occupational therapy.

(ii) The business activities of each section constitute pre-existing businesses of PTP under paragraph (d)(2) of this section, because PTP was actively engaged in the activities on or before December 17, 1987.

(iii) The nursing sections primarily furnish health care. They employ nurses and therapists, are subject to federal, state, and local licensing requirements, and may change certain costs to government programs like Medicare and Medicaid.

(iv) In 1993, PTP acquired new nursing homes that treat inpatient adults of all ages. The nursing homes provide private and semiprivate rooms, dining facilities, examination and treatment rooms, drugs, medical equipment, and physical, speech, and occupational therapy. The nursing homes primarily furnish health care. They employ nurses and therapists, are subject to federal, state, and local licensing requirements, and may charge certain costs to government programs like Medicare and Medicaid.

(v) PTP's new nursing homes and old nursing sections provide very similar services, market to very similar customers, use similar types of property and personnel, and are licensed by the same regulatory agencies. The nursing homes and old nursing sections have the same Industry SIC Code. Under these facts and circumstances, the new nursing homes are closely related to a pre-existing business of the partnership. Accordingly, under paragraph (d)(1) of this section, the acquisition of the new nursing homes is not the addition of a new line of business.

(vi) PTP was a publicly traded partnership on December 17, 1987, and was an existing partnership under paragraph (b)(1)(i) of this section. Because PTP has added no substantial new line of business after December 17, 1987, paragraph (b)(2) of this section does not terminate PTP's status as an existing partnership.

Example 3. (i) On December 17, 1987, PTP, a calendar-year publicly traded partnership, owned and operated cable television systems in the northeastern United States. PTP's registration statement described as its proposed business activities the ownership and operation of cable television systems, any ancillary operations, and any business permitted by the laws of the state in which PTP was formed.

(ii) PTP's cable systems include cables strung along telephone lines, converter boxes in subscribers' homes, other types of cable equipment, satellite dishes that receive programs broadcast by various television networks, and channels that carry public service announcements of local interest. Subscribers pay the systems a fee for the right to receive both the local announcements and the network signals relayed through the cables. Those fees constitute PTP's primary revenue. The systems operate under franchise agreements negotiated with each municipality in which they do business.

(iii) On September 1, 1993, PTP purchased a television station in the northwestern United States. The station owns broadcasting facilities, satellite dishes that receive programs broadcast by the station's network, and a studio that produces programs of interest to the area that receives the station's broadcasts. Fees from advertisers constitute the station's primary revenue. The station operates under a license from the Federal Communications Commission.

(iv) In the partnership's 1993 taxable year, the station generated less than 15 percent of PTP's gross income and constituted less than 15 percent of its total assets (by value). In PTP's 1994 taxable year, the station generated more than 15 percent of PTP's gross income.

(v) The cable systems relay signals through cables to subscribers and earn revenue from subscriber fees; the station broadcasts signals to the general public and earns revenue by selling air time for commercials. Despite certain similarities, the two types of activities generally require different operating assets and earn income from different sources. They are regulated by different agencies. They are not commonly conducted at the same location and do not generally depend upon one another for their economic success. They have different Industry SIC Codes. Under the facts and circumstances, the television station activities are not closely related to PTP's pre-existing business, the cable system activities.

(vi) As of December 17, 1987, PTP did not own and operate any television station. PTP's registration statement specifically described as its proposed business activities only the ownership and operation of cable television systems and any ancillary operations. For purposes of paragraph (d)(2) of this section, a specific description does not include PTP's general authority to carry on any business permitted by the state of its formation. Therefore, the television station line of business was not specifically described as a proposed business activity of PTP in its registration statement. PTP's acquisition of the television station business activity constitutes a new line of business under paragraph (d)(1) of this section.

(vii) PTP was a publicly traded partnership on December 17, 1987, and was an existing partnership under paragraph (b)(1)(i) of this section. PTP added a new line of business in 1993, but that line of business was not substantial under paragraph (c) of this section, and thus PTP remained an existing partnership for its 1993 taxable year. In 1994, the new line of business became substantial because it generated more than 15 percent of PTP's gross income. Paragraph (b)(2) of this section therefore terminates PTP's existing partnership status as of January 1, 1994, the first day of the first taxable year beginning after December 31, 1987, in which PTP's new line of business became substantial.

[T.D. 8450, 57 FR 58708, Dec. 11, 1992]

§ 1.7704–3 Qualifying income.

(a) *Certain investment income*—(1) *In general*. For purposes of section 7704(d)(1), qualifying income includes capital gain from the sale of stock, income from holding annuities, income from notional principal contracts (as defined in § 1.446–3), and other substantially similar income from ordinary and routine investments to the extent determined by the Commissioner. Income from a notional principal contract is included in qualifying income only if the property, income, or cash flow that measures the amounts to which the partnership is entitled under the contract would give rise to qualifying income if held or received directly by the partnership.

(2) *Limitations*. Qualifying income described in paragraph (a)(1) of this section does not include income derived in the ordinary course of a trade or business. For purposes of the preceding sentence, income derived from an asset with respect to which the partnership is a broker, market maker, or dealer is income derived in the ordinary course of a trade or business; income derived from an asset with respect to which the taxpayer is a trader or investor is not income derived in the ordinary course of a trade or business.

(b) *Calculation of gross income and qualifying income*—(1) *Treatment of losses*. Except as otherwise provided in this section, in computing the gross income and qualifying income of a partnership for purposes of section 7704(c)(2) and this section, losses do not enter into the computation.

(2) *Certain positions that are marked to market*. Gain recognized with respect to a position that is marked to market (for example, under section 475(f), 1256, 1259, or 1296) shall not fail to be qualifying income solely because there is no sale or disposition of the position.

(3) *Certain items of ordinary income*. Gain recognized with respect to a capital asset shall not fail to be qualifying income solely because it is characterized as ordinary income under section 475(f), 988, 1258, or 1296.

(4) *Straddles*. In computing the gross income and qualifying income of a partnership for purposes of section 7704(c)(2) and this section, a straddle (as defined in section 1092(c)) shall be treated as set forth in this paragraph (b)(4). For purposes of the preceding sentence, two or more straddles that are part of a larger straddle shall be treated as a single straddle. The amount of the gain from any straddle to be taken into account shall be computed as follows:

(i) *Straddles other than mixed straddle accounts*. With respect to each straddle (whether or not a straddle during the

taxable year) other than a mixed straddle account, the amount of gain taken into account shall be the excess, if any, of gain recognized during the taxable year with respect to property that was at any time a position in that straddle over any loss recognized during the taxable year with respect to property that was at any time a position in that straddle (including loss realized in an earlier taxable year).

(ii) *Mixed straddle accounts*. With respect to each mixed straddle account (as defined in §1.1092(b)–4T(b)), the amount of gain taken into account shall be the annual account gain for that mixed straddle account, computed pursuant to §1.1092(b)–4T(c)(2).

(5) *Certain transactions similar to straddles*. In computing the gross income and qualifying income of a partnership for purposes of section 7704(c)(2) and this section, related interests in property (whether or not personal property as defined in section 1092(d)(1)) that produce a substantial diminution of the partnership's risk of loss similar to that of a straddle (as defined in section 1092(c)) shall be combined so that the amount of gain taken into account by the partnership in computing its gross income shall be the excess, if any, of gain recognized during the taxable year with respect to such interests over any loss recognized during the taxable year with respect to such interests.

(6) *Wash sale rule*—(i) *Gain not taken into account*. Solely for purposes of section 7704(c)(2) and this section, if a partnership recognizes gain in a section 7704 wash sale transaction with respect to one or more positions in either a straddle (as defined in section 1092(c)) or an arrangement described in paragraph (b)(5) of this section, then the gain shall not be taken into account to the extent of the amount of unrecognized loss (as of the close of the taxable year) in one or more offsetting positions of the straddle or arrangement described in paragraph (b)(5) of this section.

(ii) *Section 7704 wash sale transaction*. For purposes of this paragraph (b)(6), a section 7704 wash sale transaction is a transaction in which—

(A) A partnership disposes of one or more positions of a straddle (as defined in section 1092(c)) or one or more related positions described in paragraph (b)(5) of this section; and

(B) The partnership acquires a substantially similar position or positions within a period beginning 30 days before the date of the disposition and ending 30 days after such date.

(c) *Effective date*. This section applies to taxable years of a partnership beginning on or after December 17, 1998. However, a partnership may apply this section in its entirety for all of the partnership's open taxable years beginning after any earlier date selected by the partnership.

[T.D. 8799, 63 FR 69553, Dec. 17, 1998]

§§ 1.7872–1—1.7872–4 [Reserved]

§ 1.7872–5 Exempted loans.

(a) *In general*—(1) *General rule*. Except as provided in paragraph (a)(2) of this section, notwithstanding any other provision of section 7872 and the regulations under that section, section 7872 does not apply to the loans listed in paragraph (b) of this section because the interest arrangements do not have a significant effect on the Federal tax liability of the borrower or the lender.

(2) *No exemption for tax avoidance loans*. If a taxpayer structures a transaction to be a loan described in paragraph (b) of this section and one of the principal purposes of so structuring the transaction is the avoidance of Federal tax, then the transaction will be recharacterized as a tax avoidance loan as defined in section 7872(c)(1)(D).

(b) *List of exemptions*. Except as provided in paragraph (a) of this section, the following transactions are exempt from section 7872:

(1) through (15) [Reserved] For further guidance, see §1.7872–5T(b)(1) through (15).

(16) An exchange facilitator loan (within the meaning of §1.468B–6(c)(1)) if the amount of the exchange funds (as defined in §1.468B–6(b)(2)) treated as loaned does not exceed $2,000,000 and the duration of the loan is 6 months or less. The Commissioner may increase this $2,000,000 loan exemption amount in published guidance of general applicability, see §601.601(d)(2) of this chapter.

(c) [Reserved] For further guidance, see §1.7872–5T(c).

(d) *Effective/applicability date*. This section applies to exchange facilitator loans issued on or after October 8, 2008.

[T.D. 9413, 73 FR 39622, July 10, 2008]

§ 1.7872–5T Exempted loans (temporary).

(a) *In general*—(1) *General rule*. Except as provided in paragraph (a)(2) of this section, notwithstanding any other provision of section 7872 and the regulations thereunder, section 7872 does not apply to the loans listed in paragraph (b) of this section because the interest arrangements do not have a significant effect on the Federal tax liability of the borrower or the lender.

(2) *No exemption for tax avoidance loans*. If a taxpayer structures a transaction to be a loan described in paragraph (b) of this section and one of the principal purposes of so structuring the transaction is the avoidance of Federal tax, then the transaction will be recharacterized as a tax avoidance loan as defined in section 7872 (c)(1)(D).

(b) *List of exemptions*. Except as provided in paragraph (a) of this section, the following transactions are exempt from section 7872:

(1) Loans which are made available by the lender to the general public on the same terms and conditions and which are consistent with the lender's customary business practice;

(2) Accounts or withdrawable shares with a bank (as defined in section 581), or an institution to which section 591 applies, or a credit union, made in the ordinary course of its business;

(3) Acquisitions of publicly traded debt obligations for an amount equal to the public trading price at the time of acquisition;

(4) Loans made by a life insurance company (as defined in section 816 (a)), in the ordinary course of its business, to an insured, under a loan right contained in a life insurance policy and in which the cash surrender values are used as collateral for the loans;

(5) Loans subsidized by the Federal, State (including the District of Columbia), or Municipal government (or any agency or instrumentality thereof), and which are made available under a program of general application to the public;

(6) Employee-relocation loans that meet the requirements of paragraph (c)(1) of this section;

(7) Obligations the interest on which is excluded from gross income under section 103;

(8) Obligations of the United States government;

(9) Gift loans to a charitable organization (described in section 170(c)), but only if at no time during the taxable year will the aggregate outstanding amount of gift loans by the lender to that organization exceed $250,000. Charitable organizations which are effectively controlled, within the meaning of § 1.482–1(a)(1), by the same person or persons shall be considered one charitable organization for purposes of this limitation.

(10) Loans made to or from a foreign person that meet the requirements of paragraph (c)(2) of this section;

(11) Loans made by a private foundation or other organization described in section 170(c), the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B);

(12) Indebtedness subject to section 482, but such indebtedness is exempt from the application of section 7872 only during the interest-free period, if any, determined under § 1.482–2(a)(1)(iii) with respect to intercompany trade receivables described in § 1.482–2(a)(1)(ii)(A)(*ii*). See also § 1.482–2(a)(3);

(13) All money, securities, and property—

(i) Received by a futures commission merchant or registered broker/dealer or by a clearing organization (A) to margin, guarantee or secure contracts for future delivery on or subject to the rules of a qualified board or exchange (as defined in section 1256(g)(7)), or (B) to purchase, margin, guarantee or secure options contracts traded on or subject to the rules of a qualified board or exchange, so long as the amounts so received to purchase, margin, guarantee or secure such contracts for future delivery or such options contracts are reasonably necessary for such purposes and so long as any commissions received by the futures commission merchant, registered broker-dealer, or clearing organization are not reduced for those making deposits of money,

and all money accruing to account holders as the result of such futures and options contacts or

(ii) Received by a clearing organization from a member thereof as a required deposit to a clearing fund, guaranty fund, or similar fund maintained by the clearing organization to protect it against defaults by members.

(14) Loans the interest arrangements of which the taxpayer is able to show have no significant effect on any Federal tax liability of the lender or the borrower, as described in paragraph (c)(3) of this section; and

(15) Loans, described in revenue rulings or revenue procedures issued under section 7872(g)(1)(C), if the Commissioner finds that the factors justifying an exemption for such loans are sufficiently similar to the factors justifying the exemptions contained in this section.

(c) *Special rules*—(1) *Employee-relocation loans*—(i) *Mortgage loans*. In the case of a compensation-related loan to an employee, where such loan is secured by a mortgage on the new principal residence (within the meaning of section 217 and the regulations thereunder) of the employee, acquired in connection with the transfer of that employee to a new principal place of work (which meets the requirements in section 217(c) and the regulations thereunder), the loan will be exempt from section 7872 if the following conditions are satisfied:

(A) The loan is a demand loan or is a term loan the benefits of the interest arrangements of which are not transferable by the employee and are conditioned on the future performance of substantial services by the employee;

(B) The employee certifies to the employer that the employee reasonably expects to be entitled to and will itemize deductions for each year the loan is outstanding; and

(C) The loan agreement requires that the loan proceeds be used only to purchase the new principal residence of the employee.

(ii) *Bridge loans*. In the case of a compensation-related loan to an employee which is not described in paragraph (c)(1)(i) of this section, and which is used to purchase a new principal residence (within the meaning of section 217 and the regulations thereunder) of the employee acquired in connection with the transfer of that employee to a new principal place of work (which meets the requirements in section 217(c) and the regulations thereunder), the loan will be exempt from section 7872 if the following conditions are satisfied:

(A) The conditions contained in paragraphs (c)(1)(i) (A), (B), and (C) of this section;

(B) The loan agreement provides that the loan is payable in full within 15 days after the date of the sale of the employee's immediately former principal residence;

(C) The aggregate principal amount of all outstanding loans described in this paragraph (c)(1)(ii) to an employee is no greater than the employer's reasonable estimate of the amount of the equity of the employee and the employee's spouse in the employee's immediately former principal residence, and

(D) The employee's immediately former principal residence is not converted to business or investment use.

(2) *Below-market loans involving foreign persons*. (i) Section 7872 shall not apply to a below-market loan (other than a compensation-related loan or a corporation-shareholder loan where the borrower is a shareholder that is not a C corporation as defined in section 1361(a)(2)) if the lender is a foreign person and the borrower is a U.S. person unless the interest income imputed to the foreign lender (without regard to this paragraph) would be effectively connected with the conduct of a U.S. trade or business within the meaning of section 864(c) and the regulations thereunder and not exempt from U.S. income taxation under an applicable income tax treaty.

(ii) Section 7872 shall not apply to a below-market loan where both the lender and the borrower are foreign persons unless the interest income imputed to the lender (without regard to this paragraph) would be effectively connected with the conduct of a U.S. trade or business within the meaning of section 864(c) and the regulations thereunder and not exempt from U.S. income taxation under an applicable income tax treaty.

(iii) For purposes of this section, the term ''foreign person'' means any person that is not a U.S. person.

(3) *Loans without significant tax effect.* Whether a loan will be considered to be a loan the interest arrangements of which have a significant effect on any Federal tax liability of the lender or the borrower will be determined according to all of the facts and circumstances. Among the factors to be considered are—

(i) Whether items of income and deduction generated by the loan offset each other;

(ii) The amount of such items;

(iii) The cost to the taxpayer of complying with the provisions of section 7872 if such section were applied; and

(iv) Any non-tax reasons for deciding to structure the transaction as a below-market loan rather than a loan with interest at a rate equal to or greater than the applicable Federal rate and a payment by the lender to the borrower.

(26 U.S.C. 7872)

[T.D. 8045, 50 FR 33520, Aug. 20, 1985, as amended by T.D. 8093, 51 FR 25033, July 10, 1986; 51 FR 28553, Aug. 8, 1986; T.D. 8204, 53 FR 18282, May 23, 1988]

§ 1.7872–15 Split-dollar loans.

(a) *General rules*—(1) *Introduction.* This section applies to split-dollar loans as defined in paragraph (b)(1) of this section. If a split-dollar loan is not a below-market loan, then, except as provided in this section, the loan is governed by the general rules for debt instruments (including the rules for original issue discount (OID) under sections 1271 through 1275 and the regulations thereunder). If a split-dollar loan is a below-market loan, then, except as provided in this section, the loan is governed by section 7872. The timing, amount, and characterization of the imputed transfers between the lender and borrower of a below-market split-dollar loan depend upon the relationship between the parties and upon whether the loan is a demand loan or a term loan. For additional rules relating to the treatment of split-dollar life insurance arrangements, *see* § 1.61–22.

(2) *Loan treatment*—(i) *General rule.* A payment made pursuant to a split-dollar life insurance arrangement is treated as a loan for Federal tax purposes, and the owner and non-owner are treated, respectively, as the borrower and the lender, if—

(A) The payment is made either directly or indirectly by the non-owner to the owner (including a premium payment made by the non-owner directly or indirectly to the insurance company with respect to the policy held by the owner);

(B) The payment is a loan under general principles of Federal tax law or, if it is not a loan under general principles of Federal tax law (for example, because of the nonrecourse nature of the obligation or otherwise), a reasonable person nevertheless would expect the payment to be repaid in full to the non-owner (whether with or without interest); and

(C) The repayment is to be made from, or is secured by, the policy's death benefit proceeds, the policy's cash surrender value, or both.

(ii) *Payments that are only partially repayable.* For purposes of § 1.61–22 and this section, if a non-owner makes a payment pursuant to a split-dollar life insurance arrangement and the non-owner is entitled to repayment of some but not all of the payment, the payment is treated as two payments: One that is repayable and one that is not. Thus, paragraph (a)(2)(i) of this section refers to the repayable payment.

(iii) *Treatment of payments that are not split-dollar loans. See* § 1.61–22(b)(5) for the treatment of payments by a non-owner that are not split-dollar loans.

(iv) *Examples.* The provisions of this paragraph (a)(2) are illustrated by the following examples:

Example 1. Assume an employee owns a life insurance policy under a split-dollar life insurance arrangement, the employer makes premium payments on this policy, there is a reasonable expectation that the payments will be repaid, and the repayments are secured by the policy. Under paragraph (a)(2)(i) of this section, each premium payment is a loan for Federal tax purposes.

Example 2. (i) Assume an employee owns a life insurance policy under a split-dollar life insurance arrangement and the employer makes premium payments on this policy. The employer is entitled to be repaid 80 percent of each premium payment, and the repayments are secured by the policy. Under paragraph (a)(2)(ii) of this section, the taxation of 20 percent of each premium payment

is governed by § 1.61–22(b)(5). If there is a reasonable expectation that the remaining 80 percent of a payment will be repaid in full, then, under paragraph (a)(2)(i) of this section, the 80 percent is a loan for Federal tax purposes.

(ii) If less than 80 percent of a premium payment is reasonably expected to be repaid, then this paragraph (a)(2) does not cause any of the payment to be a loan for Federal tax purposes. If the payment is not a loan under general principles of Federal tax law, the taxation of the entire premium payment is governed by § 1.61–22(b)(5).

(3) *No de minimis exceptions*. For purposes of this section, section 7872 is applied to a split-dollar loan without regard to the *de minimis* exceptions in section 7872(c)(2) and (3).

(4) *Certain interest provisions disregarded*—(i) *In general*. If a split-dollar loan provides for the payment of interest and all or a portion of the interest is to be paid directly or indirectly by the lender (or a person related to the lender), then the requirement to pay the interest (or portion thereof) is disregarded for purposes of this section. All of the facts and circumstances determine whether a payment to be made by the lender (or a person related to the lender) is sufficiently independent from the split-dollar loan for the payment to not be an indirect payment of the interest (or a portion thereof) by the lender (or a person related to the lender).

(ii) *Examples*. The provisions of this paragraph (a)(4) are illustrated by the following examples:

Example 1. (i) On January 1, 2009, Employee *B* issues a split-dollar term loan to Employer *Y*. The split-dollar term loan provides for five percent interest, compounded annually. Interest and principal on the split-dollar term loan are due at maturity. On January 1, 2009, *B* and *Y* also enter into a fully vested non-qualified deferred compensation arrangement that will provide a payment to *B* in an amount equal to the accrued but unpaid interest due at the maturity of the split-dollar term loan.

(ii) Under paragraph (a)(4)(i) of this section, *B*'s requirement to pay interest on the split-dollar term loan is disregarded for purposes of this section, and the split-dollar term loan is treated as a loan that does not provide for interest for purposes of this section.

Example 2. (i) On January 1, 2004, Employee *B* and Employer *Y* enter into a fully vested non-qualified deferred compensation arrangement that will provide a payment to *B* equal to *B*'s salary in the three years preceding the retirement of *B*. On January 1, 2009, *B* and *Y* enter into a split-dollar life insurance arrangement and, under the arrangement, *B* issues a split-dollar term loan to *Y* on that date. The split-dollar term loan provides for five percent interest, compounded annually. Interest and principal on the split-dollar term loan are due at maturity. Over the period in which the non-qualified deferred compensation arrangement is effective, the terms and conditions of *B*'s non-qualified deferred compensation arrangement do not change in a way that indicates that the payment of the non-qualified deferred compensation is related to *B*'s requirement to pay interest on the split-dollar term loan. No other facts and circumstances exist to indicate that the payment of the non-qualified deferred compensation is related to *B*'s requirement to pay interest on the split-dollar term loan.

(ii) The facts and circumstances indicate that the payment by *Y* of non-qualified deferred compensation is independent from *B*'s requirement to pay interest under the split-dollar term loan. Under paragraph (a)(4)(i) of this section, the fully vested non-qualified deferred compensation does not cause *B*'s requirement to pay interest on the split-dollar term loan to be disregarded for purposes of this section. For purposes of this section, the split-dollar term loan is treated as a loan that provides for stated interest of five percent, compounded annually.

(b) *Definitions*. For purposes of this section, the terms *split-dollar life insurance arrangement*, *owner*, and *non-owner* have the same meanings as provided in § 1.61–22(b) and (c). In addition, the following definitions apply for purposes of this section:

(1) A *split-dollar loan* is a loan described in paragraph (a)(2)(i) of this section.

(2) A *split-dollar demand loan* is any split-dollar loan that is payable in full at any time on the demand of the lender (or within a reasonable time after the lender's demand).

(3) A *split-dollar term loan* is any split-dollar loan other than a split-dollar demand loan. See paragraph (e)(5) of this section for special rules regarding certain split-dollar term loans payable on the death of an individual, certain split-dollar term loans conditioned on the future performance of substantial services by an individual, and gift split-dollar term loans.

(c) *Interest deductions for split-dollar loans*. The borrower may not deduct

any qualified stated interest, OID, or imputed interest on a split-dollar loan. *See* sections 163(h) and 264(a). In certain circumstances, an indirect participant may be allowed to deduct qualified stated interest, OID, or imputed interest on a deemed loan. See paragraph (e)(2)(iii) of this section (relating to indirect loans).

(d) *Treatment of split-dollar loans providing for nonrecourse payments*—(1) *In general*. Except as provided in paragraph (d)(2) of this section, if a payment on a split-dollar loan is nonrecourse to the borrower, the payment is a contingent payment for purposes of this section. *See* paragraph (j) of this section for the treatment of a split-dollar loan that provides for one or more contingent payments.

(2) *Exception for certain loans with respect to which the parties to the split-dollar life insurance arrangement make a representation*—(i) *Requirement*. An otherwise noncontingent payment on a split-dollar loan that is nonrecourse to the borrower is not a contingent payment under this section if the parties to the split-dollar life insurance arrangement represent in writing that a reasonable person would expect that all payments under the loan will be made.

(ii) *Time and manner for providing written representation*. The Commissioner may prescribe the time and manner for providing the written representation required by paragraph (d)(2)(i) of this section. Until the Commissioner prescribes otherwise, the written representation that is required by paragraph (d)(2)(i) of this section must meet the requirements of this paragraph (d)(2)(ii). Both the borrower and the lender must sign the representation not later than the last day (including extensions) for filing the Federal income tax return of the borrower or lender, whichever is earlier, for the taxable year in which the lender makes the first split-dollar loan under the split-dollar life insurance arrangement. This representation must include the names, addresses, and taxpayer identification numbers of the borrower, lender, and any indirect participants. Unless otherwise stated therein, this representation applies to all subsequent split-dollar loans made pursuant to the split-dollar life insurance arrangement. Each party should retain an original of the representation as part of its books and records and should attach a copy of this representation to its Federal income tax return for any taxable year in which the lender makes a loan to which the representation applies.

(e) *Below-market split-dollar loans*—(1) *Scope*—(i) *In general*. This paragraph (e) applies to below-market split-dollar loans enumerated under section 7872(c)(1), which include gift loans, compensation-related loans, and corporation-shareholder loans. The characterization of a split-dollar loan under section 7872(c)(1) and of the imputed transfers under section 7872(a)(1) and (b)(1) depends upon the relationship between the lender and the borrower or the lender, borrower, and any indirect participant. For example, if the lender is the borrower's employer, the split-dollar loan is generally a compensation-related loan, and any imputed transfer from the lender to the borrower is generally a payment of compensation. The loans covered by this paragraph (e) include indirect loans between the parties. *See* paragraph (e)(2) of this section for the treatment of certain indirect split-dollar loans. *See* paragraph (f) of this section for the treatment of any stated interest or OID on split-dollar loans. *See* paragraph (j) of this section for additional rules that apply to a split-dollar loan that provides for one or more contingent payments.

(ii) *Significant-effect split-dollar loans*. If a direct or indirect below-market split-dollar loan is not enumerated in section 7872(c)(1)(A), (B), or (C), the loan is a significant-effect loan under section 7872(c)(1)(E).

(2) *Indirect split-dollar loans*—(i) *In general*. If, based on all the facts and circumstances, including the relationship between the borrower or lender and some third person (the indirect participant), the effect of a below-market split-dollar loan is to transfer value from the lender to the indirect participant and from the indirect participant to the borrower, then the below-market split-dollar loan is restructured as two or more successive below-market loans (the deemed loans) as provided in this paragraph (e)(2). The transfers of value described in the

preceding sentence include (but are not limited to) a gift, compensation, a capital contribution, and a distribution under section 301 (or, in the case of an S corporation, under section 1368). The deemed loans are—

(A) A deemed below-market split-dollar loan made by the lender to the indirect participant; and

(B) A deemed below-market split-dollar loan made by the indirect participant to the borrower.

(ii) *Application*. Each deemed loan is treated as having the same provisions as the original loan between the lender and borrower, and section 7872 is applied to each deemed loan. Thus, for example, if, under a split-dollar life insurance arrangement, an employer (lender) makes an interest-free split-dollar loan to an employee's child (borrower), the loan is restructured as a deemed compensation-related below-market split-dollar loan from the lender to the employee (the indirect participant) and a second deemed gift below-market split-dollar loan from the employee to the employee's child. In appropriate circumstances, section 7872(d)(1) may limit the interest that accrues on a deemed loan for Federal income tax purposes. For loan arrangements between husband and wife, *see* section 7872(f)(7).

(iii) *Limitations on investment interest for purposes of section 163(d)*. For purposes of section 163(d), the imputed interest from the indirect participant to the lender that is taken into account by the indirect participant under this paragraph (e)(2) is not investment interest to the extent of the excess, if any, of—

(A) The imputed interest from the indirect participant to the lender that is taken into account by the indirect participant; over

(B) The imputed interest to the indirect participant from the borrower that is recognized by the indirect participant.

(iv) *Examples*. The provisions of this paragraph (e)(2) are illustrated by the following examples:

Example 1. (i) On January 1, 2009, Employer *X* and Individual *A* enter into a split-dollar life insurance arrangement under which *A* is named as the policy owner. *A* is the child of *B*, an employee of *X*. On January 1, 2009, *X* makes a $30,000 premium payment, repayable upon demand without interest. Repayment of the premium payment is fully recourse to *A*. The payment is a below-market split-dollar demand loan. *A*'s net investment income for 2009 is $1,100, and there are no other outstanding loans between *A* and *B*. Assume that the blended annual rate for 2009 is 5 percent, compounded annually.

(ii) Based on the relationships among the parties, the effect of the below-market split-dollar loan from *X* to *A* is to transfer value from *X* to *B* and then to transfer value from *B* to *A*. Under paragraph (e)(2) of this section, the below-market split-dollar loan from *X* to *A* is restructured as two deemed below-market split-dollar demand loans: a compensation-related below-market split-dollar loan between *X* and *B* and a gift below-market split-dollar loan between *B* and *A*. Each of the deemed loans has the same terms and conditions as the original loan.

(iii) Under paragraph (e)(3) of this section, the amount of forgone interest deemed paid to *B* by *A* in 2009 is $1,500 ([$30,000 × 0.05]—0). Under section 7872(d)(1), however, the amount of forgone interest deemed paid to *B* by *A* is limited to $1,100 (*A*'s net investment income for the year). Under paragraph (e)(2)(iii) of this section, *B*'s deduction under section 163(d) in 2009 for interest deemed paid on *B*'s deemed loan from *X* is limited to $1,100 (the interest deemed received from *A*).

Example 2. (i) The facts are the same as the facts in *Example 1*, except that *T*, an irrevocable life insurance trust established for the benefit of *A* (*B*'s child), is named as the policy owner. *T* is not a grantor trust.

(ii) Based on the relationships among the parties, the effect of the below-market split-dollar loan from *X* to *T* is to transfer value from *X* to *B* and then to transfer value from *B* to *T*. Under paragraph (e)(2) of this section, the below-market split-dollar loan from *X* to *T* is restructured as two deemed below-market split-dollar demand loans: a compensation-related below-market split-dollar loan between *X* and *B* and a gift below-market split-dollar loan between *B* and *T*. Each of the deemed loans has the same terms and conditions as the original loan.

(iii) Under paragraph (e)(3) of this section, the amount of forgone interest deemed paid to *B* by *T* in 2009 is $1,500 ([$30,000 × 0.05]—0). Section 7872(d)(1) does not apply because *T* is not an individual. The amount of forgone interest deemed paid to *B* by *T* is $1,500. Under paragraph (e)(2)(iii) of this section, *B*'s deduction under section 163(d) in 2009 for interest deemed paid on *B*'s deemed loan from *X* is $1,500 (the interest deemed received from *T*).

(3) *Split-dollar demand loans*—(i) *In general*. This paragraph (e)(3) provides rules for testing split-dollar demand

loans for sufficient interest, and, if the loans do not provide for sufficient interest, rules for the calculation and treatment of forgone interest on these loans. *See* paragraph (g) of this section for additional rules that apply to a split-dollar loan providing for certain variable rates of interest.

(ii) *Testing for sufficient interest.* Each calendar year that a split-dollar demand loan is outstanding, the loan is tested to determine if the loan provides for sufficient interest. A split-dollar demand loan provides for sufficient interest for the calendar year if the rate (based on annual compounding) at which interest accrues on the loan's adjusted issue price during the year is no lower than the blended annual rate for the year. (The Internal Revenue Service publishes the blended annual rate in the Internal Revenue Bulletin in July of each year (*see* § 601.601(d)(2)(ii) of this chapter).) If the loan does not provide for sufficient interest, the loan is a below-market split-dollar demand loan for that calendar year. *See* paragraph (e)(3)(iii) of this section to determine the amount and treatment of forgone interest for each calendar year the loan is below-market.

(iii) *Imputations*—(A) *Amount of forgone interest.* For each calendar year, the amount of forgone interest on a split-dollar demand loan is treated as transferred by the lender to the borrower and as retransferred as interest by the borrower to the lender. This amount is the excess of—

(*1*) The amount of interest that would have been payable on the loan for the calendar year if interest accrued on the loan's adjusted issue price at the blended annual rate (determined in paragraph (e)(3)(ii) of this section) and were payable annually on the day referred to in paragraph (e)(3)(iii)(B) of this section; over

(*2*) Any interest that accrues on the loan during the year.

(B) *Timing of transfers of forgone interest*—(*1*) *In general.* Except as provided in paragraphs (e)(3)(iii)(B)(*2*) and (*3*) of this section, the forgone interest (as determined under paragraph (e)(3)(iii)(A) of this section) that is attributable to a calendar year is treated as transferred by the lender to the borrower (and retransferred as interest by the borrower to the lender) on the last day of the calendar year and is accounted for by each party to the split-dollar loan in a manner consistent with that party's method of accounting.

(*2*) *Exception for death, liquidation, or termination of the borrower.* In the taxable year in which the borrower dies (in the case of a borrower who is a natural person) or is liquidated or otherwise terminated (in the case of a borrower other than a natural person), any forgone interest is treated, for both the lender and the borrower, as transferred and retransferred on the last day of the borrower's final taxable year.

(3) *Exception for repayment of below-market split-dollar loan.* Any forgone interest is treated, for both the lender and the borrower, as transferred and retransferred on the day the split-dollar loan is repaid in full.

(4) *Split-dollar term loans*—(i) *In general.* Except as provided in paragraph (e)(5) of this section, this paragraph (e)(4) provides rules for testing split-dollar term loans for sufficient interest and, if the loans do not provide for sufficient interest, rules for imputing payments on these loans. *See* paragraph (g) of this section for additional rules that apply to a split-dollar loan providing for certain variable rates of interest.

