

## **HIGHLIGHTS OF THIS ISSUE**

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### **INCOME TAX**

#### **T.D. 9476, page 336.**

Final regulations under section 1561 of the Code provide guidance to corporations that are component members of a controlled group of corporations and to consolidated groups filing life-nonlife Federal income tax returns. The regulations also provide guidance to component members regarding the apportionment of tax benefit items and the amount and type of information they are required to submit with their returns.

#### **REG-101896-09, page 347.**

Proposed regulations under section 6045 of the Code provide rules for stockbrokers regarding changes in the law that require them to report for certain sales the adjusted basis of the stock being sold and whether any gain or loss with respect to the sale is long-term or short-term. The regulations under section 1012 of the Code address changes in the law that alter how investors compute basis when averaging the basis of shares acquired at different prices and that expand the ability of investors to compute basis by averaging. The regulations under sections 6045A, 6045B, 6721, and 6722 of the Code address new reporting requirements imposed on issuers of securities for corporate actions that affect the securities' basis and on brokers (including custodians and issuers of securities) for transfers of securities. A public hearing is scheduled for February 17, 2010. Rev. Rul. 67-436 obsoleted.

### **EMPLOYEE PLANS**

#### **Notice 2010-14, page 344.**

#### **Weighted average interest rate update; corporate bond indices; 30-year Treasury securities; segment rates.**

This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in January 2010; the 24-month average segment rates; the funding transitional segment rates applicable for January 2010; and the minimum present value transitional rates for December 2009.

### **EXEMPT ORGANIZATIONS**

#### **Announcement 2010-4, page 384.**

The IRS has revoked its determination that Coinmach Disaster Relief Fund Trust of Plainview, NY; Five Rivers Community Development Corporation of Georgetown, SC; Interfaith Adopt-A-Building of New York, NY; Jeffrey and Sara Brunken Family FDN of Salt Lake City, UT; Newton County Community Center, Inc., of Covington, GA; The Hemp & Cannabis Foundation of Portland, OR; and Nuestra Sra De La Ribida-USA Auxiliary Service, Inc., of Tamarac, FL, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

(Continued on the next page)

Finding Lists begin on page ii.



## **ADMINISTRATIVE**

### **REG-101896-09, page 347.**

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# The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying

the tax law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 1561.—Limitations on Certain Multiple Tax Benefits in the Case of Certain Controlled Corporations

26 CFR 1.1561-1: General rules regarding certain tax benefits available to the component members of a controlled group of corporations.

### T.D. 9476

#### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

#### Apportionment of Tax Items Among the Members of a Controlled Group of Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance to corporations that are component members of a controlled group of corporations and to consolidated groups filing life-nonlife Federal income tax returns. They provide guidance to component members regarding the apportionment of tax benefit items and the amount and type of information they are required to submit with their returns.

DATES: *Effective Date:* These regulations are effective on December 28, 2009.

*Applicability Date:* For dates of applicability, see §§1.1502-43(e), 1.1502-47(t), 1.1561-1(d), 1.1561-2(f) and 1.1561-3(d). In accordance with section 7805(b)(1), respective portions of this Treasury decision are applicable to consolidated Federal income tax returns due on or after December 21, 2009 or to taxable years beginning on or after December 21, 2009, as the case may be.

FOR FURTHER INFORMATION CONTACT: Grid Glycer, (202) 622-7930 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 22, 2006, the IRS and the Treasury Department published several temporary regulations, including temporary regulations under sections 1502 and 1561. See T.D. 9304 (71 FR 76904), 2007-1 C.B. 423. Also on December 22, 2006, the IRS and the Treasury Department issued a notice of proposed rulemaking cross-referencing those temporary regulations. See REG-161919-05 (71 FR 76955), 2007-1 C.B. 463. For administrative reasons, these regulations were relocated in REG-113688-09. See T.D. 9451 (74 FR 25147), 2009-23 I.R.B. 1060.

On December 26, 2007, the IRS and the Treasury Department published several temporary regulations, including an additional temporary regulation under section 1561. See T.D. 9369 (72 FR 72929), 2008-1 C.B. 394. Also on December 26, 2007, the IRS and the Treasury Department issued a notice of proposed rulemaking cross-referencing those temporary regulations. See REG-104713-07 (72 FR 72970), 2008-1 C.B. 409.

##### Explanation of Provisions

This Treasury decision adopts the proposed regulations (§§1.1502-43, 1.1502-47, 1.1561-0, 1.1561-1, 1.1561-2 and 1.1561-3) with no substantive changes. However, this Treasury decision makes clarifying changes to §§1.1561-2 and 1.1561-3. These changes are discussed in the following portion of this preamble.

1. *Only the Positive Taxable Income or Positive Alternative Minimum Taxable Income of the Component Members of a Controlled Group of Corporations Shall Be Combined for Purposes of Determining the Amount of the Additional Tax Imposed by Section 11(b)(1) and the Reduction in the Alternative Minimum*

*Tax Exemption Amount Under Section 55(d)(3), Respectively.*

Section 1561(a) provides that in computing the amount of additional tax imposed by section 11(b)(1) (the additional tax), and the phase-out of the alternative minimum tax exemption amount under section 55(d)(3) (the exemption amount), the component members of a controlled group of corporations (as defined in section 1563) shall, as a first step, combine their taxable incomes (or alternative minimum taxable incomes) for their tax years that include the same December 31<sup>st</sup> date. This taxable income (or alternative minimum taxable income) is for the entire tax year of a component member, even if it was not a member of the group for each day of that tax year. In the case of the determination of the additional tax, the calculation is limited to the taxable incomes of those component members to which any part of the tax bracket amounts are apportioned.

The question has arisen whether a component member that incurs a loss for a tax year may apply that loss to reduce the amount of the combined taxable income (or combined alternative minimum taxable income) of the controlled group for purposes of determining the amount of the additional tax or the reduction in the exemption amount, respectively. This Treasury decision clarifies that, for these purposes, only the positive taxable incomes (or positive alternative minimum taxable incomes) of those component members can be combined.

Only if the members of an affiliated group of corporations, as defined in section 1504, elect to file a consolidated return, as defined in section 1502, may these members offset their income and losses in determining their consolidated Federal income tax liability. See, for example, *Woolford Realty Co. v. Rose*, 286 U.S. 319 (1932). Since the members of a controlled group have not elected to file a consolidated return (even if such controlled group meets the section 1504 definition of an affiliated group), they may not offset their income and losses in determining their combined Federal income tax liability. Hence, they

cannot offset such income and losses to determine their combined additional tax liability or their combined alternative minimum taxable income for purposes of determining the reduction in the exemption amount.

*2. A Component Member That Has a Short Taxable Year That Does Not Include a December 31<sup>st</sup> Date Calculates Its Additional Tax and Alternative Minimum Tax Liability on Just Its Own Income.*

Section 1561(b) and §1.1561-2(e) provide rules for apportioning the tax bracket amounts and accumulated earnings credit to a member with a short taxable year that does not include a December 31<sup>st</sup> date (a short-year member). However, §1.1561-2(e) does not provide guidance to a short-year member for determining its additional tax liability. This Treasury decision clarifies that such a member determines its additional tax liability on its own income for such short taxable year. Further, such income is not combined with the taxable incomes of the other component members of the same controlled group for purposes of determining the additional tax liability of such other component members.

In addition, for purposes of a short-year member determining its alternative minimum tax liability, this Treasury decision includes a reference to section 443(d). Section 443(d) provides that if a taxpayer has a return of less than 12 months (whether or not the tax year of that taxpayer includes a December 31<sup>st</sup> date), its alternative minimum tax liability is determined on an annualized basis.

*3. Clarification of the Rules under Which An Apportionment Plan Is Terminated.*

Section 1.1561-3(c)(3) provides the circumstances under which an apportionment plan is terminated. Paragraphs (iii) and (iv) of §1.1561-3(c)(3) of the proposed regulations provided:

(iii) Any corporation which was a component member of such group on the particular December 31 is not a component member of such group on such succeeding December 31; or

(iv) Any corporation which was not a component member of such group on the particular December 31 is a component

member of such group on such succeeding December 31.

It is often not feasible for the members of a controlled group to know for the current tax year whether a corporation will or will not be a component member of such group for the succeeding tax year. Accordingly, this Treasury decision clarifies these paragraphs by rewriting them to refer to the previous tax year and the current tax year, instead of the succeeding tax year. In addition, this Treasury decision clarifies that the fact that a corporation is joining or leaving a consolidated group, when such consolidated group is treated collectively as constituting one component member of the controlled group, will not serve to affect the ongoing status of such controlled group, provided that, after that corporation has either left or joined such consolidated group, such consolidated group remains in existence within the meaning of §1.1502-75(d).

The IRS and the Treasury Department received no written or electronic comments from the public in response to the notice of proposed rulemaking and no public hearing was requested or held.

**Special Analyses**

It has been determined that this Treasury decision 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. Therefore, 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, the notices of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Drafting Information**

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

\* \* \* \* \*

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

**PART 1—INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order and removing the entries for §§1.1502-43T and 1.1561-2T to read as follows:

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

Section 1.1502-43 also issued under 26 U.S.C. 1502. \* \* \*

Section 1.1561-2 also issued under 26 U.S.C. 1561. \* \* \*

**§1.924(a)-1T [Amended]**

Par. 2. Section 1.924(a)-1T(j)(2)(i), fifth sentence, is amended by removing the language “§1.1561-3T” and adding “§1.1561-3” in its place.

Par. 3. Section 1.924(a)-1T(j)(2)(i), sixth sentence, is amended by removing the language “§1.1561-3T(a)” and adding “§1.1561-3” in its place.

Par. 4. Section 1.1502-43 is amended by revising paragraphs (d) and (e) to read as follows:

*§1.1502-43 Consolidated accumulated earnings tax.*

\* \* \* \* \*

(d) *Consolidated accumulated earnings credit—(1) In general.* [Reserved]

(2) *Special rule if a consolidated group is part of a controlled group.* If a consolidated group is treated collectively as being one component member of a controlled group, or if each member of a consolidated group is treated as being a separate component member of a controlled group, see section 1561 for determining the portion of the accumulated earnings credit to be allocated to such group or to such members.

(e) *Effective/applicability date.* This section applies to any consolidated Federal income tax return due (without extensions) on or after December 21, 2009. However, a consolidated group may apply this section to any consolidated Federal income tax return filed on or after December 21, 2009. For returns due before December 21, 2009, see §1.1502-43T as contained in 26 CFR part 1 in effect on April 1, 2009.

### §1.1502-43T [Removed]

Par. 5. Section 1.1502-43T is removed.

