

Notice 2013-10: Information Reporting by Domestic Entities under Section 6038D with Respect to Specified Foreign Financial Assets

This notice provides guidance to domestic entities concerning the first taxable year certain domestic entities will be required to report interests in specified foreign financial assets under section 6038D of the Internal Revenue Code (Code).

Section 6038D was enacted by section 511 of the Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat. 71 (the HIRE Act), and applies to taxable years beginning after March 18, 2010. Section 6038D(a) requires an individual who holds any interest in a specified foreign financial asset during any taxable year to attach a statement to that individual's return of tax imposed by subtitle A of the Code for the taxable year to report the information identified in section 6038D(c) if the aggregate value of all such assets in which the individual holds an interest exceeds \$50,000 (or such higher amount as the Secretary may specify) for such taxable year.

Section 6038D(f) authorizes the Secretary to issue regulations or other guidance applying the provisions of section 6038D to any domestic entity as if the domestic entity were an individual, if the domestic entity is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets.

On December 19, 2011, the Internal Revenue Service (IRS) and the Department of the Treasury (Treasury Department) published temporary regulations providing guidance to individuals required to report specified foreign financial assets with their annual return pursuant to section 6038D. TD 9567, 76 FR 78553, 2012-1 C.B. 395. On December 19, 2011, the IRS and the Treasury

Department also published a notice of proposed rulemaking that cross-referenced those temporary regulations and also included Prop. Reg. §1.6038D-6. REG-130302-10, 76 FR 78594, 2012-1 C.B. 412.

Prop. Reg. §1.6038D-6 sets out the conditions under which a domestic entity will be considered a specified domestic entity and, therefore, required to report specified foreign financial assets in which the entity holds an interest. Prop. Reg. §1.6038D-6 is proposed to apply to taxable years beginning after December 31, 2011.

The IRS and the Treasury Department intend that, when final regulations are issued under section 6038D, those final regulations will modify the effective/applicability date of Prop. Reg. §1.6038D-6. Reporting by domestic entities of interests in specified foreign financial assets will not be required before the date specified by final regulations, which will not be earlier than taxable years beginning after December 31, 2012.

The principal author of this notice is Joseph S. Henderson of the Office of Associate Chief Counsel (International). For further information about this notice, contact Mr. Henderson at (202) 622-3840 (not a toll-free call).