(ii) *Testing a split-dollar term loan for sufficient interest.* A split-dollar term loan is tested on the day the loan is made to determine if the loan provides for sufficient interest. A split-dollar term loan provides for sufficient interest if the imputed loan amount equals or exceeds the amount loaned. The imputed loan amount is the present value of all payments due under the loan, determined as of the date the loan is made, using a discount rate equal to the AFR in effect on that date. The AFR used for purposes of the preceding sentence must be appropriate for the loan's term (short-term, mid-term, or long-term) and for the compounding period used in computing the present value. *See* section 1274(d)(1). If the split-dollar loan does not provide for sufficient interest, the loan is a below-market split-dollar term loan subject to paragraph (e)(4)(iv) of this section.

(iii) *Determining loan term.* This paragraph (e)(4)(iii) provides rules to determine the term of a split-dollar term loan for purposes of paragraph (e)(4)(ii) of this section. The term of the loan determined under this paragraph (e)(4)(iii) (other than paragraph (e)(4)(iii)(C) of this section) applies to determine the split-dollar loan's term, payment schedule, and yield for all purposes of this section.

(A) *In general.* Except as provided in paragraph (e)(4)(iii)(B), (C), (D) or (E) of this section, the term of a split-dollar term loan is based on the period from the date the loan is made until the loan's stated maturity date.

(B) *Special rules for certain options—(1) Payment schedule that minimizes yield.* If a split-dollar term loan is subject to one or more unconditional options that are exercisable at one or more times during the term of the loan and that, if exercised, require payments to be made on the split-dollar loan on an alternative payment schedule (for example, an option to extend or an option to call a split-dollar loan), then the rules of this paragraph (e)(4)(iii)(B)(*1*) determine the term of the loan. However, this paragraph (e)(4)(iii)(B)(*1*) applies only if the timing and amounts of the payments that comprise each payment schedule are known as of the issue date. For purposes of determining a split-dollar loan's term, the borrower is projected to exercise or not exercise an option or combination of options in a manner that minimizes the loan's overall yield. Similarly, the lender is projected to exercise or not exercise an option or combination of options in a manner that minimizes the loan's overall yield. If different projected patterns of exercise or non-exercise produce the same minimum yield, the parties are projected to exercise or not exercise an option or combination of options in a manner that produces the longest term.

(*2*) *Change in circumstances.* If the borrower (or lender) does or does not exercise the option as projected under paragraph (e)(4)(iii)(B)(*1*) of this section, the split-dollar loan is treated for purposes of this section as retired and reissued on the date the option is or is not exercised for an amount of cash equal to the loan's adjusted issue price on that date. The reissued loan must be retested using the appropriate AFR in effect on the date of reissuance to determine whether it is a below-market loan.

(*3*) *Examples.* The following examples illustrate the rules of this paragraph (e)(4)(iii)(B):

Example 1. Employee *B* issues a 10-year split-dollar term loan to Employer *Y*. *B* has the right to prepay the loan at the end of year 5. Interest is payable on the split-dollar loan at 1 percent for the first 5 years and at 10 percent for the remaining 5 years. Under paragraph (e)(4)(iii)(B)(*1*) of this section, this arrangement is treated as a 5-year split-dollar term loan from *Y* to *B*, with interest payable at 1 percent.

Example 2. The facts are the same as the facts in *Example 1*, except that B does not in fact prepay the split-dollar loan at the end of year 5. Under paragraph (e)(4)(iii)(B)(*2*) of this section, the first loan is treated as retired at the end of year 5 and a new 5-year split-dollar term loan is issued at that time, with interest payable at 10 percent.

Example 3. Employee *A* issues a 10-year split-dollar term loan on which the lender, Employer *X*, has the right to demand payment at the end of year 2. Interest is payable on the split-dollar loan at 7 percent each year that the loan is outstanding. Under paragraph (e)(4)(iii)(B)(*1*) of this section, this arrangement is treated as a 10-year split-dollar term loan because the exercise of *X*'s put option would not reduce the yield of the loan (the yield of the loan is 7 percent, compounded annually, whether or not *X* demands payment).

(C) *Split-dollar term loans providing for certain variable rates of interest.* If a split-dollar term loan is subject to paragraph (g) of this section (a split-dollar loan that provides for certain variable rates of interest), the term of the loan for purposes of paragraph (e)(4)(ii) of this section is determined under paragraph (g)(3)(ii) of this section.

(D) *Split-dollar loans payable upon the death of an individual.* If a split-dollar term loan is described in paragraph (e)(5)(ii)(A) or (v)(A) of this section, the term of the loan for purposes of paragraph (e)(4)(ii) of this section is determined under paragraph (e)(5)(ii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(E) *Split-dollar loans conditioned on the future performance of substantial services by an individual.* If a split-dollar term loan is described in paragraph

(e)(5)(iii)(A)(*1*) or (v)(A) of this section, the term of the loan for purposes of paragraph (e)(4)(ii) of this section is determined under paragraph (e)(5)(iii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(iv) *Timing and amount of imputed transfer in connection with below-market split-dollar term loans.* If a split-dollar term loan is a below-market loan, then the rules applicable to below-market term loans under section 7872 apply. In general, the loan is recharacterized as consisting of two portions: an imputed loan amount (as defined in paragraph (e)(4)(ii) of this section) and an imputed transfer from the lender to the borrower. The imputed transfer occurs at the time the loan is made (for example, when the lender makes a premium payment on a life insurance policy) and is equal to the excess of the amount loaned over the imputed loan amount.

(v) *Amount treated as OID.* In the case of any below-market split-dollar term loan described in this paragraph (e)(4), for purposes of applying sections 1271 through 1275 and the regulations thereunder, the issue price of the loan is the amount determined under §1.1273–2, reduced by the amount of the imputed transfer described in paragraph (e)(4)(iv) of this section. Thus, the loan is generally treated as having OID in an amount equal to the amount of the imputed transfer described in paragraph (e)(4)(iv) of this section, in addition to any other OID on the loan (determined without regard to section 7872(b)(2)(A) or this paragraph (e)(4)).

(vi) *Example.* The provisions of this paragraph (e)(4) are illustrated by the following example:

Example. (i) On July 1, 2009, Corporation *Z* and Shareholder *A* enter into a split-dollar life insurance arrangement under which *A* is named as the policy owner. On July 1, 2009, *Z* makes a $100,000 premium payment, repayable without interest in 15 years. Repayment of the premium payment is fully recourse to *A*. The premium payment is a split-dollar term loan. Assume the long-term AFR (based on annual compounding) at the time the loan is made is 7 percent.

(ii) Based on a 15-year term and a discount rate of 7 percent, compounded annually (the long-term AFR), the present value of the payments under the loan is $36,244.60, determined as follows: $100,000/[1+(0.07/1)]^{15}. This loan is a below-market split-dollar term loan because the imputed loan amount of $36,244.60 (the present value of the amount required to be repaid to *Z*) is less than the amount loaned ($100,000).

(iii) In accordance with section 7872(b)(1) and paragraph (e)(4)(iv) of this section, on the date that the loan is made, *Z* is treated as transferring to *A* $63,755.40 (the excess of $100,000 (amount loaned) over $36,244.60 (imputed loan amount)). Under section 7872 and paragraph (e)(1)(i) of this section, *Z* is treated as making a section 301 distribution to *A* on July 1, 2009, of $63,755.40. *Z* must take into account as OID an amount equal to the imputed transfer. See §1.1272–1 for the treatment of OID.

(5) *Special rules for certain split-dollar term loans*—(i) *In general.* This paragraph (e)(5) provides rules for split-dollar loans payable on the death of an individual, split-dollar loans conditioned on the future performance of substantial services by an individual, and gift term loans. These split-dollar loans are split-dollar term loans for purposes of determining whether the loan provides for sufficient interest. If, however, the loan is a below-market split-dollar loan, then, except as provided in paragraph (e)(5)(v) of this section, forgone interest is determined annually, similar to a demand loan, but using an AFR that is appropriate for the loan's term and that is determined when the loan is issued.

(ii) *Split-dollar loans payable not later than the death of an individual*—(A) *Applicability.* This paragraph (e)(5)(ii) applies to a split-dollar term loan payable not later than the death of an individual.

(B) *Treatment of loan.* A split-dollar loan described in paragraph (e)(5)(ii)(A) of this section is tested under paragraph (e)(4)(ii) of this section to determine if the loan provides for sufficient interest. If the loan provides for sufficient interest, then section 7872 does not apply to the loan, and the interest on the loan is taken into account under paragraph (f) of this section. If the loan does not provide for sufficient interest, then section 7872 applies to the loan, and the loan is treated as a below-market demand loan subject to paragraph (e)(3)(iii) of this section. For each year that the loan is outstanding, however, the rate used in the determination of forgone interest under paragraph (e)(3)(iii) of this section is not the blended annual rate but rather is the

AFR (based on annual compounding) appropriate for the loan's term as of the month in which the loan is made. *See* paragraph (e)(5)(ii)(C) of this section to determine the loan's term.

(C) *Term of loan.* For purposes of paragraph (e)(5)(ii)(B) of this section, the term of a split-dollar loan payable on the death of an individual (including the death of the last survivor of a group of individuals) is the individual's life expectancy as determined under the appropriate table in §1.72–9 on the day the loan is made. If a split-dollar loan is payable on the earlier of the individual's death or another term determined under paragraph (e)(4)(iii) of this section, the term of the loan is whichever term is shorter.

(D) *Retirement and reissuance of loan.* If a split-dollar loan described in paragraph (e)(5)(ii)(A) of this section remains outstanding longer than the term determined under paragraph (e)(5)(ii)(C) of this section because the individual outlived his or her life expectancy, the split-dollar loan is treated for purposes of this section as retired and reissued as a split-dollar demand loan at that time for an amount of cash equal to the loan's adjusted issue price on that date. However, the loan is not retested at that time to determine whether the loan provides for sufficient interest. For purposes of determining forgone interest under paragraph (e)(5)(ii)(B) of this section, the appropriate AFR for the reissued loan is the AFR determined under paragraph (e)(5)(ii)(B) of this section on the day the loan was originally made.

(iii) *Split-dollar loans conditioned on the future performance of substantial services by an individual*—(A) *Applicability*—(*1*) *In general.* This paragraph (e)(5)(iii) applies to a split-dollar term loan if the benefits of the interest arrangements of the loan are not transferable and are conditioned on the future performance of substantial services (within the meaning of section 83) by an individual.

(*2*) *Exception.* Notwithstanding paragraph (e)(5)(iii)(A)(*1*) of this section, this paragraph (e)(5)(iii) does not apply to a split-dollar loan described in paragraph (e)(5)(v)(A) of this section (regarding a split-dollar loan that is payable on the later of a term certain and the date on which the condition to perform substantial future services by an individual ends).

(B) *Treatment of loan.* A split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section is tested under paragraph (e)(4)(ii) of this section to determine if the loan provides for sufficient interest. Except as provided in paragraph (e)(5)(iii)(D) of this section, if the loan provides for sufficient interest, then section 7872 does not apply to the loan and the interest on the loan is taken into account under paragraph (f) of this section. If the loan does not provide for sufficient interest, then section 7872 applies to the loan and the loan is treated as a below-market demand loan subject to paragraph (e)(3)(iii) of this section. For each year that the loan is outstanding, however, the rate used in the determination of forgone interest under paragraph (e)(3)(iii) of this section is not the blended annual rate but rather is the AFR (based on annual compounding) appropriate for the loan's term as of the month in which the loan is made. *See* paragraph (e)(5)(iii)(C) of this section to determine the loan's term.

(C) *Term of loan.* The term of a split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section is based on the period from the date the loan is made until the loan's stated maturity date. However, if a split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section does not have a stated maturity date, the term of the loan is presumed to be seven years.

(D) *Retirement and reissuance of loan.* If a split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section remains outstanding longer than the term determined under paragraph (e)(5)(iii)(C) of this section because of the continued performance of substantial services, the split-dollar loan is treated for purposes of this section as retired and reissued as a split-dollar demand loan at that time for an amount of cash equal to the loan's adjusted issue price on that date. The loan is retested at that time to determine whether the loan provides for sufficient interest.

(iv) *Gift split-dollar term loans*—(A) *Applicability.* This paragraph (e)(5)(iv) applies to gift split-dollar term loans.

(B) *Treatment of loan.* A split-dollar loan described in paragraph (e)(5)(iv)(A) of this section is tested under paragraph (e)(4)(ii) of this section to determine if the loan provides for sufficient interest. If the loan provides for sufficient interest, then section 7872 does not apply to the loan and the interest on the loan is taken into account under paragraph (f) of this section. If the loan does not provide for sufficient interest, then section 7872 applies to the loan and the loan is treated as a below-market demand loan subject to paragraph (e)(3)(iii) of this section. For each year that the loan is outstanding, however, the rate used in the determination of forgone interest under paragraph (e)(3)(iii) of this section is not the blended annual rate but rather is the AFR (based on annual compounding) appropriate for the loan's term as of the month in which the loan is made. *See* paragraph (e)(5)(iv)(C) of this section to determine the loan's term.

(C) *Term of loan.* For purposes of paragraph (e)(5)(iv)(B) of this section, the term of a gift split-dollar term loan is the term determined under paragraph (e)(4)(iii) of this section.

(D) *Limited application for gift split-dollar term loans.* The rules of paragraph (e)(5)(iv)(B) of this section apply to a gift split-dollar term loan only for Federal income tax purposes. For purposes of Chapter 12 of the Internal Revenue Code (relating to the gift tax), gift below-market split-dollar term loans are treated as term loans under section 7872(b) and paragraph (e)(4) of this section. *See* section 7872(d)(2).

(v) *Split-dollar loans payable on the later of a term certain and another specified date*—(A) *Applicability.* This paragraph (e)(5)(v) applies to any split-dollar term loan payable upon the later of a term certain or—

(*1*) The death of an individual; or

(*2*) For a loan described in paragraph (e)(5)(iii)(A)(*1*) of this section, the date on which the condition to perform substantial future services by an individual ends.

(B) *Treatment of loan*—(*1*) *In general.* A split-dollar loan described in paragraph (e)(5)(v)(A) of this section is a split-dollar term loan, subject to paragraph (e)(4) of this section.

(*2*) *Term of the loan.* The term of a split-dollar loan described in paragraph (e)(5)(v)(A) of this section is the term certain.

(*3*) *Appropriate AFR.* The appropriate AFR for a split-dollar loan described in paragraph (e)(5)(v)(A) of this section is based on a term of the longer of the term certain or the loan's expected term as determined under either paragraph (e)(5) (ii) or (iii) of this section, whichever is applicable.

(C) *Retirement and reissuance.* If a split-dollar loan described in paragraph (e)(5)(v)(A) of this section remains outstanding longer than the term certain, the split-dollar loan is treated for purposes of this section as retired and reissued at the end of the term certain for an amount of cash equal to the loan's adjusted issue price on that date. The reissued loan is subject to paragraph (e)(5) (ii) or (iii) of this section, whichever is applicable. However, the loan is not retested at that time to determine whether the loan provides for sufficient interest. For purposes of paragraph (e)(3)(iii) of this section, the appropriate AFR for the reissued loan is the AFR determined under paragraph (e)(5)(v)(B)(*3*) of this section on the day the loan was originally made.

(vi) *Example.* The provisions of this paragraph (e)(5) are illustrated by the following example:

Example. (i) On January 1, 2009, Corporation *Y* and Shareholder *B*, a 65 year-old male, enter into a split-dollar life insurance arrangement under which *B* is named as the policy owner. On January 1, 2009, *Y* makes a $100,000 premium payment, repayable, without interest, from the death benefits of the underlying contract upon *B*'s death. The premium payment is a split-dollar term loan. Repayment of the premium payment is fully recourse to *B*. Assume the long-term AFR (based on annual compounding) at the time of the loan is 7 percent. Both *Y* and *B* use the calendar year as their taxable years.

(ii) Based on Table 1 in §1.72–9, the expected term of the loan is 15 years. Under paragraph (e)(5)(ii)(C) of this section, the long-term AFR (based on annual compounding) is the appropriate test rate. Based on a 15-year term and a discount rate of 7 percent, compounded annually (the long-term AFR), the present value of the payments under the loan is $36,244.60, determined as follows: $\$100,000/[1+(0.07/1)]^{15}$. Under paragraph (e)(5)(ii)(B) of this section, this loan is a below-market split-dollar term loan because the imputed loan amount of

$36,244.60 (the present value of the amount required to be repaid to *Y*) is less than the amount loaned ($100,000).

(iii) Under paragraph (e)(5)(ii)(B) of this section, the amount of forgone interest for 2009 (and each subsequent full calendar year that the loan remains outstanding) is $7,000, which is the amount of interest that would have been payable on the loan for the calendar year if interest accrued on the loan's adjusted issue price ($100,000) at the long-term AFR (7 percent, compounded annually). Under section 7872 and paragraph (e)(1)(i) of this section, on December 31, 2009, *Y* is treated as making a section 301 distribution to *B* of $7,000. In addition, *Y* has $7,000 of imputed interest income for 2009.

(f) *Treatment of stated interest and OID for split-dollar loans*—(1) *In general.* If a split-dollar loan provides for stated interest or OID, the loan is subject to this paragraph (f), regardless of whether the split-dollar loan has sufficient interest. Except as otherwise provided in this section, split-dollar loans are subject to the same Internal Revenue Code and regulatory provisions for stated interest and OID as other loans. For example, the lender of a split-dollar loan that provides for stated interest must account for any qualified stated interest (as defined in §1.1273–1(c)) under its regular method of accounting (for example, an accrual method or the cash receipts and disbursements method). *See* §1.446–2 to determine the amount of qualified stated interest that accrues during an accrual period. In addition, the lender must account under §1.1272–1 for any OID on a split-dollar loan. However, §1.1272–1(c) does not apply to any split-dollar loan. *See* paragraph (h) of this section for a subsequent waiver, cancellation, or forgiveness of stated interest on a split-dollar loan.

(2) *Term, payment schedule, and yield.* The term of a split-dollar term loan determined under paragraph (e)(4)(iii) of this section (other than paragraph (e)(4)(iii)(C) of this section) applies to determine the split-dollar loan's term, payment schedule, and yield for all purposes of this section.

(g) *Certain variable rates of interest*—(1) *In general.* This paragraph (g) provides rules for a split-dollar loan that provides for certain variable rates of interest. If this paragraph (g) does not apply to a variable rate split-dollar loan, the loan is subject to the rules in paragraph (j) of this section for split-dollar loans that provide for one or more contingent payments.

(2) *Applicability*—(i) *In general.* Except as provided in paragraph (g)(2)(ii) of this section, this paragraph (g) applies to a split-dollar loan that is a variable rate debt instrument (within the meaning of §1.1275–5) and that provides for stated interest at a qualified floating rate (or rates).

(ii) *Interest rate restrictions.* This paragraph (g) does not apply to a split-dollar loan if, as a result of interest rate restrictions (such as an interest rate cap), the expected yield of the loan taking the restrictions into account is significantly less than the expected yield of the loan without regard to the restrictions. Conversely, if reasonably symmetric interest rate caps and floors or reasonably symmetric governors are fixed throughout the term of the loan, these restrictions generally do not prevent this paragraph (g) from applying to the loan.

(3) *Testing for sufficient interest*—(i) *Demand loan.* For purposes of paragraph (e)(3)(ii) of this section (regarding testing a split-dollar demand loan for sufficient interest), a split-dollar demand loan is treated as if it provided for a fixed rate of interest for each accrual period to which a qualified floating rate applies. The projected fixed rate for each accrual period is the value of the qualified floating rate as of the beginning of the calendar year that contains the last day of the accrual period.

(ii) *Term loan.* For purposes of paragraph (e)(4)(ii) of this section (regarding testing a split-dollar term loan for sufficient interest), a split-dollar term loan subject to this paragraph (g) is treated as if it provided for a fixed rate of interest for each accrual period to which a qualified floating rate applies. The projected fixed rate for each accrual period is the value of the qualified floating rate on the date the split-dollar term loan is made. The term of a split-dollar loan that is subject to this paragraph (g)(3)(ii) is determined using the rules in §1.1274–4(c)(2). For example, if the loan provides for interest at a qualified floating rate that adjusts at varying intervals, the term of the loan is determined by reference to

the longest interval between interest adjustment dates. *See* paragraph (e)(5) of this section for special rules relating to certain split-dollar term loans, such as a split-dollar term loan payable not later than the death of an individual.

(4) *Interest accruals and imputed transfers.* For purposes of paragraphs (e) and (f) of this section, the projected fixed rate or rates determined under paragraph (g)(3) of this section are used for purposes of determining the accrual of interest each period and the amount of any imputed transfers. Appropriate adjustments are made to the interest accruals and any imputed transfers to take into account any difference between the projected fixed rate and the actual rate.

(5) *Example.* The provisions of this paragraph (g) are illustrated by the following example:

Example. (i) On January 1, 2010, Employer *V* and Employee *F* enter into a split-dollar life insurance arrangement under which *F* is named as the policy owner. On January 1, 2010, *V* makes a $100,000 premium payment, repayable in 15 years. The premium payment is a split-dollar term loan. Under the arrangement between the parties, interest is payable on the split-dollar loan each year on January 1, starting January 1, 2011, at a rate equal to the value of 1-year LIBOR as of the payment date. The short-term AFR (based on annual compounding) at the time of the loan is 7 percent. Repayment of both the premium payment and the interest due thereon is nonrecourse to *F*. However, the parties made a representation under paragraph (d)(2) of this section. Assume that the value of 1-year LIBOR on January 1, 2010, is 8 percent, compounded annually.

(ii) The loan is subject to this paragraph (g) because the loan is a variable rate debt instrument that bears interest at a qualified floating rate. Because the interest rate is reset each year, under paragraph (g)(3)(ii) of this section, the short-term AFR (based on annual compounding) is the appropriate test rate used to determine whether the loan provides for sufficient interest. Moreover, under paragraph (g)(3)(ii) of this section, to determine whether the loan provides for sufficient interest, the loan is treated as if it provided for a fixed rate of interest equal to 8 percent, compounded annually. Based on a discount rate of 7 percent, compounded annually (the short-term AFR), the present value of the payments under the loan is $109,107.91. The loan provides for sufficient interest because the loan's imputed loan amount of $109,107.91 (the present value of the payments) is more than the amount loaned of $100,000. Therefore, the loan is not a below-market split-dollar term loan, and interest on the loan is taken into account under paragraph (f) of this section.

(h) *Adjustments for interest paid at less than the stated rate*—(1) *Application*—(i) *In general.* To the extent required by this paragraph (h), if accrued but unpaid interest on a split-dollar loan is subsequently waived, cancelled, or forgiven by the lender, then the waiver, cancellation, or forgiveness is treated as if, on that date, the interest had in fact been paid to the lender and retransferred by the lender to the borrower. The amount deemed transferred and retransferred is determined under paragraph (h) (2) or (3) of this section. Except as provided in paragraph (h)(1)(iv) of this section, the amount treated as retransferred by the lender to the borrower under paragraph (h) (2) or (3) of this section is increased by the deferral charge determined under paragraph (h)(4) of this section. To determine the character of any retransferred amount, *see* paragraph (e)(1)(i) of this section. *See* § 1.61–22(b)(6) for the treatment of amounts other than interest on a split-dollar loan that are waived, cancelled, or forgiven by the lender.

(ii) *Certain split-dollar term loans.* For purposes of this paragraph (h), a split-dollar term loan described in paragraph (e)(5) of this section (for example, a split-dollar term loan payable not later than the death of an individual) is subject to the rules of paragraph (h)(3) of this section.

(iii) *Payments treated as a waiver, cancellation, or forgiveness.* For purposes of this paragraph (h), if a payment by the lender (or a person related to the lender) to the borrower is, in substance, a waiver, cancellation, or forgiveness of accrued but unpaid interest, the payment by the lender (or person related to the lender) is treated as an amount retransferred to the borrower by the lender under this paragraph (h) and is subject to the deferral charge in paragraph (h)(4) of this section to the extent that the payment is, in substance, a waiver, cancellation, or forgiveness of accrued but unpaid interest.

(iv) *Treatment of certain nonrecourse split-dollar loans.* For purposes of this paragraph (h), if the parties to a split-

dollar life insurance arrangement make the representation described in paragraph (d)(2) of this section and the interest actually paid on the split-dollar loan is less than the interest required to be accrued on the split-dollar loan, the excess of the interest required to be accrued over the interest actually paid is treated as waived, cancelled, or forgiven by the lender under this paragraph (h). However, the amount treated as retransferred under paragraph (h)(1)(i) of this section is not increased by the deferral charge in paragraph (h)(4) of this section.

(2) *Split-dollar term loans.* In the case of a split-dollar term loan, the amount of interest deemed transferred and retransferred for purposes of paragraph (h)(1) of this section is determined as follows:

(i) If the loan's stated rate is less than or equal to the appropriate AFR (the AFR used to test the loan for sufficient interest under paragraph (e) of this section), the amount of interest deemed transferred and retransferred pursuant to this paragraph (h) is the excess of the amount of interest payable at the stated rate over the interest actually paid.

(ii) If the loan's stated rate is greater than the appropriate AFR (the AFR used to test the loan for sufficient interest under paragraph (e) of this section), the amount of interest deemed transferred and retransferred pursuant to this paragraph (h) is the excess, if any, of the amount of interest payable at the AFR over the interest actually paid.

(3) *Split-dollar demand loans.* In the case of a split-dollar demand loan, the amount of interest deemed transferred and retransferred for purposes of paragraph (h)(1) of this section is equal to the aggregate of—

(i) For each year that the split-dollar demand loan was outstanding in which the loan was a below-market split-dollar demand loan, the excess of the amount of interest payable at the stated rate over the interest actually paid allocable to that year; plus

(ii) For each year that the split-dollar demand loan was outstanding in which the loan was not a below-market split-dollar demand loan, the excess, if any, of the amount of interest payable at the appropriate rate used for purposes of imputation for that year over the interest actually paid allocable to that year.

(4) *Deferral charge.* The Commissioner may prescribe the method for determining the deferral charge treated as retransferred by the lender to the borrower under paragraph (h)(1) of this section. Until the Commissioner prescribes otherwise, the deferral charge is determined under paragraph (h)(4)(i) of this section for a split-dollar term loan subject to paragraph (h)(2) of this section and under paragraph (h)(4)(ii) of this section for a split-dollar demand loan subject to paragraph (h)(3) of this section.

(i) *Split-dollar term loan.* The deferral charge for a split-dollar term loan subject to paragraph (h)(2) of this section is determined by multiplying the hypothetical underpayment by the applicable underpayment rate, compounded daily, for the period from the date the split-dollar loan was made to the date the interest is waived, cancelled, or forgiven. The hypothetical underpayment is equal to the amount determined under paragraph (h)(2) of this section, multiplied by the highest rate of income tax applicable to the borrower (for example, the highest rate in effect under section 1 for individuals) for the taxable year in which the split-dollar term loan was made. The applicable underpayment rate is the average of the quarterly underpayment rates in effect under section 6621(a)(2) for the period from the date the split-dollar loan was made to the date the interest is waived, cancelled, or forgiven.

(ii) *Split-dollar demand loan.* The deferral charge for a split-dollar demand loan subject to paragraph (h)(3) of this section is the sum of the following amounts determined for each year the loan was outstanding (other than the year in which the waiver, cancellation, or forgiveness occurs): For each year the loan was outstanding, multiply the hypothetical underpayment for the year by the applicable underpayment rate, compounded daily, for the applicable period. The hypothetical underpayment is equal to the amount determined under paragraph (h)(3) of this section for each year, multiplied by the highest rate of income tax applicable

to the borrower for that year (for example, the highest rate in effect under section 1 for individuals). The applicable underpayment rate is the average of the quarterly underpayment rates in effect under section 6621(a)(2) for the applicable period. The applicable period for a year is the period of time from the last day of that year until the date the interest is waived, cancelled, or forgiven.

(5) *Examples*. The provisions of this paragraph (h) are illustrated by the following examples:

Example 1. (i) On January 1, 2009, Employer *Y* and Employee *B* entered into a split-dollar life insurance arrangement under which *B* is named as the policy owner. On January 1, 2009, *Y* made a $100,000 premium payment, repayable on December 31, 2011, with interest of 5 percent, compounded annually. The premium payment is a split-dollar term loan. Assume the short-term AFR (based on annual compounding) at the time the loan was made was 5 percent. Repayment of both the premium payment and the interest due thereon was fully recourse to *B*. On December 31, 2011, *Y* is repaid $100,000 but *Y* waives the remainder due on the loan ($15,762.50). Both *Y* and *B* use the calendar year as their taxable years.

(ii) When the split-dollar term loan was made, the loan was not a below-market loan under paragraph (e)(4)(ii) of this section. Under paragraph (f) of this section, *Y* was required to accrue compound interest of 5 percent each year the loan remained outstanding. *B*, however, was not entitled to any deduction for this interest under paragraph (c) of this section.

(iii) Under paragraph (h)(1) of this section, the waived amount is treated as if, on December 31, 2011, it had in fact been paid to *Y* and was then retransferred by *Y* to *B*. The amount deemed transferred to *Y* and retransferred to *B* equals the excess of the amount of interest payable at the stated rate ($15,762.50) over the interest actually paid ($0), or $15,762.50. In addition, the amount deemed retransferred to *B* is increased by the deferral charge determined under paragraph (h)(4) of this section. Because of the employment relationship between *Y* and *B*, the total retransferred amount is treated as compensation paid by *Y* to *B*.

Example 2. (i) On January 1, 2009, Employer *Y* and Employee *B* entered into a split-dollar life insurance arrangement under which *B* is named as the policy owner. On January 1, 2009, *Y* made a $100,000 premium payment, repayable on the demand of *Y*, with interest of 7 percent, compounded annually. The premium payment is a split-dollar demand loan. Assume the blended annual rate (based on annual compounding) in 2009 was 5 percent and in 2010 was 6 percent. Repayment of both the premium payment and the interest due thereon was fully recourse to *B*. On December 31, 2010, *Y* demands repayment and is repaid its $100,000 premium payment in full; however, *Y* waives all interest due on the loan. Both *Y* and *B* use the calendar year as their taxable years.

(ii) For each year that the split-dollar demand loan was outstanding, the loan was not a below-market loan under paragraph (e)(3)(ii) of this section. Under paragraph (f) of this section, *Y* was required to accrue compound interest of 7 percent each year the loan remained outstanding. *B*, however, was not entitled to any deduction for this interest under paragraph (c) of this section.

(iii) Under paragraph (h)(1) of this section, a portion of the waived interest is treated as if, on December 31, 2010, it had in fact been paid to *Y* and was then retransferred by *Y* to *B*. The amount of interest deemed transferred to *Y* and retransferred to *B* equals the excess, if any, of the amount of interest payable at the blended annual rate for each year the loan is outstanding over the interest actually paid with respect to that year. For 2009, the interest payable at the blended annual rate is $5,000 ($100,000×0.05). For 2010, the interest payable at the blended annual rate is $6,000 ($100,000×0.06). Therefore, the amount of interest deemed transferred to *Y* and retransferred to *B* equals $11,000. In addition, the amount deemed retransferred to *B* is increased by the deferral charge determined under paragraph (h)(4) of this section. Because of the employment relationship between *Y* and *B*, the total retransferred amount is treated as compensation paid by *Y* to *B*.

(i) [Reserved]

(j) *Split-dollar loans that provide for contingent payments*—(1) *In general*. Except as provided in paragraph (j)(2) of this section, this paragraph (j) provides rules for a split-dollar loan that provides for one or more contingent payments. This paragraph (j), rather than §1.1275–4, applies to split-dollar loans that provide for one or more contingent payments.

(2) *Exceptions*—(i) *Certain contingencies*. For purposes of this section, a split-dollar loan does not provide for contingent payments merely because—

(A) The loan provides for options described in paragraph (e)(4)(iii)(B) of this section (for example, certain call options, put options, and options to extend); or

(B) The loan is described in paragraph (e)(5) of this section (relating to

certain split-dollar term loans, such as a split-dollar term loan payable not later than the death of an individual).

(ii) *Insolvency and default.* For purposes of this section, a payment is not contingent merely because of the possibility of impairment by insolvency, default, or similar circumstances. However, if any payment on a split-dollar loan is nonrecourse to the borrower, the payment is a contingent payment for purposes of this paragraph (j) unless the parties to the arrangement make the written representation provided for in paragraph (d)(2) of this section.

(iii) *Remote and incidental contingencies.* For purposes of this section, a payment is not a contingent payment merely because of a contingency that, as of the date the split-dollar loan is made, is either remote or incidental (within the meaning of § 1.1275–2(h)).

(iv) *Exceptions for certain split-dollar loans.* This paragraph (j) does not apply to a split-dollar loan described in § 1.1272–1(d) (certain debt instruments that provide for a fixed yield) or a split-dollar loan described in paragraph (g) of this section (relating to split-dollar loans providing for certain variable rates of interest).

(3) *Contingent split-dollar method*—(i) *In general.* If a split-dollar loan provides for one or more contingent payments, then the parties account for the loan under the contingent split-dollar method. In general, except as provided in this paragraph (j), this method is the same as the noncontingent bond method described in § 1.1275–4(b).

(ii) *Projected payment schedule*—(A) *Determination of schedule.* No comparable yield is required to be determined. The projected payment schedule for the loan includes all noncontingent payments and a projected payment for each contingent payment. The projected payment for a contingent payment is the lowest possible value of the payment. The projected payment schedule, however, must produce a yield that is not less than zero. If the projected payment schedule produces a negative yield, the schedule must be reasonably adjusted to produce a yield of zero.

(B) *Split-dollar term loans payable upon the death of an individual.* If a split-dollar term loan described in paragraph (e)(5)(ii)(A) or (v)(A)(*1*) of this section provides for one or more contingent payments, the projected payment schedule is determined based on the term of the loan as determined under paragraph (e)(5)(ii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(C) *Certain split-dollar term loans conditioned on the future performance of substantial services by an individual.* If a split-dollar term loan described in paragraph (e)(5)(iii)(A)(*1*) or (v)(A)(*2*) of this section provides for one or more contingent payments, the projected payment schedule is determined based on the term of the loan as determined under paragraph (e)(5)(iii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(D) *Demand loans.* If a split-dollar demand loan provides for one or more contingent payments, the projected payment schedule is determined based on a reasonable assumption as to when the lender will demand repayment.

(E) *Borrower/lender consistency.* Contrary to § 1.1275–4(b)(4)(iv), the lender rather than the borrower is required to determine the projected payment schedule and to provide the schedule to the borrower and to any indirect participant as described in paragraph (e)(2) of this section. The lender's projected payment schedule is used by the lender, the borrower, and any indirect participant to compute interest accruals and adjustments.