Par. 6. Section 1.1502-47 is amended by revising paragraphs (s) and (t) to read as follows:

#### *§1.1502-47 Consolidated returns by life-nonlife groups.*

\* \* \* \* \*

(s) *Filing requirements*—(1) *In general.* To file a consolidated income tax return for a life-nonlife consolidated group, the common parent shall—

(i) File the applicable consolidated corporate income tax return: a Form 1120-L, “U.S. Life Insurance Company Income Tax Return,” where the common parent is a life insurance company; a Form 1120-PC, “U.S. Property and Casualty Insurance Company Income Tax Return,” where the common parent is an insurance company, other than a life insurance company; or a Form 1120, “U.S. Corporation Income Tax Return,” where the common parent is any other type of corporation;

(ii) Indicate clearly on the face of this return that such corporate tax return is a life-nonlife return;

(iii) Show any set offs required by paragraphs (g), (m), and (n) of this section;

(iv) Report separately the nonlife consolidated taxable income or loss, determined under paragraph (h) of this section, on a Form 1120 or 1120-PC (whether filed by the common parent or as an attachment to the consolidated return), as the case may be, of all nonlife members of the consolidated group; and

(v) Report separately the consolidated partial Life Insurance Company Taxable Income (as defined by paragraph (d)(3) of this section), determined under paragraph (j) of this section, on a Form 1120-L (whether filed by the common parent or as an attachment to the consolidated return), of all life members of the consolidated group.

(2) *Cross reference.* See §1.1502-75(j), regarding the inclusion in a corporate tax return of the required statements and schedules for subsidiaries.

(t) *Effective/applicability date.* Paragraph (s) of this section applies to any consolidated Federal income tax return due (without extensions) on or after December 21, 2009. However, a

consolidated group may apply paragraph (s) of this section to any consolidated Federal income tax return filed on or after December 21, 2009. For returns due before December 21, 2009, see §1.1502-47T as contained in 26 CFR part 1 in effect on April 1, 2009.

### §1.1502-47T [Removed]

Par. 7. Section 1.1502-47T is removed.

Par. 8. Section 1.1561-0 is added to read as follows:

#### *§1.1561-0 Table of contents.*

This section lists the table of contents for §§1.1561-1 through 1.1561-3.

#### *§1.1561-1 General rules regarding certain tax benefits available to the component members of a controlled group of corporations.*

- (a) In general.
  - (1) Limitation.
  - (2) Definitions.
- (b) Special rules.
  - (1) S Corporation.
  - (2) 52-53-week taxable year.
- (c) Tax avoidance.
- (d) Effective/applicability date.

#### *§1.1561-2 Special rules for allocating reductions of certain Section 1561(a) tax-benefit items.*

- (a) Additional tax.
  - (1) Calculation.
  - (2) Apportionment.
  - (3) Examples.
- (b) Reduction to the amount exempted from the alternative minimum tax.
  - (1) Calculation.
  - (2) Apportionment.
  - (3) Examples.
- (c) Accumulated earnings credit.
- (d) [Reserved].
- (e) Short taxable year not including a December 31<sup>st</sup> date.
  - (1) General rule.
  - (2) Additional rules.
  - (3) Calculation of the additional tax.
  - (4) Calculation of the alternative minimum tax.
  - (5) Examples.
- (f) Effective/applicability date.

#### *§1.1561-3 Allocation of the section 1561(a) tax items.*

- (a) Filing of form.
  - (1) In general.
  - (2) Exception for component members that are members of a consolidated group.
  - (b) No apportionment plan in effect.
  - (c) Apportionment plan in effect.
    - (1) Adoption of plan.
    - (2) Limitation on adopting a plan.
    - (3) Termination of plan.
  - (d) Effective/applicability date.

### §1.1561-0T [Removed]

Par. 9. Section 1.1561-0T is removed.

Par. 10. Section 1.1561-1 is added to read as follows:

#### *§1.1561-1 General rules regarding certain tax benefits available to the component members of a controlled group of corporations.*

(a) *In general*—(1)—*Limitation.* Part II (section 1561 and following) of subchapter B of chapter 6 of the Internal Revenue Code (Code) (part II) provides rules to limit the amounts of certain specified tax benefit items of component members of a controlled group of corporations for their tax years which include a particular December 31<sup>st</sup> date, or, in the case of a short taxable year member (see section 1561(b) and §1.1561-2(e)), the date substituted for that December 31<sup>st</sup> date. The amount of the tax items enumerated in section 1561(a) available to any of the component members of a controlled group shall be determined for purposes of subtitle A of the Code as if the component members were a single corporation. Certain other tax items also set forth in section 1561(a) (for example, the additional tax imposed by section 11(b)(1) and the section 55(d)(3) phase out of the alternative minimum tax exemption amount) will be determined by combining the positive taxable income or positive alternative minimum taxable income of the component members of such a group and then allocating the amount of such items among those members.

(2) *Definitions.* For certain definitions (including the definition of a *controlled group of corporations* and a *component member*) and special rules for purposes of this part II see section 1563.

(b) *Special rules*—(1) *S Corporation*. For purposes of this part II, the term *corporation* includes a small business corporation (as defined in section 1361). However, for the treatment of such a corporation as an *excluded member* of a controlled group of corporations see §1.1563-1(b)(2)(ii)(C).

(2) *52-53-week taxable year*. In the case of corporations electing a 52-53-week taxable year under section 441(f)(1), the provisions of this part II shall be applied in accordance with the special rule of section 441(f)(2)(A). See §1.441-2.

(c) *Tax avoidance*. The provisions of this part II do not delimit or abrogate any principle of law established by judicial decision, or any existing provisions of the Code, such as sections 269, 482, and 1551, which serve to prevent any avoidance or evasion of income taxes.

(d) *Effective/applicability date*. This section applies to any tax year beginning on or after December 21, 2009. However, taxpayers may apply this section to any Federal income tax return filed on or after December 21, 2009. For tax years beginning before December 21, 2009, see §1.1561-1T as contained in 26 CFR part 1 in effect on April 1, 2009.

#### §1.1561-1T [Removed]

Par. 11. Section 1.1561-1T is removed.

Par. 12. Section 1.1561-2 is added to read as follows:

#### §1.1561-2 *Special rules for allocating reductions of certain section 1561(a) tax-benefit items.*

(a) *Additional tax*—(1) *Calculation*—(i) *In general*. For the purpose of determining the amount, if any, of the additional tax imposed by section 11(b)(1) (the additional tax), the taxable incomes of all of the component members of a controlled group of corporations shall be combined to determine whether either of the income thresholds for imposing the additional tax have been attained.

(ii) *Special rules*. For purposes of paragraph (a)(1)(i) of this section—

(A) *Component member* means a corporation that is apportioned some part of any applicable tax bracket amount; and

(B) *Taxable income* means the positive taxable income of a component mem-

ber for its entire tax year (even if it was not a member of the group for each day of that tax year) that includes the same December 31<sup>st</sup> testing date, which is also applicable to the other component members of that same controlled group.

(2) *Apportionment*—(i) *General rule*. Any additional tax determined under paragraph (a)(1) of this section shall be apportioned among such members in the same manner as the corresponding tax bracket of section 11(b)(1) is apportioned. For rules to apportion the section 11(b)(1) tax brackets among the component members of a controlled group, see §1.1561-3(b) or (c).

(ii) *Apportionment methods*. Unless the component members of a controlled group elect to use the first-in-first-out (FIFO) method described in paragraph (a)(2)(ii)(B) of this section, such members are required to apportion the amount of the additional tax using the proportionate method described in paragraph (a)(2)(ii)(A) of this section. These component members may elect the FIFO method by specifically adopting such method in their apportionment plan.

(A) *Proportionate method*. Under the proportionate method, the additional tax is allocated to each component member in the same proportion as the portion of the tax-benefit amount that inured to a member from utilizing lower tax brackets bears to the amount of the group's total tax-benefit amount inuring to it from utilizing those lower tax brackets. The tax-benefit amount that inures to a corporation from using a particular tax bracket is the tax savings that such corporation realizes from having a portion of its taxable income taxed at the lower rate attributed to that tax bracket instead of the high tax rates to which it would otherwise be subject. The steps for applying the proportionate method of allocation are as follows:

(1) *Step 1*. The regular tax (not including the additional tax) owed by a component member under a particular tax bracket is divided by the total tax owed by all component members under that tax bracket;

(2) *Step 2*. The percentage calculated under *Step 1* is multiplied by the total tax-benefit amount inuring to all the members of the group from their use of this tax bracket. This computed amount equals the portion of the group's tax-benefit amount that inured to such member from using its portion of this tax bracket;

(3) *Step 3*. The amount determined under *Step 2* is divided by the total tax-benefit amount, inuring to all the component members of the group from using all the tax brackets to which any component member's income was subject;

(4) *Step 4*. The percentage calculated under *Step 3* is multiplied by the amount of the group's additional tax. The amount determined under this *Step 4* equals the amount of the additional tax apportioned to such member for that tax bracket; and

(5) *Step 5*. If a component member is liable for regular tax (not including the additional tax) under more than one tax bracket, that member must calculate the amount of the additional tax apportioned to it with respect to each tax bracket. Accordingly, steps 1 through 4 must be applied for each tax bracket applicable to that member. The sum of all the apportioned amounts of additional tax from each tax bracket for which the member is subject is the total amount of the additional tax apportioned to that member.

(B) *FIFO method*. Under the FIFO method, the first dollars of the additional tax are to be allocated proportionately to the members starting with the lowest tax bracket (that is, the first tax bracket), up to the amount of the tax benefit inuring to those members from using that tax bracket. Any remaining amount of additional tax is then allocated proportionately among the component members who use the next higher tax bracket, and so on, until the entire amount of the additional tax has been fully apportioned among the members. For example, the first \$9,500 of the additional tax liability of a controlled group is apportioned entirely to the member(s) that availed themselves of the benefit of the 15 percent tax bracket.

(3) *Examples*. The provisions of this paragraph (a) may be illustrated by the following examples:

*Example 1.* (i) *Facts*. A controlled group of corporations consists of three members: X, Y and Z. X owns all the stock of Y and Z. Each corporation files its separate return on a calendar year basis. For calendar year 2007, the component members of the controlled group have an apportionment plan in effect. The members apportioned 80% of the 15 percent tax-bracket amount (\$40,000) to X and the remaining 10% (\$10,000) to Y. The members apportioned 100% of the 25 percent tax-bracket amount (\$25,000) to Y. However, these members have not adopted the FIFO method for apportioning the additional taxes. Therefore, they must follow the proportionate method. For 2007, X had taxable income (TI) of \$40,000, Y had

TI of \$60,000 and Z had TI of \$100,000. Thus the total TI of the group is \$200,000.

(ii) *Calculating the tax from the tax brackets and the tax benefit derived from such tax.* (A) *Regular tax of group subject to a 15 percent tax rate.* (1) *Calculating the group's tax which resulted from applying a 15 percent tax rate.* The amount of tax under the 15 percent tax bracket is \$7,500 (15% x \$50,000).

(2) *The tax-benefit amount inuring to the group from using the 15 percent tax bracket.* A tax benefit inures to those members of the group who avail themselves of the 15 percent tax bracket. That tax benefit results from having the first \$50,000 of its income taxed at the 15 percent tax rate, instead of at the 34 percent tax rate. Thus, the tax-benefit amount inuring to this group from using the 15 percent tax bracket is \$9,500 (\$17,000 (34% x \$50,000) minus \$7,500 (15% x \$50,000)).

