

(i) *Expiration date.* The applicability date of paragraph (d)(6)(ii) expires on January 13, 2015.

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[FR Doc. 2012-3855 Filed 2-17-12; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9567]

RIN 1545-BK17

#### Reporting of Specified Foreign Financial Assets; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to final regulations (TD 9567), which were published in the **Federal Register** on Monday, December 19, 2011, relating to the reporting of specified foreign financial assets.

**DATES:** *Effective date:* This correction is effective February 21, 2012, and is applicable beginning December 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Joseph S. Henderson, (202) 622-3880 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The final regulations that are the subject of these corrections are under section 6038 of the Internal Revenue Code.

##### Need for Correction

As published on December 19, 2011 (76 FR 78561), final regulation (TD 9567), contains errors which may prove to be misleading and are in need of clarification.

##### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments.

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

*Authority:* 26 U.S.C. 7805 \* \* \*

## PART 1—[CORRECTED]

■ **Par. 2.** Section 1.6038D-2T is amended by:

■ 1. Revising the last sentence of paragraph (b)(3).

■ 2. Revising, in paragraph (d), the subject heading and fifth sentence of paragraph (2)(i) in the *Example*.

The revisions read as follows:

#### § 1.6038D-2T Requirement to report specified foreign financial assets (temporary).

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \* See § 1.6038D-5T(f) for rules to determine the maximum value of an interest in a foreign trust or estate.

\* \* \* \* \*

(d) \* \* \*

*Example.* \* \* \*

(2) \* \* \*

(i) *Married specified individuals filing separate annual returns.* \* \* \* See § 1.6038D-5T(b) regarding the maximum value of a jointly owned and specified foreign financial asset to be reported by a specified person, including a married specified individual, that is a joint owner of an asset. \* \* \*

\* \* \* \* \*

■ **Par. 3.** Section 1.6038D-4T is amended by revising paragraph (a)(9) to read as follows:

#### § 1.6038D-4T Information required to be reported (temporary).

(a) \* \* \*

(9) The foreign currency exchange rate and, if the source of such rate is other than as described in § 1.6038D-5T(c)(1), the source of the rate used to determine the specified foreign financial asset's U.S. dollar value, including maximum value; and

\* \* \* \* \*

■ **Par. 4.** Section 1.6038D-5T is amended by revising paragraph (c)(1).

#### § 1.6038D-5T Valuation guidelines (temporary).

\* \* \* \* \*

(c) \* \* \*

(1) *In general.* Except as provided in paragraph (c)(2) of this section, the U.S. Treasury Department's Financial Management Service foreign currency exchange rate is to be used to convert the value of a specified foreign financial asset into U.S. dollars for purposes of determining the aggregate value of specified foreign financial assets in which a specified person has an interest and determining the maximum value of a specified foreign financial asset.

\* \* \* \* \*

■ **Par. 5.** Section 1.6038D-7T is amended by revising paragraphs (a)(1)(i)(C) and (b) introductory text to read as follows:

#### § 1.6038D-7T Exceptions from the reporting of certain assets under section 6038D (temporary).

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(C) Form 8621, "Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund";

\* \* \* \* \*

(b) *Owner of certain trusts.* A specified person that is treated as an owner of any portion of a domestic trust under sections 671 through 678 is not required to file Form 8938 to report any specified foreign financial asset held by the trust if the trust is—

\* \* \* \* \*

**Guy R. Traynor,**

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[FR Doc. 2012-3935 Filed 2-17-12; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9567]

RIN 1545-BK17

#### Reporting of Specified Foreign Financial Assets; Correction

**AGENCY:** Internal Revenue Service (IRS).

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains corrections to final regulations (TD 9567), which were published in the **Federal Register** on Monday, December 19, 2011, relating to reporting of specified foreign financial assets.

**DATES:** *Effective Date:* This correction is effective February 21, 2012, and is applicable beginning December 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Joseph S. Henderson, (202) 622-3880 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The final regulations that are the subject of these corrections are under section 6038 of the Internal Revenue Code.

## Need for Correction

As published on December 19, 2011 (76 FR 78553), final regulation (TD 9567) contains errors which may prove to be misleading and are in need of correction.

## Correction of Publication

Accordingly, the publication of the final regulations (TD 9567), which were the subject of FR Doc. 2011-32263, is corrected as follows:

1. On page 78557, the first column, in the preamble, in paragraph (J), line 7 from the bottom of the paragraph, the language "Investment Company or a Qualified" is corrected to read "Investment Company or Qualified".