(iii) *Negative adjustments.* If the issuer of a split-dollar loan is not allowed to deduct interest or OID (for example, because of section 163(h) or 264), then the issuer is not required to include in income any negative adjustment carryforward determined under § 1.1275–4(b)(6)(iii)(C) on the loan, except to the extent that at maturity the total payments made over the life of the loan are less than the issue price of the loan.

(4) *Application of section 7872*—(i) *Determination of below-market status.* The yield based on the projected payment schedule determined under paragraph (j)(3) of this section is used to determine whether the loan is a below-market split-dollar loan under paragraph (e) of this section.

(ii) *Adjustment upon the resolution of a contingent payment.* To the extent that

interest has accrued under section 7872 on a split-dollar loan and the interest would not have accrued under this paragraph (j) in the absence of section 7872, the lender is not required to recognize income under § 1.1275–4(b) for a positive adjustment and the borrower is not treated as having interest expense for a positive adjustment. To the same extent, there is a reversal of the tax consequences imposed under paragraph (e) of this section for the prior imputed transfer from the lender to the borrower. This reversal is taken into account in determining adjusted gross income.

(5) *Examples*. The following examples illustrate the rules of this paragraph (j). For purposes of this paragraph (j)(5), assume that the contingent payments are neither remote nor incidental. The examples are as follows:

Example 1. (i) On January 1, 2010, Employer *T* and Employee *G* enter into a split-dollar life insurance arrangement under which *G* is named as the policy owner. On January 1, 2010, *T* makes a $100,000 premium payment. On December 31, 2013, *T* will be repaid an amount equal to the premium payment plus an amount based on the increase, if any, in the price of a specified commodity for the period the loan is outstanding. The premium payment is a split-dollar term loan. Repayment of both the premium payment and the interest due thereon is recourse to *G*. Assume that the appropriate AFR for this loan, based on annual compounding, is 7 percent. Both *T* and *G* use the calendar year as their taxable years.

(ii) Under this paragraph (j), the split-dollar term loan between *T* and *G* provides for a contingent payment. Therefore, the loan is subject to the contingent split-dollar method. Under this method, the projected payment schedule for the loan provides for a noncontingent payment of $100,000 and a projected payment of $0 for the contingent payment (because it is the lowest possible value of the payment) on December 31, 2013.

(iii) Based on the projected payment schedule and a discount rate of 7 percent, compounded annually (the appropriate AFR), the present value of the payments under the loan is $76,289.52. Under paragraphs (e)(4) and (j)(4)(i) of this section, the loan does not provide for sufficient interest because the loan's imputed loan amount of $76,289.52 (the present value of the payments) is less than the amount loaned of $100,000. Therefore, the loan is a below-market split-dollar term loan and the loan is recharacterized as consisting of two portions: an imputed loan amount of $76,289.52 and an imputed transfer of $23,710.48 (amount loaned of $100,000 minus the imputed loan amount of $76,289.52).

(iv) In accordance with section 7872(b)(1) and paragraph (e)(4)(iv) of this section, on the date the loan is made, *T* is treated as transferring to *G* $23,710.48 (the imputed transfer) as compensation. In addition, *T* must take into account as OID an amount equal to the imputed transfer. See § 1.1272–1 for the treatment of OID.

Example 2. (i) Assume, in addition to the facts in *Example 1*, that on December 31, 2013, *T* receives $115,000 (its premium payment of $100,000 plus $15,000).

(ii) Under the contingent split-dollar method, when the loan is repaid, there is a $15,000 positive adjustment ($15,000 actual payment minus $0 projected payment). Under paragraph (j)(4) of this section, because *T* accrued imputed interest under section 7872 on this split-dollar loan to *G* and this interest would not have accrued in the absence of section 7872, *T* is not required to include the positive adjustment in income, and *G* is not treated as having interest expense for the positive adjustment. To the same extent, *T* must include in income, and *G* is entitled to deduct, $15,000 to reverse their respective prior tax consequences imposed under paragraph (e) of this section (*T*'s prior deduction for imputed compensation deemed paid to *G* and *G*'s prior inclusion of this amount). *G* takes the reversal into account in determining adjusted gross income. That is, the $15,000 is an ''above-the-line'' deduction, whether or not *G* itemizes deductions.

Example 3. (i) Assume the same facts as in *Example 2*, except that on December 31, 2013, *T* receives $127,000 (its premium payment of $100,000 plus $27,000).

(ii) Under the contingent split-dollar method, when the loan is repaid, there is a $27,000 positive adjustment ($27,000 actual payment minus $0 projected payment). Under paragraph (j)(4) of this section, because *T* accrued imputed interest of $23,710.48 under section 7872 on this split-dollar loan to *G* and this interest would not have accrued in the absence of section 7872, *T* is not required to include $23,710.48 of the positive adjustment in income, and *G* is not treated as having interest expense for the positive adjustment. To the same extent, in 2013, *T* must include in income, and *G* is entitled to deduct, $23,710.48 to reverse their respective prior tax consequences imposed under paragraph (e) of this section (*T*'s prior deduction for imputed compensation deemed paid to *G* and *G*'s prior inclusion of this amount). *G* and *T* take these reversals into account in determining adjusted gross income. Under the contingent split-dollar method, *T* must include in income $3,289.52 upon resolution of the contingency ($27,000 positive adjustment minus $23,710.48).

(k) *Payment ordering rule*. For purposes of this section, a payment made by the borrower to or for the benefit of the lender pursuant to a split-dollar life insurance arrangement is applied to all direct and indirect split-dollar loans in the following order—

(1) A payment of interest to the extent of accrued but unpaid interest (including any OID) on all outstanding split-dollar loans in the order the interest accrued;

(2) A payment of principal on the outstanding split-dollar loans in the order in which the loans were made;

(3) A payment of amounts previously paid by a non-owner pursuant to a split-dollar life insurance arrangement that were not reasonably expected to be repaid by the owner; and

(4) Any other payment with respect to a split-dollar life insurance arrangement, other than a payment taken into account under paragraphs (k)(1), (2), and (3) of this section.

(l) [Reserved]

(m) *Repayments received by a lender*. Any amount received by a lender under a life insurance contract that is part of a split-dollar life insurance arrangement is treated as though the amount had been paid to the borrower and then paid by the borrower to the lender. Any amount treated as received by the borrower under this paragraph (m) is subject to other provisions of the Internal Revenue Code as applicable (for example, sections 72 and 101(a)). The lender must take the amount into account as a payment received with respect to a split-dollar loan, in accordance with paragraph (k) of this section. No amount received by a lender with respect to a split-dollar loan is treated as an amount received by reason of the death of the insured.

(n) *Effective date*—(1) *General rule*. This section applies to any split-dollar life insurance arrangement entered into after September 17, 2003. For purposes of this section, an arrangement is entered into as determined under § 1.61–22(j)(1)(ii).

(2) *Modified arrangements treated as new arrangements*. If an arrangement entered into on or before September 17, 2003 is materially modified (within the meaning of § 1.61–22(j)(2)) after September 17, 2003, the arrangement is treated as a new arrangement entered into on the date of the modification.

[T.D. 9092, 68 FR 54352, Sept. 17, 2003]

§ 1.7872–16 Loans to an exchange facilitator under § 1.468B–6.

(a) *Exchange facilitator loans*. This section provides rules in applying section 7872 to an exchange facilitator loan (within the meaning of § 1.468B–6(c)(1)). For purposes of this section, the terms *deferred exchange*, *exchange agreement*, *exchange facilitator*, *exchange funds*, *qualified intermediary*, *replacement property*, and *taxpayer* have the same meanings as in § 1.468B–6(b).

(b) *Treatment as demand loans*. For purposes of section 7872, except as provided in paragraph (d) of this section, an exchange facilitator loan is a demand loan.

(c) *Treatment as compensation-related loans*. If an exchange facilitator loan is a below-market loan, the loan is a compensation-related loan under section 7872(c)(1)(B).

(d) *Applicable Federal rate (AFR) for exchange facilitator loans*. For purposes of section 7872, in the case of an exchange facilitator loan, the applicable Federal rate is the lower of the short-term AFR in effect under section 1274(d)(1) (as of the day on which the loan is made), compounded semiannually, or the 91-day rate. For purposes of the preceding sentence, the 91-day rate is equal to the investment rate on a 13-week (generally 91-day) Treasury bill with an issue date that is the same as the date that the exchange facilitator loan is made or, if the two dates are not the same, with an issue date that most closely precedes the date that the exchange facilitator loan is made.

(e) *Use of approximate method permitted*. The taxpayer and exchange facilitator may use the approximate method to determine the amount of forgone interest on any exchange facilitator loan.

(f) *Exemption for certain below-market exchange facilitator loans*. If an exchange facilitator loan is a below-market loan, the loan is not eligible for the exemptions from section 7872 listed under § 1.7872–5T. However, the loan may be eligible for the exemption from section 7872 under § 1.7872–5(b)(16) (relating to exchange facilitator loans in

which the amount treated as loaned does not exceed $2,000,000).

(g) *Effective/applicability date*. This section applies to exchange facilitator loans issued on or after October 8, 2008.

(h) *Example*. The provisions of this section are illustrated by the following example:

Example. (i) T enters into a deferred exchange with QI, a qualified intermediary. The exchange is governed by an exchange agreement. The exchange funds held by QI pursuant to the exchange agreement are treated as loaned to QI under § 1.468B–6(c)(1). The loan between T and QI is an exchange facilitator loan. The exchange agreement between T and QI provides that no earnings will be paid to T. On December 1, 2008, T transfers property to QI, QI transfers the property to a purchaser for $2,100,000, and QI deposits $2,100,000 in a money market account. On March 1, 2009, QI uses $2,100,000 of the funds in the account to purchase replacement property identified by T, and transfers the replacement property to T. The amount loaned for purposes of section 7872 is $2,100,000 and the loan is outstanding for three months. For purposes of section 7872, under paragraph (d) of this section, T uses the 91-day rate, which is 4 percent, compounded semi-annually. T uses the approximate method for purposes of section 7872.

(ii) Under paragraphs (b) and (c) of this section, the loan from T to QI is a compensation-related demand loan. Because there is no interest payable on the loan from T to QI, the loan is a below-market loan under section 7872. The loan is not exempt under § 1.7872–5(b)(16) because the amount treated as loaned exceeds $2,000,000. Under section 7872(e)(2), the amount of forgone interest on the loan for 2008 is $7000 ($2,100,000*.04/2*1/6). Under section 7872(e)(2), the amount of forgone interest for 2009 is $14,000 ($2,100,000*.04/2*2/6). The $7000 for 2008 is deemed transferred as compensation by T to QI and retransferred as interest by QI to T on December 31, 2008. The $14,000 for 2009 is deemed transferred as compensation by T to QI and retransferred as interest by QI to T on March 1, 2009.

[T.D. 9413, 73 FR 39622, July 10, 2008]

§ 1.7874–1 Disregard of affiliate-owned stock.

(a) *Scope*. Section 7874(c)(2)(A) provides that stock of the foreign corporation referred to in section 7874(a)(2)(B) held by members of the expanded affiliated group (EAG) that includes such foreign corporation shall not be taken into account in determining ownership for purposes of section 7874(a)(2)(B)(ii). This section provides rules under section 7874(c)(2)(A). The rules provided in this section are also subject to section 7874(c)(4).

(b) *General rule*. Except as provided in paragraph (c) of this section, for purposes of the ownership percentage determination required by section 7874(a)(2)(B)(ii), stock held by one or more members of the EAG is not included in either the numerator or the denominator of the fraction that determines such percentage (ownership fraction).

(c) *Exceptions to general rule*—(1) *Overview*. Stock held by one or more members of the EAG shall be included in the denominator, but not in the numerator, of the ownership fraction, if the acquisition qualifies as an *internal group restructuring* or results in a *loss of control*, as described in paragraph (c)(2) and (c)(3) of this section.

(2) *Internal group restructuring*. For purposes of paragraph (c)(1) of this section, an acquisition qualifies as an internal group restructuring if:

(i) Before the acquisition, 80 percent or more of the stock (by vote and value) or the capital and profits interest, as applicable, of the domestic entity was held directly or indirectly by the corporation that is the common parent of the EAG after the acquisition; and

(ii) After the acquisition, 80 percent or more of the stock (by vote and value) of the acquiring foreign corporation is held directly or indirectly by such common parent.

(3) *Loss of control*. For purposes of paragraph (c)(1) of this section, the acquisition results in a loss of control if after the acquisition, the former shareholders or partners of the domestic entity do not hold, in the aggregate, directly or indirectly, more than 50 percent of the stock (by vote or value) of any member of the EAG.

(d) *Treatment of certain hook stock*. This paragraph applies to stock of a corporation that is held by an entity in which at least 50 percent of the stock (by vote or value) or at least 50 percent of the capital or profits interest, as applicable, in such entity, is held directly or indirectly by the corporation. The stock to which this paragraph applies

shall not be included in either the numerator or denominator of any fraction for the following purposes:

(1) For applying paragraph (c)(1) of this section; and

(2) For determining whether the acquisition qualifies as an internal group restructuring (described in paragraph (c)(2) of this section) or results in a loss of control (described in paragraph (c)(3) of this section).

(e) *Stock held by a partnership*. For purposes of section 7874, stock held by a partnership shall be considered as held proportionately by its partners.

(f) *Examples*. The application of this section is illustrated by the following examples. It is assumed that all transactions in the examples occur after March 4, 2003. In all the examples, if an entity or other person is not described as either domestic or foreign, it may be either domestic or foreign. In addition, each entity has only a single class of equity outstanding. Finally, the analysis of the following examples is limited to a discussion of issues under section 7874, even though the examples may raise other issues (for example, under section 367).

Example 1. Disregard of hook stock—(i) *Facts*. USS, a domestic corporation, has 100 shares of stock outstanding. USS's stock is held by a group of individuals. Pursuant to a plan, USS forms FS, a foreign corporation, and transfers to FS the stock of several wholly owned foreign corporations, in exchange for 90 shares of FS stock. FS then forms Merger Sub, a domestic corporation. Under a merger agreement and state law, Merger Sub merges into USS, with USS surviving the merger. In exchange for their USS stock, the former shareholders of USS receive, in the aggregate, 100 shares of newly issued FS stock. As a result of the merger FS holds 100 percent of the USS stock. USS continues to hold 90 shares of FS stock.

(ii) *Analysis*. FS has indirectly acquired substantially all the properties held directly or indirectly by USS pursuant to a plan. After the acquisition, the former shareholders of USS hold 100 shares of FS stock by reason of holding stock in USS, and USS holds 90 shares of FS stock. Under paragraph (b) of this section, the 90 shares of FS stock held by USS, a member of the EAG, are not included in either the numerator or the denominator of the ownership fraction. Accordingly, the ownership fraction is 100/100. If the condition in section 7874(a)(2)(B)(iii) is satisfied, FS is a surrogate foreign corporation which is treated as a domestic corporation under section 7874(b).

Example 2. Internal group restructuring; wholly owned corporation—(i) *Facts*. P, a corporation, owns all 100 outstanding shares of USS, a domestic corporation. USS forms FS, a foreign corporation, and transfers all its assets to FS in exchange for all 100 shares of the stock of FS, in a reorganization described in section 368(a)(1). P exchanges its USS stock for FS stock under section 354.

(ii) *Analysis*. FS has directly acquired substantially all the properties held directly or indirectly by USS pursuant to a plan. The acquisition is an internal group restructuring described in paragraph (c)(2) of this section because P, the common parent of the EAG after the acquisition, held directly or indirectly 80 percent or more of the stock (by vote and value) of USS before the acquisition, and after the acquisition, P holds directly or indirectly 80 percent or more of the stock (by vote and value) of FS. Accordingly, under paragraph (c)(1) of this section, the FS stock held by P is included in the denominator, but not in the numerator of the ownership fraction. Therefore, the ownership fraction is 0/100. FS is not a surrogate foreign corporation.

Example 3. Internal group restructuring; wholly owned corporation—(i) *Facts*. The facts are the same as in *Example 2*, except that USS does not transfer any of its assets to FS. Instead, P transfers all 100 shares of USS stock to FS in exchange for all 100 shares of FS stock.

(ii) *Analysis*. FS has indirectly acquired substantially all the properties held directly or indirectly by USS pursuant to a plan. The acquisition is an internal group restructuring described in paragraph (c)(2) of this section because P, the common parent of the EAG after the acquisition, held directly or indirectly 80 percent or more of the stock (by vote and value) of USS before the acquisition, and after the acquisition, P holds directly or indirectly 80 percent or more of the stock (by vote and value) of FS. Accordingly, under paragraph (c)(1) of this section, the FS stock held by P is included in the denominator, but not in the numerator of the ownership fraction. Accordingly, the ownership fraction is 0/100. FS is not a surrogate foreign corporation.

Example 4. Internal group restructuring; less than wholly owned corporation—(i) *Facts*. The facts are the same as in *Example 3*, except that P holds 85 shares of USS stock. The remaining 15 shares of USS stock are held by A, a person unrelated to P. P and A transfer their shares of USS stock to FS in exchange for 85 and 15 shares of FS stock, respectively.

(ii) *Analysis*. FS has indirectly acquired substantially all the properties held directly or indirectly by USS pursuant to a plan. The acquisition is an internal group restructuring described in paragraph (c)(2) of this

section because P, the common parent of the EAG after the acquisition, held directly or indirectly 80 percent or more of the stock (by vote and value) of USS before the acquisition, and after the acquisition P holds directly or indirectly 80 percent or more of the stock (by vote and value) of FS. Therefore, under paragraph (c)(1) of this section, the FS stock held by P is included in the denominator, but not in the numerator of the ownership fraction. Accordingly, the ownership fraction is 15/100. FS is not a surrogate foreign corporation.

Example 5. Internal group restructuring exception not applicable; less than 80 percent owned corporation—(i) *Facts*. The facts are the same as in Example 2, except that P owns 55 shares of USS stock, and A, a person unrelated to P, holds 45 shares of USS stock. P and A exchange their shares of USS stock for 55 shares and 45 shares of FS stock, respectively.

(ii) *Analysis*. FS has acquired substantially all the properties held directly or indirectly by USS pursuant to a plan. P, the common parent of the EAG after the acquisition, did not hold directly or indirectly 80 percent or more of the stock (by vote and value) of USS before the acquisition, and after the acquisition P does not hold directly or indirectly 80 percent or more of the stock (by vote and value) of FS. Thus, the acquisition is not an internal group restructuring described in paragraph (c)(1) of this section, and the general rule of paragraph (b) of this section applies. Under paragraph (b) of this section, the FS stock held by P, a member of the EAG, is not included in either the numerator or the denominator of the ownership fraction. Accordingly, the ownership fraction is 45/45. If the condition in section 7874(a)(2)(B)(iii) is satisfied, FS is a surrogate foreign corporation which is treated as a domestic corporation under section 7874(b).

Example 6. Internal group restructuring; hook stock—(i) *Facts*. USS, a domestic corporation, has 100 shares of stock outstanding. P, a corporation, holds 80 shares of USS stock. The remaining 20 shares of USS stock are held by A, a person unrelated to P. USS owns all 30 outstanding shares of FS, a foreign corporation. Pursuant to a plan, FS forms Merger Sub, a domestic corporation. Under a merger agreement and state law, Merger Sub merges into USS, with USS surviving the merger as a subsidiary of FS. In exchange for their USS stock, P and A, the former shareholders of USS, respectively receive 56 and 14 shares of FS stock. USS continues to hold 30 shares of FS stock.

(ii) *Analysis*. FS has indirectly acquired substantially all the properties held directly or indirectly by USS pursuant to a plan. Under paragraph (b) of this section, the shares of FS stock held by P and USS, both of which are members of the EAG, are not included in either the numerator or denominator of the ownership fraction, unless the acquisition results in an internal group restructuring or loss of control of USS such that the exception of paragraph (c)(1) of this section applies. In determining whether the acquisition of USS is an internal group restructuring, under paragraph (d)(2) of this section, the FS stock held by USS is disregarded. Because P held directly or indirectly 80 percent or more of the stock (by vote and value) of USS before the acquisition, and after the acquisition P holds directly or indirectly 80 percent or more of the stock (by vote and value) of FS (when disregarding the FS stock held by USS), the acquisition is an internal group restructuring and the exception of paragraph (c)(1) of this section applies. Accordingly, when determining whether FS is a surrogate foreign corporation, the FS stock held by P is included in the denominator, but not the numerator of the ownership fraction. However, under paragraph (b) of this section, the FS stock held by USS is not included in either the numerator or denominator of the ownership fraction. Accordingly, the ownership fraction is 14/70, or 20 percent, since only the stock held by A is included in the numerator, and the stock held by both P and A is included in the denominator. Accordingly, FS is not a surrogate foreign corporation.

Example 7. Loss of control—(i) *Facts*. P, a corporation, holds all the outstanding stock of USS, a domestic corporation. B, a corporation unrelated to P, holds all 60 outstanding shares of FS, a foreign corporation. P transfers to FS all the outstanding stock of USS in exchange for 40 newly issued shares of FS.

(ii) *Analysis*. FS has indirectly acquired substantially all the properties held directly or indirectly by USS pursuant to a plan. After the acquisition, B holds 60 percent of the outstanding shares of the FS stock. Accordingly, B, FS and USS are members of an EAG. After the acquisition, P does not hold directly or indirectly more than 50 percent of the stock (by vote or value) of any member of the EAG and, thus, the acquisition results in a loss of control described in paragraph (c)(3) of this section. Accordingly, under paragraph (c)(1) of this section, the FS stock owned by B is included in the denominator, but not in the numerator, of the ownership fraction. Therefore, the ownership fraction is 40/100. FS is not a surrogate foreign corporation.

Example 8. Internal group restructuring; partnership—(i) *Facts*. LLC, a Delaware limited liability company, is engaged in the conduct of a trade or business. P, a corporation, holds 90 percent of the interests of LLC. A, a person unrelated to P, holds 10 percent of the interests of LLC. LLC has not elected to be treated as an association taxable as a corporation. P and A transfer their interests in LLC to FS, a newly formed foreign corporation, in exchange for 90 shares and 10 shares,

respectively, of FS's stock, which are all of the outstanding shares of FS. Accordingly, LLC becomes a disregarded entity.

(ii) *Analysis.* Prior to the FS's acquisition of the interests of LLC, LLC was a domestic partnership for Federal income tax purposes. FS has acquired substantially all the properties constituting a trade or business of LLC pursuant to a plan. After the acquisition, P holds 90 percent of FS's stock (by vote and value) by reason of holding a capital and profits interest in LLC, and A holds 10 percent of FS's stock (by vote and value) by reason of holding a capital and profits interest in LLC. The internal group restructuring exception under paragraph (c)(2) of this section applies, because before the acquisition, P held 80 percent or more of the capital and profits interest in LLC, and after the acquisition, P holds 80 percent or more of the stock (by vote and value) of FS. Under paragraph (c)(1) of this section, the FS stock held by P is included in the denominator, but not the numerator, of the ownership fraction. Accordingly, the ownership fraction is 10/100. FS is not a surrogate foreign corporation.

(g) *Effective/applicability date.* Except as otherwise provided in this paragraph, this section shall apply to acquisitions completed on or after May 20, 2008. This section shall not, however, apply to an acquisition that was completed on or after May 20, 2008, provided such acquisition was entered into pursuant to a written agreement which was (subject to customary conditions) binding prior to May 20, 2008, and at all times thereafter (binding commitment). For purposes of the preceding sentence, a binding commitment shall include entering into options and similar interests in connection with one or more written agreements described in the preceding sentence. Notwithstanding the general application of this paragraph, taxpayers may elect to apply this section to prior acquisitions, but must apply it consistently to all acquisitions within its scope.

[T.D. 9399, 73 FR 29057, May 20, 2008]

§ 1.7874–2T Surrogate foreign corporation (temporary).

(a) *Scope.* This section provides rules under section 7874(a)(2)(B) for determining whether a foreign corporation shall be treated as a surrogate foreign corporation. Paragraph (b) of this section provides rules under section 7874(a)(2)(B)(i) regarding the indirect acquisition of properties held directly or indirectly by a domestic corporation or domestic partnership. Paragraph (c) of this section provides rules under section 7874(a)(2)(B)(ii) for identifying stock of the entity held by former shareholders or partners of the domestic entity by reason of holding stock or a partnership interest in the domestic entity. Paragraph (d) of this section provides rules under section 7874(a)(2)(B)(iii) for determining whether the expanded affiliated group (as defined in section 7874(c)(1)) that includes the entity (EAG) has substantial business activities in the foreign country in which, or under the laws of which, the entity was created or organized, when compared to the total business activities of the EAG. Paragraph (e) of this section provides rules under which a publicly traded foreign partnership is treated as a foreign corporation for purposes of determining whether it is a surrogate foreign corporation under section 7874(a)(2)(B), and rules regarding the consequences under the Code if a partnership is treated as a surrogate foreign corporation. Paragraph (f) of this section provides rules under which certain interests held by former shareholders or partners of the domestic entity are treated as stock of the foreign entity making the acquisition described in section 7874(a)(2)(B)(i). Paragraph (g) of this section provides rules relating to the change in status from a foreign corporation to a domestic corporation under section 7874(b). Paragraph (h) of this section provides that section 367 is not applicable to the transfer of assets or stock to a surrogate foreign corporation that is treated as a domestic corporation under section 7874(b).

(b) *Indirect acquisition of properties*—(1) *Acquisition of stock of a domestic corporation.* For purposes of section 7874(a)(2)(B)(i), an acquisition by a foreign corporation of stock of a domestic corporation is considered an indirect acquisition by such foreign corporation of a proportionate amount of the properties held directly or indirectly by such domestic corporation.

(2) *Acquisition of stock of a foreign corporation.* For purposes of section 7874(a)(2)(B)(i), an acquisition by a foreign corporation of stock of a second

foreign corporation is not considered an indirect acquisition by the first foreign corporation of any properties held directly or indirectly by a domestic corporation or domestic partnership owned directly or indirectly, wholly or partly, by the second foreign corporation.

(3) *Acquisition of an interest in a partnership.* For purposes of section 7874(a)(2)(B)(i), an acquisition by a foreign corporation of a capital or profits interest in a foreign or domestic partnership that holds stock in a domestic corporation is considered an indirect acquisition by such foreign corporation of a proportionate amount of the properties held directly or indirectly by such domestic corporation.

(4) *Acquisition of stock or assets of a domestic corporation by controlled subsidiary.* For purposes of section 7874(a)(2)(B)(i) and paragraph (b)(1) of this section, if a corporation acquires stock or assets of a domestic corporation in exchange for stock of a foreign corporation which owns directly or indirectly, after the acquisition, more than 50 percent of the stock (by vote or value) of the acquiring corporation, such foreign corporation is considered as acquiring a proportionate amount of such stock or assets of the domestic corporation.

(5) *Examples.* The application of this paragraph is illustrated by the following examples. It is assumed that all transactions in the examples occur after March 4, 2003. The examples read as follows:

Example 1. Acquisition of stock of domestic corporation. A is a domestic corporation with 100 shares of a single class of common stock outstanding. F, a foreign corporation, acquires 25 shares of A stock from a shareholder of A. For purposes of section 7874(a)(2)(B)(i), F is considered to have made an indirect acquisition of 25% of the properties held directly or indirectly by A.

Example 2. Acquisition of stock of foreign corporation. The facts are the same as in Example 1 except as follows: All of A's stock is held by B, a foreign corporation. C, a foreign corporation, acquires 25 shares of B stock from a shareholder of B. For purposes of section 7874(a)(2)(B)(i), C is not considered to have made an indirect acquisition of any portion of the properties held directly or indirectly by A.

Example 3. Acquisition of partnership interest. D is a partnership which owns all of the issued and outstanding stock of E, a domestic corporation. G, a foreign corporation, acquires a 40% interest in D from a partner in D. For purposes of section 7874(a)(2)(B)(i), G is considered to have made an indirect acquisition of 40% of the properties held directly or indirectly by E.

Example 4. Acquisition by controlled corporation. FS, a foreign corporation, is 90% owned by foreign corporation FP. Pursuant to a plan of reorganization, FS acquires all the stock of DT, a domestic corporation, in exchange for stock of FP which is exchanged with the shareholders of DT on a one-for-one basis. For purposes of section 7874(a)(2)(B)(i) and paragraph (b)(1) of this section, FP is considered to have acquired 90% of the stock of DT and thus to have made an indirect acquisition of 90% of the properties held directly or indirectly by DT. If FS had acquired substantially all the assets of DT, rather than the stock of DT, in exchange for stock of FP, FP would be considered to have acquired 90% of the assets of DT for purposes of section 7874(a)(2)(B)(i).

(c) *Stock held by former shareholders or partners by reason of holding stock or a partnership interest in the domestic entity*—(1) *General rule.* For purposes of section 7874(a)(2)(B)(ii), stock of the foreign corporation which is received by a former shareholder of the domestic corporation in exchange for stock of the domestic corporation is considered stock held by reason of holding stock in the domestic corporation. Similarly, for purposes of section 7874(a)(2)(B)(ii), stock of the foreign corporation which is received by a former partner of the domestic partnership in exchange for a capital or profits interest in the domestic partnership is considered stock held by reason of holding a capital or profits interest in the domestic partnership. Subject to section 7874(c)(4), in cases where the foreign corporation also issues stock to a former shareholder of the domestic corporation or partner of the domestic partnership in the same transaction or series of transactions in exchange for consideration other than stock in the domestic corporation or a capital or profits interest in the domestic partnership, the percentage of the foreign corporation's stock considered to be held by former shareholders of the domestic corporation or former partners of the domestic partnership by reason of holding stock in the domestic corporation or a capital or profits interest in the domestic partnership shall be determined on the basis of the

relative value of the property in exchange for which the foreign corporation's stock was issued.

(2) *Former shareholders and former partners.* For purposes of this section, former shareholders of the domestic corporation are persons who held stock in the domestic corporation before the acquisition, including persons (if any) who held stock in the domestic corporation both before and after the acquisition. Former partners of the domestic partnership are persons who held a capital or profits interest in the domestic partnership before the acquisition, including persons (if any) who held a capital or profits interest in the domestic partnership both before and after the acquisition.

(3) *Example.* The following example illustrates the application of this paragraph:

Example. Contribution of stock of domestic and foreign corporations. A holds all of the issued and outstanding common stock of DC, FC1, FC2, and FC3. DC is a domestic corporation, and FC1, FC2, and FC3 are foreign corporations. Each of DC, FC1, FC2, and FC3 has only one class of stock outstanding. DC's outstanding stock is worth $40x, FC1's outstanding stock is worth $20x, FC2's outstanding stock is worth $25x, and FC3's outstanding stock is worth $15x. In a transaction subject to section 351, A contributes the stock of DC, FC1, FC2, and FC3 to FP, a foreign corporation, in exchange for all of the issued and outstanding common stock of FP. The transaction occurs after March 4, 2003. For purposes of section 7874(a)(2)(B)(ii), A is considered to hold 40% of the stock of FP by reason of holding stock in DC.

(d) *Substantial business activities of the EAG*—(1) *General rule*—(i) *Facts and circumstances test.* Subject to paragraph (d)(2) of this section, the determination of whether, after the acquisition, the EAG has substantial business activities in the foreign country in which, or under the law of which, the acquiring foreign entity is created or organized, when compared to the total business activities of the EAG, shall be made on the basis of all of the facts and circumstances. However, the factors described in paragraph (d)(1)(iii) of this section shall not be taken into account in making the determination. For the EAG to have substantial business activities in the foreign country when compared to the total business activities of the EAG, there is no minimum percentage of its total business activities (regardless of how measured) that must be in the foreign country. It is necessary, however, for the determination of substantiality to be made on the basis of a comparison to the total business activities of the EAG, and the factors set forth in paragraph (d)(1)(ii) of this section are to be evaluated accordingly. Thus, it is possible that the business activities of an EAG in a particular country would be substantial when compared to the total business activities of such EAG, but the identical business activities of another EAG in the same country would not be substantial when compared to the total business activities of that EAG because the total business activities of the second EAG were much more extensive than the total business activities of the first EAG.

(ii) *Factors to be considered.* Relevant factors indicating that the EAG has substantial business activities in the foreign country when compared to the total business activities of the EAG include, but are not limited to, the factors set forth below. The presence or absence of any factor, or of a particular number of factors, is not determinative. Moreover, the weight given to any factor (whether or not set forth below) depends on the particular case. Relevant factors include, but are not limited to—

(A) *Historical presence.* The conduct of continuous business activities in the foreign country by EAG members prior to the acquisition;

(B) *Operational activities.* Business activities of the EAG in the foreign country occurring in the ordinary course of the active conduct of one or more trades or businesses, involving—

(*1*) Property located in the foreign country which is owned by members of the EAG;

(*2*) The performance of services by individuals in the foreign country who are employed by members of the EAG; and

(*3*) Sales to customers in the foreign country by EAG members;

(C) *Management activities.* The performance in the foreign country of substantial managerial activities by EAG

members' officers and employees who are based in the foreign country;

(D) *Ownership*. A substantial degree of ownership of the EAG by investors resident in the foreign country.

(E) *Strategic factors*. The existence of business activities in the foreign country that are material to the achievement of the EAG's overall business objectives.

(iii) *Factors not to be considered*. Any assets, activities, or income attributable to a transfer or transfers disregarded under section 7874(c)(4) are not relevant factors to be considered. In addition, any assets that are temporarily located in a foreign country at any time as part of a plan a principal purpose of which is to avoid the purposes of section 7874 are not relevant factors to be considered.

(2) *Safe harbor*—(i) *Elements*. The EAG will be considered to have substantial business activities, after the acquisition, in the foreign country in which, or under the law of which, the acquiring foreign entity was created or organized, when compared to the total business activities of the EAG, if paragraphs (d)(2)(ii), (iii), and (iv) of this section apply.

(ii) *Employees*. This paragraph (d)(2)(ii) applies if, after the acquisition, the group employees based in the foreign country account for at least 10 percent (by headcount and compensation) of total group employees.

(iii) *Assets*. This paragraph (d)(2)(iii) applies if, after the acquisition, the total value of the group assets located in the foreign country is at least 10 percent of the total value of all group assets.

(iv) *Sales*. This paragraph (d)(2)(iv) applies if, during the testing period, the group sales made in the foreign country accounted for at least 10 percent of total group sales.

(3) *Definitions and application of rules*. For purposes of paragraph (d) of this section—

(i) The term *group employee* means a common law employee of one or more members of the EAG who worked full time (meaning normally 35 or more hours per week) throughout the testing period. An independent contractor performing activities on behalf of an EAG member is not a group employee. A group employee is considered to be based in a country only if the group employee spent more time providing services in such country than in any other country throughout the testing period and continues to provide services in such country immediately after the acquisition. The compensation of a group employee is determined in United States dollars and, in the case of compensation denominated in a foreign currency, translated into United States dollars using the weighted average exchange rate for the taxable year, as defined in §1.989(b)–1.