(B) *Regular tax of group subject to a 25 percent tax rate.* (1) *Calculating the group's tax which resulted from applying a 25 percent tax rate.* The

amount of tax under the 25 percent tax bracket is \$6,250 (25% x \$25,000 (\$75,000 - \$50,000)).

(2) *The tax-benefit amount inuring to the group from using the 25 percent tax bracket.* A tax benefit inures to those members of the group who avail themselves of the 25 percent tax bracket. That tax benefit results from having \$25,000 of its income taxed at the 25 percent tax rate, instead of at the 34 percent tax rate. Thus, the tax-benefit amount inuring to this group from using the 25 percent tax bracket is \$2,250 (\$8,500 (34% x \$25,000) minus \$6,250 (25% x \$25,000)).

(C) *Regular tax of group subject to a 34 percent tax rate.* (1) *Calculating the group's tax which resulted from applying a 34 percent tax rate.* The amount of tax under the 34 percent tax bracket is \$42,500 (34% x \$125,000 (\$200,000 (total TI) - \$75,000) (amount taxed at lower rates)).

(2) *The tax-benefit amount inuring to the group from using the 34 percent tax bracket.* The group's total TI of \$200,000 is less than the \$15,000,000 in-

come threshold for imposing any 3 percent additional tax on the group. Therefore, there is no tax benefit inuring to the members of this group for using the 34 percent tax bracket.

(D) *The computation of the additional tax.* Since the combined TI of the group exceeds \$100,000, a 5 percent additional tax is imposed on the group. That 5 percent additional tax is the lesser amount of 5 percent of the group's taxable income exceeding \$100,000 or \$11,750. Five percent of that excess amount of taxable income is \$5,000 (5% x \$100,000 (\$200,000 - \$100,000)). Since \$5,000 is less than \$11,750, the group's 5 percent additional tax is \$5,000.

(iii) *Apportioning the amount of additional tax to each applicable tax bracket.* (A) *The apportioned tax under each bracket.* The amount of tax owed by each member under each tax bracket pursuant to the apportionment plan is as follows:

Name of Component Member	Amount of tax owed under the 15% tax bracket	Amount of tax owed under the 25% tax bracket	Amount of tax owed under the 34% tax bracket
X	\$6,000	0	0
Y	\$1,500	\$6,250	\$8,500
Z	0	0	\$34,000

(B) *Apportioning the 5 percent additional tax among the component members of the controlled group.* Since the group did not elect to adopt the FIFO method of apportionment, it is required to apportion the \$5,000 of its 5 percent additional tax pursuant to the proportionate method in the following manner:

(1) *Amount of the additional tax apportioned to X.* Pursuant to the plan, X was liable for \$6,000 of the group's \$7,500 regular tax (80%) owed under the 15 percent tax bracket (and X is not liable for any regular tax under any higher tax bracket). See *Step 1* of paragraph (a)(2)(ii)(A) of this section. X's portion of the group's tax benefit which it derived from using the 15 percent tax rate is \$7,600 (0.8 x \$9,500). See *Step 2*. The tax benefit inuring to the entire group from using the 15 percent and 25 percent tax brackets is \$11,750 (\$9,500 (from the 15 percent tax bracket) + \$2,250 (from the 25 percent tax bracket)). So, X's percentage portion of the group's total tax benefit is \$7,600/\$11,750 (64.68%). See *Step 3*. Thus, X's allocated portion of the 5 percent additional tax from using the 15 percent tax bracket is \$3,234 (0.6468 x \$5,000). See *Step 4*.

(2) *Amount of the additional tax apportioned to Y.* (i) *Regular tax apportioned to Y from using the 15 percent tax bracket.* Pursuant to the plan, Y was liable for the remaining \$1,500 of the group's \$7,500 regular tax (20%) owed under the 15 percent tax bracket. See *Step 1*. Y's portion of the group's tax benefit which it derived from using the 15 percent tax rate is \$1,900 (\$9,500 - \$7,600, or 0.2 x \$9,500). See *Step 2*. So, Y's percentage portion of the group's total tax benefit is \$1,900/\$11,750 (16.17%). See *Step 3*. Thus, Y's allocated portion of the 5 percent additional tax from using the 15 percent tax bracket is \$809 (0.1617 x \$5,000). See *Step 4*.

(ii) *Regular tax apportioned to Y from using the 25 percent tax bracket.* Pursuant to the plan, Y was liable for 100% of the group's regular tax owed under the 25 percent tax bracket, an amount of \$6,250. See *Step 1*. Y is, therefore, entitled to 100% of the group's tax benefit which it derived from using this tax bracket, an amount of \$2,250. See *Step 2*. So, Y's percentage portion of the group's total tax benefit is \$2,250/\$11,750 (19.15%). See *Step 3*. Thus, Y's allocated portion of the 5 percent additional tax from using the 25 percent tax bracket is \$957 (0.1915 x \$5,000). See *Step 4*. Y's total allocated portion of the additional tax is \$1,766 (\$809 + \$957). See *Step 5*.

*Example 2.* (i) *Facts.* The facts are the same as in *Example 1*, except that on August 31, 2007, X of the X-Y-Z controlled group sold all of the stock of Z to M of the M-N controlled group, a pair of corporations unrelated to the X-Y group. Pursuant to the terms of the sales agreement, the members of the M-N group properly notified the members of the X-Y group on a timely basis that Z's taxable income for its 2007 tax year, as based on the group's December 31<sup>st</sup> testing date, was \$100,000.

(ii) *Controlled group analysis.* On December 31<sup>st</sup>, 2007, X and Y are members of the selling controlled group and M, N and Z are members of the buying controlled group. However, pursuant to section 1563(b)(3), Z is treated as an additional member of the X-Y group on December 31<sup>st</sup> 2007, since it was a member for at least one-half the number of days (243 out of 364) during the period beginning on January 1 and ending on December 30, 2007. Conversely, pursuant to section 1563(b)(2)(A), Z is treated as an excluded member of the M-N controlled group. Therefore, on December 31<sup>st</sup>, 2007, X, Y and Z qualify as component members of the selling

group, and only M and N qualify as component members of the buying group.

(iii) *Additional tax analysis.* With regard to X and Y's 2007 tax years, X and Y together owed \$5,000 of additional tax, as calculated in *Example 1*. X's allocated portion of the additional tax is \$3,234, as calculated in the manner set forth in *Example 1*. Y's allocated portion of the additional tax is \$1,766, also as calculated in the manner set forth in *Example 1*.

*Example 3.* (i) *Facts.* The facts are the same as in *Example 2*, except that in 2012, pursuant to an IRS audit, Z's 2007 taxable income was re-determined. It was adjusted by an income increase of \$10,000. Pursuant to the terms of the sales agreement, the members of the M-N group timely notified the members of the X-Y group of Z's income adjustment.

(ii) *Additional tax analysis.* For 2007 the X-Y-Z group owed a revised additional tax in the amount of \$5,500, allocated as follows: \$3,557.40 to X and \$1,942.60 to Y. X and Y each filed an amended 2007 tax return to report their portions of the \$500 increase to the group's additional tax. Pursuant to their apportionment plan for allocating their regular tax, and as a result of defaulting to the proportionate method for allocating the group's additional tax, X reported \$323.40 as its share of the group's increase to its additional tax and Y reported \$176.60 as its share of the group's increase to its additional tax.

*Example 4.* The facts are the same as in *Example 1*, except that the members elected in their apportionment plan to adopt the FIFO method for apportioning the additional tax. Under the FIFO method, the 5 percent additional tax amount of \$5,000 will be apportioned entirely to those members who would benefit from using the 15 percent tax bracket, by reason that \$5,000 of the group's additional tax is less than \$9,500, which is the full tax-benefit amount inuring

to a controlled group from having a 15 percent tax rate applied to the full income bracket subject to that rate. Since X derived 80 percent of the group's tax benefit by its use of the 15 percent tax bracket, its share of the group's 5 percent additional tax is \$4,000 (80% x \$5,000), and Y's share of the group's 5 percent additional tax is, therefore, \$1,000, which is the remaining amount of the group's 5 percent additional tax, attributable to the 15 percent tax bracket.

(b) *Reduction to the amount exempted from the alternative minimum tax*—(1) *Calculation.* The alternative minimum taxable incomes of the component members of a controlled group of corporations shall be taken into account in calculating the reduction set forth in section 55(d)(3) to the amount exempted from the alternative minimum tax (the exemption amount). For purposes of the preceding sentence, *alternative minimum taxable income* means the positive alternative minimum taxable income of a component member for its entire tax year (even if it was not a member of the group for each day of that tax year) that includes the same December 31<sup>st</sup> testing date, which is also applicable to the other component members of that same controlled group.

(2) *Apportionment.* Any reduction to the exemption amount shall be apportioned to the component members of a controlled group in the same manner that the amount of the exemption (provided in section 55(d)(2)) to the alternative minimum tax was allocated under section 1561(a). For rules to apportion the section 55(d)(2) exemption amount among the component members of a controlled group, see §1.1561-3(b) or (c).

(3) *Examples.* The provisions of this paragraph (b) may be illustrated by the following example:

*Example. (i) Facts.* A controlled group of corporations consists of three members: X, Y and Z. X owns all of the stock of Y and Z. Each corporation files its separate return on a calendar year basis. For calendar year 2007, the component members of this controlled group have an apportionment plan in effect. The group has chosen to apportion the entire section 55(d)(2) exemption amount of \$40,000 to Z. For 2007, X had alternative minimum taxable income (AMTI) of \$40,000, Y had AMTI of \$60,000 and Z had AMTI of \$100,000. Thus the total AMTI of the group is \$200,000.

(ii) *Calculating the reduction to the exemption amount.* Section 55(d)(3)(A) provides that the section 55(d)(2) exemption amount shall be reduced (but not below zero) by an amount equal to 25 percent of the amount by which the AMTI of a corporation exceeds \$150,000. For the purpose of computing the group's AMTI, the AMTI of each of the component members, for their tax years that have the

same December 31<sup>st</sup> testing date, shall be taken into account. In accordance with these provisions, the \$40,000 exemption amount is reduced by \$12,500 (25% x \$50,000 (\$200,000 - \$150,000)). Pursuant to the group's allocation plan, the entire \$12,500 reduction to the exemption amount is allocated to Z. Thus, after such allocation, Z's \$40,000 exemption amount is reduced to \$27,500 (\$40,000 - \$12,500).

(c) *Accumulated earnings credit.* The component members of a controlled group of corporations are permitted to allocate the amount of the accumulated earnings credit unequally if they have an apportionment plan in effect.

(d) [Reserved].

(e) *Short taxable years not including a December 31<sup>st</sup> date*—(1) *General rule.* If a corporation has a short taxable year not including a December 31<sup>st</sup> date and, after applying the rules of section 1561(b) and paragraph (e)(2)(i) of this section, it qualifies as a component member of the group with respect to its short taxable year (short-year member), then, for purposes of subtitle A of the Internal Revenue Code, the amount of any tax-benefit item described in section 1561(b) allocated to that component member's short taxable year shall be the amount specified in section 1561(a) for that item, divided by the number of corporations which are component members of that group on the last day of that component member's short taxable year. The component members of such group may not apportion, by an apportionment plan, an amount of such tax-benefit item to any short-year member that differs from equal apportionment of that item.

