

(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 Returns required in connection with certain options.

(a) *Requirement of return with respect to incentive stock options under section 6039(a)(1).* (1) Every corporation which in any calendar year transfers to any person a share of stock pursuant to such person's exercise of an incentive stock option shall, for such calendar

year, file a return with respect to each transfer made during such year. This return must include the following information—

(i) The name, address, and employer identification number of the corporation transferring the stock;

(ii) If other than the corporation identified in paragraph (a)(1)(i) of this section, the name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The name, address, and identifying number of the person to whom the share or shares of stock were transferred pursuant to the exercise of the option;

(iv) The date the option was granted to the person;

(v) The exercise price per share;

(vi) The date the option was exercised by the person;

(vii) The fair market value of a share of stock on the date the option was exercised by the person; and

(viii) The number of shares of stock transferred to the person pursuant to the exercise of the option.

(2) Each return required by this paragraph (a) shall be made on Form 3921, Exercise of an Incentive Stock Option Under Section 422(b) (or its designated successor) and shall be filed in such manner as provided in the instructions thereto.

(b) *Requirement of return with respect to stock purchased under an employee stock purchase plan under section 6039(a)(2).* (1) Every corporation which in any calendar year records, or has by its agent recorded, a transfer of the legal title of a share of stock acquired by the transferor (person who acquires the shares pursuant to the exercise of the option) pursuant to the transferor's exercise of an option granted under an employee stock purchase plan as described in section 423(c) and where the exercise price is less than 100 percent of the value of the stock on date of grant or is not fixed or determinable on the date of the grant, shall, for such calendar year, file a return with respect to each transfer made during such year. This return must include the following information—

(i) The name, address, and identifying number of the transferor;

(ii) The name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The date the option was granted to the transferor;

(iv) The fair market value of the stock on the date the option was granted;

(v) The actual exercise price paid per share;

(vi) The exercise price per share determined as if the option were exercised on the date the option was granted to the transferor (to be provided only if the exercise price per share is not fixed or determinable on the date the option was granted);

(vii) The date the option was exercised by the transferor;

(viii) The fair market value of the stock on the date the option was exercised by the transferor;

(ix) The date the legal title of the shares was transferred by the transferor (see paragraph (b)(3) of this section); and

(x) The number of shares to which legal title was transferred by the transferor.

(2) Each return required by this paragraph (b) shall be made on Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c) (or its designated successor) and shall be filed in such manner as provided in the instructions thereto.

(3) A return is required by reason of a transfer described in section 6039(a)(2) only with respect to the first transfer of legal title of the shares by the transferor, including the first transfer of legal title to a recognized broker or financial institution. If a contractual agreement exists or is entered into with a recognized broker or financial institution pursuant to which shares acquired upon exercise of the option will be immediately deposited into a brokerage account established on behalf of the transferor, then the deposit of shares by the transferor into the brokerage account following the exercise of the option is the first transfer of legal title of the shares acquired by the transferor, and the corporation is only required to file a return relating to such transfer of legal title.

(4) Every corporation that 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 legal 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 filing returns.* Each return required by this section for a calendar year must be filed in accordance with the guidelines and procedures set forth in the instructions to Form 3921 and Form 3922.

(d) *Penalty.* For provisions relating to the penalty applicable to the failure to file a return under this section, see section 6721.

(e) *Exception to return requirements of section 6039(a) for certain nonresident aliens—(1) Return requirement under section 6039(a)(1).* The return requirement of section 6039(a)(1) is not applicable to the exercise of an incentive stock option by an employee who is a nonresident alien (as defined in section 7701(b)) and to whom the corporation is not required to provide a Form W-2, Wage and Tax Statement (or its designated successor) for any calendar year within the time period beginning with the first day of the calendar year in which the option was granted to the employee and ending on the last day of the calendar year in which the employee exercised the option.

(2) *Return requirement under section 6039(a)(2).* The return requirement of section 6039(a)(2) is not applicable to the first transfer of legal title of a share of stock by an employee who is a nonresident alien (as defined in section 7701(b)) and to whom the corporation is not required to provide a Form W-2 for any calendar year within the time period beginning with the first day of the calendar year in which the option was granted to the employee and ending on the last day of the calendar year in which the employee first transferred legal title to shares acquired under the option as described in paragraph (b)(3) of this section.

(3) For purposes of this paragraph (e), the term *corporation* is defined in section 7701(a) and includes, but is not

limited to, the corporation issuing the stock, a related corporation of the corporation, any agent of the corporation, any party distributing shares of stock or other payments in connection with the plan (for example, a brokerage firm), and any party in control of the payment of remuneration for employment to the employee.

(f) *Effective/applicability date—(1) In general.* This section is effective on November 17, 2009. This section will apply as of January 1, 2007.

(2) *Transition period.* Taxpayers are not required to comply with the return requirements of paragraphs (a) and (b) of this section for stock transfers that occur during the 2007, 2008 and 2009 calendar years.

[T.D. 9470, 74 FR 59090, Nov. 17, 2009]

§ 1.6039-2 Statements to persons with respect to whom information is reported.

(a) *Requirement of statement with respect to incentive stock options under section 6039(b).* (1) Every corporation filing a return under § 1.6039-1(a) shall furnish to each person whose name is set forth in such return a written statement with respect to the transfer or transfers made to such person during such year. This statement must include the information described in § 1.6039-1(a)(1).

(2) Each statement required by this paragraph (a) to be furnished to any person must be furnished to such person on Form 3921, Exercise of an Incentive Stock Option Under Section 422(b) (or its designated successor) and be delivered at such time and in such manner as provided in the instructions thereto.

(b) *Requirement of statement with respect to stock purchased under an employee stock purchase plan under section 6039(b).* (1) Every corporation filing a return under § 1.6039-1(b) shall furnish to each person whose name is set forth in such return a written statement with respect to the transfer or transfers made by such person during such year. This statement must include the information described in § 1.6039-1(b)(1).

(2) Each statement required by this paragraph (b) to be furnished to any person must be furnished to such person on Form 3922, Transfer of Stock Acquired Through an Employee Stock