(ii) The term *group assets* means tangible property used or held for use in the active conduct of a trade or business by a member of the EAG. An item of tangible personal property is considered to be located in a country only if such item was physically present in such country for more time than in any other country during the testing period. The total value of group assets is determined for purposes of this paragraph on the last day of the testing period, on a gross basis (that is, not reduced by liabilities), measured by either tax book value or fair market value, but not both, in United States dollars translated if necessary at the spot rate determined under the principles of §1.988–1(d)(1), (2) and (4). Group assets do not include property located in a country by reason of a transfer, or a change of geographic location, pursuant to a plan a principal purpose of which is to avoid the application of section 7874. In addition, intangible assets are not taken into account (in either the numerator or denominator) in calculating the amount of group assets.

(iii) The term *group sales* means sales and the provision of services by members of the EAG, measured by gross receipts from such sales and services, in United States dollars (determined, in the case of gross receipts denominated in a foreign currency, using the weighted average exchange rate for the taxable year, as defined in Treas. Reg. §1.989(b)–1). A group sale is considered to be made in a country only if the services, goods or other property transferred by such sale are sold for use, consumption or disposition in such country.

(iv) If one or more members of the EAG own capital or profits interests in a partnership, the proportionate amount of activities, employees, assets, income and sales of such partnership are considered to be activities, employees, assets, income and sales of the member or members of the EAG. A partner's proportionate share shall be determined under the rules and principles of sections 701 through 706 and the regulations thereunder.

(v) The term *testing period* means the 12 month period ending on the last day of the EAG's monthly or quarterly management accounting period in which the acquisition is completed and the term *after the acquisition* means, for purposes of paragraphs (d)(1)(i) and (d)(2)(ii) and (iii) of this section, the last day of the testing period.

(4) *Examples*. The application of paragraph (d)(1) of this section is illustrated by the following examples of business activities of an EAG in a foreign country after an acquisition described in section 7874(a)(2)(B)(i). In each example, the acquiring foreign entity is incorporated in Country A. Paragraph (d)(2) of this section does not apply to any of the examples. The examples are not intended to allow any inferences to be drawn as to whether the presence or absence, in a particular case, of one or more facts described in an example is determinative as to whether an EAG does, or does not, have substantial business activities in the relevant foreign country when compared to the total business activities of the EAG. The examples read as follows:

Example 1. Administrative activities and some customer services. (i) *Facts*. Group employees based in Country A regularly perform administrative, back office services for other EAG members, and regularly provide customer service globally via telephone and e-mail at a communications center located in Country A. After the acquisition, fewer than 2% of group employees are based in Country A. Less than 3% of group sales were made in Country A in the 12-month period ending on the date of the acquisition. The total value of group assets located in Country A on the date of the acquisition is approximately 2% of total group assets. None of the EAG's senior managers are based in Country A.

(ii) *Conclusion*. In light of all the facts and circumstances, after the acquisition, the EAG does not have substantial business activities in Country A when compared to the total business activities of the EAG.

Example 2. Manufacturing in foreign country. (i) *Facts*. EAG members own and have continuously operated a manufacturing facility and warehouses in Country A for several years prior to the acquisition. The goods produced in Country A represented approximately 2% of the total value of the EAG's production of finished goods in the 12-month period ending on the date of the acquisition. Group employees based in Country A also regularly perform back office services for other EAG members. Fewer than 5% of group employees were based in Country A during the 12-month period ending after the acquisition. Less than 2% of group sales were made in Country A during the 12-month period ending after the acquisition. The total value of group assets located in Country A after the acquisition is approximately 4% of total group assets. None of the EAG's senior managers are based in Country A.

(ii) *Conclusion*. In light of all the facts and circumstances, after the acquisition, the EAG does not have substantial business activities in Country A when compared to the total business activities of the EAG.

Example 3. Financial services group; real estate in foreign country. (i) *Facts*. The EAG's main line of business is financial services. Group employees based in Country A regularly perform back office services for other EAG members. Fewer than 5% of group employees were based in Country A during the 12-month period ending on the date of the acquisition. Less than 3% of group sales were made in Country A during the same period. However, the total value of group assets located in Country A after the acquisition is more than 10% of the value of total group assets, due to the fact that EAG members purchased a substantial amount of commercial and residential real estate in Country A during the 24 months preceding the acquisition. The management of the real estate is performed by an unrelated independent agent. Most of the EAG's senior managers are based outside Country A. The EAG's real estate portfolio in Country A was not acquired pursuant to a strategic plan for one or more of the EAG's worldwide lines of business, nor are the EAG's business activities in Country A material to the achievement of the EAG's overall business objectives.

(ii) *Conclusion*. In light of all the facts and circumstances, after the acquisition, the EAG does not have substantial business activities in Country A when compared to the total business activities of the EAG.

Example 4. Foreign group merging with larger U.S. group. (i) *Facts*. The Country A corporation that is the parent entity in the EAG acquired a domestic corporation and its subsidiaries pursuant to a merger agreement. Before the merger, the stock of both the

Country A corporation and the domestic corporation was publicly traded in their respective countries of incorporation. The two groups were competitors in the same global line of business for many years preceding the merger. The merger was prompted by a third group's attempt to obtain control of the domestic corporation and its subsidiaries without the consent of the management of the domestic corporation. After the merger, the Country A corporation is more than 60% owned by former shareholders of the domestic corporation, due to the fact that the domestic corporation was significantly more valuable than the Country A corporation. After the merger, the stock of the Country A corporation is publicly traded on stock exchanges in both Country A and the United States. Group employees based in Country A perform all of the functions involved in the EAG's overall business activities, including headquarters and senior management functions. After the merger, approximately 11% of group employees are based in Country A, the total value of group assets located in Country A is approximately 10% of the value of total group assets, and the estimated percentage of group sales that will be made in Country A during the year following the merger is approximately 7%.

(ii) *Conclusion*. In light of all the facts and circumstances, after the acquisition, the EAG has substantial business activities in Country A when compared to the total business activities of the EAG.

Example 5. Relocation of business to foreign country. (i) *Facts*. The EAG's business involves advanced technology. The controlling shareholders of the Country A corporation that is the parent entity in the EAG, and the senior managers of the EAG, are resident in Country A. The controlling shareholders originally established DC, a domestic corporation, which established its head office in City B in the United States, where a leading institute of technology is located. Part of DC's business strategy was to hire research personnel who had been trained at the institute of technology and had settled in City B. DC hired 10 researchers who worked at DC's premises in City B. DC also established FS, a wholly owned Country A subsidiary, which hired research personnel in Country A to perform research and product development functions at FS's premises in Country A. Subsequently, the senior managers and controlling shareholders adopted a new business strategy involving the closure of the U.S. operations and the transfer of DC's business and FS's stock to FP, a new Country A corporation, with the result of centering the EAG's business in Country A. Pursuant to the new strategy, DC terminated the employment of seven researchers and the lease on its City B premises, relocated the other three researchers from City B to Country A, and transferred its remaining assets, including the stock of FS, to FP in exchange for more than 80% of the stock of FP. After the acquisition, substantially all of the group employees were based in Country A, and substantially all of the group assets were located in Country A.

(ii) *Conclusion*. In light of all the facts and circumstances, after the acquisition, the EAG has substantial business activities in Country A when compared to the total business activities of the EAG.

(e) *Acquisition by publicly traded foreign partnership*—(1) *Treatment as a foreign corporation*. For purposes of applying section 7874(a)(2)(B) and this section, a publicly traded foreign partnership shall be treated as a foreign corporation created or organized in, or under the laws of, the foreign country in which, or under the laws of which, such partnership was created or organized, and interests in such partnership shall be treated as stock of such foreign corporation. In determining whether the publicly traded foreign partnership is a surrogate foreign corporation, the publicly traded foreign partnership will be treated as a member of the EAG, if the requirements of section 7874(c)(1) are met. If this paragraph is applicable and the provisions of section 7874(a)(2)(B) are satisfied such that the foreign entity making the acquisition is a surrogate foreign corporation to which section 7874(b) applies, the foreign entity shall be treated as a domestic corporation for purposes of the Internal Revenue Code. *See* paragraph (e)(3) of this section for the deemed treatment of the change in form from a foreign partnership to a domestic corporation. If this paragraph is applicable and the provisions of section 7874(a)(2)(B) are satisfied such that the foreign entity making the acquisition is a surrogate foreign corporation to which section 7874(b) does not apply, the foreign entity shall continue to be a foreign partnership for purposes of the Internal Revenue Code, but the tax treatment of the expatriated entity shall be governed by section 7874(a)(1). If this paragraph is applicable, but the provisions of section 7874(a)(2)(B) are not satisfied such that the foreign partnership making the acquisition is not a surrogate foreign corporation, the status of the publicly traded foreign partnership will not be affected by section 7874 or § 1.7874–2T.

(2) *Publicly traded foreign partnership.* For purposes of this section, the term *publicly traded foreign partnership* means any foreign partnership that would, but for the application of section 7704(c), be treated as a corporation under section 7704 at any time during the two-year period following the partnership's completion of an acquisition described in section 7874(a)(2)(B)(i).

(3) *Deemed treatment of change from foreign partnership to domestic corporation.* Except for purposes of determining whether it is a surrogate foreign corporation under section 7874(a)(2)(B) and §1.7874–2T, a foreign partnership that is treated as a domestic corporation pursuant to the application of paragraph (e)(1) of this section and the application of section 7874(b) and §1.7874–2T shall, immediately before commencement of the acquisition, be treated as transferring all of its assets and liabilities to a newly formed domestic corporation in exchange for the stock of the domestic corporation, and distributing such stock to its partners in liquidation of their interests in the partnership. The tax treatment of the transaction shall be determined under all relevant provisions of the Internal Revenue Code and general principles of tax law, including the step transaction doctrine.

(4) *Disregard of deemed acquisition.* For purposes of paragraph (e)(1) of this section, a publicly traded foreign partnership's deemed acquisition of assets and liabilities under §1.708–1(b)(4) is not a direct or indirect acquisition of properties to which section 7874(a)(2)(B)(i) could apply.

(5) *Examples.* The application of this paragraph is illustrated by the following examples. It is assumed that all transactions in the examples occur after March 4, 2003, and that any foreign partnership referred to in an example is not treated as a corporation under section 7704. The examples read as follows:

Example 1. Foreign hybrid entity; public trading of ownership interests on stock market following triangular merger. (i) *Facts.* The stock of DP, a domestic corporation, is publicly traded on stock exchange SE. Pursuant to a plan, DP and an unrelated person form a foreign subsidiary entity, FQ, under the laws of foreign country X, transferring a minimal amount of cash to FQ in the process. DP owns 99.9% of FQ and the unrelated party owns 0.1% of FQ. FQ is a limited liability company and is a foreign eligible entity under §301.7701–2. FQ makes an election under §301.7701–3 to be treated as a partnership for Federal income tax purposes as of the date of its formation. FQ forms a wholly owned domestic corporation, DS, under the laws of State A. Under a merger agreement and State A law, DS merges into DP,with DP surviving the merger as a wholly owned subsidiary of FQ and the former shareholders of DP receiving ownership interests in FQ in exchange for their DP stock. On the day of the merger, the stock of DP ceases to be listed on stock exchange SE. Trading of ownership interests of FQ on stock exchange SE commences on the day after the day of the merger. FQ, however, is not treated as a corporation under section 7704, due to the application of section 7704(c). After the acquisition, the corporate group owned by FQ does not have substantial business activities in foreign country X when compared to its total business activities.

(ii) *Analysis.* FQ is a publicly traded foreign partnership under paragraph (e)(1) of this section. For purposes of determining whether FQ is a surrogate foreign corporation under section 7874(a)(2)(B), FQ is considered to be a foreign corporation rather than a foreign partnership, and ownership interests in FQ are considered to be stock of FQ. Therefore, on the basis of these facts, FQ is a surrogate foreign corporation because all of the conditions stated in section 7874(a)(2)(B) are satisfied. Because the former shareholders of DP hold more than 80% of FQ's ownership interests, FQ is treated under section 7874(b) as a domestic corporation for purposes of the Internal Revenue Code. In addition, the former shareholders of DP are treated as having received stock of domestic corporation FQ in exchange for their stock of DP.

Example 2. Substantial business activities of the EAG in the foreign country of incorporation. (i) *Facts.* The facts are the same as in *Example 1* except that, after the acquisition, the EAG that includes FQ has substantial business activities in foreign country X when compared to the total business activities of the EAG under the criteria set forth in paragraph (d) of this section.

(ii) *Analysis.* For purposes of determining whether FQ is a surrogate foreign corporation under section 7874(a)(2)(B), FQ is considered to be a foreign corporation rather than a foreign partnership, and ownership interests in FQ are considered to be stock of FQ. On the basis of these facts, FQ is not a surrogate foreign corporation, because, after the acquisition, the EAG that includes FQ has substantial business activities in foreign country X when compared to the total business activities of the EAG. Therefore, section 7874 does not apply to the acquisition,

and the status of FQ as a foreign partnership is unaffected.

Example 3. Acquisition by publicly traded foreign partnership owned by former shareholders and unrelated persons. (i) *Facts.* The facts are the same as in Example 1 except that, at the time of the merger transaction, unrelated persons who did not own any stock of DP transfer stock of a foreign corporation to FQ in exchange for 25% of the ownership interests in FQ. Former shareholders of DP receive 75% of the ownership interests in FQ.

(ii) *Analysis.* For purposes of determining whether FQ is a surrogate foreign corporation under section 7874(a)(2)(B), FQ is considered to be a foreign corporation rather than a foreign partnership, and ownership interests in FQ are considered to be stock of FQ. Therefore, on the basis of these facts, and taking into account the provisions of section 7874(c)(4), FQ is a surrogate foreign corporation, because all of the conditions stated in section 7874(a)(2)(B) are satisfied. Because the former shareholders of DP hold less than 80% of FQ's ownership interests, FQ is not treated under section 7874(b) as a domestic corporation for purposes of the Internal Revenue Code. Rather, FQ is a foreign partnership for purposes of the Internal Revenue Code, and section 7874(a)(1) applies in determining the Federal income tax liability of DP and any other expatriated entity (as defined in section 7874(a)(2)).

(f) *Options and similar interests treated as stock of the foreign acquiring corporation*—(1) *General rule.* For purposes of section 7874(a)(2)(B)(ii), options and interests that are similar to options held by a person by reason of holding stock in the domestic corporation or a capital or profits interest in the domestic partnership described in section 7874(a)(2)(B)(i) shall be treated as exercised. The prior sentence shall apply, however, only to the extent that the effect of such exercise is to treat the foreign entity that has made the acquisition described in section 7874(a)(2)(B)(i) as a surrogate foreign corporation under section 7874(a)(2)(B).

(2) *Interests that are similar to options.* For purposes of paragraph (f)(1) of this section, an interest that is similar to an option includes, but is not limited to, a warrant, a convertible debt instrument, an instrument other than debt that is convertible into stock, a put, a stock interest subject to risk of forfeiture, and a contract to acquire or sell stock.

(3) *Example.* The application of this paragraph is illustrated by the following example. It is assumed that the transaction in the example occurs after March 4, 2003. The example reads as follows:

Example. Convertible bonds treated as stock of foreign corporation. (i) *Facts.* DT, a domestic corporation with 80 shares of stock issued and outstanding, is owned by a group of individuals. FA, a foreign corporation unrelated to DT, has 20 shares of stock issued and outstanding. Pursuant to a plan, the shareholders of DT transfer all of their shares of DT to FA in exchange for 25 newly issued shares of FA stock (with a value of $25x) and $55x of FA bonds that are convertible at the election of the holder into 55 shares of FA stock, for no additional consideration, at any time during the ensuing 5-year period. After the acquisition, the EAG that includes FA does not have substantial business activities in FA's country of incorporation when compared to the total business activities of the EAG.

(ii) *Analysis.* FA has indirectly acquired substantially all the properties held directly or indirectly by DT pursuant to a plan. Before the application of this paragraph (f), the former shareholders of DT own 25 shares of FA stock by reason of holding stock in DT. Accordingly, the section 7874(a)(2)(B)(ii) fraction would be 25/45, the resulting percentage would be 55%, and FA would not be a surrogate foreign corporation. Pursuant to paragraph (f)(2) of this section, the FA convertible bonds issued to the former shareholders of DT are treated as interests that are similar to options. As a result, and pursuant to paragraph (f)(1) of this section, the convertible bonds are treated as being converted into 55 shares of FA stock for purposes of section 7874(a)(2)(B)(ii). Therefore, the section 7874(a)(2)(B)(ii) fraction is 80/100, the resulting percentage is 80% and FA is a surrogate foreign corporation. In addition, pursuant to section 7874(b), FA is treated as a domestic corporation.

(g) *Change from foreign to domestic status*—(1) *Conversion*—(i) *General rule.* Except for purposes of determining whether it is a surrogate foreign corporation under section 7874(a)(2)(B) and § 1.7874–2T, the conversion of a foreign corporation to a domestic corporation under section 7874(b) shall, immediately before commencement of the acquisition described in section 7874(a)(2)(B)(i), be treated as a reorganization described in section 368(a)(1)(F). For the consequences of the conversion, *see* § 1.367(b)–2(f). *See also* § 1.367(b)–3. The tax treatment of all aspects of the transaction other

than such conversion shall be determined under all relevant provisions of the Code and general principles of tax law, including the step transaction doctrine.

(ii) *Example*. The following example illustrates the application of paragraph (g)(1)(i) of this section. It is assumed that the transaction in the example occurs after March 4, 2003. The example reads as follows:

Example. Conversion treated as reorganization under section 368(a)(1)(F). (i) *Facts*. DT, a domestic corporation is owned by a group of individuals. FA, a foreign corporation unrelated to DT which has been conducting a trade or business for several years, has 20 shares of stock issued and outstanding. Pursuant to a plan, the shareholders of DT transfer all of their shares of DT to FA in exchange for 80 newly issued shares of FA stock. After the acquisition, the EAG that includes FA does not have substantial business activities in FA's country of incorporation when compared to the total business activities of the EAG.

(ii) *Analysis*. FA has indirectly acquired substantially all the properties held directly or indirectly by DT pursuant to a plan. After the acquisition, the former shareholders of DT own 80 shares of FA stock by reason of holding stock in DT. Accordingly, the section 7874(a)(2)(B)(ii) fraction is 80/100, the resulting percentage is 80%, and FA is a surrogate foreign corporation. In addition, pursuant to section 7874(b), FA is treated as a domestic corporation. Other than for purposes of determining whether FA is a surrogate foreign corporation, the conversion of FA from a foreign corporation to a domestic corporation shall, immediately before FA's acquisition of the DT stock, be treated as a reorganization under section 368(a)(1)(F). See §§1.367(b)–2(f) and 1.367(b)–3. The tax treatment of all other aspects of the transaction, including the acquisition of the DT stock by FA, is determined under all relevant provisions of the Code and general principles of tax law, including the step transaction doctrine.

(2) *Entity classification*. An entity that is treated as a domestic corporation under section 7874(b) is not an eligible entity as defined in §301.7701–3(a) of this chapter and therefore may not elect noncorporate status.

(3) *Time of determination*. Subject to the application of the step transaction doctrine and section 7874(c)(4), the determination of whether a foreign entity is a surrogate foreign corporation is made immediately after completion of the acquisition described in section 7874(a)(2)(B)(i), except as provided in paragraphs (d)(3)(v) and (e)(2) of this section. A foreign entity that is treated as a domestic corporation under section 7874(b) shall continue to be treated as a domestic corporation without regard to whether the provisions of section 7874(a)(2)(B)(ii) and (iii) are satisfied at a later time.

(h) *Nonapplication of section 367*—(1) *General rule*. If section 7874(b) applies to a surrogate foreign corporation, section 367 shall not apply to the transfer of stock or other property to such entity as part of the acquisition described in section 7874(a)(2)(B)(i).

(2) *Example*. The following example illustrates the application of paragraphs (g) and (h)(1) of this section. It is assumed that the transaction in the example occurs after March 4, 2003. The example reads as follows:

Example. Conversion of foreign corporation to domestic corporation. (i) *Facts*. FP, a newly formed foreign corporation, acquires pursuant to a plan substantially all of the stock of DX, a domestic corporation, by issuing its stock to the owners of DX in exchange for their DX stock. The former owners of DX, all of whom are U.S. persons, hold more than 80% of the stock of FP by reason of their ownership of DX stock. The EAG that includes FP does not have substantial business activities in FP's country of incorporation after the acquisition when compared to the total business activities of the EAG.

(ii) *Analysis*. FP is a surrogate foreign corporation under section 7874(a)(2)(B). Under section 7874(b), FP is treated as a domestic corporation for purposes of the Internal Revenue Code. In addition, the former owners of DX are not subject to section 367 with respect to the transfer of their DX stock to FP.

(i) [Reserved]

(j) *Effective date*. This section shall apply to acquisitions completed on or after June 6, 2006. However, taxpayers may apply this section to acquisitions completed prior to that date, but must apply it consistently to all acquisitions within its scope.

[T.D. 9265, 71 FR 32443, June 6, 2006]

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SOURCE: Sections 1.9000–1 through 1.9000–8 contained in T.D. 6500, 25 FR 12155, Nov. 26, 1960, unless otherwise noted.

§ 1.9000–1 Statutory provisions.

The Act of June 15, 1955 (Pub. L. 74, 84th Cong., 69 Stat. 134), provides as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. *Repeal of sections 452 and 462*—(a) *Prepaid income.* Section 452 of the Internal Revenue Code of 1954 is hereby repealed.

(b) Reserves for estimated expenses, etc. Section 462 of the Internal Revenue Code of 1954 is hereby repealed.

SEC. 2. *Technical amendments.* The following provisions of the Internal Revenue Code of 1954 are hereby amended as follows:

(1) Subsection (c) of section 381 is amended by striking out paragraph (7) (relating to carryover of prepaid income in certain corporate acquisitions).

(2) The table of sections for subpart B of part II of subchapter E of chapter 1 (relating to taxable year for which items of gross income included) is amended by striking out

''Sec. 452. Prepaid income.''

(3) The table of sections for subpart C of such part II (relating to taxable year for which deductions are taken) is amended by striking out:

''Sec. 462. Reserves for estimated expenses, etc.''

SEC. 3. *Effective date.* The amendments made by this act shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.

SEC. 4. *Saving provisions*—(a) *Filing of statement.* If:

(1) the amount of any tax required to be paid for any taxable year ending on or before the date of the enactment of this act is increased by reason of the enactment of this act, and

(2) the last date prescribed for payment of such tax (or any installment thereof) is before December 15, 1955,

then the taxpayer shall, on or before December 15, 1955, file a statement which shows the increase in the amount of such tax required to be paid by reason of the enactment of this act.

(b) *Form and effect of statement*—(1) *Form of statement, etc.* The statement required by subsection (a) shall be filed at the place fixed for filing the return. Such statement shall be in such form, and shall include such information necessary or appropriate to show the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this act, as the Secretary of the Treasury or his delegate shall by regulations prescribe.

(2) *Treatment as amount shown on return.* The amount shown on a statement filed under subsection (a) as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this act shall, for all purposes of the internal revenue laws, be treated as tax shown on the return. Notwithstanding the preceding sentence, that portion of the amount of increase in tax for any taxable year which is attributable to a decrease (by reason of the enactment of this act) in the net operating loss for a succeeding taxable year shall not be treated as tax shown on the return.

(3) *Waiver of interest in case of payment on or before December 15, 1955.* If the taxpayer, on or before December 15, 1955, files the statement referred to in subsection (a) and pays in full that portion of the amount shown thereon for which the last date prescribed for payment is before December 15, 1955, then for purposes of computing interest (other than interest on overpayments) such portion shall be treated as having been paid on the last date prescribed for payment. This paragraph shall not apply if the amount shown on the statement as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this act is greater than the actual increase unless the taxpayer establishes, to the satisfaction of the Secretary of the Treasury or his delegate, that his computation of the greater amount was based upon a reasonable interpretation and application of sections 452 and 462 of the Internal Revenue Code of 1954, as those sections existed before the enactment of this act.

(c) *Special rules*—(1) *Interest for period before enactment.* Interest shall not be imposed on the amount of any increase in tax resulting from the enactment of this act for any period before the day after the date of the enactment of this act.

(2) *Estimated tax.* Any addition to the tax under section 294(d) of the Internal Revenue Code of 1939 shall be computed as if this act had not been enacted. In the case of any installment for which the last date prescribed for payment is before December 15, 1955, any addition to the tax under section 6654 of the Internal Revenue Code of 1954 shall be computed as if this act had not been enacted.

(3) *Treatment of certain payments which taxpayer is required to make.* If:

(A) The taxpayer is required to make a payment (or an additional payment) to another person by reason of the enactment of this act, and

(B) The Internal Revenue Code of 1954 prescribes a period, which expires after the close of the taxable year, within which the taxpayer must make such payment (or additional payment) if the amount thereof is to be taken into account (as a deduction or otherwise) in computing taxable income for such taxable year,

then, subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, if such payment (or additional payment) is made on or before December 15,

1955, it shall be treated as having been made within the period prescribed by such Code.

(4) *Treatment of certain dividends.* Subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, for purposes of section 561(a)(1) of the Internal Revenue Code of 1954, dividends paid after the 15th day of the third month following the close of the taxable year and on or before December 15, 1955, may be treated as having been paid on the last day of the taxable year, but only to the extent (A) that such dividends are attributable to an increase in taxable income for the taxable year resulting from the enactment of this act, and (B) elected by the taxpayer.

(5) *Determination of date prescribed.* For purposes of this section, the determination of the last date prescribed for payment or for filing a return shall be made without regard to any extension of time therefor and without regard to any provision of this section.

(6) *Regulations.* For requirement that the Secretary of the Treasury or his delegate shall prescribe all rules and regulations as may be necessary by reason of the enactment of this act, see section 7805(a) of the Internal Revenue Code of 1954.

§ 1.9000–2 Effect of repeal in general.

(a) Section 452 (relating to prepaid income) and section 462 (relating to reserves for estimated expenses) of the Internal Revenue Code of 1954 were repealed by the Act of June 15, 1955 (Pub. L. 74, 84th Cong., 69 Stat. 134), with respect to all years subject to such Code. The effect of the repeal will generally be to increase the tax liability of taxpayers who elected to adopt the methods of accounting provided by sections 452 and 462. References to sections of law in §§ 1.9000–2 to 1.9000–8, inclusive, are references to the Internal Revenue Code of 1954 unless otherwise specified.

(b) The Act of June 15, 1955, provides that if the amount of any tax is increased by the repeal of sections 452 and 462 and if the last date prescribed for the payment of such tax (or any installment thereof) is before December 15, 1955, then the taxpayer shall on or before such date file a statement as prescribed in § 1.9000–3. The last date prescribed for payment for this purpose shall be determined without regard to any extensions of time and without regard to the provisions of the Act of June 15, 1955.

§ 1.9000–3 Requirement of statement showing increase in tax liability.

(a) *Returns filed before June 15, 1955.* Where a return reflecting an election under section 452 or 462 was filed before June 15, 1955, the taxpayer must file on or before December 15, 1955, a statement on Form 2175 showing the increase in tax liability resulting from the repeal of sections 452 and 462. The provisions of this paragraph may be illustrated by the following example:

Example. Corporation X filed its income tax return for the calendar year 1954 on March 15, 1955, and elected under section 6152 to pay the unpaid amount of the tax shown thereon in two equal installments. Such installment payments are due on March 15, 1955, and June 15, 1955, respectively. The corporation elected to compute its tax for such taxable year under the methods of accounting provided by sections 452 and 462. Corporation X's tax liability is increased by reason of the enactment of Public Law 74, and since the last date prescribed for paying its tax expires before December 15, 1955, it is required to submit the prescribed statement on or before December 15, 1955, showing its increase in tax liability.

(b) *Returns filed on or after June 15, 1955.* A taxpayer filing a return on or after June 15, 1955, for a taxable year ending on or before such date, may elect to apply the accounting methods provided in sections 452 and 462. The election may be exercised by either of the following methods:

(1) By computing the tax liability shown on such return as though the provisions of sections 452 and 462 had not been repealed. In such a case, the taxpayer must file on or before December 15, 1955, a statement on Form 2175 showing the increase in tax liability resulting from the repeal of sections 452 and 462.

(2) By computing his tax liability without regard to sections 452 and 462. In this case, Form 2175 must be filed with the return. However, taxable income and the tax liability computed with the application of sections 452 and 462 shall be shown on lines 8 and 14, respectively, of the form in lieu of the amounts otherwise called for on those lines.

If a taxpayer does not make an election to have the provisions of sections 452 and 462 apply, the savings provisions of

section 4 of the Act of June 15, 1955, are not applicable.

(c) *Taxable years ending after June 15, 1955.* A taxpayer having a taxable year ending after June 15, 1955, may not elect to apply the methods of accounting prescribed in sections 452 and 462 in computing taxable income for such taxable year. Such a taxpayer must file his return and pay the tax as if such sections had not been enacted.

(d) *Other situations requiring statements.* (1) A person who made an election under section 452 or 462 but whose tax liability was not increased by reason of the enactment of the Act of June 15, 1955, is nevertheless required to file a statement on Form 2175 if his gross income is increased or his deductions are decreased as the result of the repeal of sections 452 and 462. A partnership which makes an election under such sections must file such a statement. In addition, a partner, stockholder, distributee, etc. (whether or not such person made an election under section 452 or 462), shall file a statement showing any increase in his tax liability resulting from the effects of the repeal on the gross income or deductions of any person mentioned in the previous sentences of this subparagraph.

(2) A statement shall also be filed for a taxable year, other than a year to which an election under section 452 or 462 is applicable, if the repeal of such sections increases the tax liability of such year. Thus, a statement must be filed for any taxable year to which a net operating loss is carried from a year to which an election under section 452 or 462 is applicable, provided that the repeal of such sections affects the amount of the tax liability for the year to which such loss is carried. A separate statement must also be filed for a year in which there is a net operating loss which is changed by reason of the repeal of sections 452 and 462. Where there is a short taxable year involved, a taxpayer may have two taxable years to which elections under sections 452 and 462 are applicable and, in such a case, a statement, on Form 2175, must be filed for each such year.

§ 1.9000–4 Form and content of statement.

(a) *Information to be shown.* The statement shall be filed on Form 2175 which may be obtained from district directors. It shall be filed with the district director for the internal revenue district in which the return was filed. The statement shall be prepared in accordance with the instructions contained thereon and shall show the following information:

(1) The name and address of the taxpayer,

(2) The amounts of each type of income deferred under section 452,

(3) The amount of the addition to each reserve deducted under section 462,

(4) The taxable income and the tax liability of the taxpayer computed with the application of sections 452 and 462,

(5) The taxable income and the tax liability of the taxpayer computed without the application of sections 452 and 462,

(6) The details of the recomputation of taxable income and tax liability, including any changes in other items of income, deductions, and credits resulting from the repeal of sections 452 and 462, and

(7) If self-employment tax is increased, the computations and information required on page 3 of Schedule C, Form 1040.

(b) *Procedure for recomputing tax liability.* In determining the taxable income and the tax liability computed without the application of sections 452 and 462, such items as vacation pay and prepaid subscription income shall be reported under the law and regulations applicable to the taxable year as if such sections had not been enacted. The tax liability for the year shall be recomputed by restoring to taxable income the amount of income deferred under section 452 and the amount of the deduction taken under section 462. Other deductions or credits affected by such changes in taxable income shall be adjusted. For example, if the deduction for contributions allowed for the taxable year was limited under section 170(b), the amount of such deduction shall be recomputed, giving effect to the increase in adjusted gross income or taxable income, as the case may be,

by reason of the adjustments required by the repeal of sections 452 and 462.

§ 1.9000–5 Effect of filing statement.

(a) *Years other than years affected by a net operating loss carryback.* If the taxpayer files a timely statement in accordance with the provisions of § 1.9000–3, the amount of the increase in tax shown on such statement for a taxable year shall, except as provided in paragraph (b) of this section, be considered for all purposes of the Code, as tax shown on the return for such year. In general, such increase shall be assessed and collected in the same manner as if it had been tax shown on the return as originally filed. The provisions of this paragraph may be illustrated by the following example:

Example. A taxpayer filed his return showing a tax liability computed under the methods of accounting provided by sections 452 and 462 as $1,000 and filed the statement in accordance with § 1.9000–3 showing an increase in tax liability of $200. The tax computed as though sections 452 and 462 had not been enacted is $1,200, and the difference of $200 is the increase in the tax attributable to the repeal of sections 452 and 462. This increase is considered to be tax shown on the return for such taxable year. Additions to the tax for fraud or negligence under section 6653 will be determined by reference to $1,200 (that is, $1,000 plus $200) as the tax shown on the return.

(b) *Years affected by a net operating loss carryback.* In the case of a year which is affected by a net operating loss carryback from a year to which an election under section 452 or 462 applies, that portion of the amount of increase in tax shown on the statement for the year to which the loss is carried back which is attributable to a decrease in such net operating loss shall not be treated as tax shown on the return.

§ 1.9000–6 Provisions for the waiver of interest.

(a) *In general.* If the statement is filed in accordance with § 1.9000–3 and if that portion of the increase in tax which is due before December 15, 1955 (without regard to any extension of time for payment and without regard to the provisions of §§ 1.9000–2 to 1.9000–8, inclusive), is paid in full on or before such date, then no interest shall be due with respect to that amount. The provisions of this paragraph may be illustrated by the following example:

Example. Corporation M's return for the calendar year 1954 was filed on March 15, 1955, and the tax liability shown thereon was paid in equal installments on March 15, 1955, and June 15, 1955. M filed a statement on December 15, 1955, showing the increase in its tax liability resulting from the repeal of sections 452 and 462 and paid at that time the increase in tax shown thereon. No interest will be imposed with respect to the amount of such payment.

Interest shall be computed under the applicable provisions of the internal revenue laws on any portion of the increase in tax shown on the statement which is due after December 15, 1955, and which is not paid when due.

(b) *Limitation on application of waiver.* The provisions of paragraph (a) of this section shall not apply to any portion of the increase in tax shown on the statement if such increase reflects an amount in excess of that attributable solely to the repeal of sections 452 and 462, i. e., is attributable in whole or in part to excessive or unwarranted deferrals or accruals under section 452 or 462, as the case may be, in computing the tax liability with the application of such sections. Notwithstanding the preceding sentence, paragraph (a) of this section shall be applicable if the taxpayer can show that the tax liability as computed with the application of sections 452 and 462 is based upon a reasonable interpretation and application of such sections as they existed prior to repeal. If the taxpayer complied with the provisions of the regulations under sections 452 and 462 in computing the tax liability with the application of such sections, he will be regarded as having reasonably interpreted and applied sections 452 and 462. In this regard, it is not essential that the taxpayer submit with his return the detailed information required by such regulations in support of the deduction claimed under section 462, but such information shall be supplied at the request of the Commissioner.

