

[4830-01-p]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-109512-05

RIN 1545-BE47

Information Returns Required with Respect to Certain Foreign Corporations and Certain Foreign-Owned Domestic Corporations.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations to clarify existing guidance under sections 6038 and 6038A of the Internal Revenue Code (Code) with respect to the information required to be furnished regarding certain related party transactions of certain foreign corporations and certain foreign-owned U.S. corporations. The temporary regulations also increase the amount of certain penalties, and make certain other changes, to reflect the statutory changes made by the Taxpayer Relief Act of 1997. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by September 19, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-109512-05), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-109512-05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs) or via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-109512-05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kate Y. Hwa, (202) 622-3840; concerning submissions of comments, Kelly Banks, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

The collection of information contained in these proposed regulations has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Comments concerning the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Any such comments should be submitted not later than August 21, 2006.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operations, maintenance, and purchase of service to provide information.

The collection of information is in §1.6038-2(f)(11). This information is required by the IRS pursuant to section 6038 of the Code. The likely recordkeepers are business or other for-profit institutions. The estimated burden is as follows:

Estimated total annual reporting and/or recordkeeping burden: 1250 hours.

Estimated average annual burden per respondent: 15 minutes.

Estimated number of respondents: 5,000.

Estimated annual frequency of responses: once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### **Background**

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) to clarify the existing rules under sections 6038 and 6038A of the Code with respect to the information required to be furnished regarding certain related party transactions of certain foreign corporations and certain foreign-owned domestic corporations. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. 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 these regulations. Because these regulations impose no new collection of

information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### **Comments and Request for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal author of these regulations is Kate Y. Hwa, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

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

Income taxes, Reporting and recordkeeping requirements.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Par. 2. Section 1.6038-2 is amended to read as follows:

1. Paragraphs (f)(11), (k)(1), (k)(5) and (m) are revised.
2. Paragraph (f)(12) is added.

The additions and revisions read as follows:

§1.6038-2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations.

\* \* \* \* \*

(f)(11) [The text of this proposed amendment is the same as the text of §1.6038-2T(f)(11) published elsewhere in this issue of the **Federal Register**].

(f)(12) [The text of this proposed amendment is the same as the text of §1.6038-2T(f)(12) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(k)(1) [The text of this proposed amendment is the same as the text of §1.6038-2T(k)(1) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(5) \* \* \*

Example 3. [The text of this proposed amendment is the same as the text of §1.6038-2T(k)(5) Example 3 published elsewhere in this issue of the **Federal Register**].

Example 4. [The text of this proposed amendment is the same as the text of §1.6038-2T(k)(5) Example 4 published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(m) [The text of this proposed amendment is the same as the text of §1.6038-2T(m) published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.6038A-2 is amended by revising paragraphs (b)(8) and (h) to read as follows:

§1.6038A-2 Requirement of return.

\* \* \* \* \*

(b) \* \* \*

(8) [The text of this proposed amendment is the same as the text of §1.6038A-2T(b)(8) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(h) [The text of this proposed amendment is the same as the text of §1.6038A-2T(h) published elsewhere in this issue of the **Federal Register**].

/s/ Mark E. Matthews  
Deputy Commissioner for Services and Enforcement.