(2) *Additional rules.* For purposes of paragraph (e)(1) of this section—

(i) Section 1563(b) shall be applied as if the last day of the taxable year of a short-year member were substituted for December 31<sup>st</sup>, and

(ii) The term *short taxable year* does not refer to any portion of a tax year of a corporation for which its income is required to be included in a consolidated return pursuant to §1.1502-76(b).

(3) *Calculation of the additional tax.* A short-year member (as defined in paragraph (e)(1) of this section) for its short taxable year calculates its additional tax liability imposed by section 11(b)(1) only on its own income, and therefore the subsequent calculation of the additional tax liability with regard to the remaining members of the group will not include the income of this short-year member.

(4) *Calculation of the alternative minimum tax.* If a component member has a tax year of less than 12 months, whether or not such tax year includes a December 31<sup>st</sup> date, see section 443(d) for the annualization method required for calculating the alternative minimum tax.

(5) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples:

*Example 1. Formation of a new member of a controlled group. (i) Facts.* On January 2, 2007, corporation X transfers cash to newly formed corporation Y (which begins business on that date) and receives all of the stock of Y in return. X also owns all of the stock of corporation Z on each day of 2006 and 2007. X, Y and Z have an apportionment plan in effect, apportioning the 15 percent tax-bracket amount as follows: 40% (\$20,000) to each of X and Y and 20% (\$10,000) to Z. X, Y and Z each file a separate return with respect to the group's December 31<sup>st</sup> 2007 testing date. X is on a calendar tax year and Z is on a fiscal tax year ending on March 31. Y adopts a fiscal year ending on June 30 and timely files a tax return for its short taxable year beginning on January 2, 2007, and ending on June 30, 2007.

(ii) *Y's short taxable year.* On June 30, 2007, Y is a component member of a parent-subsidiary controlled group of corporations composed of X, Y and Z. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to Y's short taxable year ending on June 30, 2007. Rather, Y is entitled to exactly 1/3 of such bracket amount, or \$16,667.

(iii) *The members' subsequent tax years.* On December 31<sup>st</sup>, 2007, X, Y and Z are component members of a parent-subsidiary controlled group of corporations. For their tax years that include December 31<sup>st</sup>, 2007 (X's calendar year ending December 31<sup>st</sup>, 2007, Z's fiscal year ending March 31, 2008 and Y's fiscal year ending June 30, 2008), X, Y and Z apportion among themselves the full amount of all of the applicable tax brackets pursuant to their apportionment plan. For example, 40% of the 15 percent tax-bracket amount, or \$20,000, was apportioned to each of X and Y, and the remaining 10%, or \$10,000, was apportioned to Z.

*Example 2. Allocating a tax bracket to the short taxable year of a liquidated member of a controlled group (i) Facts.* On January 1, 2007, corporation P owns all of the stock of corporations S<sub>1</sub>, S<sub>2</sub> and S<sub>3</sub> (the P group). Each of these four component members of the P group, with respect to the group's December 31<sup>st</sup>, 2007 testing date, files its separate return on a calendar year basis. These members have an apportionment plan in effect (the P group plan) under which S<sub>1</sub> and S<sub>2</sub> are each entitled to 40% of the 15 percent tax-bracket amount (\$20,000), and P and S<sub>3</sub> are each entitled to 10% of the 15 percent tax-bracket amount (\$5,000). On May 31, 2007, S<sub>1</sub> liquidates and therefore files a return for the short taxable year beginning on January 1, 2007, and ending on May 31, 2007. On July 31, 2007, S<sub>2</sub> liquidates and therefore files a return for the short taxable year beginning on January 1, 2007 and ending on July 31, 2007. P and S<sub>3</sub> each file a return for their 2007 calendar tax years.

(ii) *Apportionment of the 15 percent tax bracket to S<sub>1</sub> for its short taxable year.* On May 31, 2007, S<sub>1</sub> is a component member of the P group composed of P, S<sub>1</sub>, S<sub>2</sub> and S<sub>3</sub>. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to S<sub>1</sub>'s short taxable year ending on June 30, 2007. Rather, S<sub>1</sub> is entitled to exactly 1/4 of such bracket amount, or \$12,500.

(iii) *Apportionment of the 15 percent tax bracket to S<sub>2</sub> for its short taxable year.* On July 31, 2007, S<sub>2</sub> is a component member of the P group composed of P, S<sub>2</sub> and S<sub>3</sub>. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to S<sub>2</sub>'s short taxable year ending on June 30, 2007. Rather, S<sub>2</sub> is entitled to exactly 1/3 of such bracket amount, or \$16,667.

(iv) *Apportionment of the 15 percent tax bracket to P and S<sub>3</sub> for each of their calendar tax years.* On December 31<sup>st</sup>, 2007, P and S<sub>3</sub> are component members of the P group. Accordingly, for P and S<sub>3</sub>'s 2007 calendar tax year, they are each apportioned \$25,000 of the 15 percent tax bracket, pursuant to the applicable P group plan.

*Example 3. Liquidation of member after its transfer to another controlled group.* (i) *Facts.* The facts are the same as in *Example 2*, except that P, on April 30, 2007, sold all of the stock of S<sub>2</sub> to the M-N controlled group. At the time of the sale, M and N are both unrelated to any members of the P group. As in *Example 2*, S<sub>2</sub> liquidates on July 31, 2007, and therefore files a tax return for its short taxable year beginning on January 1, 2007, and ending on July 31, 2007. Pursuant to the sales agreement, the M-N group timely notified P that S<sub>2</sub> had liquidated.

(ii) *Controlled group analysis.* On April 30, 2007, the date of the sale of S<sub>2</sub>, the P group reasonably expected that S<sub>2</sub> would be treated as an excluded member with respect to its December 31<sup>st</sup>, 2007 testing date. On that April 30<sup>th</sup> date, S<sub>2</sub> had been a member of the P group for less than one-half the number of days of what it expected would be a full 2007 calendar tax year preceding December 31<sup>st</sup>, 2007 (120 days (January 1-April 30) out of 364 days (January 1-December 30)). Yet, as a result of S<sub>2</sub>'s subsequent liquidation by the M-N group prior to December 31<sup>st</sup>, 2007, S<sub>2</sub> became a component member of the P group with respect to the P group's December 31<sup>st</sup>, 2007 testing date. With respect to that December 31<sup>st</sup> testing date, S<sub>2</sub> thus was a member of the P group for more than one-half of the number of days of its tax year ending on July 31, 2007, which days preceded December 31<sup>st</sup>, 2007 (120 days (January 1-April 30 of 2007) out of 211 days (January 1-July 30 of 2007)). The allocation of the 15 percent tax-bracket amount to the P group members is determined in the same manner as in *Example 2* and, therefore, the bracket amounts allocated to P, S<sub>1</sub>, S<sub>2</sub> and S<sub>3</sub> are the same as determined in *Example 2*. The allocation of the bracket amounts would be the same if, at the time P sold all of the S<sub>2</sub> stock, the parties had made a section 338(h)(10) election.

*Example 4. Short tax year including a December 31<sup>st</sup> date.* Corporation X owns all of the stock of corporations Y and Z. X, Y and Z each file separate returns. X and Y are on a calendar tax year and Z is on a fiscal tax year beginning October 1 and ending September 30. On January 2, 2007, Z liquidates. Because Z's final tax year (beginning on October 1, 2006 and ending on January 2, 2007) includes

a December 31<sup>st</sup> date, that is, December 31, 2006, it is therefore not subject to the short taxable year rule provided by section 1561(b) and paragraph (e) of this section. Accordingly, Z is a component member of the X-Y-Z group, for the group's December 31<sup>st</sup>, 2006 testing date. Thus, the rules of this paragraph (e) do not limit the amount of any of the tax-benefit items of section 1561(a) available to Z or to this controlled group.

(f) *Effective/applicability date.* This section applies to any tax year beginning on or after December 21, 2009. However, taxpayers may apply this section to any Federal income tax return filed on or after December 21, 2009. For tax years beginning before December 21, 2009, see §1.1561-2T as contained in 26 CFR part 1 in effect on April 1, 2009.

### §1.1561-2T [Removed]

Par. 13. Section 1.1561-2T is removed.

Par. 14. Section 1.1561-3 is added to read as follows:

#### §1.1561-3 Allocation of the section 1561(a) tax items.

(a) *Filing of form—(1) In general.* For each tax year that a corporation is a component member of the same controlled group of corporations on a December 31<sup>st</sup> (its testing date), or, in the case of a short-year member (see section 1561(b) and §1.1561-2(e)), the date substituted for that December 31<sup>st</sup> date (its testing date), such corporation and all the other component members of such group each must file the required form (that is, Schedule O or any successor form) with the Federal income tax return for that component member's tax year that includes a particular testing date. Each such corporation must file that form with its return whether or not—

(i) An apportionment plan is in effect; or

(ii) Any change is made to the group's apportionment of its section 1561(a) tax benefit items from the previous year.

(2) *Exception for component members that are members of a consolidated group.* If any of the component members of a controlled group of corporations are also members of a consolidated group, the parent of such consolidated group shall file only one form on behalf of all such members. Such form shall contain the information required for each such member.

(b) *No apportionment plan in effect.* If the component members of a controlled group of corporations do not have an apportionment plan in effect, the amounts of the section 1561(a) items must be divided equally among all such members. For purposes of the preceding sentence, if any of the component members of a controlled group of corporations are also members of a consolidated group, such members will each be treated as a separate component member of the controlled group.

(c) *Apportionment plan in effect—(1) Adoption of plan.* The component members of a controlled group of corporations consent to the adoption (or amendment) of an apportionment plan by checking the box to that effect on such form. For purposes of this paragraph (c)—

(i) An apportionment plan that is adopted (including a plan that has been amended) continues in effect until it is terminated;

(ii) A consolidated group is treated collectively as one component member of such group. This treatment occurs even where a member of that consolidated group has joined or left the group, if after such corporation joins or leaves the consolidated group, that group remains in existence, pursuant to §1.1502-75(d); and

(iii) The members must allocate the amounts of the section 1561(a) items between/among themselves as described in the plan.

(2) *Limitation on adopting a plan—(i) Sufficient statute of limitations period for making an assessment of tax.* The members may only adopt or amend such a plan if there is at least one year remaining in the statutory period (including any extensions thereof) for the assessment of a deficiency against every member the tax liability of which would be increased by the adoption of such a plan.

(ii) *Insufficient statute of limitations period for making an assessment of tax.* If any member cannot satisfy the requirement of paragraph (c)(2)(i) of this section, the members may not adopt or amend such a plan unless the member not satisfying such requirement has entered into an agreement with the Internal Revenue Service to extend the statute of limitations for the limited purpose of assessing any deficiency against such member attributable to the adoption of such a plan.