(c) *Interest for periods prior to June 16, 1955.* No interest shall be imposed with respect to any increase in tax resulting solely from the repeal of sections 452 and 462 for any period prior to June 16,

1955 (the day after the date of the enactment of the Act of June 15, 1955). The preceding sentence does not apply to that part of any increase in tax which is due to the improper application of sections 452 and 462. The provisions of this paragraph shall not apply to interest imposed under section 3779 of the Internal Revenue Code of 1939. (See paragraph (d) of this section.)

(d) *Amounts deferred by corporations expecting carrybacks.* Interest shall be imposed at the rate of 6 percent on so much of the amount of tax deferred under section 3779 of the Internal Revenue Code of 1939 as is not satisfied within the meaning of section 3779(i)(1), notwithstanding the fact that a greater amount would have been satisfied, had sections 452 and 462 not been repealed. Interest will be imposed at such rate until the amount not so satisfied is paid.

§ 1.9000–7 Provisions for estimated tax.

(a) *Additions to tax under section 294(d) of the Internal Revenue Code of 1939.* Any addition to the tax under section 294(d) (relating to estimated tax) of the Internal Revenue Code of 1939 shall be computed as if the tax for the year for which the estimate was made were computed with sections 452 and 462 still applicable to such taxable year. For the purpose of the preceding sentence, it is not necessary for the taxpayer actually to have made an election under section 452 or 462; it is only necessary for the taxpayer to have taken such sections into account in estimating its tax liability for the year. Thus, if in determining the amount of estimated tax, the taxpayer computed his estimated tax liability by applying those sections, that portion of any additions to tax under section 294(d) resulting from the repeal of sections 452 and 462 shall be disregarded.

(b) *Additions to tax under section 6654.* In the case of an underpayment of estimated tax, any additions to the tax under section 6654, with respect to installments due before December 15, 1955, shall be computed without regard to any increase in tax resulting from the repeal of sections 452 and 462. Any additions to the tax with respect to installments due on or after December 15, 1955, shall be imposed in accordance with the applicable provisions of the Code, and as though sections 452 and 462 had not been enacted. Thus, a taxpayer whose declaration of estimated tax was based upon an estimate of his taxable income for the year of the estimate which was determined by taking sections 452 and 462 into account, must file an amended declaration on or before the due date of the next installment of estimated tax due on or after December 15, 1955. Such amended declaration shall reflect an estimate of the tax without the application of such sections. If the taxpayer bases his estimate on the tax for the preceding taxable year under section 6654(d)(1)(A), an amended declaration must be filed on or before the due date of the next installment due on or after December 15, 1955, if the tax for the preceding taxable year is increased as the result of the repeal of sections 452 and 462. Similarly, if the taxpayer bases his estimate on the tax computed under section 6654(d)(1)(B), he must file an amended declaration on or before the due date of the next installment due on or after December 15, 1955, taking into account the repeal of sections 452 and 462 with respect to the preceding taxable year. Any increase in estimated tax shown on an amended declaration filed in accordance with this paragraph must be paid in accordance with section 6153(c).

(c) *Estimated tax of corporations.* Corporations required to file a declaration of estimated tax under section 6016 for taxable years ending on and after December 31, 1955, shall estimate their tax liability for such year as if sections 452 and 462 had not been enacted. Thus, if the corporation bases its estimated tax liability under section 6655(d) (1) or (2) on its operations for the preceding taxable year, the effect of the repeal of sections 452 and 462 with respect to such year must be taken into account.

§ 1.9000–8 Extension of time for making certain payments.

(a) *Time for payment specified in Code.* (1) If the treatment of any payment (including its allowance as a deduction or otherwise) is dependent upon the making of a payment within a period of time specified in the Code the period within which the payment is to be

made is extended where the amount to be paid is increased by reason of the repeal of sections 452 and 462: *Provided*, That:

(i) The taxpayer, because of a pre-existing obligation, is required to make a payment or an additional payment to another person by reason of such repeal;

(ii) The deductibility of the payment or additional payment is contingent upon its being made within a period prescribed by the Code, which period expires after the close of the taxable year; and

(iii) The payment or additional payment is made on or before December 15, 1955.

If the foregoing conditions are met, the payment or additional payment will be treated as having been made within the time specified in the Code, and, subject to any other conditions in the Code, it shall be deductible for the year to which it relates. The provision of this paragraph may be illustrated by the following examples:

Example 1. Section 267 (relating to losses, expenses and interest between related taxpayers) applies to amounts accrued by taxpayer A for salary payable to B. For the calendar year 1954, A is obligated to pay B a salary equal to 5 percent of A's taxable income for the taxable year. The amount accrued as salary payable to B for 1954 is $5,000 with the taxable income reflecting the application of section 462. As a result of the repeal of section 462 the salary payable to B for 1954 is increased to $6,000. The additional $1,000 is paid to B on December 15, 1955. In recomputing A's tax liability for 1954 the additional deduction of $1,000 for salary payable to B will be treated as having been made within two and one-half months after the close of the taxable year and will be deductible in that year.

Example 2. On March 1, 1955, Corporation X, a calendar year taxpayer using the accrual method of accounting, makes a payment described in section 404(a)(6) (relating to contributions to an employees' trust) of $10,000 which is accrued for 1954 and is determined on the basis of the amount of taxable income for that year. The taxpayer filed its return on March 15, 1955. By reason of the repeal of section 462, X's taxable income is increased so that it is required to make an additional contribution of $2,000 to the employees' trust. The additional payment is made on December 15, 1955. For purposes of recomputing X's tax liability for 1954, this additional payment is deemed to have been made on the last day of 1954.

(2) The time for inclusion in the taxable income of the payee of any additional payment of the type described in subparagraph (1) of this paragraph, shall be determined without regard to section 4(c)(3) of the Act of June 15, 1955, and §§1.9000–2 to 1.9000–8, inclusive.

(b) *Dividends paid under section 561.* under section 4(c)(4) of the Act of June 15, 1955, the period during which distributions may be recognized as dividends paid under section 561 for a taxable year to which section 452 or 462 apply may be extended under the conditions set forth below.

(1) *Accumulated earnings tax or personal holding company tax.* In the case of the accumulated earnings tax or the personal holding company tax, if:

(i) The income of a corporation is increased for a taxable year by reason of the repeal of sections 452 and 462 so that it would become liable for the tax (or an increase in the tax) imposed on accumulated earnings or personal holding companies unless additional dividends are distributed;

(ii) The corporation distributes dividends to its stockholders after the 15th day of the 3d month following the close of its taxable year and on or before December 15, 1955, which dividends are attributable to an increase in its accumulated taxable income or undistributed personal holding company income, as the case may be, resulting from the repeal of sections 452 and 462, and

(iii) The corporation elects in its statement, submitted under §1.9000–3, to have the provisions of section 4(c)(4) of the Act of June 15, 1955, apply:

Then such dividends shall be treated as having been paid on the last day of the taxable year to which the statement applies.

(2) *Regulated investment companies.* In the case of a regulated investment company taxable under section 852, if:

(i) The taxable income of the regulated investment company is increased by reason of the repeal of sections 452 and 462 (without regard to any deduction for dividends paid as provided for in this subparagraph);

(ii) The company distributes dividends to its stockholders after the 15th

day of the 3d month following the close of its taxable year and on or before December 15, 1955, which dividends are attributable to an increase in its investment company income resulting from the repeal of sections 452 and 462; and

(iii) The company elects in its statement, submitted under § 1.9000–3, to have the provisions of section 4(c)(4) of the Act of June 15, 1955, apply:

then such dividends are to be treated as having been paid on the last day of the taxable year to which the statement applies. The dividends paid are to be determined under this subparagraph without regard to the provisions of section 855.

(3) *Related provisions.* An election made under subparagraph (1) or (2) of this paragraph is irrevocable. The time for inclusion in the taxable income of the distributees of any distributions of the type described in subparagraph (1) or (2) of this paragraph shall be determined without regard to section 4(c)(4) of the Act of June 15, 1955, and §§ 1.9000–2 to 1.9000–8, inclusive.

RETIREMENT-STRAIGHT LINE ADJUSTMENT ACT OF 1958

SOURCE: Sections 1.9001 through 1.9001–4 contained in T.D. 6500, 25 FR 12158, Nov. 26, 1960, unless otherwise noted.

§ 1.9001 Statutory provisions; Retirement-Straight Line Adjustment Act of 1958.

Section 94 of the Technical Amendments Act of 1958 (72 Stat. 1669) provides as follows:

SEC. 94. *Change from retirement to straight line method of computing depreciation in certain cases*—(a) *Short title.* This section may be cited as the ''Retirement-Straight Line Adjustment Act of 1958''.

(b) *Making of election.* Any taxpayer who held retirement-straight line property on his 1956 adjustment date may elect to have this section apply. Such an election shall be made at such time and in such manner as the Secretary shall prescribe. Any election under this section shall be irrevocable and shall apply to all retirement-straight line property as hereinafter provided in this section (including such property for periods when held by predecessors of the taxpayer).

(c) *Retirement-straight line property defined.* For purposes of this section, the term ''retirement-straight line property'' means any property of a kind or class with respect to which the taxpayer or a predecessor (under the terms and conditions prescribed for him by the Commissioner) for any taxable year beginning after December 31, 1940, and before January 1, 1956, changed from the retirement to the straight line method of computing the allowance of deductions for depreciation.

(d) *Basis adjustments as of 1956 adjustment date.* If the taxpayer has made an election under this section, then in determining the adjusted basis on his 1956 adjustment date of all retirement-straight line property held by the taxpayer, in lieu of the adjustments for depreciation provided in section 1016(a) (2) and (3) of the Internal Revenue Code of 1954, the following adjustments shall be made (effective as of his 1956 adjustment date) in respect of all periods before the 1956 adjustment date:

(1) *Depreciation sustained before March 1, 1913.* For depreciation sustained before March 1, 1913, on retirement-straight line property held by the taxpayer or a predecessor on such date for which cost was or is claimed as basis and which either:

(A) *Retired before changeover.* Was retired by the taxpayer or a predecessor before the changeover date, but only if (i) a deduction was allowed in computing net income by reason of such retirement, and (ii) such deduction was computed on the basis of cost without adjustment for depreciation sustained before March 1, 1913. In the case of any such property retired during any taxable year beginning after December 31, 1929, the adjustment under this subparagraph shall not exceed that portion of the amount attributable to depreciation sustained before March 1, 1913, which resulted (by reason of the deduction so allowed) in a reduction in taxes under the Internal Revenue Code of 1954 or prior income, war-profits, or excess-profits tax laws.

(B) *Held on changeover date.* Was held by the taxpayer or a predecessor on the changeover date. This subparagraph shall not apply to property to which paragraph (2) applies.

The adjustment determined under this paragraph shall be allocated (in the manner prescribed by the Secretary) among all retirement-straight line property held by the taxpayer on his 1956 adjustment date.

(2) *Property disposed of after changeover and before 1956 adjustment date.* For that portion of the reserve prescribed by the Commissioner in connection with the changeover which was applicable to property:

(A) Sold, or

(B) With respect to which a deduction was allowed for Federal income tax purposes by reason of casualty or ''abnormal'' retirement in the nature of special obsolescence, if such sale occurred in, or such deduction was allowed for, a period on or after the changeover date and before the taxpayer's 1956 adjustment date.

(3) *Depreciation allowable from changeover to 1956 adjustment date.* For depreciation allowable, under the terms and conditions prescribed by the Commissioner in connection with the changeover, for all periods on and after the changeover date and before the taxpayer's 1956 adjustment date.

This subsection shall apply only with respect to taxable years beginning after December 31, 1955.

(e) *Effect on period from changeover to 1956 adjustment date.* If the taxpayer has made an election under this section, then in determining the adjusted basis of any retirement-straight line property as of any time on or after the changeover date and before the taxpayer's 1956 adjustment date, in lieu of the adjustments for depreciation provided in section 1016(a) (2) and (3) of the Internal Revenue Code of 1954 and the corresponding provisions of prior revenue laws, the following adjustments shall be made:

(1) *For prescribed reserve.* For the amount of the reserve prescribed by the Commissioner in connection with the changeover.

(2) *For allowable depreciation.* For the depreciation allowable under the terms and conditions prescribed by the Commissioner in connection with the changeover.

This subsection shall not apply in determining adjusted basis for purposes of section 437(c) of the Internal Revenue Code of 1939. This subsection shall apply only with respect to taxable years beginning on or after the changeover date and before the taxpayer's 1956 adjustment date.

(f) *Equity invested capital, etc.* If an election is made under this section, then (notwithstanding the terms and conditions prescribed by the Commissioner in connection with the changeover):

(1) *Equity invested capital.* In determining equity invested capital under sections 458 and 718 of the Internal Revenue Code of 1939, accumulated earnings and profits as of the changeover date, and as of the beginning of each taxable year thereafter, shall be reduced by the depreciation sustained before March 1, 1913, as computed under subsection (d)(1)(B); and

(2) *Definition of equity capital.* In determining the adjusted basis of assets for the purpose of section 437(c) of the Internal Revenue Code of 1939 (and in addition to any other adjustments required by such Code), the basis shall be reduced by depreciation sustained before March 1, 1913 (as computed under subsection (d)), together with any depreciation allowable under subsection (e)(2) for any period before the year for which the excess profits credit is being computed.

(g) *Definitions.* For purposes of this section:

(1) *Depreciation.* The term ''depreciation'' means exhaustion, wear and tear, and obsolescence.

(2) *Changeover.* The term ''changeover'' means a change from the retirement to the straight line method of computing the allowance of deductions for depreciation.

(3) *Changeover date.* The term ''changeover date'' means the first day of the first taxable year for which the changeover was effective.

(4) *1956 adjustment date.* The term ''1956 adjustment date'' means, in the case of any taxpayer, the first day of his first taxable year beginning after December 31, 1955.

(5) *Predecessor.* The term ''predecessor'' means any person from whom property of a kind or class to which this section refers was acquired, if the basis of such property is determined by reference to its basis in the hands of such person. Where a series of transfers of property has occurred and where in each instance the basis of the property was determined by reference to its basis in the hands of the prior holder, the term includes each such prior holder.

(6) The term ''Secretary'' means the Secretary of the Treasury or his delegate.

(7) The term ''Commissioner'' means the Commissioner of Internal Revenue.

§ 1.9001–1 Change from retirement to straight-line method of computing depreciation.

(a) *In general.* The Retirement-Straight Line Adjustment Act of 1958 (72 Stat. 1669), which is contained in section 94 of the Technical Amendments Act of 1958, approved September 2, 1958, provides various adjustments to be made by certain railroads which changed from the retirement to the straight-line method of computing the allowance of deductions for the depreciation of those roadway assets which are defined in this section as retirement-straight line property. The adjustments are available to all eligible taxpayers who make an irrevocable election to have the provisions of the Retirement-Straight Line Adjustment Act of 1958 apply. This election shall be made at the time and in the manner prescribed by this section. If an election is made in accordance with this section, then the provisions of the Act and of §§ 1.9001 to 1.9001–4, inclusive, shall apply. An election made in accordance with this section shall not be considered a change in accounting method for purposes of section 481 of the Code.

(b) *Making of election.* (1) Subsection (b) of the Act provides that any taxpayer who held retirement-straight line property on its 1956 adjustment

date may elect to have the provisions of the Act apply. The election shall be irrevocable and shall apply to all retirement-straight line property, including such property for periods when held by predecessors of the taxpayer.

(2) An election may be made in accordance with the provisions of this section even though the taxpayer has, at the time of election, litigated some or all of the issues covered by the provisions of the Act and has received from the courts a determination which is less favorable to the taxpayer than the treatment provided by the Act. Once an election has been made in accordance with the provisions of this section, the taxpayer may not receive the benefit of more favorable treatment, as a result of litigation, than that provided by the Act on the issues involved.

(3) The election to have the provisions of the Act apply shall be made by filing a statement to that effect, on or before January 11, 1960, with the district director for the internal revenue district in which the taxpayer's income tax return for its first taxable year beginning after December 31, 1955, was filed. A copy of this statement shall be filed with any amended return, or claim for refund, made under the Act.

(c) *Definitions*. For purposes of the Act and §§ 1.9001 to 1.9001–4, inclusive:

(1) *The Act*. The term *the Act* means the Retirement-Straight Line Adjustment Act of 1958, as contained in section 94 of the Technical Amendments Act of 1958 (72 Stat. 1669).

(2) *Commissioner*. The term *Commissioner* means the Commissioner of Internal Revenue.

(3) *Retirement-straight line property*. The term *retirement-straight line property* means any property of a kind or class with respect to which the taxpayer (or a predecessor of the taxpayer) changed, pursuant to the terms and conditions prescribed for it by the Commissioner, from the retirement to the straight-line method of computing the allowance for any taxable year beginning after December 31, 1940, and before January 1, 1956, of deductions for depreciation. The term does not include any specific property which has always been properly accounted for in accordance with the straight-line method of computing the depreciation allowances or which, under the terms-letter, was permitted or required to be accounted for under the retirement method.

(4) *Depreciation*. The term *depreciation* means exhaustion, wear and tear, and obsolescence.

(5) *Predecessor*. The term *predecessor* means any person from whom property of a kind or class to which the Act refers was acquired, if the basis of such property is determined by reference to its basis in the hands of such person. Where a series of transfers of property has occurred and where in each instance the basis of the property was determined by reference to its basis in the hands of the prior holder, the term includes each such prior holder.

(6) *Changeover*. The term *changeover* means a change from the retirement to the straight-line method of computing the allowance of deductions for depreciation.

(7) *Changeover date*. The term *changeover date* means the first day of the first taxable year for which the changeover was effective.

(8) *1956 adjustment date*. The term *1956 adjustment date* means, in the case of any taxpayer, the first day of its first taxable year beginning after December 31, 1955.

(9) *Terms-letter*. The term *terms-letter* means the terms and conditions prescribed by the Commissioner in connection with the changeover.

(10) *Terms-letter reserve*. The term *terms-letter reserve* means the reserve for depreciation prescribed by the Commissioner in connection with the changeover.

(11) *Depreciation sustained before March 1, 1913*. The term *depreciation sustained before March 1, 1913* may be construed to mean, to the extent that it is impossible to determine the actual amount of such depreciation from the books and records, that amount which is obtained by (i) deducting the ''cost of reproduction new less depreciation'' from the ''cost of reproduction new'', as ascertained as of the valuation date by the Interstate Commerce Commission under the provisions of section 19a of part I of the Interstate Commerce Act (49 U.S.C. 19a), and then (ii) making such retroactive adjustments to

the remainder as are required, in the opinion of the Commissioner of Internal Revenue, to properly reflect the depreciation sustained before March 1, 1913. For this purpose, any retirement-straight line property held on March 1, 1913, and retired on or before the valuation date shall be taken into account.

§ 1.9001–2 Basis adjustments for taxable years beginning on or after 1956 adjustment date.

(a) *In general.* Subsection (d) of the Act provides the basis adjustments required to be made by the taxpayer as of the 1956 adjustment date in respect of all periods before that date in order to determine the adjusted basis of all retirement-straight line property held by the taxpayer on that date. This adjusted basis on the 1956 adjustment date shall be used by the taxpayer for all purposes of the Code for any taxable year beginning after December 31, 1955. In order to arrive at the adjusted basis on the 1956 adjustment date, the taxpayer shall start with the unadjusted basis of all retirement-straight line property held on the changeover date by the taxpayer or a predecessor and shall, with respect to both the asset and reserve accounts, (1) make the adjustments prescribed by this section and subsection (d) of the Act and (2) also make those adjustments required, in accordance with the method of accounting regularly used, for those additions, retirements, and other dispositions of property which occurred on or after the changeover date and before the taxpayer's 1956 adjustment date. For an illustration of adjustments required in accordance with the method of accounting regularly used, see paragraph (e)(3) of this section. The adjustments required by subsection (d) of the Act shall be made in lieu of the adjustments for depreciation otherwise required by section 1016(a) (2) and (3) of the Code. The adjustments required by subsection (d) of the Act are set forth in paragraphs (b), (c), and (d) of this section.

(b) *Adjustment for depreciation sustained before March 1, 1913*—(1) *In general.* Subsection (d)(1) of the Act requires an adjustment to be made as of the 1956 adjustment date for depreciation sustained before March 1, 1913, on all retirement-straight line property held on March 1, 1913, by the taxpayer or a predecessor for which cost was or is claimed as basis and which was either (i) retired before the changeover date by the taxpayer or a predecessor or (ii) held on the changeover date by the taxpayer or a predecessor. This adjustment for depreciation sustained before March 1, 1913, shall be made in accordance with the conditions and limitations described in subparagraphs (2) and (3) of this paragraph and shall be allocated, in the manner prescribed in subparagraph (4) of this paragraph, among all retirement-straight line property held by the taxpayer on its 1956 adjustment date. The term ''cost'', when used in this paragraph with reference to the basis of property, shall be construed to mean the amount paid for the property or, if that amount could not be determined, then such other amount as was accepted by the Commissioner as ''cost'' for basis purposes.

(2) *Depreciation sustained on property retired before the changeover date.* Pursuant to subsection (d)(1)(A) of the Act, an adjustment to the basis of retirement-straight line property held by the taxpayer on its 1956 adjustment date shall be made as of that date for depreciation sustained before March 1, 1913, on all retirement-straight line property held on March 1, 1913, by the taxpayer or a predecessor for which cost was claimed as the basis and which was retired before the changeover date by the taxpayer or a predecessor, except that:

(i) The adjustment shall be made only if a deduction was allowed in computing net income by reason of the retirement and the deduction so allowed was computed on the basis of the cost of the property unadjusted for depreciation sustained before March 1, 1913, and

(ii) In the case of any such property retired during any taxable year beginning after December 31, 1929, the adjustment shall not exceed that portion of the amount attributable to depreciation sustained before March 1, 1913, which resulted, by reason of the deduction so allowed, in a reduction of taxes under the Code or under prior income, war-profits or excess-profits tax laws.

(3) *Depreciation sustained on property held on the changeover date.* Pursuant to subsection (d)(1)(B) of the Act, an adjustment to the basis of retirement-straight line property held by the taxpayer on its 1956 adjustment date shall be made as of that date for depreciation sustained before March 1, 1913, on all retirement-straight line property held on March 1, 1913, by the taxpayer or a predecessor for which cost was or is claimed as basis and which was held on the changeover date by the taxpayer or a predecessor. This subparagraph shall not apply, however, to any such property which (i) was disposed of on or after the changeover date by reason of sale, casualty, or abnormal retirement in the nature of special obsolescence, and (ii) is property to which paragraph (c) of this section and subsection (d)(2) of the Act apply.

(4) *Manner of allocating adjustment.* Pursuant to subsection (d)(1) of the Act, the amount of the adjustment required under this paragraph for depreciation sustained before March 1, 1913, which is attributable to a particular kind or class of retirement-straight line property held by the taxpayer on its 1956 adjustment date shall be made with respect to that kind or class of such property. If the adjustment required under this paragraph for depreciation sustained before March 1, 1913, is attributable to retirement-straight property of a particular kind or class no longer held by the taxpayer on its 1956 adjustment date, then the part of the adjustment to be allocated to any retirement-straight line property held by the taxpayer on its 1956 adjustment date shall be that amount which bears the same ratio to the adjustment as the unadjusted basis of the property so held bears to the entire unadjusted basis of all retirement-straight line property held by the taxpayer on its 1956 adjustment date.

(c) *Adjustment for part of terms-letter reserve applicable to property disposed of on or after changeover date and before 1956 adjustment date.* Pursuant to subsection (d)(2) of the Act, an adjustment to the basis of retirement-straight line property held by the taxpayer on its 1956 adjustment date shall be made as of that date for that part of the terms-letter reserve which was applicable to any retirement-straight line property disposed of by sale, casualty, or abnormal retirement in the nature of special obsolescence, but only if the sale occurred in, or a deduction by reason of such casualty or abnormal retirement was allowed for Federal income-tax purposes for a period on or after the changeover date and before the taxpayer's 1956 adjustment date. This paragraph shall apply even though, in computing the adjusted basis of the property for purposes of determining gain or loss on the sale, casualty, or abnormal retirement, the basis of the retirement-straight line property was not reduced by the part of the terms-letter reserve applicable to the property. If necessary, the adjustment required by this paragraph shall be allocated, in the manner prescribed in paragraph (b)(4) of this section, among all retirement-straight line property held by the taxpayer on its 1956 adjustment date.

(d) *Adjustment for depreciation allowable under the terms-letter for periods on and after the changeover date and before the 1956 adjustment date.* Pursuant to subsection (d)(3) of the Act, an adjustment to the basis of retirement-straight line property held by the taxpayer on its 1956 adjustment date shall be made as of that date for the entire amount of depreciation allowable under the terms-letter for all periods on and after the changeover date and before the taxpayer's 1956 adjustment date. This adjustment shall include all such depreciation allowable with respect to any retirement-straight line property which was disposed of on or after the changeover date and before the 1956 adjustment date.

(e) *Illustration of basis adjustments required for taxable years beginning on or after the 1956 adjustment date.* The application of this section may be illustrated by the following example, which is based upon the assumption that multiple asset accounts are used:

Example. (1) Assume that on its changeover date, January 1, 1943, the taxpayer or its predecessor held retirement-straight line property with an unadjusted cost basis of $10,000. The terms-letter reserve established as of January 1, 1943, with respect to such property was $3,000. Depreciation sustained before March 1, 1913, on retirement-straight

line property held on that date by the taxpayer or its predecessor, for which cost was or is claimed as basis, amounts to $800. Of this total depreciation sustained before March 1, 1913, $200 is attributable to retirement-straight line property retired before January 1, 1943, under circumstances requiring the adjustment under paragraph (b)(2) of this section, and $600 is attributable to retirement-straight line property held on January 1, 1943, by the taxpayer or its predecessor. On December 31, 1954, retirement-straight line property costing $1,500 was permanently retired under circumstances giving rise to an abnormal retirement in the nature of special obsolescence. The terms-letter reserve applicable to this retired property was $450, of which $120 represents depreciation sustained before March 1, 1913. On December 31, 1954, retirement-straight line property costing $1,000 was also permanently retired under circumstances giving rise to a normal retirement. None of the property retired on December 31, 1954, had any market or salvage value on that date. Depreciation allowable under the terms-letter on retirement-straight line property for all periods on and after January 1, 1943, and before January 1, 1956 (the taxpayer's 1956 adjustment date), amounts to $2,155, of which $345 is applicable to the property retired as an abnormal retirement.

(2) The reserve for depreciation as of January 1, 1956, contains a credit balance of $3,360, determined as follows but without regard to the Act:

(i) Credits to reserve:		
Terms-letter reserve as of January 1, 1943		$3,000
Depreciation allowable under terms-letter from January 1, 1943, to December 31, 1955		2,155
Balance		5,155
(ii) Charges to reserve:		
Part of terms-letter reserve applicable to property abnormally retired	$450	
Depreciation applicable to property abnormally retired and allowable from January 1, 1943, to December 31, 1954	345	
Adjustment for normal retirement	1,000	
		$1,795
(iii) Balance as of January 1, 1956		3,360

(3) The adjusted basis on January 1, 1956, of the retirement-straight line property held by the taxpayer on that date is $6,010, determined as follows and in accordance with this section:

(i) Asset account:		
Unadjusted cost on January 1, 1943		$10,000
Less:		
Adjustment for abnormal retirement	$1,500	
Adjustment for normal retirement	1,000	
		2,500
Balance as of January 1, 1956		7,500
(ii) Credits to reserve for depreciation:		
Depreciation sustained before March 1, 1913, on—		
Property retired before January 1, 1943		200
Property held on January 1, 1943	$600	
Less part of such depreciation sustained on property abnormally retired on December 31, 1954	120	
		480
Part of terms-letter reserve applicable to property abnormally retired on December 31, 1954 (including $120 depreciation sustained before March 1, 1913)		450
Depreciation allowable under terms-letter from January 1, 1943, to December 31, 1955		2,155
Total Credits		3,285
(iii) Charges to reserve for depreciation:		
Part of terms-letter reserve applicable to property abnormally retired		450
Depreciation applicable to property abnormally retired and allowable from January 1, 1943, to December 31, 1954		345
Adjustment for normal retirement		1,000
Total charges		1,795
(iv) Balance in reserve for depreciation:		
Total credits		3,285
Total charges		1,795
Balance as of January 1, 1956		1,490
(v) Adjusted basis of property:		
Balance in asset account		7,500
Balance in reserve for depreciation		1,490
Adjusted basis as of January 1, 1956		6,010

(4) The following adjustments to the reserve determined under subparagraph (2) of this paragraph may be made in order to arrive at the reserve determined under subparagraph (3)(iv) of this paragraph:

(i) Credit balance in reserve, as determined under subparagraph (2) of this paragraph		$3,360
(ii) Credit adjustments:		
Depreciation sustained before March 1, 1913, on—		
Property retired before January 1, 1943	$200	
Property held on January 1, 1943	480	
Part of terms-letter reserve applicable to property abnormally retired on December 31, 1954	450	
		1,130
Balance		4,490

(iii) Debit adjustment:	
Terms-letter reserve as of January 1, 1943	3,000
(iv) Credit Balance in reserve, as determined under subparagraph (3)(iv) of this paragraph ..	1,490

(5) The $6,010 adjusted basis as of January 1, 1956, of the retirement-straight line property held by the taxpayer on that date is to be recovered over the estimated remaining useful life of that property. The remaining useful life of the property will be reviewed regularly, and appropriate adjustments in the rates will be made as necessary in order to spread the remaining cost less estimated salvage over the estimated remaining useful life of the property. See § 1.167(a)–1.

§ 1.9001–3 Basis adjustments for taxable years between changeover date and 1956 adjustment date.

(a) *In general.* (1) Subsection (e) of the Act provides the adjustments required to be made in determining the adjusted basis of any retirement-straight line property as of any time on or after the changeover date and before the taxpayer's 1956 adjustment date. This adjusted basis shall be used for all purposes of the Internal Revenue Code of 1939 and the Internal Revenue Code of 1954 for taxable years beginning on or after the changeover date and before the taxpayer's 1956 adjustment date, except as provided in subparagraph (4) of this paragraph. The adjustments so required, which are set forth in paragraphs (b) and (c) of this section, shall not be used in determining the adjusted basis of property for taxable years beginning before the changeover date or on or after the taxpayer's 1956 adjustment date.

(2) In order to arrive at the adjusted basis as of any specific date occurring on or after the changeover date and before the 1956 adjustment date, the taxpayer shall start with the unadjusted basis of all retirement-straight line property held on the changeover date by the taxpayer or its predecessor and shall, as of that specific date and with respect to both the asset and reserve accounts, (i) make the adjustments prescribed by this section and subsection (e) of the Act and (ii) also make those adjustments required, in accordance with the method of accounting regularly used, for additions, retirements, and other dispositions of property. For an illustration of adjustments required in accordance with the method of accounting regularly used, see the example in paragraph (d) of this section.

(3) The adjustments required by subsection (e) of the Act shall be made in lieu of the adjustments for depreciation otherwise required by section 1016(a) (2) and (3) of the Code and by the corresponding provisions of prior revenue laws.

(4) Although this section, and subsection (e) of the Act, shall apply in determining the excess-profits tax, they shall not apply in determining adjusted basis for the purpose of computing equity capital for any day under section 437(c) (relating to the Excess Profits Tax Act of 1950) (64 Stat. 1137) of the Internal Revenue Code of 1939. For the adjustments to be made in computing equity capital under such section, see paragraph (c) of § 1.9001–4.

(b) *Adjustment for terms-letter reserve.* Pursuant to subsection (e)(1) of the Act, the basis of any retirement-straight line property shall be adjusted, as of any specific applicable date occurring on or after the changeover date and before the 1956 adjustment date, for the amount of the terms-letter reserve applicable to such property.

(c) *Adjustment for depreciation allowable under the terms-letter.* Pursuant to subsection (e)(2) of the Act, the basis of any retirement-straight line property shall be adjusted, as of any specific applicable date occurring on or after the changeover date and before the 1956 adjustment date, for depreciation applicable to such property and allowable under the terms-letter.

(d) *Illustration of basis adjustments required for taxable years beginning on or after the changeover date and before the 1956 adjustment date.* The application of this section may be illustrated by the following example, which is based upon the assumption that multiple asset accounts are used:

Example. (1) The facts are assumed to be the same as those in the example under paragraph (e) of § 1.9001–2, except that the adjusted basis of retirement-straight line property is determined as of January 1, 1955, and the depreciation allowable under the terms-letter from the changeover date to December 31, 1954, is $2,100.

(2) The adjusted basis on January 1, 1955, of the retirement-straight line property held by

the taxpayer on that date is $4,195, determined as follows and in accordance with this section:

(i) Asset account:		
Unadjusted cost on January 1, 1943		$10,000
Less:		
Adjustment for abnormal retirement	$1,500	
Adjustment for normal retirement	1,000	
		2,500
Balance as of January 1, 1955		7,500
(ii) Credits to reserve for depreciation:		
Entire terms-letter reserve as of January 1, 1943		3,000
Depreciation allowable under terms-letter from January 1, 1943, to December 31, 1954		2,100
Total credits		5,100
(iii) Charges to reserve for depreciation:		
Part of terms-letter reserve applicable to property abnormally retired on December 31, 1954		450
Depreciation applicable to property abnormally retired and allowable from January 1, 1943, to December 31, 1954		345
Adjustment for normal retirement		1,000
Total charges		1,795
(iv) Balance in reserve for depreciation:		
Total credits		5,100
Total charges		1,795
Balance as of January 1, 1955		3,305
(v) Adjusted basis of property:		
Balance in asset account		7,500
Balance in reserve for depreciation		3,305
Adjusted basis as of January 1, 1955		4,195

§ 1.9001–4 Adjustments required in computing excess-profits credit.

(a) *In general.* Subsection (f) of the Act provides adjustments required to be made in computing the excess-profits credit for any taxable year under the Excess Profits Tax Act of 1940 (54 Stat. 975) or under the Excess Profits Tax Act of 1950 (64 Stat. 1137). These adjustments are set forth in paragraphs (b) and (c) of this section, and they shall apply notwithstanding the terms-letter.

