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(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).

(1) *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