2. On page 78557, the third column, in the preamble, lines one and two in the first paragraph of paragraph (C) the language "Except as described in sections 5(D) and 5(E) of this explanation, for" is corrected to read "Except as described in sections 4(D) and 4(E) of this explanation, for".

### Guy R. Traynor,

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[FR Doc. 2012-3936 Filed 2-17-12; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9579]

RIN 1545-BJ78

### Source of Income From Qualified Fails Charges

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations that prescribe the source of income received on a qualified fails charge under section 863 of the Internal Revenue Code (Code). The regulations finalize proposed regulations and withdraw temporary regulations published on December 8, 2010, and affect persons that pay or are entitled to receive qualified fails charges, including withholding agents.

**DATES:** *Effective Date.* These regulations are effective on February 21, 2012.

*Applicability Date.* For the date of applicability, see § 1.863-10(g).

**FOR FURTHER INFORMATION CONTACT:**

Karen Walny, Office of Associate Chief

Counsel (International) (202) 622-3870 (not a toll free call).

### SUPPLEMENTARY INFORMATION:

#### Background

In response to persistent delivery failures in delivery-versus-payment transactions involving U.S. Treasury securities (Treasuries), the Treasury Market Practices Group (TMPG) and the Securities Industry and Financial Markets Association published a trading practice governing failed deliveries of Treasuries in 2008. In July, 2009, the Treasury Department and the Internal Revenue Service (IRS) issued Notice 2009-61 (2009-2 CB 181), which provided that the IRS will not challenge the position taken by a taxpayer or a withholding agent that a fails charge paid with respect to a Treasury on or before December 31, 2010 is not subject to U.S. gross basis taxation. On December 8, 2010, the Treasury Department and the IRS issued temporary and proposed regulations that establish source rules for a fails charge paid with respect to a Treasury, with a correction to the temporary regulations on December 28, 2010. 75 FR 76262, 75 FR 76321, and 75 FR 81457, respectively.

The temporary and proposed regulations provide that the source of income from a qualified fails charge is generally determined by reference to the residence of the taxpayer that is the recipient of the qualified fails charge income, with two exceptions. Qualified fails charge income earned by a qualified business unit (QBU) of a taxpayer is sourced to the country in which the QBU is engaged in a trade or business, and qualified fails charge income that arises from a transaction the income from which is effectively connected to a United States trade or business is sourced in the United States and treated as effectively connected to the conduct of a United States trade or business.

No comments were received on the proposed regulations, and no hearing was requested or held. This Treasury decision adopts the proposed regulations with the changes discussed in this preamble.

#### Explanation of Provisions

These final regulations adopt, with one substantive change, the proposed regulations on the source of a qualified fails charge. The final regulations also make a number of clarifying changes to the language of the regulations.

The preamble to the temporary regulations noted that no trading practice existed at that time for fails charges on securities other than

Treasuries, but that if a fails charge trading practice pertaining to other securities was endorsed by the TMPG or an agency of the United States government, the Treasury Department and the IRS would consider whether the source rule in the regulations should be extended to those fails charges. The TMPG has subsequently endorsed a trading practice for debentures issued by the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks and agency pass-through mortgage-backed securities issued or guaranteed by the Government National Mortgage Association (Ginnie Mae), Fannie Mae, and Freddie Mac (Agency Debt and Agency MBS, respectively) beginning in February, 2012.

The Treasury Department and the IRS have determined that the same source rule should apply to fails charges incurred with respect to Agency Debt and Agency MBS as to fails charges on Treasuries. Accordingly, these final regulations expand the scope of a qualified fails charge to fails charges paid with respect to Agency Debt. The sourcing rule in the final regulations also applies to a fails charge on Agency MBS guaranteed by Fannie Mae, Freddie Mac, and Ginnie Mae (for tax purposes, Fannie Mae, Freddie Mac, and Ginnie Mae do not issue Agency MBS). The final regulations do not address the source of any other payment, including a fails charge that is not a qualified fails charge.

The Treasury Department and the IRS are considering whether separate guidance is needed on the source of income attributable to certain payments, other than qualified fails charges, that arise in securities lending transactions or repurchase transactions and request comments regarding this issue.

#### Effective Date

These regulations are effective on February 21, 2012.

#### Applicability Date

These regulations apply to a qualified fails charge paid or accrued on or after December 8, 2010.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to