(3) *Termination of plan.* An apportionment plan that is in effect for the component members of a controlled group with respect to a preceding December 31<sup>st</sup> is terminated with respect to the current December 31<sup>st</sup> if—

(i) Each member of such group consents to the termination of such a plan for the current December 31<sup>st</sup> by checking the box to that effect on its form;

(ii) The controlled group ceases to remain in existence (within the meaning of section 1563(a)) during the calendar year ending on the current December 31<sup>st</sup>;

(iii) Any corporation which was a component member of such group on the preceding December 31<sup>st</sup> is not a component

member of such group on the current December 31<sup>st</sup>; or

(iv) Any corporation which was not a component member of such group on the preceding December 31<sup>st</sup> is a component member of such group on the current December 31<sup>st</sup>.

(d) *Effective/applicability date.* This section applies to any tax year beginning on or after December 21, 2009. However, taxpayers may apply this section to any Federal income tax return filed on or after December 21, 2009. For tax years beginning before December 21, 2009, see §1.1561–3T as contained in 26 CFR part 1 in effect on April 1, 2009.

### §1.1561–3T [Removed]

Par. 15. Section 1.1561–3T is removed.

Steven T. Miller,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved December 17, 2009.

Michael Mundaca,  
*Acting Assistant Secretary  
of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on December 22, 2009, 4:15 p.m., and published in the issue of the Federal Register for December 28, 2009, 74 F.R. 68530)

# Part III. Administrative, Procedural, and Miscellaneous

## Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

### Notice 2010-14

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code as in effect for plan years beginning before 2008. It also provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), the 24-month average segment rates, and the funding transitional segment rates under § 430(h)(2). In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I), and the min-

imum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007.

#### CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004 and by the Pension Protection Act of 2006 (PPA), provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 through 2007 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004-34, 2004-1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate

and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices. The methodology for determining the monthly composite corporate bond rate as set forth in Notice 2004-34 continues to apply in determining that rate. See Notice 2006-75, 2006-2 C.B. 366.

The composite corporate bond rate for December 2009 is 5.88 percent. Pursuant to Notice 2004-34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for plan years beginning in the month shown below.

For Plan Years Beginning in		Corporate Bond Weighted Average	Permissible Range	
Month	Year		90%	to 100%
January	2010	6.42	5.77	6.42

#### YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates

("segment rates"), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. For plan years beginning in 2008 and 2009, a transitional rule under § 430(h)(2)(G) provides that the segment rates are blended with the corporate bond weighted average as specified above. An election may be made under § 430(h)(2)(G)(iv) to use the segment rates without applying the transitional rule.

Notice 2007-81, 2007-2 C.B. 899, provides guidelines for determining the

monthly corporate bond yield curve, the 24-month average corporate bond segment rates, and the funding transitional segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007-81, the monthly corporate bond yield curve derived from December 2009 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of December 2009 are, respectively, 2.35, 5.65, and 6.45. The three 24-month average corporate bond segment rates applicable for January 2010 under the election of § 430(h)(2)(G)(iv) are as follows:

First Segment	Second Segment	Third Segment
4.60	6.65	6.76

The transitional segment rates under § 430(h)(2)(G) applicable for January 2010, taking into account the corporate bond

weighted average of 6.42 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2009	5.21	6.57	6.65

The transitional rule of § 430(h)(2)(G) does not apply to plan years starting in 2010. Therefore, for a plan year starting in 2010 with a lookback month to January 2010, the funding segment rates are the three 24-month average corporate bond segment rates applicable for January 2010, listed above without blending for the transitional period.

### 30-YEAR TREASURY SECURITIES INTEREST RATES

Section 417(e)(3)(A)(ii)(II) (prior to amendment by PPA) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury se-

curities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)-1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual rate of interest on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury securities for December 2009 is 4.49 percent. The Service has determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in November 2039.

Generally for plan years beginning after 2007, § 431 specifies the mini-

mum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in section 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The following rates were determined for plan years beginning in the month shown below.

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range	
Month	Year		90%	to 105%
January	2010	4.37	3.93	4.58

### MINIMUM PRESENT VALUE SEGMENT RATES

Generally for plan years beginning after December 31, 2007, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a

24-month average. For plan years beginning in 2008 through 2011, the applicable interest rates are the monthly spot segment rates blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007-81 provides guidelines for de-

termining the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for December 2009, taking into account the December 2009 30-year Treasury rate of 4.49 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2009	3.63	4.95	5.27
2010	3.21	5.19	5.67

### DRAFTING INFORMATION

The principal author of this notice is Tony Montanaro of the Employee Plans,

Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov).

**Table I**

Monthly Yield Curve for December 2009  
 Derived from December 2009 Data

<i>Maturity</i>	<i>Yield</i>								
0.5	0.79	20.5	6.28	40.5	6.48	60.5	6.55	80.5	6.59
1.0	1.15	21.0	6.29	41.0	6.48	61.0	6.55	81.0	6.59
1.5	1.50	21.5	6.30	41.5	6.48	61.5	6.55	81.5	6.59
2.0	1.86	22.0	6.31	42.0	6.48	62.0	6.55	82.0	6.59
2.5	2.22	22.5	6.31	42.5	6.49	62.5	6.55	82.5	6.59
3.0	2.57	23.0	6.32	43.0	6.49	63.0	6.55	83.0	6.59
3.5	2.91	23.5	6.33	43.5	6.49	63.5	6.56	83.5	6.59
4.0	3.23	24.0	6.33	44.0	6.49	64.0	6.56	84.0	6.59
4.5	3.52	24.5	6.34	44.5	6.50	64.5	6.56	84.5	6.59
5.0	3.79	25.0	6.34	45.0	6.50	65.0	6.56	85.0	6.59
5.5	4.04	25.5	6.35	45.5	6.50	65.5	6.56	85.5	6.59
6.0	4.27	26.0	6.36	46.0	6.50	66.0	6.56	86.0	6.59
6.5	4.48	26.5	6.36	46.5	6.50	66.5	6.56	86.5	6.59
7.0	4.67	27.0	6.37	47.0	6.51	67.0	6.56	87.0	6.59
7.5	4.85	27.5	6.37	47.5	6.51	67.5	6.56	87.5	6.59
8.0	5.00	28.0	6.38	48.0	6.51	68.0	6.57	88.0	6.59
8.5	5.15	28.5	6.38	48.5	6.51	68.5	6.57	88.5	6.60
9.0	5.28	29.0	6.39	49.0	6.51	69.0	6.57	89.0	6.60
9.5	5.40	29.5	6.39	49.5	6.52	69.5	6.57	89.5	6.60
10.0	5.50	30.0	6.40	50.0	6.52	70.0	6.57	90.0	6.60
10.5	5.60	30.5	6.40	50.5	6.52	70.5	6.57	90.5	6.60
11.0	5.68	31.0	6.41	51.0	6.52	71.0	6.57	91.0	6.60
11.5	5.76	31.5	6.41	51.5	6.52	71.5	6.57	91.5	6.60
12.0	5.83	32.0	6.42	52.0	6.52	72.0	6.57	92.0	6.60
12.5	5.89	32.5	6.42	52.5	6.53	72.5	6.57	92.5	6.60
13.0	5.94	33.0	6.43	53.0	6.53	73.0	6.57	93.0	6.60
13.5	5.99	33.5	6.43	53.5	6.53	73.5	6.57	93.5	6.60
14.0	6.03	34.0	6.43	54.0	6.53	74.0	6.58	94.0	6.60
14.5	6.07	34.5	6.44	54.5	6.53	74.5	6.58	94.5	6.60
15.0	6.10	35.0	6.44	55.0	6.53	75.0	6.58	95.0	6.60
15.5	6.13	35.5	6.44	55.5	6.54	75.5	6.58	95.5	6.60
16.0	6.15	36.0	6.45	56.0	6.54	76.0	6.58	96.0	6.60
16.5	6.18	36.5	6.45	56.5	6.54	76.5	6.58	96.5	6.60
17.0	6.19	37.0	6.46	57.0	6.54	77.0	6.58	97.0	6.60
17.5	6.21	37.5	6.46	57.5	6.54	77.5	6.58	97.5	6.60
18.0	6.23	38.0	6.46	58.0	6.54	78.0	6.58	98.0	6.61
18.5	6.24	38.5	6.46	58.5	6.54	78.5	6.58	98.5	6.61
19.0	6.25	39.0	6.47	59.0	6.55	79.0	6.58	99.0	6.61
19.5	6.26	39.5	6.47	59.5	6.55	79.5	6.58	99.5	6.61
20.0	6.27	40.0	6.47	60.0	6.55	80.0	6.58	100.0	6.61

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking and Notice of Public Hearing

### Basis Reporting by Securities Brokers and Basis Determination for Stock

#### REG-101896-09

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to reporting sales of securities by brokers and determining the basis of securities. The proposed regulations reflect changes in the law made by the Energy Improvement and Extension Act of 2008 that require brokers when reporting the sale of securities to the IRS to include the customer's adjusted basis in the sold securities and to classify any gain or loss as long-term or short-term. This document also contains proposed regulations reflecting changes in the law that alter how taxpayers compute basis when averaging the basis of shares acquired at different prices and that expand the ability of taxpayers to compute basis by averaging. The document also proposes regulations that provide brokers and others until February 15 to furnish certain information statements to customers. This document also contains proposed regulations that implement new reporting requirements imposed upon persons that transfer custody of stock and upon issuers of stock regarding organizational actions that affect the basis of the issued stock. This document also contains proposed regulations reflecting changes in the law that alter how brokers report short sales of securities. Finally, this document provides for a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by February 8, 2010. Outlines of topics to be discussed at the public hearing scheduled for February 17,

2010 must be received by February 8, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-101896-09), 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-101896-09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-101896-09). The public hearing will be held in the auditorium of the IRS New Carrollton Federal Building, 5000 Ellin Road, Lanham, Maryland 20706.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under section 1012, Edward C. Schwartz of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 622-4960; concerning the proposed regulations under sections 3406, 6045, 6045A, 6045B, 6721, and 6722, Stephen Schaeffer of the Office of Associate Chief Counsel (Procedure and Administration) at (202) 622-4910; concerning submissions of comments, the public hearing, and/or to be placed on the building access list to attend the public hearing, Funmi Taylor of the Office of Associate Chief Counsel (Procedure and Administration) at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking related to the furnishing of information in connection with the transfer of securities has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on 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. Comments on the collection of information should be received by February 16, 2010. 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;

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

How the burden of complying with the proposed collection 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 operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations in §§1.6045-1(c)(3)(xi)(C) and 1.6045A-1 concerning furnishing information in connection with a transfer of securities is necessary to allow brokers that effect sales of transferred covered securities to determine and report the adjusted basis of the securities and whether any gain or loss with respect to the securities is long-term or short-term in compliance with section 6045(g) of the Internal Revenue Code (Code). The collection of information is required to comply with the provisions of section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343 (122 Stat. 3765, 3854 (2008)). The likely respondents are brokers of securities and issuers, transfer agents, and professional custodians of securities that do not effect sales.

Estimated total annual reporting burden: 240,000 hours.

Estimated average annual burden per respondent: 8 hours.

Estimated average burden per response: 4 minutes.