(b) *Equity invested capital.* (1) Pursuant to subsection (f)(1) of the Act, in determining equity invested capital for any day of any taxable year under section 458 (relating to the Excess Profits Tax Act of 1950) or section 718 (relating to the Excess Profits Tax Act of 1940) of the Internal Revenue Code of 1939, the accumulated earnings and profits as of the changeover date, and as of the beginning of each taxable year thereafter, shall be reduced by the depreciation sustained before March 1, 1913, on all retirement-straight line property held on March 1, 1913, by the taxpayer or a predecessor for which cost was or is claimed as basis and which was held on the changeover date by the taxpayer or a predecessor.

(2) For the computation of accumulated earnings and profits in determining equity invested capital, see 26 CFR (1941 Supp.) 30.718–2, as amended by Treasury Decision 5299, approved October 1, 1943, 8 FR 13451, C.B. 1943, 747 (Regulations 109); 26 CFR (1943 Cum. Supp.) 35.718–2 (Regulations 112); and 26 CFR (1939) 41.458–4 (Regulations 130).

(c) *Equity capital.* (1) Pursuant to subsection (f)(2) of the Act, in determining the adjusted basis of assets for the purpose of computing equity capital for any day under section 437(c) (relating to the Excess Profits Tax Act of 1950) of the Internal Revenue Code of 1939, the basis of the assets which enter into the computation shall also be reduced by:

(i) Depreciation sustained before March 1, 1913, on all retirement-straight line property held on March 1, 1913, by the taxpayer or a predecessor for which cost was or is claimed as basis and which was:

(*a*) Retired before the changeover date by the taxpayer or a predecessor, or

(*b*) Held on the changeover date by the taxpayer or a predecessor and also held as of the beginning of the day for which the equity capital is being determined; and

(ii) All depreciation applicable to the assets which enter into the computation and allowable under the terms-letter for all periods on and after the changeover date and before the taxable year for which the excess-profits credit is being computed.

(2) The adjustment required to be made by subparagraph (1)(i)(*a*) of this paragraph as of the beginning of the day for which the equity capital is being determined shall be made in accordance with the conditions and limitation described in paragraph (b)(2) of § 1.9001–2.

(3) For the determination of equity capital under section 437(c) of the Internal Revenue Code of 1939, see 26 CFR (1939) 40.437–5 (Regulations 130).

DEALER RESERVE INCOME ADJUSTMENT ACT OF 1960

§ 1.9002 Statutory provisions; Dealer Reserve Income Adjustment Act of 1960 (74 Stat. 124).

SECTION 1. *Short title.* This Act may be cited as the ''Dealer Reserve Income Adjustment Act of 1960''.

SEC. 2. *Persons to whom this Act applies.* This Act shall apply to any person who, for his most recent taxable year ending on or before June 22, 1959:

(1) Computed, or was required to compute, taxable income under an accrual method of accounting.

(2) Treated any dealer reserve income, which should have been taken into account (under the accrual method of accounting) for such taxable year, as accruable for a subsequent taxable year, and

(3) Before September 1, 1960, makes an election under section 3(a) or 4(a) of this Act.

SEC. 3. *Election to have section 481 apply—(a) General rule.* If:

(1) For the year of the change (determined under subsection (b)), the treatment of dealer reserve income by any person to whom this Act applies is changed to a method proper under the accrual method of accounting (whether or not such person initiated the change),

(2) Such person makes an election under this subsection, and

(3) Such person does not make the election provided by section 4(a),

then, for purposes of section 481 of the Internal Revenue Code of 1954, the change described in paragraph (1) shall be treated as a change in method of accounting not initiated by the taxpayer.

(b) *Year of change, etc.* In applying section 481 of the Internal Revenue Code of 1954 for purposes of this section, the ''year of the change'' in the case of any person is:

(1) Except as provided in paragraph (2), the first taxable year ending after June 22, 1959, or

(2) The earliest taxable year (whether the Internal Revenue Code of 1954 or the Internal Revenue Code of 1939 applies to such year) for which:

(A) On or before June 22, 1959:

(i) The Secretary of the Treasury or his delegate issued a notice of deficiency, or a written notice of a proposed deficiency, with respect to dealer reserve income, or

(ii) Such person filed with the Secretary or his delegate a claim for refund or credit with respect to dealer reserve income, and

(B) The assessment of any deficiency, or the refund or credit of any overpayment, whichever is applicable, was not, on June 21, 1959, prevented by the operation of any law or rule of law.

For purposes of this section, section 481 of such Code shall be treated as applying to any year of the change to which the Internal Revenue Code of 1939 applies.

SEC. 4. *Election to have section 481 not apply; payment in installments*—(a) *General rule.* If a person to whom this Act applies makes an election under this subsection, then for purposes of Chapter 1 of the Internal Revenue Code of 1954 (and the corresponding provisions of prior law) a change in the treatment of dealer reserve income to a method proper under the accrual method of accounting shall be treated as not a change in method of accounting in respect of which section 481 of the Internal Revenue Code of 1954 applies. Any election under this subsection shall apply to all taxable years ending on or before June 22, 1959 (whether the provisions of the Internal Revenue Code of 1954 or the corresponding provisions of prior law apply), for which the assessment of any deficiency, or for which refund or credit of any overpayment, whichever is applicable, was not, on June 21, 1959, prevented by the operation of any law or rule of law.

(b) *Election to pay tax in installments*—(1) *Eligibility.* If the net increase in tax (as defined in paragraph (2)) which results solely from the effect of the election provided by subsection (a) exceeds $2,500, then the taxpayer may elect (at the time the election is made under subsection (a)) to pay in two or more (but not to exceed 10) equal annual installments any portion of such net increase which (on the date of such election) is unpaid.

(2) *Net increase in tax defined.* For purposes of this section, the term ''net increase in tax'' means the amount (if any) by which:

(A) The sum of the increases in tax (including interest) for all taxable years to which the election applies and which is attributable to the election, exceeds

(B) The sum of the decreases in tax (including interest) for all taxable years to which the election applies and which is attributable to the election.

For purposes of this paragraph, interest for the period before the date of the election shall be computed as provided in Chapter 67 of the Internal Revenue Code of 1954 (or the corresponding provisions of prior revenue laws).

(c) *Due date for installments.* If an election is made under subsection (b), the first installment shall be paid on or before the date prescribed by section 6151(a) of the Internal Revenue Code of 1954 for payment of the tax for the taxable year in which the election was made, and each succeeding installment

shall be paid on or before the date which is one year after the date prescribed by this subsection for payment of the preceding installment.

(d) *Effect of subsequent redetermination of tax*—(1) *Redetermination*. If:

(A) The taxpayer makes an election under subsection (b), and

(B) There is a redetermination of the taxpayer's tax for any taxable year to which the election provided by subsection (a) applies,

then the net increase in tax (as defined in subsection (b)(2) shall be redetermined.

(2) *Effect of increase*. If the redetermination described in paragraph (1)(B) results in an increase in the net increase in tax (as defined in subsection (b)(2)), the resulting increase shall be prorated to all the installments. The part of such resulting increase so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of such resulting increase so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary of the Treasury or his delegate.

(3) *Effect of decrease*. For treatment of a decrease in the net increase in tax as the result of a redetermination described in paragraph (1)(B), see section 6403 of the Internal Revenue Code of 1954 (relating to overpayment of installment).

(e) *Suspension of interest*—(1) *In general*. If an election under subsection (a) applies and there is a net increase in tax (as defined in subsection (b)(2)), no interest shall be imposed on any underpayment (and no interest shall be paid on any overpayment) attributable to such election for the period beginning on the date of such election and ending on the date prescribed by section 6151(a) of the Internal Revenue Code of 1954 for payment of the tax for the taxable year in which the election was made.

(2) *No interest during installment period*. If an election under subsection (b) applies, no interest shall be imposed for the period on or after the date fixed for payment of the first installment unless payment of unpaid installments is accelerated under subsection (f) or (g).

(3) *Interest where payment is accelerated*. If payment is accelerated under subsection (f) or (g), interest determined in accordance with the provisions of section 6601 of the Internal Revenue Code of 1954 on the entire unpaid tax shall be payable:

(A) If payment is accelerated under subsection (f), from the date of notice and demand provided by such subsection to the date such tax is paid, or

(B) If payment is accelerated under subsection (g), from the date fixed for paying the unpaid installment to the date such tax is paid.

(f) *Termination of installment payment privilege*. The extension of time provided by this section for payment of tax shall cease to apply, and any unpaid installments shall be paid upon notice and demand from the Secretary of the Treasury or his delegate, if:

(1) In the case of a taxpayer who is an individual, he dies or ceases to engage in a trade or business,

(2) In the case of a taxpayer who is a partner, the entire interest of such partner is transferred or liquidated or the partnership terminates, or

(3) In the case of a taxpayer which is a corporation, the taxpayer ceases to engage in a trade or business, unless the unpaid portion of the tax payable in installments is required to be taken into account by the acquiring corporation under section 5(d).

(g) *Failure to pay installment*. If any installment under this section is not paid on or before the date fixed for its payment by this section (including any extension of time for payment of such installment), the unpaid installments shall be paid upon notice and demand from the Secretary of the Treasury or his delegate.

(h) *Suspension of running of periods of limitation*. The running of the periods of limitation provided by section 6502 of the Internal Revenue Code of 1954 (or corresponding provision of prior law) for the collection of any amount of tax payable in installments under this section shall be suspended for the period of any extension of time for payment granted under this section.

SEC. 5. *Definitions; special rules*—(a) *Dealer reserve income*. For purposes of this Act, the term ''dealer reserve income'' means:

(1) That part of the consideration derived by any person from the sale or other disposition of customers' sales contracts, notes, and other evidences of indebtedness (or derived from customers' finance charges connected with such sales or other dispositions) which is:

(A) Attributable to the sale by such person to such customers, in the ordinary course of his trade or business, of real property or tangible personal property, and

(B) Held in a reserve account, by the financial institution to which such person disposed of such evidences of indebtedness, for the purpose of securing obligations of such person or of such customers, or both; and

(2) That part of the consideration:

(A) Derived by any person from a sale described in paragraph (1)(A) in respect of which part or all of the purchase price of the property sold is provided by a financial institution to or for the customer to whom such property is sold, or

(B) Derived by such person from finance charges connected with the financing of such sale,

which is held in a reserve account by such financial institution for the purpose of securing obligations of such person or of such customer, or both.

(b) *Financial institution*. For purposes of this Act, the term ''financial institution'' means any person regularly engaged in the business of acquiring evidences of indebtedness of the kind described in subsection (a)(1), or of financing sales of the kind described in subsection (a)(2), or both.

(c) *Other terms; application of other laws*. Except where otherwise distinctly expressed or manifestly intended, terms used in this Act shall have the same meaning as when used in the Internal Revenue Code of 1954 and all provisions of law shall apply with respect to this Act as if this Act were a part of such Code.

(d) *Acquiring corporation*. In the case of the acquisition of assets of a corporation by another corporation in a distribution or transfer described in section 381(a) of the Internal Revenue Code of 1954, the acquiring corporation shall, for purposes of this Act, be treated as if it were the distributor or transferor corporation.

(e) *Statutes of limitations*—(1) *Extension of period for assessment and refund or credit*. For purposes of applying sections 3 and 4 of this Act, if the assessment of any deficiency, or the refund or credit of any overpayment, for any taxable year was not prevented on June 21, 1959, by the operation of any law or rule of law, but would be so prevented prior to September 1, 1961, the period within which such assessment, or such refund or credit, may be made shall not expire prior to September 1, 1961. An election by a taxpayer under section 3 or 4 of this Act shall be considered as a consent to the application of the provisions of this subsection.

(2) *Years closed by closing agreement or compromise*. For purposes of this Act, if the assessment of any deficiency, or the refund or credit of any overpayment, for any taxable year is prevented on the date of an election under section 3 or 4 of this Act by the operation of the provisions of Chapter 74 of the Internal Revenue Code of 1954 (relating to closing agreements and compromises) or by the corresponding provisions of the Internal Revenue Code of 1939, such assessment, or such refund or credit, shall be considered as having been prevented on June 21, 1959.

(f) *Regulations*. The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this Act, including regulations relating to:

(1) The application of the provisions of this Act in the case of partnerships, and

(2) The manner in which the elections provided by this Act are to be made.

[T.D. 6490, 25 FR 8369, Sept. 1, 1960]

§ 1.9002–1 Purpose, applicability, and definitions.

(a) *In general*. The Dealer Reserve Income Adjustment Act of 1960 (74 Stat. 124) contains transitional provisions relating to adjustments to income resulting from a change in the income tax treatment of dealer reserve income. The purpose of the Act is to provide eligible taxpayers who elect to have its provisions apply with two alternatives for accounting for the adjustments to income resulting from a change to a proper method of reporting dealer reserve income. The Act also provides certain taxpayers with an election to pay in installments any net increase in tax. Eligible taxpayers must make any election under the provisions of the Act prior to September 1, 1960. If any election is made, then the applicable provisions of the Act and §§ 1.9002–1 to 1.9002–8, inclusive, shall apply.

(b) *Eligibility to elect*. In order to be eligible to make any of the elections provided by the Act, a taxpayer must have, for his most recent taxable year ending on or before June 22, 1959, (1) computed, or been required to compute, taxable income under an accrual method of accounting, and (2) treated dealer reserve income (or portions thereof) which should have been taken into account (under the accrual method of accounting) for such most recent taxable year as accruable for a subsequent taxable year. Thus, the elections provided by the Act are not available to a person who, for his most recent taxable year ending on or before June 22, 1959, reported dealer reserve income under a method proper under the accrual method of accounting or who was not required to compute taxable income under the accrual method of accounting. An election may be made even though the taxpayer is litigating his liability for income tax based upon his treatment of dealer reserve income, whether in The Tax Court of the United States or any other court, and an election filed by a taxpayer who is litigating his liability for income tax based upon his treatment of dealer reserve income does not constitute a waiver of his right to continue pending litigation until final judicial determination. He must, however, comply

with the provisions of the Act and the regulations thereunder.

(c) *Definitions*. For purposes of the Act and §§ 1.9002–1 to 1.9002–8, inclusive:

(1) *The Act*. The term *the Act* means the Dealer Reserve Income Adjustment Act of 1960 (74 Stat. 124).

(2) *Dealer reserve income*. The term *dealer reserve income* means:

(i) That part of the consideration derived by any person from the sale or other disposition of customers' sales contracts, notes, and other evidences of indebtedness (or derived from customers' finance charges connected with such sales or other dispositions) which is:

(*a*) Attributable to the sale by such person to such customers, in the ordinary course of his trade or business, of real property or tangible personal property, and

(*b*) Held in a reserve account, by the financial institution to which such person disposed of such evidences of indebtedness, for the purpose of securing obligations of such person or of such customers, or both; and

(ii) That part of the consideration:

(*a*) Derived by any person from a sale described in subdivision (i)(*a*) of this subparagraph in respect of which part or all of the purchase price of the property sold is provided by a financial institution to or for the customer to whom such property is sold, or

(*b*) Derived by such person from finance charges connected with the financing of such sale, which is held in a reserve account by such financial institution for the purpose of securing obligations of such person or of such customer, or both. Thus, the term includes amounts held in a reserve account by a financial institution in transactions in which the customer becomes obligated to the institution as well as such amounts so held by a financial institution in transactions in which the taxpayer is the obligee on the contract, note, or other evidence of indebtedness. For purposes of the definition of the term ''dealer reserve income'' it is immaterial whether or not the taxpayer guarantees the customer's obligation in excess of the reserve retained by the financial institution. The term does not include the consideration derived from transactions relating to the sale of intangible property such as stocks, bonds, copyrights, patents, etc. Further, the term does not include consideration derived by the taxpayer from transactions relating to the sale of property by a person not the taxpayer or to casual sales of property not in the ordinary course of the taxpayer's trade or business.

(3) *Financial institution*. The term *financial institution* means any person regularly engaged in the business of acquiring evidences of indebtedness of the kind described in section 5(a)(1) of the Act, or of financing sales of the kind described in section 5(a)(2) of the Act, or both. It thus includes banking institutions, finance companies, building and loan associations, and other similar type organizations, as well as an individual or partnership regularly engaged in the described business.

(4) *Taxpayer*. The term *taxpayer* means any person to whom the Act applies.

(5) *Other terms*. All other terms which are not specifically defined shall have the same meaning as when used in the Code except where otherwise distinctly expressed or manifestly intended.

[T.D. 6490, 25 FR 8371, Sept. 1, 1960]

§ 1.9002–2 Election to have the provisions of section 481 of the Internal Revenue Code of 1954 apply.

(a) *In general*. Section 3(a) of the Act provides that if the income tax treatment of dealer reserve income by the taxpayer is changed (whether or not such change is initiated by the taxpayer) to a proper method under the accrual method of accounting, then the taxpayer may elect to have such change treated as a change in method of accounting not initiated by the taxpayer to which the provisions of section 481 of the Code apply. This election may be made only when the alternative election under section 4(a) of the Act has not been exercised.

(b) *Year of change*. Where an election has been made under section 3(a) of the Act to have section 481 of the Code apply, then for purposes of applying section 481 of the Code the year of change shall be determined in accordance with the provisions of section 3(b) of the Act. Section 3(b) provides that the year of change is the earlier of (1)

the first taxable year ending after June 22, 1959, or (2) the earliest taxable year for which, on or before June 22, 1959,

(i) There was issued a notice of deficiency or written notice of a proposed deficiency attributable to the erroneous treatment of dealer reserve income, or

(ii) The taxpayer filed a claim for refund or credit with respect to the treatment of such income,

and in respect of which the assessment of any deficiency, or the refund or credit of any overpayment, was not prevented on June 21, 1959, by the operation of any law or rule of law. The written notice of proposed deficiency includes a 15- or 30-day letter issued under established procedure or other similar written notification.

(c) *Application to pre-1954 Code years.* If the earliest year described in paragraph (b) of this section is a year subject to the Internal Revenue Code of 1939 in respect of which assessment of any deficiency or refund or credit of any overpayment was not prevented on June 21, 1959, by the operation of any law or rule of law, section 481 of the Internal Revenue Code of 1954 shall be treated as applying in the same manner it would have applied had it been enacted as part of the Internal Revenue Code of 1939.

(d) *Examples.* The operation of this section in determining the year of change may be illustrated by the following examples:

Example 1. D, a taxpayer on the calendar year basis who employs the accrual method of accounting, voluntarily changed to the proper method of accounting for dealer reserve income for the taxable year 1959. A statutory notice of deficiency, however, was issued prior to June 23, 1959, relating to the erroneous treatment of such income for the taxable year 1956, which was the earliest taxable year in respect of which assessment of a deficiency or credit or refund of an overpayment was not prevented on June 21, 1959. Prior to September 1, 1960, D properly exercises his election under section 3 of the Act to have the change in the treatment of dealer reserve income treated as a change in method of accounting not initiated by the taxpayer to which section 481 of the Code applies. Under these facts, 1956 is the year of the change for purposes of applying section 481. Accordingly, the net amount of any adjustment found necessary as a result of the change in the treatment of dealer reserve income which is attributable to taxable years subject to the 1954 Code shall be taken into account for the year of change in accordance with section 481. The net amount of the adjustments attributable to pre-1954 Code years is to be disregarded. The income of each taxable year succeeding the year of change in respect of which the assessment of any deficiency or refund or credit of any overpayment is not prevented will be recomputed under the proper method of accounting initiated by the change.

Example 2. Assume the same facts as set forth in example (1), except that no notice of a proposed deficiency of any type has been issued, and assume further that no claim for refund has been filed. Since there was no earlier year open on June 21, 1959, for which the taxpayer either was notified of a proposed deficiency attributable to the erroneous treatment of dealer reserve income or for which he had filed a claim for refund or credit with respect to the treatment of such income, the year of change is 1959, the first taxable year ending after June 22, 1959. Accordingly, the net amount of any adjustment found necessary as a result of the change in the treatment of dealer reserve income which is attributable to taxable years subject to the 1954 Code shall be taken into account for the year of the change in accordance with section 481. The net amount of the adjustments attributable to pre-1954 Code years is to be disregarded.

Example 3. Assume the same facts as set forth in example (1), except that a refund claim specifying adjustments relative to dealer reserve income was timely filed for the taxable year 1951, which was the earliest taxable year for which a refund or credit of an overpayment or assessment of a deficiency was not prevented on June 21, 1959. Under this factual situation, the year of change for purposes of applying section 481 would be 1951. Section 481 would be applied to 1951 and be given effect for that year in the same manner as it would have applied had it been enacted as a part of the 1939 Code and as if the change to the proper method of accounting had not been initiated by the taxpayer. Any adjustment with regard to dealer reserve income attributable to pre-1951 years is disregarded. The income of each taxable year succeeding the year of change in respect of which the assessment of any deficiency or refund or credit of any overpayment is not prevented will be recomputed under the proper method of accounting initiated by the change.

[T.D. 6490, 25 FR 8371, Sept. 1, 1960]

§ 1.9002–3 Election to have the provisions of section 481 of the Internal Revenue Code of 1954 not apply.

Section 4(a) of the Act provides that in the treatment of dealer reserve income by the taxpayer is changed to a method proper under the accrual method of accounting, then the taxpayer may elect to have such change treated as not a change in method of accounting to which the provisions of section 481 of the Internal Revenue Code of 1954 apply. This election shall apply to all taxable years ending on or before June 22, 1959, for which the assessment of any deficiency, or for which refund or credit of any overpayment, was not prevented on June 21, 1959, by the operation of any law or rule of law. This election may be made only if the alternative election under section 3(a) of the Act has not been exercised. If an election is made under section 4(a) of the Act, taxable income (or net income in the case of a taxable year to which the Internal Revenue Code of 1939 applies) shall be recomputed under a proper method of accounting for dealer reserve income for each taxable year to which the election applies, without regard to section 481.

[T.D. 6490, 25 FR 8372, Sept. 1, 1960]

§ 1.9002–4 Election to pay net increase in tax in installments.

(a) *Election*. If an election is made under section 4(a) of the Act and if the net increase in tax determined in accordance with paragraph (b) of this section exceeds $2,500, the taxpayer may also make an election under section 4(b) of the Act prior to September 1, 1960, to pay any portion of such net increase in tax, unpaid on the date of the election, in 2 or more, but not to exceed 10, equal annual installments. If the taxpayer making the election under section 4(a) of the Act is a partnership or a small business corporation electing under Subchapter S, Chapter 1 of the Code, the determination as to whether the net increase in tax exceeds $2,500 shall be made separately as to each partner or shareholder, respectively, with regard to his individual liability. Thus, if a partnership makes an election under section 4(a) of the Act, and partners A and B had a net increase in tax of $3,000 and $2,000, respectively, as a result of dealer reserve income adjustments to partnership income, partner A may elect under section 4(b) of the Act to pay the net increase in 2 or more, but not exceeding 10, equal annual installments to the extent that such tax was unpaid on the date of the election. Partner B may not make the election since his net increase in tax does not exceed $2,500.

(b) *Net increase in tax*. (1) The term ''net increase in tax'' means the amount by which the sum of the increases in tax (including interest) for all taxable years to which the election under section 4(a) of the Act applies and which is attributable to the election exceeds the sum of the decreases in tax (including interest) for all taxable years to which the election under such section applies and which is attributable to the election.

(2) In determining the net increase in tax, the tax and interest for each taxable year to which the election applies is computed by taking into account all adjustments necessary to reflect the change to the proper treatment of dealer reserve income. If the computation results in additional tax for a taxable year, then interest is computed under section 6601 of the Code (or corresponding provisions of prior law) on such additional tax for the taxable year involved from the last date prescribed for payment of the tax for such taxable year to the date the election is made. The interest so computed is then added to the additional tax determined for such taxable year. The sum of these two items (tax plus interest) represents the increase in tax for such taxable year. If the computation of the tax after taking into account the appropriate dealer reserve income adjustments results in a reduction in tax for any taxable year to which the election applies, interest under section 6611 of the Code (or corresponding provisions of prior law) is computed from the date of the overpayment of the tax for such year to the date of the election. The amount of the interest so computed is then added to the reduction in tax to determine the total decrease in tax for such year. The net increase in tax is then determined by adding together the total increases in tax for each year to which the election applies and from

the resulting total subtracting the sum of the total decreases in tax for each year. If the total increases in tax for all such years do not exceed the total decreases in tax, there is no net increase in tax for purposes of section 4(b) of the Act. For purposes of determining the net increase in tax, net operating losses affecting the computation of tax for any prior taxable year not otherwise affected shall be taken into account.

(c) *Time for paying installments.* If the election under this section is made to pay the unpaid portion of the net increase in tax in installments, the first installment shall be paid on or before the date prescribed by section 6151(a) of the Code for payment of the tax for the taxable year in which such election is made. Each succeeding installment shall be paid on or before the date which is one year after the date prescribed for the payment of the preceding installment.

(d) *Termination of installment privilege*—(1) *For nonpayment of installment.* The extension of time provided by section 4(b) of the Act for payment of the net increase in tax in installments shall terminate, and any unpaid installments shall be paid upon notice and demand from the district director if any installment under such section is not paid by the taxpayer on or before the date fixed for its payment, including any extension of time for payment of any such installment.

(2) *For other reasons.* The extension of time provided by section 4(b) of the Act for payment of the net increase in tax in installments shall terminate, and any unpaid installments shall be paid upon notice and demand from the district director if:

(i) In the case of an individual, he dies or ceases to engage in any trade or business,

(ii) In the case of a partner, his entire interest in the partnership is transferred or liquidated or the partnership terminates, or

(iii) In the case of a corporation, it ceases to engage in a trade or business, unless the unpaid portion of the tax payable in installments is required to be taken into account by an acquiring corporation under section 5(d) of the Act.

The installment privilege is not terminated under this subparagraph even though the taxpayer terminates the trade or business in respect of which the dealer reserve income is attributable provided the taxpayer continues in a trade or business. Further, the privilege is not terminated by a transfer of a part of a partnership interest so long as the partner retains any interest in the partnership. Also, the privilege is not terminated by a transaction falling within the provisions of section 381(a) of the Code if, under section 5(d) of the Act, the acquiring corporation is required to take into account the unpaid portion of the net increase in tax. In such a case the privilege may be continued by the acquiring corporation in the same manner and under the same conditions as though it were the distributor or transferor corporation.

(e) *Redetermination of tax subsequent to exercise of installment election.* Section 4(d) of the Act provides that where a taxpayer has elected to pay the net increase in tax in installments and thereafter it becomes necessary to redetermine the taxpayer's tax for any taxable year to which the election provided by section 4(a) of the Act applies, then the net increase in tax shall be redetermined. Where the redetermination does not involve adjustments affecting the treatment of dealer reserve income, then the net increase in tax previously computed will not be disturbed. The net increase in tax is limited to the amount of tax computed under section 4(b)(2) of the Act as a result of the change in treatment accorded dealer reserve income. If the redetermination of tax for any taxable year to which the election applies results in an addition to the net increase in tax previously computed, then such addition shall be prorated to all of the installments whether paid or unpaid. The part of the addition, prorated to installments which are not yet due, shall be collected at the same time as, and as a part of, such installments. The part of the addition prorated to installments, the time for payment of which has arrived, shall be paid upon notice and demand from the district director. Under section 4(g) of the Act, failure to make such payment within 10 days

after issuance of notice and demand will terminate the installment privilege. The imposition of interest on the addition to the net increase in tax as a result of the redetermination will be determined in the same manner as interest on the previously computed net increase in tax. Thus, no interest will be imposed on the amount of the addition to the net increase in tax prorated to installments not yet due unless the installment privilege is terminated under subsection (f) or (g) of section 4 of the Act. If a reduction in the net increase in tax results from a redetermination of tax for any taxable year to which the election applies, the entire amount of such reduction shall, in accordance with the provisions of section 6403 of the Code (relating to overpayment of installments), be prorated to the installments which are not yet due, resulting in a pro rata reduction in each of such installments. Where the redetermination does not involve adjustments pertaining to dealer reserve income, then any resulting deficiency pertaining to the year to which the election applies will be assessed and collected, in accordance with the applicable provisions of the Code (or corresponding provisions of prior law) without regard to any election made under the Act.

(f) *Periods of limitation*. Section 4(h) of the Act provides that where there is an extension of time for payment of tax under the provisions of section 4(b) of the Act, the running of the periods of limitation provided by section 6502 of the Code (or corresponding provisions of prior law) for collection of such tax is suspended for the period of time for which the extension is granted.

[T.D. 6490, 25 FR 8372, Sept. 1, 1960]

§ 1.9002–5 Special rules relating to interest.

(a) *In general*. Where an election is made under section 4(a) of the Act interest is computed under section 6601 of the Code (or corresponding provisions of prior law) on any increase in tax attributable to such election for each taxable year involved for the period from the last date prescribed for payment of the tax for such year (determined without regard to any extensions of time for filing the return) through the date preceding the date on which the election is made. Where the election under section 4(a) of the Act results in a decrease in tax for any year to which the election applies, interest is computed in accordance with section 6611 of the Code (or corresponding provisions of prior law) from the date of overpayment through the date preceding the date on which the election is made. Where there is a net increase in tax as a result of the election under section 4(a) of the Act, no interest shall be imposed on any underpayment (and no interest shall be paid on any overpayment) attributable to the dealer reserve income adjustment for any year to which the election applies for the period commencing with the date such election is made and ending on the date prescribed for filing the return (determined without regard to extensions of time) for the taxable year in which the election is made. This rule applies regardless of whether the election under section 4(b) of the Act is made. If there is no net increase in tax, interest on any underpayment or overpayment attributable to the dealer reserve income adjustment for any taxable year to which the election applies for the period commencing with the date of the election shall be determined in accordance with §§ 301.6601–1 and 301.6611–1 of this chapter (Regulations on Procedure and Administration).

(b) *Installment period*—(1) *Where payment is not accelerated*. If the election under section 4(b) of the Act is made to pay the net increase in tax in installments, no interest will be imposed on such net increase in tax for the period beginning with the due date fixed under section 4(c) of the Act for the first installment payment and ending with the date fixed under such section for the last installment payment unless payment of the unpaid installments is accelerated under other provisions of the Act. See subsections (f) and (g) of section 4 of the Act.

(2) *Where payment is accelerated*. Where payment of the unpaid installments is accelerated because of the termination of the installment privilege, interest will be computed under section 6601 of the Code on the entire unpaid

net increase in tax for the applicable period set forth below:

(i) In the case of acceleration under section 4(f) of the Act for reasons other than nonpayment of an installment, from the date of the notice and demand for payment of the unpaid tax to the date of payment; or

(ii) In the case of acceleration under section 4(g) of the Act for nonpayment of an installment, from the date fixed for payment of the installment to the date of payment.

When payment is accelerated under section 4(f) of the Act, however, no interest will be charged where payment of the unpaid installments is made within 10 days of issuance of the notice and demand for such payment.

[T.D. 6490, 25 FR 8373, Sept. 1, 1960]

§ 1.9002–6 Acquiring corporation.

Section 5(d) of the Act provides that for purposes of such Act in the case of the acquisition of the assets of a corporation by another corporation in a distribution or transfer described in section 381(a) of the Code the acquiring corporation shall be treated as if it were the distributor or transferor corporation.

[T.D. 6490, 25 FR 8373, Sept. 1, 1960]

§ 1.9002–7 Statute of limitations.

(a) *Extension of period for assessment and refund or credit.* Under section 5(e) of the Act, if an election is made to have the Act apply, and if the assessment of any deficiency, or the refund or credit of any overpayment attributable to the election, for any taxable year to which the Act applies was not prevented on June 21, 1959, by the operation of any law or rule of law (except as provided in paragraph (b) of this section, relating to closing agreements and compromises), but would be so prevented prior to September 1, 1961, the period within which such assessment, or such refund or credit, may be made with respect to such taxable year shall not expire prior to September 1, 1961. An election under either section 3 or 4 of the Act will be considered to be a consent to the extension of the period of limitation for purposes of assessment for any year to which the Act applies. Thus, for example, if, as the result of an election under section 4(a) of the Act, assessment of a deficiency for the taxable year 1955 was not prevented by the statute of limitations, a judicial decision that had become final, or otherwise, on June 21, 1959, but would (except for section 5(e) of the Act) be prevented on a later date, as for instance September 1, 1959, then for purposes of applying section 4 of the Act, assessment may be made at any time prior to September 1, 1961, with respect to such year if the taxpayer made an election under the Act prior to September 1, 1960. Section 5(e) of the Act will, in no event, operate to shorten the period of limitation otherwise applicable with respect to any taxable year.

(b) *Years closed by closing agreement or compromise.* For purposes of the Act, if the assessment of any deficiency or a refund or credit of any overpayment for any taxable year was not prevented on June 21, 1959, but is prevented on the date of an election under section 3 or 4 of the Act by the operation of the provisions of chapter 74 of the Code (relating to closing agreements and compromises), assessment, refund, or credit will, nevertheless, be considered as being prevented on June 21, 1959.

[T.D. 6490, 25 FR 8373, Sept. 1, 1960]

§ 1.9002–8 Manner of exercising elections.

(a) *By whom election is to be made*—(1) *In general.* Generally, the taxpayer to whom the Act applies will exercise the elections provided therein. In the case of a partnership or a corporation electing under the provisions of subchapter S, chapter 1 of the Code, the election shall be exercised by the persons specified in subparagraphs (2) and (3) of this paragraph, respectively.

(2) *Partnerships.* In the case of a partnership, the election under section 3 or 4(a) of the Act shall be exercised by the partnership. If an election is made by the partnership under section 4(a) of the Act, any election under section 4(b) of the Act to pay the net increase in tax in installments shall be made by each partner separately. The determination as to whether the net increase in tax resulting from the election under section 4(a) of the Act exceeds $2,500 shall be made with reference to the increase or decrease in

the tax of each partner attributable to the adjustment to his distributive share of the partnership income resulting from the election.

(3) *Subchapter S corporations.* In the case of an electing small business corporation under subchapter S, chapter 1 of the Code, the election under section 3 or 4(a) of the Act shall be made by such corporation. An election under section 4(b) of the Act to pay the net increase in tax in installments shall, to the extent the net increase in tax resulting from the election is attributable to adjustments to income for taxable years for which the corporation was not an electing small business corporation, be made by the corporation. The determination as to whether the net increase in tax for such taxable years exceeds $2,500 shall be made with reference to the increase or decrease in tax of the corporation. Any election under section 4(b) of the Act to pay the net increase in tax in installments shall, to the extent the increase in tax is attributable to years for which the corporation was an electing small business corporation, be made by the shareholders separately. The determination in such a case as to whether the net increase in tax for such taxable years exceeds $2,500 shall be made with reference to the increases or decreases in the tax of each shareholder attributable to the adjustments to taxable income of the electing small business corporation resulting from the election.