Estimated number of respondents: 30,000.

Estimated frequency of responses: 4,000,000.

The burden for the collection of information contained in proposed regulation §1.6045-1 except for §1.6045-1(c)(3)(xi)(C) will be reflected in the burden on Form 1099-B, “*Proceeds From Broker and Barter Exchange Transactions*,” when revised to request the additional information in that proposed regulation. The burden for the collection of information contained in proposed regulation §1.6045B-1 will be reflected in the burden on the form that the IRS will create to request the information in that proposed regulation.

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

## Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1), the Regulations on Employment Tax and Collection of Income Tax at the Source (26 CFR part 31), and the Regulations on Procedure and Administration (26 CFR part 301) relating to information reporting by brokers and others as required by section 6045. The document also contains proposed amendments relating to the scope and computation of basis by the average basis method under section 1012 and to new information reporting requirements by brokers, custodians, and issuers of securities under sections 6045A and 6045B. These sections were amended or added by section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343 (122 Stat. 3765, 3854 (2008)) (the Act). These proposed regulations are proposed to be issued under the authority contained in sections 1012, 3406, 6045, 6045A, 6045B, and 7805.

### 1. Returns of Brokers

Section 6045(g) provides that every broker that is required to file a return with the IRS under section 6045(a) showing the gross proceeds from the sale of a covered

security must include in the return the customer’s adjusted basis in the security and whether any gain or loss with respect to the security is long-term or short-term. Thus, a broker that is currently subject to gross proceeds reporting under section 6045(a) with respect to the sale of a covered security is also subject to the reporting of adjusted basis of that security and whether any gain or loss with respect to that security is long-term or short-term under section 6045(g).

Section 1.6045-1(a)(1) provides that the term *broker* generally means any U.S. or foreign person that, in the ordinary course of a trade or business, stands ready to effect sales to be made by others. However, with respect to a sale (including a redemption or retirement) effected at an office outside the United States, a broker includes only a person described as a U.S. payor or U.S. middleman in §1.6049-5(c)(5). Additionally, under §1.6045-1(g)(1), reporting is not required with respect to certain holders of securities that are exempt foreign persons. U.S. and foreign brokers that are subject to gross proceeds reporting under the existing rules will also be subject to reporting under the rules of section 6045(g).

### a. Covered Security

For purposes of reporting under section 6045(g), section 6045(g)(3)(A) provides that a covered security is any specified security acquired on or after the applicable date if the security: (1) Was acquired through a transaction in the account in which the security was held; or (2) was transferred to that account from an account in which the security was a covered security, but only if the broker receiving custody of the security receives a statement under section 6045A (described later in this preamble) with respect to the transfer.

### b. Specified Security

Section 6045(g)(3)(B) provides that a specified security is any: (1) Share of stock in a corporation; (2) note, bond, debenture, or other evidence of indebtedness; (3) commodity, or a contract or a derivative with respect to the commodity, if the Secretary determines that adjusted basis reporting is appropriate; and (4) other financial instrument with respect to which

the Secretary determines that adjusted basis reporting is appropriate.

### c. Applicable Date

The applicable date of the reporting requirements under section 6045(g) depends on the type of specified security that is sold. For stock in or of a corporation (other than stock in a regulated investment company (RIC) or stock acquired in connection with a dividend reinvestment plan (DRP)), section 6045(g)(3)(C)(i) provides that the applicable date is January 1, 2011. For stock in a RIC (RIC stock) or stock acquired in connection with a DRP (DRP stock) (for which additional rules are described later in this preamble), section 6045(g)(3)(C)(ii) provides that the applicable date is January 1, 2012. For any other specified security, section 6045(g)(3)(C)(iii) provides that the applicable date is January 1, 2013, or a later date determined by the Secretary. The reporting rules related to options transactions apply only to options granted or acquired on or after January 1, 2013, as provided in section 6045(h)(3).

### d. Reporting Method

A broker must report a customer’s adjusted basis under the following statutory rules. Under section 6045(g)(2)(B)(i)(I), a broker must report the adjusted basis of any security (other than RIC stock or DRP stock) using the first-in, first-out (FIFO) basis determination method unless the customer notifies the broker of the specific stock to be sold or transferred by means of making an adequate identification of the stock sold or transferred at the time of sale or transfer. Under section 6045(g)(2)(B)(i)(II), a broker must report the adjusted basis of RIC stock or DRP stock in accordance with the broker’s default method under section 1012 unless the customer notifies the broker that the customer elects another permitted method.

## 2. Determination of Basis

### a. In General

For any sale, exchange, or other disposition of a specified security on or after the applicable date, section 1012(c) provides that the conventions prescribed by regulations under section 1012 for determining

adjusted basis apply on an account by account basis.

b. *RIC Stock*

Section 1012(c)(2) provides that RIC stock acquired before January 1, 2012, is treated as held in a separate account from RIC stock acquired on or after that date. However, a RIC may elect (at the time and in the form and manner prescribed by the Secretary), on a stockholder by stockholder basis, to treat all stock in the RIC held by the stockholder as one account without regard to when the stock was acquired (single-account election). When this election applies, the average basis of a customer's stock is computed by averaging the basis of shares of identical stock acquired before, on, and after January 1, 2012, and all the shares are treated as covered securities. If a broker holds RIC stock as a nominee of the beneficial owner of the shares, the broker makes the election.

c. *DRP Stock*

If stock is acquired on or after January 1, 2011, in connection with a DRP, section 1012(d)(1) provides that the basis of that stock is determined under one of the basis computation methods permissible for RIC stock. Accordingly, the average basis method may be used for determining the basis of DRP stock. This special rule for DRP stock, however, applies only while the stock is held as part of the DRP. If the stock is transferred to another account, under section 1012(d)(2), each share of stock has a cost basis in that other account equal to its basis in the DRP immediately before the transfer (with adjustment for charges connected with the transfer).

Section 1012(d)(4)(A) provides that a DRP is any arrangement under which dividends on stock are reinvested in stock identical to the stock on which the dividends are paid. Stock is treated as acquired in connection with a DRP if the stock is acquired pursuant to the DRP or if the dividends paid on the stock are subject to the DRP. Under section 1012(d)(3), in determining basis under this rule, the account by account rules of section 1012(c), including the single-account election available to RICs, apply.

3. *Other Broker Reporting Provisions*

a. *Wash Sales*

Section 6045(g)(2)(B)(ii) provides that, unless the Secretary provides otherwise, a customer's adjusted basis in a covered security generally is determined for reporting purposes without taking into account the effect on basis of the wash sale rules of section 1091 unless the purchase and sale transactions resulting in a wash sale occur in the same account and are in identical securities (rather than substantially identical securities as required by section 1091).

b. *S Corporations*

Section 6045(g)(4) provides that, for purposes of section 6045, an S corporation (other than a financial institution) is treated in the same manner as a partnership. This rule applies to any sale of a covered security acquired by an S corporation (other than a financial institution) after December 31, 2011. When this rule takes effect, brokers generally will be required to report gross proceeds and basis information to customers that are S corporations for securities purchased on or after January 1, 2012.

c. *Short Sales*

In the case of a short sale, section 6045(g)(5) provides that gross proceeds and basis reporting under section 6045 generally is required for the year in which the short sale is closed (rather than, as under the present rule for gross proceeds reporting, the year in which the short sale is entered into).

d. *Options*

Section 6045(h)(1) provides that if a covered security is acquired or disposed of pursuant to the exercise of an option that was granted or acquired in the same account as the covered security, the amount received with respect to the grant or paid with respect to the acquisition of such option must be treated for reporting purposes as an adjustment to gross proceeds or as an adjustment to basis, as the case may be. Section 6045(h)(2) provides that gross proceeds and basis reporting is required when there is a lapse of, or

a closing transaction with respect to, an option on a specified security or an exercise of a cash-settled option on a specified security. Section 6045(h)(3) provides that section 6045(h)(1) and (h)(2) do not apply to any option granted or acquired before January 1, 2013.

e. *Time for Furnishing Statements*

The Act amended section 6045(b) to extend the due date from January 31 to February 15 for furnishing certain information statements to customers, effective for statements required to be furnished after December 31, 2008. Section 6045(b) provides that the statements to which the new February 15 due date applies are statements required under section 6045 and statements with respect to other reportable items that are furnished with these statements in a consolidated reporting statement (as defined in regulations under section 6045). See Notice 2009-11, 2009-5 I.R.B. 420, providing that, with respect to reportable items from calendar year 2008, brokers had until February 17, 2009, to report all items that they customarily reported on their annual composite form recipient statements. See §601.601(d)(2).

4. *Transfer Statements*

The Act added section 6045A, which provides that a broker and any other person specified in Treasury regulations (applicable person) that transfers to a broker a security that is a covered security in the hands of the transferring person must furnish to the broker receiving custody of the security (receiving broker) a written statement that allows the receiving broker to satisfy the basis reporting requirements of section 6045(g). Section 6045A(c) provides that, unless the Secretary provides otherwise, the statement required by this rule must be furnished to the receiving broker not later than fifteen days after the transfer of the covered security.

5. *Issuer Reporting*

The Act added section 6045B, which provides that an issuer of specified securities must file a return according to forms or regulations prescribed by the Secretary describing any organizational action (such as a stock split, merger, or acquisition)

that affects the basis of the specified security, the quantitative effect on the basis of that specified security, and any other information the Secretary requires. Section 6045B(b) provides that this return must be filed within forty-five days after the date of the organizational action, unless the action occurs in December, in which case the return must be filed by January 15th of the following year.

Section 6045B(c) provides that an issuer must furnish, according to forms or regulations prescribed by the Secretary, to each nominee with respect to that security (or to each certificate holder if there is no nominee) a written statement showing: (1) The name, address, and telephone number of the information contact of the person required to file the return; (2) the information required to be included on the return with respect to the security; and (3) any other information required by the Secretary. This statement must be furnished to the nominee or certificate holder on or before January 15th of the year following the calendar year in which the organizational action took place.

Section 6045B(e) provides that the Secretary may waive the return filing and information statement requirements if the person to which the requirements apply makes publicly available, in the form and manner determined by the Secretary, the name, address, telephone number, and e-mail address of the information contact of that person, and the information about the organizational action and its effect on basis otherwise required to be included in the return.

## 6. Penalties

The Act amended the list of returns and statements in section 6724(d) for which sections 6721 and 6722 impose penalties for any failure to file or furnish complete and correct returns and statements. This section imposes a penalty on brokers for a failure to file returns or furnish complete and correct statements after a sale of securities as required by section 6045. Section 6724(d) now also imposes penalties with respect to the returns and statements required by sections 6045A and 6045B.

## 7. Request for Comments

Notice 2009-17, 2009-8 I.R.B. 575, published by the IRS on February 23,

2009, invited public comments regarding guidance under the new reporting requirements in sections 6045, 6045A, and 6045B and for determining the basis of certain securities under section 1012. In particular, Notice 2009-17 requested comments on the applicability of the reporting requirements, basis method elections, DRPs, reconciliation with customer reporting, special rules and mechanical issues, transfer reporting, issuer reporting, and broker practices and procedures. Many comments were received in response to Notice 2009-17. The comments were considered in developing the proposed regulations. See §601.601(d)(2).

## Explanation of the Provisions and Summary of Comments

The proposed regulations provide rules for determining basis and for reporting adjusted basis and whether any gain or loss on a sale is long-term or short-term. The proposed regulations also address the new reporting requirements imposed upon persons transferring custody of stock and upon issuers of stock.

The proposed regulations do not address rules regarding reporting for options, compensatory options, or other equity-based compensation arrangements, or reporting of adjusted basis for indebtedness, because indebtedness is only subject to the requirements of section 6045(g) if acquired on or after January 1, 2013, and options are only subject to the requirements of section 6045(g) and (h) if granted or acquired on or after January 1, 2013. These rules are expected to be addressed in future guidance.

The proposed regulations generally are limited to the amendments to the Internal Revenue Code (Code) under the Act in sections 1012, 6045, 6045A, 6045B, and 6724 and do not address requests from commentators regarding changes to substantive rules in other areas such as the rules regarding allocation of a return of capital. The proposed regulations also do not address technical issues related to information reporting such as electronic delivery of returns by brokers to customers. These comments are outside the scope of the proposed regulations.

## 1. Returns of Brokers

Section 1.6045-1(c) requires brokers to make a return of information with respect to each sale by a customer of the broker effected by the broker in the ordinary course of a trade or business in which the broker stands ready to effect sales to be made by others. Section 1.6045-1(d) sets forth the information that the broker must include on the return.

The proposed regulations amend the definition of *broker* in §1.6045-1(a)(1) to modify the exception for non-U.S. payors and non-U.S. middlemen. Under the revised rule, a non-U.S. payor or non-U.S. middleman would be a broker to the extent provided in a withholding agreement described in §1.1441-1(e)(5)(iii) between a qualified intermediary and the IRS or similar agreement with the IRS. The Treasury Department and IRS expect that such agreements generally will provide that the broker that is party to such agreement will be subject to the broker reporting requirements under section 6045 to the same extent as U.S. payors and U.S. middlemen. The Treasury Department and IRS request comments regarding the usefulness of information received from non-U.S. payors and non-U.S. middlemen, the costs to non-U.S. payors and non-U.S. middlemen of complying with such a requirement, and other potential effects of such a requirement in a withholding or reporting agreement with the IRS.

### a. Form and Manner of New Broker Reporting Requirements

The proposed regulations provide that brokers must report adjusted basis and whether any gain or loss with respect to the security is long-term or short-term on Form 1099-B, “*Proceeds From Broker and Barter Exchange Transactions*,” or any successor form under section 6045(a) when reporting the sale of a covered security. They clarify that the basis reported by a broker is the total amount paid by a customer or credited against a customer’s account as a result of the acquisition of securities adjusted for commissions and the effects of other transactions occurring within the account. The proposed regulations also require brokers to adjust the basis they report to take into account the information received on a transfer state-

ment in connection with the transfer of a covered security (including transfers from a decedent and gift transfers) as well as information received from issuers of stock about the quantitative effect on basis from corporate actions. The proposed regulations generally do not require a broker to adjust the reported basis for transactions, elections, or events occurring outside the account. For example, with respect to wash sales (discussed in more detail later in this preamble), the proposed regulations require that a broker adjust the reported basis in accordance with section 1091 if both the purchase and sale transactions occur with respect to identical securities in the same account.

Commentators suggested that brokers be required to report certain warnings or indicators to a customer about potential discrepancies between the broker-reported basis and the basis the customer must report on the customer's income tax return. For example, commentators suggested that a flag be added to the information return that would alert a customer that a foreign issuer may not have reported to the broker all issuer actions affecting basis. The proposed regulations do not adopt these suggestions but, as discussed with respect to wash sales later in this preamble, require a broker to report to customers engaging in wash sales the amount of any disallowed loss. Brokers may communicate additional information on other statements furnished to customers if desired. The Treasury Department and IRS request further comments regarding whether additional information items should be required on the information return. A draft of the 2011 Form 1099-B is available for viewing and comment on the IRS Web site at <http://www.irs.gov/pub/irs-dft/f1099b--dft.pdf>.

For a sale of securities that were acquired on different dates or at different prices, some commentators requested that brokers be permitted to report the sale on a single information return. Other commentators asked that the proposed regulations require separate reporting of the sale of securities acquired on different dates or at different prices. The proposed regulations generally maintain the current requirement that brokers report a sale of securities within an account on one return, even if the sale involves multiple acquisitions, to limit the number of separate returns filed

with the IRS and statements furnished to customers. However, because brokers must report whether any gain or loss on the sale of a covered security is short-term or long-term, and because noncovered securities must be reported separately from covered securities to avoid treatment as covered securities, a single sale in an account could necessitate as many as three returns if the sale included covered securities held more than a year, covered securities held one year or less, and noncovered securities.

#### *b. Scope of Covered Securities and Treatment of Noncovered Securities*

The proposed regulations clarify that a broker is not required to report adjusted basis and whether any gain or loss on a sale is long-term or short-term for securities that are excepted from all reporting under section 6045 at the time of their acquisition. For example, the new basis reporting requirements do not apply to a security purchased by an organization that is tax-exempt even if the organization later loses its tax-exempt status and becomes subject to gross proceeds reporting on the sale of securities under section 6045(a).

With respect to a security transferred into an account in a non-sale transaction, the security is a covered security under the proposed regulations if it was a covered security prior to transfer and the broker receives the statement required under section 6045A for the transfer (the transfer statement, discussed in more detail later in this preamble) indicating that the security is a covered security. Conversely, a security is a noncovered security if the broker receives a transfer statement indicating that the security is a noncovered security. A transferred security will be presumed to be a covered security unless the transfer statement expressly states that the security is a noncovered security.

If the receiving broker does not receive a transfer statement or receives a transfer statement that does not contain all of the required information, the proposed regulations permit the broker to treat the security as a noncovered security if, as suggested by commentators, the broker notifies the person that effected the transfer and requests a complete statement, and no complete statement is provided in response to this request before the broker reports

the sale or subsequent transfer of the security. The proposed regulations do not require brokers to make this request more than once.

If a broker receives the information required on the transfer statement after reporting the sale of the security, the proposed regulations require the broker to file a corrected Form 1099-B if the reporting was incorrect or incomplete. Similarly, if an issuer furnishes the return required by section 6045B concerning corporate organizational actions (the issuer statement, discussed in more detail later in this preamble) after the broker has reported the sale of the security, the proposed regulations require the broker to file a corrected Form 1099-B to report any adjustments to basis not reflected previously. Commentators requested that corrected reporting not be required for *de minimis* adjustments or for statements furnished beyond a specific period after the close of the calendar year. The proposed regulations do not adopt either suggestion. The Treasury Department and IRS request further comments regarding corrected reporting.

Commentators expressed concern regarding the difficulty, in some cases, of determining whether a security is stock (for which basis must be reported for acquisitions beginning in January 2011 or January 2012) or indebtedness or another financial instrument (for which basis does not need to be reported for acquisitions in 2011 or 2012). Some commentators suggested that the proposed regulations classify each security or require issuers to file a classification report with the IRS to permit the IRS to publish a report identifying each security. The proposed regulations do not adopt this approach. Instead, the proposed regulations provide that, solely for purposes of determining the applicable date for basis reporting, any security an issuer classifies as stock is treated as stock. If no issuer classification has been made, the security is not treated as stock unless the broker knows, or has reason to know, that the security is reasonably classified as stock under general tax principles.

Some commentators expressed a desire to report adjusted basis and whether any gain or loss on a sale is long-term or short-term for noncovered securities. Other commentators requested that the regulations prohibit such reporting on

Form 1099-B and permit reporting only of adjusted basis and whether any gain or loss on a sale is long-term or short-term to the customer on statements not filed with the IRS. In order to encourage more reporting of information and simplify reporting by taxpayers on their income tax returns, the proposed regulations allow brokers the option of reporting adjusted basis and whether any gain or loss on a sale is long-term or short-term for noncovered securities on a security by security basis. Therefore, a broker may choose to report this information for any given noncovered security. The proposed regulations also provide that a broker that chooses to report this information with respect to a noncovered security is not subject to penalties under section 6721 or 6722 for any failure to report such information correctly, provided that the broker indicates on Form 1099-B that the sale reported is a sale of a noncovered security. The instructions to the tax return will inform taxpayers of their duty to verify the information reported by brokers and to adjust the reported information when necessary to reflect the taxpayer's correct information. This duty applies equally to covered and noncovered securities.

### *c. Determination of Basis Required To Be Reported*

Section 6045(g)(2)(B)(i)(I) provides that, except for RIC stock or DRP stock, a broker must report using the FIFO basis determination method unless the customer notifies the broker of the specific security to be sold or transferred by means of making an adequate identification of the security sold or transferred at the time of sale or transfer. With respect to RIC stock or DRP stock, section 6045(g)(2)(B)(i)(II) provides that a broker must report adjusted basis in accordance with the broker's default method under section 1012 unless the customer notifies the broker that the customer elects another permitted method.

The proposed regulations clarify that, when a customer sells less than the entire position of a security in an account, the selling broker must follow the customer's instruction, if any, adequately identifying the security sold or, when applicable, requesting that average basis be used to compute the basis of eligible stock. Thus, under the proposed regulations, a broker must

report basis using any permitted lot identification and basis determination method the customer chooses when the customer provides a valid instruction (discussed in more detail later in this preamble). Absent a valid instruction from the customer, the proposed regulations clarify that a broker must report basis of a security (other than stock eligible for averaging) using the FIFO basis determination method when reporting the sale. The proposed regulations also clarify that, absent a valid instruction to use another method, a broker must report basis for stock eligible for averaging using the broker's default basis determination method.

Commentators requested that brokers and customers be permitted to report basis by different methods and that brokers be permitted to report basis for all sales using only one of the permitted basis determination methods, for example, the average basis method. The proposed regulations do not adopt these requests because section 1012 permits customers to report basis by a different permissible method than the default method selected by the broker and section 6045 requires brokers to follow instructions from customers regarding this selection. The requested rules are inconsistent with the goal of conforming broker reporting with taxpayer basis determination method elections to facilitate and promote compliance in taxpayer reporting of income.

### *2. Average Basis Method*

Section 1.1012-1(e) provides rules for computing the basis of RIC stock by averaging the cost of all shares in the account (the average basis method). Taxpayers may elect to use the average basis method for RIC stock acquired at different prices and maintained by a custodian or agent in an account for the periodic acquisition, redemption, sale, or other disposition of the stock.

Consistent with section 1012(d)(1), the proposed regulations extend the average basis method to shares of stock acquired after December 31, 2010, in connection with a DRP, and clarify that shares are eligible for averaging only if they are identical.