(b) *Time and manner of making elections*—(1) *In general.* Any election made under the Act shall be made by the taxpayers described in paragraph (a) of this section before September 1, 1960, by filing a statement with the district director with whom such taxpayer's income tax return for the taxable year in which the election is made is required to be filed. A copy of the statement of election shall be attached to and filed with such taxpayer's income tax return for such taxable year.

(2) *Election to have section 481 apply.* An election under section 3 of the Act shall be made in the form of a statement which shall include the following:

(i) A clear indication that an election is being made under section 3 of the Act;

(ii) Information sufficient to establish eligibility to make the election; and

(iii) The year of change as defined in section 3(b) of the Act.

An amended income tax return reflecting the increase or decrease in tax attributable to the election shall be filed for the year of change together with schedules showing how the tax was recomputed under section 481 of the Code. If income tax returns have been filed for any taxable years subsequent to the year of change, amended returns reflecting the proper treatment of dealer reserve income for such years shall also be filed. In the case of partnerships and electing small business corporations under subchapter S, chapter 1 of the Code, amended returns shall be filed by the partnership or electing small business corporation, as well as by the partners or shareholders, as the case may be. Any amended return shall be filed with the office of the district director with whom the taxpayer files his income tax return for the taxable year in which the election is made and, if practicable, on the same date the statement of election is filed, but amended returns shall be filed in no event later than November 30, 1960, unless an extension of time is granted under section 6081 of the Code. Whenever the amended returns do not accompany the statement of election, a copy of the statement shall be submitted with the amended returns.

(3) *Election not to have section 481 apply.* An election under section 4(a) of the Act shall be made in the form of a statement which shall include the following:

(i) A clear indication that an election is being made under section 4(a) of the Act;

(ii) Information sufficient to establish eligibility to make the election; and

(iii) The taxable years to which the election applies.

Amended income tax returns reflecting the increase or decrease in tax attributable to the election shall be filed for the taxable years to which the election applies. If income tax returns have been filed for any subsequent taxable years, amended returns reflecting the

proper treatment of dealer reserve income for such years shall also be filed. In the case of partnerships and electing small business corporations under subchapter S, chapter 1 of the Code, amended returns shall be filed by the partnership or electing small business corporation, as well as by the partners or shareholders, as the case may be. Any amended return shall be filed with the office of the district director with whom the taxpayer files his income tax return for the taxable year in which the election is made and, if practicable, on the same date the statement of election is filed, but amended returns shall be filed in no event later than November 30, 1960, unless an extension of time is granted under section 6081 of the Code. Whenever the amended returns do not accompany the statement of election, a copy of the statement shall be submitted with the amended return.

(4) *Election to pay tax in installments.* (i) Except as otherwise provided in subdivision (ii) of this subparagraph, if the taxpayer making the election under section 4(a) of the Act also desires to make the election under section 4(b) of the Act to pay the increase in tax in installments, then the statement of election shall include the following additional information:

(*a*) A clear indication that an election is also being made under section 4(b) of the Act;

(*b*) A summary of the total increases and decreases in tax, together with interest thereon, in sufficient detail to establish eligibility to make the election; and

(*c*) The number of annual installments in which the taxpayer elects to pay the net increase in tax.

(ii) Where a partnership or electing small business corporation under subchapter S, chapter 1 of the Code, has made an election under section 4(a) of the Act, and any partner or shareholder, as the case may be, desires to make an election under section 4(b) of the Act, a statement of election shall be filed by such partner or shareholder containing the following information:

(*a*) A clear indication that an election is being made under section 4(b) of the Act;

(*b*) A summary of the total increases and decreases in tax, together with interest thereon, of such partner or shareholder in sufficient detail to establish eligibility to make the election;

(*c*) The number of annual installments in which the partner or shareholder elects to pay the net increase in tax; and

(*d*) The office of the district director and the date on which the election under section 4(a) of the Act was filed by such partnership or corporation.

The statement of election under section 4(b) of the Act shall be accompanied by a copy of the statement of election under section 4(a) of the Act made by the partnership or electing small business corporation under subchapter S, chapter 1 of the Code, as the case may be.

(c) *Effect of election.* An election made under section 3 or 4 of the Act shall become irrevocable on September 1, 1960, and shall be binding on the taxpayer for all taxable years to which it applies.

[T.D. 6490, 25 FR 8373, Sept. 1, 1960]

PUBLIC DEBT AND TAX RATE EXTENSION ACT OF 1960

AUTHORITY: Sections 1.9003 to 1.9003–5 issued under sec. 302(c), 74 Stat. 292, as amended; 26 U.S.C. 613 note.

§ 1.9003 Statutory provisions; section 4 of the Act of September 14, 1960 (Pub. L. 86–781, 74 Stat. 1017).

SEC. 4. Subsection (c) of section 302 of the Public Debt and Tax Rate Extension Act of 1960 (Pub. L. 86–564; 74 Stat. 293) is amended to read as follows:

(c) *Effective date*—(1) *In general.* Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall be applicable only with respect to taxable years beginning after December 31, 1960.

(2) *Calcium carbonates, etc.*—(A) *Election for past years.* In the case of calcium carbonates or other minerals when used in making cement, if an election is made by the taxpayer under subparagraph (C):

(i) The amendments made by subsection (b) shall apply to taxable years with respect to which such election is effective, and

(ii) Provisions having the same effect as the amendments made by subsection (b) shall be deemed to be included in the Internal Revenue Code of 1939 and shall apply to taxable years with respect to which such

election is effective in lieu of the corresponding provisions of such Code.

(B) *Years to which applicable.* An election made under subparagraph (C) to have the provisions of this paragraph apply shall be effective for all taxable years beginning before January 1, 1961, in respect of which:

(i) The assessment of a deficiency,

(ii) The refund or credit of an overpayment, or

(iii) The commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954,

is not prevented on the date of the enactment of this paragraph by the operation of any law or rule of law. Such election shall also be effective for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before the date of the enactment of this paragraph.

(C) *Time and manner of election.* An election to have the provisions of this paragraph apply shall be made by the taxpayer on or before the 60th day after the date of publication in the FEDERAL REGISTER of final regulations issued under authority of subparagraph (F), and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Such election, if made, may not be revoked.

(D) *Statutes of limitation.* Notwithstanding any other law, the period within which an assessment of a deficiency attributable to the application of the amendments made by subsection (b) may be made with respect to any taxable year to which such amendments apply under an election made under subparagraph (C), and the period within which a claim for refund or credit of an overpayment attributable to the application of such amendments may be made with respect to any such taxable year, shall not expire prior to one year after the last day for making an election under subparagraph (C). An election by a taxpayer under subparagraph (C) shall be considered as a consent to the application of the provisions of this subparagraph.

(E) *Terms; applicability of other laws.* Except where otherwise distinctly expressed or manifestly intended, terms used in this paragraph shall have the same meaning as when used in the Internal Revenue Code of 1954 (or corresponding provisions of the Internal Revenue Code of 1939) and all provisions of law shall apply with respect to this paragraph as if this paragraph were a part of such Code (or corresponding provisions of the Internal Revenue Code of 1939).

(F) *Regulations.* The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this paragraph.

[T.D. 6492, 25 FR 8904, Sept. 16, 1960]

§ 1.9003–1 Election to have the provisions of section 613(c) (2) and (4) of the 1954 Code, as amended, apply for past years.

(a) *In general.* Section 4 of the Act of September 14, 1960 (Pub. L. 86–781, 74 Stat. 1017), amended section 302(c) of the Public Debt and Tax Rate Extension Act of 1960 to permit certain taxpayers for taxable years beginning before January 1, 1961, to apply the provisions of section 302(b) of that Act. Section 302(b) of the Act amended section 613(c) (2) and (4) of the Internal Revenue Code of 1954 to read in part as follows:

SEC. 613. *Percentage Depletion.* * * *

(c) *Definition of gross income from property.* For purposes of this section:

* * * * *

(2) *Mining.* The term ''mining'' includes not merely the extraction of the ores or minerals from the ground but also the treatment processes considered as mining described in paragraph (4) (and the treatment processes necessary or incidental thereto), and so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which such treatment processes are applied thereto as is not in excess of 50 miles unless the Secretary or his delegate finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills.

* * * * *

(4) *Treatment processes considered as mining.* The following treatment processes where applied by the mine owner or operator shall be considered as mining to the extent they are applied to the ore or mineral in respect of which he is entitled to a deduction for depletion under section 611:

* * * * *

(F) In the case of calcium carbonates and other minerals when used in making cement—all processes (other than preheating of the kiln feed) applied prior to the introduction of the kiln feed into the kiln, but not including any subsequent process;

(b) *Election.* Under section 302(c)(2) of the Act, the taxpayer, in the case of calcium carbonates or other minerals when used by him in making cement, may elect to apply the provisions of section 613(c) (2) and (4) of the

1954 Code as amended in lieu of the corresponding provisions of prior law. The taxpayer must make the election in accordance with § 1.9003–4 on or before November 15, 1960, and the election shall become irrevocable on November 15, 1960.

(c) *Years to which the election is applicable.* If the election described in paragraph (b) of this section is made by the taxpayer, the provisions of section 613(c) (2) and (4) as amended by section 302(b) of the Act apply to all taxable years beginning before January 1, 1961, in respect of which:

(1) The assessment of any deficiency,

(2) Refund or credit of any overpayment,

(3) Commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954,

is not prevented on September 14, 1960, by the operation of any law or rule of law. The election also applies to taxable years beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before September 14, 1960.

[T.D. 6492, 25 FR 8905, Sept. 16, 1960]

§ 1.9003–2 Effect of election.

(a) *In general.* If a taxpayer makes the election described in paragraph (b) of § 1.9003–1, he shall be deemed to have consented to the application of section 302(b) of the Act with respect to all taxable years to which the election applies. Thus, subparagraph (F) of section 613(c)(4) of the Internal Revenue Code of 1954 as amended must be applied in determining gross income from mining for the taxable years to which the election applies (including years subject to the Internal Revenue Code of 1939) whether or not the taxpayer is litigating the issue. Further, the election shall apply to all calcium carbonates or other minerals mined and used by the taxpayer in making cement.

(b) *Effect on gross income from mining.* The election is only determinative of what constitutes ''mining'' for purposes of computing percentage depletion and has no effect on the method employed in determining the amount of gross income from mining. In applying the election to the years affected there shall be taken into account the effect that any adjustments resulting from the election shall have on other items affected thereby, such as charitable contributions, foreign tax credit, net operating loss, and the effect that adjustments to any such items shall have on other taxable years. The provisions of section 302(b) of the Act are applicable with respect to taxable years subject to the Internal Revenue Code of 1939 for purposes of applying sections 450 and 453 of that Code.

[T.D. 6492, 25 FR 8905, Sept. 16, 1960]

§ 1.9003–3 Statutes of limitation.

Under section 302(c)(2) of the Act, the period within which the assessment of any deficiency or the credit or refund of any overpayment attributable to the election may be made shall not expire sooner than 1 year after November 15, 1960. Thus, if assessment of a deficiency or credit or refund of an overpayment, whichever is applicable, is not prevented on September 14, 1960, the time for making assessment or credit or refund shall not expire for at least 1 year after November 15, 1960, notwithstanding any other provision of law to the contrary. Even though assessment of a deficiency is prevented on September 14, 1960, if commencement of a suit for recovery of a refund under section 7405 of the Code may be made on such date, then any deficiency resulting from the election may be assessed at any time within 1 year after November 15, 1960. If the taxpayer makes the election he shall be deemed to have consented to the application of the provisions of section 302(c)(2) of the Act extending the time for assessing a deficiency attributable to the election. Section 302(c)(2) of the Act does not shorten the period of limitations otherwise applicable. An agreement may be entered into under section 6501(c)(4) of the Code and corresponding provisions of prior law to extend the period for assessment.

[T.D. 6492, 25 FR 8905, Sept. 16, 1960]

§ 1.9003–4 Manner of exercising election.

(a) *By whom election is to be made.* Generally, the taxpayer whose tax liability is affected by the election shall make the election. In the case of a partnership, or a corporation electing under the provisions of subchapter S, chapter 1 of the Code, the election shall be exercised by the partnership or such corporation, as the case may be.

(b) *Time and manner of making election*. The election shall be made on or before November 15, 1960, by filing a statement with the district director with whom the taxpayer's income tax return for the taxable year in which the election is made is required to be filed. The statement shall include the following:

(1) A clear indication that an election is being made under section 302(c)(2) of the Act, and

(2) The taxable years to which the election applies.

Amended income tax returns reflecting any increase or decrease in tax attributable to the election shall be filed for the taxable years to which the election applies. In the case of partnerships and electing small business corporations under subchapter S, chapter 1 of the Code, amended returns shall be filed by the partnership or electing small business corporations, as well as by the partners or shareholders, as the case may be. Any amended return shall be filed with the office of the district director with whom the taxpayer files his income tax return for the taxable year in which the election is made and, if practicable, on the same date the statement of election is filed, but amended returns shall be filed in no event later than February 28, 1961, unless an extension of time is granted under section 6081 of the Code. Whenever the amended returns do not accompany the statement of election, a copy of the statement shall be submitted with the amended returns. The amended returns shall be accompanied by payment of the additional tax (together with interest thereon) resulting from the election.

[T.D. 6492, 25 FR 8905, Sept. 16, 1960]

§ 1.9003–5 Terms; applicability of other laws.

All other terms which are not otherwise specifically defined shall have the same meaning as when used in the Code (or the corresponding provisions of prior law) except where otherwise distinctly expressed or manifestly intended to the contrary. Further, all provisions of law contained in the Code (or the corresponding provisions of prior law) shall apply to the extent that they can apply. Thus, all of the provisions of subtitle F of the Code and the corresponding provisions of prior law shall apply to the extent they can apply, including the provisions of law relating to assessment, collection, credit or refund, and limitations. For purposes of this section and §§ 1.9003–1 to 1.9003–4, inclusive, the term ''Act'' means the Public Debt and Tax Rate Extension Act of 1960 as amended (74 Stat. 293, 1018).

[T.D. 6492, 25 FR 8905, Sept. 16, 1960]

CERTAIN BRICK AND TILE CLAY, FIRE CLAY, AND SHALE; REGULATIONS UNDER THE ACT OF SEPTEMBER 26, 1961

§ 1.9004 Statutory provisions; the Act of September 26, 1961 (Pub. L. 87–312, 75 Stat. 674).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) *Election for past years*. In the case of brick and tile clay, fire clay, or shale used by the mineowner or operator in the manufacture of building or paving brick, drainage and roofing tile, sewer pipe, flower pots, and kindred products (without regard to the applicable rate of percentage depletion), if an election is made under subsection (c), for the purpose of applying section 613(c) of the Internal Revenue Code of 1954 (and corresponding provision of the Internal Revenue Code of 1939) for each of the taxable years with respect to which the election is effective:

(1) Gross income from the property shall be 50 per centum of the amount for which the manufactured products are sold during the taxable year except that with respect to such manufactured products, gross income from the property shall not exceed an amount equal to $12.50 multiplied by the number of short tons used in the manufactured products sold during the taxable year, and

(2) For purposes of computing the 50 per centum limitation under section 613(a) of the Internal Revenue Code of 1954 (or the corresponding provision of the Internal Revenue Code of 1939), the taxable income from the property (computed without allowance for depletion) shall be 50 per centum of the taxable income from the manufactured products sold during the taxable year (computed without allowance for depletion).

(b) *Years to which applicable*. An election made under subsection (c) to have the provisions of this section apply shall be effective for all taxable years beginning before January 1, 1961, in respect of which:

(1) The assessment of a deficiency,

(2) The refund or credit of an overpayment, or

(3) The commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954, is not prevented on the date of the enactment of this Act by the operation of any law or rule of law. Such election shall also be effective for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before the date of the enactment of this Act.

(c) *Time and manner of election.* An election to have the provisions of this section apply shall be made by the taxpayer on or before the sixtieth day after the date of publication in the FEDERAL REGISTER of final regulations issued under authority of subsection (f), and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Such election, if made, may not be revoked.

(d) *Statutes of limitation.* Notwithstanding any other law, the period within which an assessment of a deficiency attributable to the election under subsection (c) may be made with respect to any taxable year for which such election is effective, and the period within which a claim for refund or credit of an overpayment attributable to the election under such subsection may be made with respect to any such taxable year, shall not expire prior to one year after the last day for making an election under subsection (c). An election by a taxpayer under subsection (c) shall be considered as a consent to the application of the provisions of this subsection.

(e) *Terms; applicability of other laws.* Except where otherwise distinctly expressed or manifestly intended, terms used in this section shall have the same meaning as when used in the Internal Revenue Code of 1954 (or corresponding provisions of the Internal Revenue Code of 1939) and all provisions of law shall apply with respect to this section as if this section were a part of such Code (or corresponding provisions of the Internal Revenue Code of 1939).

(f) *Regulations.* The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(75 Stat. 674; 26 U.S.C. 613 note)

[T.D. 6575, 26 FR 9632, Oct. 12, 1961]

§ 1.9004–1 Election relating to the determination of gross income from the property for taxable years beginning prior to 1961 in the case of certain clays and shale.

(a) *In general.* The Act of September 26, 1961 (Pub. L. 87–312, 75 Stat. 674), provides that certain taxpayers may elect to apply the provisions thereof to all taxable years beginning before January 1, 1961, with respect to which the election is effective. The Act prescribes special rules for the application of section 613 (a) and (c) of the Internal Revenue Code of 1954 (and corresponding provisions of the Internal Revenue Code of 1939) in the case of shale and certain clays used by the mine owner or operator in the manufacture of certain clay and shale products.

(b) *Election.* The election to apply the provisions of the Act may be made only by a mine owner or operator with respect to brick and tile clay, fire clay, or shale which he mined and used in the manufacture of building or paving brick, drainage and roofing tile, sewer pipe, flower pots, and kindred products. The election must be made in accordance with § 1.9004–4 on or before December 11, 1961, and the election shall become irrevocable on December 11, 1961.

(c) *Years to which the election is applicable.* If the election described in paragraph (b) of this section is made by the taxpayer, the provisions of the Act shall be effective for all taxable years beginning before January 1, 1961, in respect of which the:

(1) Assessment of a deficiency,

(2) Refund or credit of an overpayment, or

(3) Commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954,

is not prevented on September 26, 1961, by the operation of any law or rule of law. The election is also effective for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before September 26, 1961.

(75 Stat. 674; 26 U.S.C. 613 note)

[T.D. 6575, 26 FR 9632, Oct. 12, 1961]

§ 1.9004–2 Effect of election.

(a) *In general.* If a taxpayer makes the election described in paragraph (b) of § 1.9004–1, he shall be deemed to have consented to the application of the Act with respect to all the clay and shale described in that paragraph for all taxable years for which the election is effective whether or not the taxpayer is litigating the issue for any of such years. Thus, in applying section 613 of the Internal Revenue Code of 1954 (and

corresponding provisions of the Internal Revenue Code of 1939) to those years:

(1) The ''gross income from the property'' for purposes of section 613(c) of the Internal Revenue Code of 1954 (and corresponding provisions of the Internal Revenue Code of 1939) shall be 50 percent of the amount for which the mineowner or operator sold, during the taxable year, the building or paving brick, drainage and roofing tile, sewer pipe, flower pots, and kindred products manufactured from the clay and shale described in paragraph (b) of § 1.9004–1, but shall not exceed an amount equal to $12.50 multiplied by the number of short tons of all such clay or shale mined and used by the mineowner or operator in the manufacture of the products sold during the taxable year; and

(2) The ''taxable income from the property'' (computed without allowance for depletion) for purposes of section 613(a) of the Internal Revenue Code of 1954 (and corresponding provisions of the Internal Revenue Code of 1939) shall be 50 percent of the taxable income from the manufactured products sold during the taxable year (computed without allowance for depletion).

(b) *Effect on depletion rates and other items.* The election shall have no effect on the applicable rate of percentage depletion for the taxable years to which the election is effective. In applying the election to the years affected there shall be taken into account the effect that any adjustments resulting from the election shall have on other items affected thereby, such as charitable contributions, foreign tax credit, net operating loss, and the effect that adjustments to any such items shall have on other taxable years. The provisions of the Act are applicable with respect to taxable years subject to the Internal Revenue Code of 1939 for purposes of applying sections 450 and 453 of that Code.

(75 Stat. 674; 26 U.S.C. 613 note)

[T.D. 6575, 26 FR 9632, Oct. 12, 1961]

§ 1.9004–3 Statutes of limitation.

The period within which the assessment of any deficiency or the credit or refund of any overpayment attributable to the election may be made shall not expire sooner than one year after December 11, 1961. Thus, if assessment of a deficiency or credit or refund of an overpayment, whichever is applicable, is not prevented on September 26, 1961, the time for making assessment or credit or refund shall not expire for at least one year after December 11, 1961, notwithstanding any other provision of law to the contrary. Even though assessment of a deficiency is prevented on September 26, 1961, if commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954 may be made on such date, then any deficiency resulting from the election may be assessed at any time within 1 year after December 11, 1961. If a taxpayer makes the election, he shall be deemed to have consented to the application of the provisions of the Act extending the time for assessing a deficiency attributable to the election. The Act does not shorten the periods of limitation otherwise applicable. An agreement may be entered into under section 6501(c)(4) of the Internal Revenue Code of 1954 and corresponding provisions of prior law to extend the period for assessment.

(75 Stat. 674; 26 U.S.C. 613 note)

[T.D. 6575, 26 FR 9632, Oct. 12, 1961]

§ 1.9004–4 Manner of exercising election.

(a) *By whom election is to be made.* Generally, the taxpayer whose tax liability is affected by the election shall make the election. In the case of a partnership, or a corporation electing under the provisions of subchapter S, chapter 1 of the Internal Revenue Code of 1954, the election shall be exercised by the partnership or such corporation, as the case may be.

(b) *Time and manner of making election.* The election shall be made on or before December 11, 1961, by filing a statement with the district director with whom the taxpayer's income tax return for the taxable year in which the election is made is required to be filed. The statement shall include the following:

(1) A clear indication that an election is being made under the Act, and

(2) The taxable years to which the election applies.

Amended income tax returns reflecting any increase or decrease in tax attributable to the election shall be filed for the taxable years to which the election applies. In the case of partnerships and electing small business corporations under subchapter S, chapter 1 of the Internal Revenue Code of 1954, amended returns shall be filed by the partnership or electing small business corporation, as well as by the partners or shareholders, as the case may be. Any amended return shall be filed with the office of the district director with whom the taxpayer files his income tax return for the taxable year in which the election is made and, if practicable, on the same date the statement of election is filed, but amended returns shall be filed in no event later than March 31, 1962, unless an extension of time is granted under section 6081 of the Internal Revenue Code of 1954. Whenever the amended returns do not accompany the statement of election, a copy of the statement shall be submitted with the amended returns. The amended returns shall be accompanied by payment of the additional tax (together with interest thereon) resulting from the election.

(75 Stat. 674, 26 U.S.C. 613 note)

[T.D. 6575, 26 FR 9633, Oct. 12, 1961]

§ 1.9004–5 Terms; applicability of other laws.

All other terms which are not otherwise specifically defined shall have the same meaning as when used in the Internal Revenue Code of 1954 (or the corresponding provisions of prior law) except where otherwise distinctly expressed or manifestly intended to the contrary. Further, all provisions of law contained in the Code (or the corresponding provisions of prior law) shall apply to the extent that they can apply. Thus, all the provisions of subtitle F of the Code (and the corresponding provisions of prior law) shall apply to the extent they can apply, including the provisions of law relating to assessment, collection, credit or refund, and limitations. For purposes of this section and §§ 1.9004–1 to 1.9004–4, inclusive, the term ''Act'' means the Act of September 26, 1961 (Pub. L. 87–312, 75 Stat. 674).

(75 Stat. 674, 26 U.S.C. 613 note)

[T.D. 6575, 26 FR 9633, Oct. 12, 1961]

QUARTZITE AND CLAY USED IN PRODUCTION OF REFRACTORY PRODUCTS; ELECTION FOR PRIOR TAXABLE YEARS

§ 1.9005 Statutory provisions; section 2 of the Act of September 26, 1961 (Pub. L. 87–321, 75 Stat. 683).

SEC. 2. *Election for quartzite and clay used in the production of refractory products*—(a) *Election for past years.* If an election is made under subsection (c), in the case of quartzite and clay used by the mine owner or operator in the production of refractory products, for the purpose of applying section 613(c) of the Internal Revenue Code of 1954 (and corresponding provisions of the Internal Revenue Code of 1939) for each of the taxable years with respect to which the election is effective:

(1) The term ''ordinary treatment processes'' shall include crushing, grinding, and separating the mineral from waste, but shall not include any subsequent process; and

(2) The gross income from mining for each short ton of such quartzite or clay used in the production of all refractory products sold during the taxable year shall be equal to 87½ percent of the lesser of:

(A) The average lowest published or advertised price, or

(B) The average lowest actual selling price, at which, during the taxable year, the mine owner or operator offered to sell, or sold, such quartzite or clay (in the form and condition of such products after the application of only the processes described in paragraph (1) and before transportation from the plant in which such processes were applied). For purposes of this paragraph, exceptional, unusual, or nominal sales or selling prices shall be disregraded. If the mine owner or operator makes no sales of, or makes only exceptional, unusual, or nominal sales of, such quartzite or clay after application of only the processes described in paragraph (1), then in lieu of the price provided for in subparagraph (A) or (B) there shall be used the average lowest recognized selling price for the taxable year for such quartzite or clay in the marketing area of the mine owner or operator published in a trade journal or other industry publication.

(b) *Years to which applicable.* An election made under subsection (c) to have the provisions of this section apply shall be effective on and after January 1, 1951, for all taxable years beginning before January 1, 1961, in respect of which:

(1) The assessment of a deficiency,

(2) The refund or credit of an overpayment, or

(3) The commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954,

is not prevented on the date of the enactment of this Act by the operation of any law or rule of law. Such election shall also be effective on and after January 1, 1951, for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before the date of the enactment of this Act.

(c) *Time and manner of election.* An election to have the provisions of this section apply shall be made by the taxpayer on or before the 60th day after the date of publication in the Federal Register of final regulations issued under authority of subsection (f), and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Such election, if made, may not be revoked.

(d) *Statutes of limitations.* Notwithstanding any other law, the period within which an assessment of a deficiency attributable to the election under subsection (c) may be made with respect to any taxable year for which such election is effective, and the period within which a claim for refund or credit of an overpayment attributable to the election under such subsection may be made with respect to any such taxable year, shall not expire prior to one year after the last day for making an election under subsection (c). An election by a taxpayer under subsection (c) shall be considered as a consent to the application of the provisions of this subsection.

(e) *Terms; applicability of other laws.* Except where otherwise distinctly expressed or manifestly intended, terms used in this section shall have the same meaning as when used in the Internal Revenue Code of 1954 (or corresponding provisions of the Internal Revenue Code of 1939) and all provisions of law shall apply with respect to this section as if this section were a part of such Code (or corresponding provisions of the Internal Revenue Code of 1939).

(f) *Regulations.* The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(Sec. 2(f), 75 Stat. 683; 26 U.S.C. 613 note)

[T.D. 6583, 26 FR 12077, Dec. 16, 1961]

§ 1.9005–1 Election relating to the determination of gross income from the property for taxable years beginning prior to 1961 in the case of clay and quartzite used in making refractory products.

(a) *In general.* Section 2 of the Act of September 26, 1961 (Pub. L. 87–321, 75 Stat. 683), provides that certain taxpayers may elect to apply the provisions of such section to all taxable years beginning before January 1, 1961, with respect to which the election is effective. Section 2 of the Act prescribes special rules for the application of section 613(c) of the Internal Revenue Code of 1954 (and corresponding provisions of the Internal Revenue Code of 1939) in the case of quartzite and clay used by the mine owner or operator in the production of refractory products.

(b) *Election.* The election to apply the provisions of section 2 of the Act may be made only in the case of quartzite and clay used in the production of products generally recognized as refractory products by the refractories industry. Examples of such products are clay firebrick, silica brick, and refractory bonding mortars. The election may be made only by a taxpayer who both mined the clay or quartzite and used it in the production of refractory products. The election must be made in accordance with § 1.9005–4 on or before February 14, 1962, and the election shall become irrevocable on that date.

(c) *Years to which the election is applicable.* If the election described in paragraph (b) of this section is made by the taxpayer, the provisions of section 2 of the Act shall be effective on and after January 1, 1951, for all taxable years beginning before January 1, 1961, in respect of which the:

(1) Assessment of a deficiency,

(2) Refund or credit of an overpayment, or

(3) Commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954,

was not prevented on September 26, 1961, by the operation of any law or rule of law. The election is also effective on and after January 1, 1951, for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made

but not collected on or before September 26, 1961.

(Sec. 2(f), 76 Stat. 683, 26 U.S.C. 613 note)

[T.D. 6583, 26 FR 12078, Dec. 16, 1961]

§ 1.9005–2 Effect of election.

(a) *In general*. If a taxpayer makes the election described in paragraph (b) of § 1.9005–1, he shall be deemed to have consented to the application of section 2 of the Act with respect to all the clay and quartzite described in that paragraph for all taxable years for which the election is effective whether or not the taxpayer is litigating the issue for any of such years. Thus, in applying section 613(c) of the Internal Revenue Code of 1954 (and corresponding provisions of the Internal Revenue Code of 1939) to those years:

(1) The term ''ordinary treatment processes'' shall include crushing, grinding, and separating the mineral from waste, but shall not include any subsequent process; and

(2) The gross income from mining for each short ton of quartzite or clay mined by the taxpayer and used by him in the production of all refractory products sold during the taxable year shall be equal to 87½ percent of the lesser of:

(i) The average lowest published or advertised price, or

(ii) The average lowest actual selling price at which the mine owner or operator offered to sell or sold any such quartzite or clay during the taxable year.

(b) *Rules for applying paragraph (a) of this section*. (1) The price described in paragraph (a)(2) of this section and any price described in this paragraph shall be determined with reference to quartzite or clay in the form and condition of such products after the application of only the processes described in paragraph (a)(1) of this section and before transportation from the plant in which such processes were applied.

(2) If quartzite and clay were mined and used by the taxpayer in the production of refractory products, a separate price shall be used with respect to each mineral.

(3) There shall be used for each mineral the lowest price at which it was sold or offered for sale by the taxpayer during the taxable year. Thus, only one price shall be used with respect to each mineral regardless of variations in type or grade.

(4) For purposes of this paragraph, exceptional, unusual, or nominal sales of quartzite or clay shall be disregarded. Thus, for example, if the taxpayer made an accommodation sale during the taxable year at other than the regular price, such sale is to be disregarded.

(5) If the taxpayer made no sales during the taxable year of quartzite or clay in the form and condition described in subparagraph (1) of this paragraph, or if his sales were exceptional, unusual, or nominal, there shall be used the lowest recognized selling price for the taxpayer's marketing area for quartzite or clay (of the same grade and type as that used by him) which was published for the taxable year in a trade journal or other industry publication.

(6) If subparagraph (5) of this paragraph does not apply for the reason that there is no recognized selling price published in a trade journal or other industry publication for the taxpayer's marketing area, there shall be used the lowest price at which quartzite or clay comparable to that used by the taxpayer was sold or offered for sale during the taxable year in that area by other producers similarly circumstanced as the taxpayer or, if appropriate, the lowest price paid by the taxpayer for purchased quartzite or clay.

(7) If the lowest selling price otherwise applicable under the preceding provisions of this paragraph fluctuated during the taxable year, the two or more lowest selling prices shall be averaged according to the number of days during the taxable year that each such price was in effect.

(c) The provisions of paragraphs (a) and (b) of this section may be illustrated by the following examples:

Example 1. (i) *Facts*. Taxpayer A, a calendar year taxpayer, mined quartzite and clay and used them in the production of recognized refractory products. During the taxable year, the lowest price for which A sold clay after the application of crushing and grinding was $13.75 per short ton. He also sold some ground clay of a different type at $20.00 per

short ton. A sold quartzite after the application of crushing and grinding for various prices, depending upon type, ranging from $14.00 per short ton to $20.00 per short ton. During the taxable year, the prices for the various types of ground clay and quartzite did not change. None of the sales by A of ground clay or quartzite were exceptional, unusual, or nominal.

(ii) *Determination of gross income from mining.* If A makes the election described in paragraph (b) of §1.9005–1, the gross income from mining per short ton of clay mined by A and used in the production of refractory products sold during the taxable year is $12.03 (87½ percent of $13.75), and the gross income from mining per short ton of quartzite mined by A and used in the production of refractory products sold during the taxable year is $12.25 (87½ percent of $14.00). To determine his gross income from mining, A must compute the sum of:

(a) $12.03 multiplied by the number of short tons of clay which were mined by A (whether or not during the taxable year) and which were used by A in the production of refractory products (refractory bonding mortar, fire brick, etc.) sold during the taxable year; plus

(b) $12.25 multiplied by the number of short tons of quartzite which were mined by A (whether or not during the taxable year) and which were used by A in the production of refractory products sold during the taxable year.

Example 2. Assume the same facts as in example (1) except that on October 1 of the taxable year A's lowest price for clay after the application of crushing and grinding increased to $14.40 per short ton. In this case, the average lowest price for which A sold ground clay during the taxable year must be determined by taking into account the price adjustment of October 1. Under these circumstances, the average lowest price for the ground clay would be $13.91, that is $13.75×273/365 plus $14.40×92/365.

(d) *Effect on depletion rates and other items.* The election shall have no effect on the applicable rate of percentage depletion for the taxable years for which the election is effective. In applying the election to the years affected there shall be taken into account the effect that any adjustments resulting from the election shall have on other items affected thereby, such as charitable contributions, foreign tax credit, net operating loss, and the effect that adjustments to any such items shall have on other taxable years. The provisions of section 2 of the Act are applicable with respect to taxable years subject to the Internal Revenue Code of 1939 for purposes of applying sections 450 and 453 of that Code. The election shall have no effect on the determination of the treatment processes which are to be considered as mining or on the determination of gross income from mining for any taxable year beginning after December 31, 1960.

(Sec. 2(f), 75 Stat. 683; 26 U.S.C. 613 note)

[T.D. 6583, 26 FR 12078, Dec. 16, 1961]

§ 1.9005–3 Statutes of limitation.

Notwithstanding any provision of law to the contrary, the period within which the assessment of any deficiency attributable to the election may be made, or within which the credit or refund of any overpayment attributable to the election may be made, shall not expire sooner than one year after the last day for making the election. Thus, if assessment of a deficiency or credit or refund of an overpayment, whichever is applicable, was not prevented on September 26, 1961, the time for making assessment or credit or refund shall not expire for at least one year after the last day for making the election. Even though assessment of a deficiency was prevented on September 26, 1961, if commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954 may have been made on such date, then any deficiency resulting from the election may be assessed at any time within one year after the last day for making the election. If a taxpayer makes the election, he shall be deemed to have consented to the application of the provisions of section 2 of the Act extending the time for assessing a deficiency attributable to the election. Section 2 of the Act does not shorten the period of limitations otherwise applicable. An agreement may be entered into under section 6501(c)(4) of the Internal Revenue Code of 1954 and corresponding provisions of prior law to extend the period for assessment.

(Sec. 2(f), 75 Stat. 683; 26 U.S.C. 613 note)

[T.D. 6583, 26 FR 12079, Dec. 16, 1961]

§ 1.9005–4 Manner of exercising election.

(a) *By whom election is to be made.* Generally, the taxpayer whose tax liability is affected by the election shall

make the election. In the case of a partnership, or a corporation electing under the provisions of subchapter S, chapter 1 of the Internal Revenue Code of 1954, the election shall be exercised by the partnership or such corporation, as the case may be.

(b) *Time and manner of making election*. The election shall be made on or before February 14, 1962, by filing a statement with the district director with whom the taxpayer's income tax return for the taxable year in which the election is made is required to be filed. The statement shall include the following:

(1) A clear indication that an election is being made under section 2 of the Act, and

(2) The taxable years to which the election applies.

Amended income tax returns reflecting any increase or decrease in tax attributable to the election shall be filed for the taxable years to which the election applies. In the case of partnerships and electing small business corporations under subchapter S, chapter 1 of the Internal Revenue Code of 1954, amended returns shall be filed by the partnership or electing small business corporation, as well as by the partners or shareholders, as the case may be. Any amended return shall be filed with the office of the district director with whom the taxpayer files his income tax return for the taxable year in which the election is made, and, if practicable, on the same date the statement of election is filed, but amended returns shall be filed in no event later than May 31, 1962, unless an extension of time is granted under section 6081 of the Internal Revenue Code of 1954. Whenever the amended returns do not accompany the statement of election, a copy of the statement shall be submitted with the amended returns. The amended returns shall be accompanied by payment of the additional tax (together with interest thereon) resulting from the election.

(Sec. 2(f), 75 Stat. 683; 26 U.S.C. 613 note)

[T.D. 6583, 26 FR 12079, Dec. 16, 1961]

§ 1.9005–5 Terms; applicability of other laws.

All other terms which are not otherwise specifically defined shall have the same meaning as when used in the Internal Revenue Code of 1954 (or the corresponding provisions of prior law) except where otherwise distinctly expressed or manifestly intended to the contrary. Further, all provisions of law contained in the Code (or the corresponding provisions of prior law) shall apply to the extent that they can apply. Thus, all the provisions of subtitle F of the Code (and the corresponding provisions of prior law) shall apply to the extent they can apply, including the provisions of law relating to assessment, collection, credit or refund, and limitations. For purposes of this section and §§ 1.9005–1 to 1.9005–4, inclusive, the term ''Act'' means the Act of September 26, 1961 (Pub. L. 87–321, 75 Stat. 683).

(Sec. 2(f), 75 Stat. 683; 26 U.S.C. 613 note)

[T.D. 6583, 26 FR 12079, Dec. 16, 1961]

TAX REFORM ACT OF 1969

§ 1.9006 Statutory provisions; Tax Reform Act of 1969.

Section 946 of the Tax Reform Act of 1969 (83 Stat. 729) provides as follows:

SEC. 946. *Interest and penalties in case of certain taxable years*—(a) *Interest on underpayment*. Notwithstanding section 6601 of the Internal Revenue Code of 1954, in the case of any taxable year ending before the date of the enactment of this Act, no interest on any underpayment of tax, to the extent such underpayment is attributable to the amendments made by this Act, shall be assessed or collected for any period before the 90th day after such date.

(b) *Declarations of estimated tax*. In the case of a taxable year beginning before the date of the enactment of this Act, if any taxpayer is required to make a declaration or amended declaration of estimated tax, or to pay any amount or additional amount of estimated tax, by reason of the amendments made by this Act, such amount or additional amount shall be paid ratably on or before each of the remaining installment dates for the taxable year beginning with the first installment date on or after the 30th day after such date of enactment. With respect to any declaration or payment of estimated tax before such first installment date, sections 6015, 6154, 6654, and 6655 of the Internal Revenue Code of 1954 shall be applied without regard to the

amendments made by this Act. For purposes of this subsection, the term ''installment date'' means any date on which, under section 6153 or 6154 of such Code (whichever is applicable), an installment payment of estimated tax is required to be made by the taxpayer.

[T.D. 7088, 36 FR 3052, Feb. 17, 1971]

§ 1.9006–1 Interest and penalties in case of certain taxable years.

(a) *Interest on underpayment.* The Internal Revenue Code of 1954 was amended in many important respects by the Tax Reform Act of 1969. Certain of these amendments affect taxable years ending prior to December 30, 1969 (the date of enactment of the Act) and thereby may cause underpayments of tax by a number of taxpayers for those years. Under section 6601(a) of the Code, interest at the rate of 6 percent per annum is imposed upon the amount of any such underpayment. The effect of section 946(a) of the Act is to prevent the assessment or collection of interest on an underpayment of tax for any taxable year ending before December 30, 1969, if such underpayment is attributable to any amendment made by such Act, for the period from the due date for payment until March 30, 1970. Thus, the taxpayer is afforded an interest-free period of 90 days from the date of enactment of such Act within which to account for the changes in the law affecting him and to remit the amount of such underpayment. If, on or after March 30, 1970, the amount of any underpayment (or portion thereof) attributable to an amendment made by the Act remains unpaid, then, as of such date, such underpayment (or portion thereof) shall be subject to interest as provided by section 6601 of the Code, to be computed from such date. However, if a corporation or farmers' cooperative elects to pay its final tax in two installments under section 6152 of the Code and if the second installment is due after March 30, 1970, then, in order to escape the imposition of interest under section 6601, such corporation or cooperative need pay only one-half of the additional tax arising from an amendment made by the Act before March 30, 1970, with the remaining one-half payable as part of the second installment on the regular due date for that installment. In the case of an underpayment of tax which is only partly attributable to an amendment made by the Act, section 946(a) of such Act shall apply only to the extent that such underpayment is so attributable.

(b) *Declarations and payments of estimated tax.* (1) In the case of a taxable year beginning before December 30, 1969, section 946(b) of the Tax Reform Act of 1969 provides transitional rules with respect to the payment of estimated tax and, in the case of an individual, the filing of a declaration of estimated tax. Under such section 946(b) in the case of such a year, if any taxpayer is required to make a declaration or amended declaration of estimated tax, or to pay any amount or additional amount of estimated tax, by reason of the amendments made by the Act, such amount or additional amount shall be paid ratably on or before each of the remaining installment dates for the taxable year beginning with the first installment date on or after February 15, 1970. For purposes of section 946(b) of such Act and this section, the term ''installment date'' means any date on which, under section 6153 or 6154 of the Code (whichever is applicable), an installment payment of estimated tax is required to be made by the taxpayer.

(2) With respect to any declaration or payment of estimated tax before February 15, 1970, sections 6015, 6153, 6154, 6654, and 6655 of the Code shall be applied without regard to the amendments made by such Act. Therefore, any underpayment which occurs solely by reason of the amendments made by such Act shall not be treated as an underpayment in the case of installment dates before February 15, 1970. Similarly, in the case of a taxpayer all of whose installment dates occur prior to February 15, 1970, no payment of estimated tax need be made to reflect the amendments made by such Act.

(3) The following example illustrates the application of the provisions of subparagraphs (1) and (2) of this paragraph:

Example. A, a fiscal year taxpayer with a taxable year from July 1, 1969, through June 30, 1970, had, without regard to the enactment of the Tax Reform Act of 1969, a total tax liability, which would have been shown on his return, of $500. A is not a farmer or

fisherman described in section 6037(b). A's tax liability is increased by $20 to $520, attributable to an amendment made by such Act. A makes an installment payment of estimated tax of $90 on each of the following four installment dates: October 15, 1969; December 15, 1969; March 15, 1970; and July 15, 1970. Assume that A is unaffected by the exceptions provided in section 6654(d). Therefore, A is underpaid by $10 on both October 15 and December 15, and by $18 on both March 15 and July 15. Such underpayments are computed as follows:

(a) October 15 and December 15 installment dates:	
(1) Tax without regard to Tax Reform Act of 1969	$500
(2) 80% of item (1)	400
(3) Minimum payment to avoid underpayment, determined without regard to Act:	
October 15, 1969 (25% of item (2))	100
December 15, 1969 (25% of item (2))	100
(4) Actual payment:	
October 15, 1969	90
December 15, 1969	90
(5) Amount of underpayment:	
October 15, 1969 ($100 – $90)	10
December 15, 1969 ($100 – $90)	10
(b) March 15 and July 15 installment dates:	
(1) Tax with regard to Act	520
(2) 80% of item (1)	416
(3) Less total of minimum payments to avoid underpayment, determined without regard to Act for October 15, 1969 and December 15, 1969 ($100+$100)	200
(4) Difference of items (2) and (3)	216
(5) Minimum payment to avoid underpayment, determined with regard to Act:	
March 15 (50% of $216)	108
July 15 (50% of $216)	108
(6) Actual payment:	
March 15	90
July 15	90
(7) Amount of underpayment:	
March 15 ($108 – $90)	18
July 15 ($108 – $90)	18

(c) *Cross references*. (1) Taxpayers affected by the following sections, among others, of the Tax Reform Act of 1969 may be subject to the provisions of section 946 (a) or (b) (whichever is applicable) of such Act:

(i) Act section 201(a), which adds section 170(f)(2) to the Code and which applies to gifts made after July 31, 1969.

(ii) Act section 201(c), which repeals section 673(b) of the Code and which applies to transfers in trust made after April 22, 1969.

(iii) Act section 212(c), which amends section 1031 of the Code and which applies to taxable years to which the 1954 Code applies.

(iv) Act section 332, which amends section 677 of the Code and which applies to property transferred in trust after October 9, 1969.

(v) Act section 411(a), which adds section 279 to the Code and which applies to interest paid or incurred on an indebtedness incurred after October 9, 1969.

(vi) Act sections 412 (a) and (b), which adds section 453(b)(3) to the Code and which apply to sales or other dispositions occurring after May 27, 1969, which are not made pursuant to a contract entered into on or before that date.

(vii) Act section 413, which amends sections 1232(a), 1232(b)(2), and 6049 of the Code and which applies to bonds and other evidences of indebtedness issued after May 27, 1969.

(viii) Act section 414, which adds section 249 to the Code and which applies to convertible bonds or other convertible evidences of indebtedness repurchased after April 22, 1969.

(ix) Act section 421(a), which amends section 305 of the Code and which applies to distributions made after January 10, 1969.

(x) Act sections 516 (a) and (d), which add section 1001(e) to the Code and which apply to sales of life estates made after October 9, 1969.

(xi) Act section 601, which amends section 103 of the Code and which applies to obligations issued after October 9, 1969.

(xii) Act section 703 which amends sections 46(b) and 47(a) of the Code and which applies to section 38 property built or acquired after April 18, 1969.

(xiii) Act section 905, which adds section 311(d) to the Code and which applies to distributions made after November 30, 1969.

(2) In addition to the references in subparagraph (1) of this paragraph, section 946(b) of the Tax Reform Act of 1969 may apply to taxpayers affected by the following sections, among others, of such Act:

(i) Act section 201(a), which adds section 170(e) to the Code and which applies to contributions paid after December 31, 1969.

(ii) Act sections 501 (a) and (b), which amend section 613 of the Code and which apply to taxable years beginning after October 9, 1969.

(iii) Act sections 516 (c) and (d) which add section 1253 to the Code and which

apply to transfers after December 31, 1969.

(iv) Act section 701(a), which amends section 51 of the Code and which applies to taxable years ending after December 31, 1969, and beginning before July 1, 1970.

[T.D. 7088, 36 FR 3053, Feb. 17, 1971]

MISCELLANEOUS PROVISIONS

§ 1.9101–1 Permission to submit information required by certain returns and statements on magnetic tape.

In any case where the use of a Form 1087 or 1099 is required by the regulations under this part for the purpose of making a return or reporting information, such requirement may be satisfied by submitting the information required by such form on magnetic tape or by other media, provided that the prior consent of the Commissioner or other authorized officer or employee of the Internal Revenue Service has been obtained. Applications for such consent must be filed in accordance with procedures established by the Internal Revenue Service. In any case where the use of Form W-2 is required for the purpose of making a return or reporting information, such requirement may be satisfied by submitting the information required by such form on magnetic tape or other approved media, provided that the prior consent of the Commissioner of Social Security (or other authorized officer or employee thereof) has been obtained.

[T.D. 6883, 31 FR 6589, May 3, 1966, as amended by T.D. 7580, 43 FR 60159, Dec. 26, 1978]

§ 1.9200–1 Deduction for motor carrier operating authority.

(a) *In general.* Section 266 of the Economic Recovery Tax Act of 1981 (Pub. L. 97–34, 95 Stat. 265) provides that, for purposes of chapter 1 of the Internal Revenue Code of 1954, an ordinary deduction shall be allowed in computing the taxable income of all taxpayers who either held one or more motor carrier operating authorities on July 1, 1980, or later acquired a motor carrier operating authority pursuant to a binding contract in effect on July 1, 1980. The deduction for each motor carrier operating authority is to be allowed ratably over a 60-month period and is equal to the adjusted basis of the motor carrier operating authority on July 1, 1980. Except as provided in this section, no deduction is allowable for any diminution in value of any motor carrier operating authority caused by administrative or legislative actions to decrease restrictions on entry into the interstate motor carrier business.

(b) *Person entitled to claim deduction.* In general, the deduction provided by this section for a particular motor carrier operating authority may be claimed only by the taxpayer which held the authority on July 1, 1980. However, if another person acquired the motor carrier operating authority after July 1, 1980, pursuant to a binding contract in effect on that date, the deduction for such authority may be claimed only by the acquirer and may not be claimed by the taxpayer which held the authority on July 1, 1980. A taxpayer, otherwise entitled to claim a deduction under this section, who sells a motor carrier operating authority after July 1, 1980 may not claim an amortization deduction for such authority for any month which begins after the date of such sale. In addition, acquisition of a motor carrier operating authority after July 1, 1980, if not pursuant to a binding contract in effect on July 1, 1980, will not entitle the acquirer to a deduction under this section, unless the operating authority is acquired pursuant to a transaction to which section 381 applies.

(c) *Allowance of deduction*—(1) *Determination of period for deduction.*—(i) *General rule.* Except as provided in paragraph (c)(1)(ii) of this section, the 60-month period for taking the deduction provided by this section for a particular motor carrier operating authority begins with the month of July 1980, or, if later, the month in which the motor carrier operating authority was acquired pursuant to a binding contract in effect on July 1, 1980.

(ii) *Election.* In lieu of beginning the 60-month period as provided in paragraph (c)(1)(i) of this section, the taxpayer may elect to begin the 60-month period with the first month of the taxpayer's first taxable year beginning after July 1, 1980. This election, if made, shall apply to the deduction for all motor carrier operating authorities

either held by the taxpayer on July 1, 1980, or later acquired by the taxpayer by the end of the first month of the first taxable year beginning after July 1, 1980, pursuant to a binding contract in effect on July 1, 1980. Any such election will not apply to the determination of the period for amortizing the bases of authorities acquired by the taxpayer after the end of the first month of the first taxable year beginning after July 1, 1980.

(2) *Amount of monthly deduction.* In the case of each motor carrier operating authority for which the taxpayer is entitled (under paragraph (b) of this section) to claim a deduction, the deduction for each month during the 60-month period relating to the motor carrier operating authority is equal to the adjusted basis (determined under paragraph (e) of this section) of the motor carrier operating authority divided by 60.

(d) *Definition of motor carrier-operating authority.* For purposes of §1.9200–2 and this section, the term ''motor carrier operating authority'' means a certificate or permit held by a motor common carrier or motor contract carrier of property and issued pursuant to the Revised Interstate Commerce Act, 49 U.S.C. 10921–10933 (Supp. III 1979). The terms ''motor common carrier'' and ''motor contract carrier'' shall be defined as in 49 U.S.C. 10102 (Supp. III 1979) and do not include persons meeting the definition of freight forwarder contained in 49 U.S.C. 10102 (Supp. III 1979).

(e) *Adjusted basis of motor carrier operating authority*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, the adjusted basis of a motor carrier operating authority for which a deduction is allowed under this section is the adjusted basis of the motor carrier operating authority as determined under sections 1012 and 1016 in the hands of the taxpayer who is entitled to claim the deduction under paragraph (b) of this section.

(2) *Special rule in case of certain stock acquisitions*—(i) *Election by holder.* A corporation entitled to claim a deduction under paragraph (b) of this section for a motor carrier operating authority may elect to allocate a portion of the cost basis of a qualified acquiring party in the stock of an acquired corporation, to the basis of the authority. A qualified acquiring party is a corporation (or a noncorporate person or group of noncorporate persons described in paragraph (e)(2)(ii) of this section) that after June 21, 1952, and on or before July 1, 1980 (or after July 1, 1980 under a binding contract in effect on such date) acquired by purchase, within the meaning of section 334(b)(3) and during a period of not more than 12 months, 80 percent or more of the stock (as described in section 334(b)(2)(B)) of a corporation (the acquired corporation) which held the authority directly or indirectly on the date which is the end of the period of 12 months or less within which such 80 percent of the acquired corporation's stock was purchased. The election to allocate basis in an acquired corporation's stock to the basis in an authority may be made only if 80 percent of all classes of the acquired corporation's stock (other than nonvoting stock which is limited and preferred as to dividends) was acquired by purchase (within the meaning of section 334(b)(3)) during a period of not more than 12 months, as described in section 334(b)(2)(B). If the qualified acquiring party is a corporation, the taxpayer holding the authority on July 1, 1980, may elect the basis allocation of this paragraph only if it is a member of the affiliated group (as defined in section 1504(a)) of which the qualified acquiring party is a member. If there is more than one acquisition of stock that might permit an election to allocate basis under this paragraph (e)(2)(i), the taxpayer may elect to allocate to the authority only the basis in the acquired corporation's stock held by the qualified acquiring party which became a qualified acquiring party as a result of the last of such acquisitions.

(ii) *Certain noncorporate persons treated as qualified parties.* For purposes of paragraphs (e)(2) (i) through (vi) of this section, the term ''qualified acquiring party'' shall include a noncorporate person or group of noncorporate persons which, after June 21, 1952 and on or before July 1, 1980, acquired in one purchase, stock in a corporation (the acquired corporation) which at the

time of acquisition held, directly or indirectly, a motor carrier operating authority. In order to be treated as a qualified acquiring party under this paragraph, a noncorporate person or group of noncorporate persons must have held stock constituting control (within the meaning of section 368(c)) of the acquired corporation on July 1, 1980. A group of noncorporate persons consists of two or more noncorporate persons who, acting together on the same date, made the required purchase of stock in the acquired corporation.

(iii) *Portion of stock basis allocable to basis of authority when stock of direct holder of authority is acquired.* If the qualified acquiring party acquired the stock of a corporation directly holding the authority, the portion of the stock basis allocable to the basis of the authority is the amount that would have been properly allocable under section 334(b)(2) if the qualified acquiring party were a corporation that had received the authority in a distribution of all the acquired corporation's assets in a complete liquidation of the acquired corporation immediately after the acquisition of the acquired corporation's stock. If the acquired corporation's stock was acquired on more than one date, the date on which the liquidation is deemed to have occurred shall be the date which is the date of the last acquisition by purchase of stock of the acquired corporation within the 12-month period described in section 334(b)(2)(B).

(iv) *Portion of stock basis allocable to basis of authority when stock of indirect holder of authority is acquired.* If the qualified acquiring party acquired the stock of a corporation indirectly holding the authority (such as by owning all of the stock of a subsidiary that directly holds the authority), a portion of the qualified acquiring party's cost basis in the stock of the acquired corporation may be allocated to the basis in the operating authority. The portion allocable is the amount that would have been properly allocable under section 334(b)(2) if, immediately before the liquidation of the acquired corporation on the date of the last acquisition by purchase of stock of the acquired corporation within the 12-month period described in section 334(b)(2)(B), the authority had been transferred in such a way (such as by liquidating the subsidiary that directly holds the authority) that the qualified acquiring party would have received direct ownership of the authority upon the liquidation of the acquired corporation immediately after the acquisition.

(v) *Other assets to be accounted for.* For purposes of paragraphs (e)(2) (iii) or (iv) of this section, in determining the portion of stock basis properly allocable to the operating authority under section 334(b)(2), the portion of the qualified acquiring party's basis in the acquired corporation's stock that would have been allocable following the liquidation to other assets of the acquired corporation, including intangible assets such as goodwill and going concern value, must be taken into account.

(vi) *Adjustments to basis in acquired corporation's stock and other assets.* If a taxpayer makes the election provided by paragraph (e)(2)(i) of this section, the qualified acquiring party's basis in the stock of the acquired corporation shall be decreased, effective as of July 1, 1980, by the amount determined by the following formula:

$$\frac{\text{Basis in acquired corporation's stock}}{\text{Basis in acquired corporation's stock plus un-secured liabilities of acquired corporartion}} \times \text{Amount allocated to basis in authority under section 334(b)(2) minus acquired corporation's basis in authority.}$$

In addition, if the aggregate basis of the assets of the acquired corporation other than the authority as of July 1, 1980 (reduced by the liabilities secured by such assets) exceeds the qualified acquiring party's basis in the stock of

the acquired corporation remaining after application of the preceding sentence, then the bases of such assets shall be reduced proportionately so that their aggregate basis as of such date (minus secured liabilities) is equal to such remaining stock basis. If the acquired corporation held the authority indirectly, appropriate basis reductions shall be made to reflect the transfers deemed to have occurred under paragraph (e)(iv) of this section.

(vii) *Pre-TEFRA law applies.* References made in this section to section 334 of the Code relate to such section as it existed before amendment by the Tax Equity and Fiscal Responsibility Act of 1982.

(f) *Adjustment to basis of motor carrier operating authority.* A taxpayer's basis in a motor carrier operating authority must be reduced by the amount of any amortization deductions allowable to the taxpayer under this section.

(g) *Examples.* The principles of this section may be illustrated by the following examples:

Example 1. (i) Corporation X acquired all the stock of corporation Y for $130,000 in 1970. Y's assets at the time of acquisition consisted of a motor carrier operating authority valued at $180,000 in which it has a basis of $60,000, trucks with a fair market value of $70,000 and an aggregate basis of $30,000, and goodwill valued at $30,000. Y has $50,000 of liabilities secured by the trucks and $100,000 of unsecured liabilities. Both X and Y use a June 30 fiscal year for tax purposes.

(ii) Y is the only taxpayer eligible to claim a deduction under §1.9200–1(b). If X sold its Y stock to Z in October 1980 (other than pursuant to a binding contract in effect on July 1, 1980), Y would continue to be the only taxpayer eligible to claim the deduction. However, if Y sold the operating authority to W in February 1981, neither Y nor W would be eligible to claim the monthly deduction for the remainder of the 60-month period. Also, Y would realize gain or loss on the sale after reducing its basis in the authority by any amortization claimed for the period prior to the sale.

(iii) Y must begin the 60-month period in July 1980 unless it elects under paragraph (c)(1)(ii) of this section to begin the 60-month period with the first month of the first taxable year beginning after July 1, 1980, which in Y's case would be July 1981.

(iv) Y's allowable monthly deduction is equal to its adjusted basis in the operating authority of $60,000, divided by 60, or $1,000. However, Y may elect under §1.9200–1(e)(2) to allocate to its basis in the authority a portion of X's basis in Y stock, since X is a qualified acquiring party under paragraph (e)(2)(i) of this section and Y is a member of an affiliated group of which X is a member. Assuming Y makes the election, Y may allocate to the basis of the authority the amount of X's basis in Y stock that would have been allocable under section 334(b)(2) if X had received the authority in a distribution of all of Y's assets in a complete liquidation of Y immediately after X acquired Y's stock.

Therefore, for purposes of the allocation, X's $130,000 cost basis in Y stock is deemed to be increased by Y's $100,000 of unsecured liabilities to $230,000. Of the $230,000 deemed basis, $180,000 is allocated to the authority, $30,000 to goodwill, and $20,000 to the trucks. Y's allowable monthly amortization deduction would be $180,000 divided by 60, or $3,000. X's $130,000 cost basis in its Y stock must be decreased to $62,174 as provided in paragraph (e)(2)(vi) of this section. Y's $30,000 aggregate basis in its trucks remains unchanged.

Example 2. Assume the same facts as in Example (1), except that Y's aggregate basis in the trucks is $120,000. If Y makes the election under §1.9200–1(e)(2), the same allocation as in Example (1) would occur. However, in addition to the decrease in X's basis in its Y stock to $62,174, the $120,000 aggregate basis in the trucks must be reduced to $112,174 (so that the $112,174 basis minus secured liabilities of $50,000 is equal to X's $62,174 remaining stock basis).

Example 3. Assume the same facts as in Example (1), except that X pays a negotiated purchase price of $120,000 for the Y stock, in order to take into account an anticipated tax liability of $10,000, relating to potential section 1245 recapture. If Y makes the election under §1.9200–1(e)(2), then for purposes of allocating X's basis in Y stock, X's cost basis is deemed to be increased by Y's $100,000 of unsecured liabilities as well as the $10,000 of potential tax liability resulting from section 1245 recapture, to $230,000. The $10,000 of potential recapture tax is treated as a general liability and the deemed basis is allocated among Y's assets as in Example (1). In order to take into account the potential recapture tax liability, such amount must be based on the same fair market values that are used to determine the amount of the stock basis allocable to the operating authority.

(Sec. 266, Economic Recovery Tax Act of 1981 (Pub. L. 97–34; 95 Stat. 265); sec. 517, Highway Revenue Act of 1982 (Pub. L. 97–424; 96 Stat. 2097); and sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805)

[T.D. 7947, 49 FR 8247, Mar. 6, 1984; 49 FR 12244, Mar. 29, 1984]

§ 1.9200–2 Manner of taking deduction.

(a) *In general.* The deduction provided by § 1.9200–1 shall be taken by multiplying the amount of the monthly deduction determined under § 1.9200–1 (c)(2) for each motor carrier operating authority by the number of months in the taxable year for which the deduction is allowable, and entering the resulting amount at the appropriate place on the taxpayer's return for each year in which the deduction is properly claimed. Additionally, any taxpayer who has claimed the deduction provided by § 1.9200–1 must (unless it has already filed a statement containing the required information) attach a statement to the next income tax return of the taxpayer which has a filing due date on or after June 4, 1984. The statement shall provide, in addition to the taxpayer's name, address, and taxpayer identification number, the following information for each motor carrier operating authority for which a deduction was claimed:

(1) The taxable year of the taxpayer for which the deduction was first claimed;

(2) Whether the taxpayer's deduction was determined using the adjusted basis of the authority under section 1012 or an allocated stock basis under § 1.9200–1(e)(2); and

(3) If an allocation of stock basis has been made under § 1.9200–1(e)(2), the calculations made in determining the amount of basis to be allocated to the authority.

(b) *Filing and amendment of returns.* A taxpayer who has filed its return for the taxable year that includes July 1, 1980, claiming the deduction allowed under § 1.9200–1, may amend its return for such year in order to elect under § 1.9200–1(c)(1)(ii) to begin the 60-month period in the subsequent taxable year. A taxpayer eligible to take the deduction under § 1.9200–1 who has filed its returns for both the taxable year that includes July 1, 1980, and the following taxable year without claiming the deduction, may claim the deduction by filing amended returns or claims for refund for the taxable year in which the taxpayer elects to begin the 60-month period, and for subsequent taxable years. If a taxpayer first claims the deduction on an amended return under the preceding sentence, the statement required by paragraph (a) of this section must be attached to such amended return.

(c) *Deduction taken for operating authority other than under § 1.9200–1.* If a deduction other than the deduction allowed under § 1.9200–1 was taken in any taxable year for the reduction in value of a motor carrier operating authority caused by administrative or legislative actions to decrease restrictions on entry into the interstate motor carrier business, the taxpayer should file an amended return for such taxable year which computes taxable income without regard to such deduction.

(Approved by the Office of Management and Budget under control number 1545–0767)

(Sec. 266, Economic Recovery Tax Act of 1981 (Pub. L. 97–34; 95 Stat. 265); sec. 517, Highway Revenue Act of 1982 (Pub. L. 97–424; 96 Stat. 2097); and sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805)

[T.D. 7947, 49 FR 8249, Mar. 6, 1984]

§ 1.9300–1T Reduction in taxable income for housing Hurricane Katrina displaced individuals.

(a) *In general.* For a taxable year beginning in 2005 or 2006, a taxpayer who is a natural person may reduce taxable income by $500 for each Hurricane Katrina displaced individual (as defined in paragraph (e)(1) of this section) to whom the taxpayer provides housing free of charge in, or on the site of, the taxpayer's principal residence for a period of 60 consecutive days ending in the taxable year. A taxpayer may not claim the reduction in taxable income unless the taxpayer includes the taxpayer identification number of the Hurricane Katrina displaced individual on the taxpayer's income tax return.

(b) *Provision of housing*—(1) *Principal residence.* For purposes of this section, the term *principal residence* has the same meaning as in section 121 and the regulations thereunder. See § 1.121–1(b)(1) and (b)(2).

(2) *Legal interest required.* A taxpayer is treated as providing housing for purposes of this section only if the taxpayer is an owner or lessee (including a co-owner or co-lessee) of the residence.

(3) *Compensation for providing housing*—(i) *In general*. No reduction in taxable income is allowed under this section to a taxpayer who receives rent or any other amount from any source in connection with the provision of housing.

(ii) *Amounts in connection with the provision of housing*. For purposes of this section, amounts in connection with the provision of housing include (but are not limited to) amounts for rent and utilities. Amounts for telephone calls, food, clothing, and transportation are examples of amounts not in connection with the provision of housing.

(c) *Limitations*—(1) *Dollar limitation*—(i) *In general*. The reduction under paragraph (a) of this section may not exceed the maximum dollar limitation reduced by the amount of the reduction under this section for all prior taxable years. The maximum dollar limitation is—

(A) $2,000 in the case of an unmarried individual;

(B) $2,000 in the case of a husband and wife who file a joint income tax return; and

(C) $1,000 in the case of a married individual who files a separate income tax return.

(ii) *Married individuals with separate principal residences*. The limitations in paragraphs (c)(1)(i)(B) and (c)(1)(i)(C) of this section apply without regard to whether the married individuals occupy the same principal residence. A person is treated as married for purposes of this section if the individual is treated as married under section 7703.

(2) *Spouse or dependent of the taxpayer*. No reduction is allowed for a Hurricane Katrina displaced individual who is the spouse or dependent of the taxpayer.

(3) *Individual taken into account only once*. A taxpayer may not reduce taxable income under paragraph (a) of this section with respect to a Hurricane Katrina displaced individual who was taken into account by the taxpayer for any prior taxable year.

(4) *Taxpayers occupying the same principal residence*. A Hurricane Katrina displaced individual may be taken into account by only one taxpayer occupying the same principal residence for all taxable years.

(d) *Substantiation*. A taxpayer claiming a reduction under this section must prepare and maintain records sufficient to show entitlement to the reduction as provided in Form 8914 (Exemption Amount for Taxpayers Housing Individuals Displaced by Hurricane Katrina) or other forms, instructions, publications or guidance published by the IRS.

(e) *Definitions*. The following definitions apply for purposes of this section.

(1) *Hurricane Katrina displaced individual*. The term *Hurricane Katrina displaced individual* means any natural person if the following requirements are met—

(i) The person's principal place of abode on August 28, 2005, was in the Hurricane Katrina disaster area (as defined in paragraph (e)(2) of this section);

(ii) The person was displaced from that abode; and

(iii) If the abode was located outside the Hurricane Katrina core disaster area (as defined in paragraph (e)(3) of this section)—

(A) The abode was damaged by Hurricane Katrina; or

(B) The person was evacuated from that abode by reason of Hurricane Katrina.

(2) *Hurricane Katrina disaster area*. The term *Hurricane Katrina disaster area* means the states of Alabama, Florida, Louisiana, and Mississippi.

(3) *Hurricane Katrina core disaster area*. The term *Hurricane Katrina core disaster area* means the portion of the Hurricane Katrina disaster area designated by the President to warrant individual or individual and public assistance from the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(f) *Examples*. The provisions of this section are illustrated by the following examples in which each Hurricane Katrina displaced individual, who is not a dependent or spouse of the taxpayer, is provided housing (within the meaning of paragraph (b) of this section) in, or on the site of, the taxpayer's principal residence for a period of at least 60 consecutive days ending in the applicable taxable year. The examples are as follows:

Example 1. Taxpayer A provides housing to N, a Hurricane Katrina displaced individual, from September 1, 2005, until March 10, 2006. Under paragraphs (a) and (c)(3) of this section, A may reduce taxable income by $500 on A's 2005 income tax return or A's 2006 income tax return, but not both, with respect to N.

Example 2. The facts are the same as in *Example 1* except that A and B, A's unmarried roommate and co-lessee, provide housing to N. Under paragraphs (a) and (c)(4) of this section, either A or B, but not both, may reduce taxable income by $500 for 2005 with respect to N. If either A or B reduces taxable income for 2005 with respect to N, neither A nor B may reduce taxable income with respect to N for 2006.

Example 3. Unmarried roommates and colessees C and D provide housing to eight Hurricane Katrina displaced individuals during 2005. Under paragraphs (a) and (c)(1)(i)(A) of this section, C and D each may reduce taxable income by $2,000 on their 2005 income tax returns.

Example 4. (i) H and W are married to each other and provide housing to a Hurricane Katrina displaced individual, O, in 2005. H and W file their 2005 income tax return married filing jointly. Under paragraphs (a) and (c)(4) of this section, H and W may reduce taxable income by $500 on their 2005 income tax return with respect to O.

(ii) In 2006, H and W provide housing to O and to another Hurricane Katrina displaced individual, P. H and W file their 2006 income tax return married filing separately. Because H and W reduced their 2005 taxable income with respect to O, under paragraph (c)(3) of this section, neither H nor W may reduce taxable income on their 2006 income tax return with respect to O. Under paragraphs (a) and (c)(4) of this section, either H or W, but not both, may reduce taxable income by $500 on his or her 2006 income tax return with respect to P.

(g) *Effective date.* This section applies for taxable years beginning after December 31, 2004, and before January 1, 2007, and ending on or after December 11, 2006.

[T.D. 9301, 71 FR 74468, Dec. 12, 2006]