Commentators suggested that stock should be eligible for averaging together if it has the same Committee on Uniform Se-

curity Identification Procedures (CUSIP) number. The proposed regulations adopt this suggestion and define *identical shares of stock* as stock with the same CUSIP number (or other security identifier number as permitted in additional guidance of general applicability, see §601.601(d)(2)). However, for purposes of defining a DRP, the proposed regulations provide that the stock of a successor entity or entities that result from certain corporate actions such as mergers, consolidations, split-offs, or spinoffs, is identical to the stock of the predecessor entity. Thus, corporate actions will not cause stock acquired in connection with a DRP to become ineligible for averaging because, for example, a dividend declared before the action and paid after the action is completed is not reinvested in stock with the same CUSIP number. The proposed regulations further provide, however, that shares of stock acquired in connection with a DRP are not identical to shares of stock with the same CUSIP number that are not acquired in connection with a DRP.

### *3. Broker's Default Basis Determination Method*

Consistent with section 6045(g)(2)(B)(i)(II), the proposed regulations provide that the basis of RIC stock and DRP stock is determined in accordance with a broker's default method, unless a taxpayer elects another permitted method.

#### *a. Consistency in Use of Average Basis Method*

Commentators suggested that the proposed regulations should not require brokers to compute basis for a DRP using the average basis method for taxpayers electing this method. The proposed regulations do not adopt this recommendation because it is inconsistent with the statutory requirement that the average basis method be available to any taxpayer that desires to use it for a DRP, as well as with the goal of conforming broker reporting with taxpayer basis determination method elections to facilitate and promote compliance in taxpayer reporting of income. The proposed regulations specify that a broker must compute basis using the basis determination method the taxpayer elects.

The proposed regulations also provide that the taxpayer must report gain or loss on its return using the method the taxpayer elects or, if the taxpayer fails to make an election, the broker's default method.

#### b. *Default Method*

Commentators suggested that a broker should be allowed to determine a default basis determination method when a taxpayer fails to elect a method for determining the basis of RIC stock or DRP stock. Consistent with section 6045(g)(2)(B)(i)(II), the proposed regulations do not prescribe a broker default method, which each broker may determine.

#### c. *Communicating Default Method to Taxpayers*

A commentator suggested that the proposed regulations should require that a broker notify a taxpayer of the broker's default method by the earlier of opening a new account or January 1 of the year the average basis method election is effective. Other commentators suggested, however, that the proposed regulations should not specify how brokers communicate their default basis determination method to taxpayers. The proposed regulations do not require a specific method or time for this communication.

#### 4. *Definition of Dividend Reinvestment Plan*

##### a. *Issuer and Non-Issuer Plans*

A commentator requested that the proposed regulations broadly define *dividend reinvestment plan* to include both broker administered plans and issuer, or corporate, administered plans. Other commentators suggested, however, that if brokers are required to use the average basis method, the definition should include only issuer-administered plans. The proposed regulations define dividend reinvestment plan to include a written arrangement, plan, or program administered by an issuer or non-issuer of stock. Neither the statute nor the legislative history indicates any Congressional intent to limit the average basis method to issuer-administered plans.

##### b. *Reinvestment of Dividends*

A commentator suggested that a plan requiring reinvestment of only a portion of the dividends paid should qualify as a DRP under the proposed regulations. The proposed regulations provide that a plan qualifies as a DRP if the plan documents require that at least 10 percent of any dividend paid be reinvested in identical stock. Assuming this 10 percent requirement is met, a plan may reinvest different percentages of dividends in different stocks.

A commentator opined that a plan should not be considered a DRP if the stock is not paying dividends when the issuer offers the plan. Another commentator verbally stated that the proposed regulations should provide that a plan may qualify as a DRP even if the stock has never issued dividends or ceases to pay dividends. This commentator noted that the stock of a start-up company may be included in a DRP in the expectation of paying dividends in the future, and that a company that traditionally pays dividends may be required to temporarily suspend dividends, for example in the case of bankruptcy reorganization. The proposed regulations provide that a stock may be held in a DRP even if no dividends have ever been declared or paid or the issuer has ceased paying dividends.

A commentator suggested that the term *dividends* should include all income from stock for purposes of a DRP. The proposed regulations do not define dividends. Specific comments are requested on whether and how the regulations should define dividends, such as whether the regulations should define the term by reference to section 316, or more broadly to include any payment or distribution from stock, including ordinary dividends, capital gains dividends or distributions, non-taxable returns of capital, and cash dividends in lieu of fractional shares. Comments may address industry practices that relate to this definition.

##### c. *Acquired in Connection With a DRP*

Commentators suggested that subsequent additions to a DRP, such as purchases or transfers of stock, be eligible for the average basis method. A commentator recommended that subsequent additions be separated into separate averaging pools.

Another commentator suggested that a single averaging pool should be allowed for all post-effective date identical stock. One commentator stated that brokers have difficulty distinguishing non-DRP purchases of stock from purchases of stock with the same CUSIP number in a DRP, and therefore brokers should be allowed to apply the same basis determination method to all stock with the same CUSIP number in an account.

Consistent with section 1012(d)(4), the proposed regulations provide that stock is acquired in connection with a DRP if the stock is acquired under the DRP or the dividends paid are subject to the DRP. Stock acquired in connection with a DRP includes the initial purchase of stock in the DRP, subsequent transfers of identical stock into the DRP, additional periodic purchases of identical stock through the DRP, and all identical stock acquired through reinvestment of dividends paid under the DRP.

##### d. *Withdrawal From or Termination of a DRP*

A commentator asked about the consequences if a DRP is terminated or a taxpayer transfers shares from a DRP at one broker to a broker that does not offer a DRP. The proposed regulations provide that, if a taxpayer withdraws from a DRP or the plan administrator terminates the DRP, shares of identical stock acquired after the withdrawal or termination are not acquired in connection with a DRP. After the withdrawal or termination, the taxpayer may no longer use the average basis method for the stock, but the basis of each share of stock immediately after the change is the same as the basis immediately before the change.

#### 5. *Computing Average Basis*

##### a. *Elimination of Double-Category Method*

Under §1.1012-1(e)(3) and (4), taxpayers compute average basis using either a double-category method, which divides stock by holding period and averages long-term shares separately from short-term shares, or a single-category method, which averages all shares together regardless of holding period.

Commentators suggested that the proposed regulations eliminate the double-category method and noted that it is not widely used. One commentator stated that problems may occur when shares are transferred between accounts that use different methods. The proposed regulations adopt this suggestion and eliminate the double-category method. The proposed regulations provide that average basis is computed by averaging the basis of all identical stock in an account regardless of holding period and include a transition rule that requires taxpayers using the double-category method to average the basis of all identical stock in an account on the date of publication of final regulations. Specific comments are requested on whether the double-category method should be retained.

Section 1.1012-1(e)(4)(iii) provides that the single-category method may not be used if it appears that the taxpayer's purpose is to convert long-term gain or loss into short-term gain or loss, or *vice versa*. Consistent with the elimination of the double-category method, the proposed regulations remove this provision. The proposed regulations include ordering rules that specify that the holding period of stock to which the average basis method applies is determined on a FIFO basis.

#### b. Wash Sales

Section 1.1012-1(e)(4)(iv) provides that section 1091(d) and the associated regulations apply to wash sales of stock from an account using the single-category method of computing average basis. Commentators suggested that brokers should not be required to apply these rules to stock held in separate accounts.

Section 6045(g)(2)(B)(ii) provides that, for purposes of reporting, brokers must apply the wash sale rules only to acquisition and sale transactions in the same account and for identical securities. The rules for brokers are discussed later in this preamble.

For a taxpayer using the average basis method, the proposed regulations provide that the taxpayer must apply section 1091 and the associated regulations (dealing with wash sales of substantially identical securities) in computing average basis regardless of whether the stock or security sold or otherwise disposed of and the stock

acquired are in the same account or in different accounts.

#### c. Basis After Change From Average Basis Method

The proposed regulations provide that, except for a revocation of the average basis method election (discussed later in this preamble), if a taxpayer changes from the average basis method to another basis determination method for any reason, the basis of each share of stock immediately after the change is the same as the basis immediately before the change.

#### 6. Time and Manner of Making the Average Basis Method Election

Section 1.1012-1(e)(6) provides that a taxpayer elects to use the average basis method on an income tax return for the first taxable year the taxpayer wants the election to apply.

##### a. Manner of Making the Average Basis Method Election

Under the proposed regulations, a taxpayer elects the average basis method for covered securities by notifying the custodian or other agent for the taxpayer's account in writing. The taxpayer makes a separate election for each account holding stock for which the average basis method is permissible. A taxpayer uses the procedures under the current regulations to elect the average basis method for noncovered securities.

Commentators requested that the proposed regulations provide guidance on how taxpayers must inform brokers of their basis determination method. Commentators suggested that brokers may obtain this information through documents provided to a taxpayer opening an account and urged that the rules be flexible and allow electronic communication. The proposed regulations require that a taxpayer must notify a custodian or agent in writing of an average basis method election, but otherwise do not specify how a taxpayer must communicate a basis determination method.

##### b. Time for Making the Average Basis Method Election

Some commentators suggested that taxpayers should be allowed or required to

choose a basis determination method when opening an account or when acquiring stock for which the average basis method is permitted. Other commentators stated that taxpayers should choose a method by the date of a sale. The proposed regulations provide that taxpayers may elect the average basis method at any time, effective for sales after the date of the election.

##### c. Revocation of Average Basis Method Election

A commentator asked for clarification on how long brokers must retain basis information. Another commentator suggested that any revocation period should end by the earlier of the date of first sale, the end of the calendar year, or one year from the first purchase of stock.

In order to minimize broker record-keeping requirements, the proposed regulations provide that a taxpayer may revoke the average basis method election by the earlier of one year from the date of making the election or the first sale or other disposition of the stock following the election. A broker may extend the one-year period but no longer than the first sale. A revocation applies to all identical stock in an account and is effective when the taxpayer notifies the broker or other custodian of the revocation. If a taxpayer revokes the election, the basis of each share of stock in the account is determined using another permissible method.

##### d. Change From Average Basis Method

Section 1.1012-1(e)(6)(ii) provides that a taxpayer that elects to use the average basis method may not revoke the election without the consent of the Commissioner. Under Rev. Proc. 2008-52, 2008-36 I.R.B. 587, Section 30 of the Appendix, a taxpayer within the scope of Rev. Proc. 2008-52 uses the automatic consent procedures to change to the basis determination method described in §1.1012-1(c)(1) (FIFO or specific identification, discussed later in this preamble). The revenue procedure provides that the automatic consent procedures do not apply to RIC stock or to a change from FIFO to specific identification or vice versa, which is not a change in method of accounting. See §601.601(d)(2).

A commentator recommended that taxpayers should not be able to change from

the average basis method except by opening a new account. Other commentators opined that taxpayers should have broad discretion to change from the average basis method. Several commentators suggested that brokers should not be required to recreate a stock's original basis if a taxpayer changes from the average basis method.

The proposed regulations provide that a taxpayer may change from the average basis method to another permissible method at any time. A taxpayer's change in basis determination method applies to stock acquired on or after January 1, 2012, in a different manner than to stock acquired before January 1, 2012. Consistent with the account by account rules, discussed later in this preamble, a change in basis determination method applies to identical stock a taxpayer acquires on or after January 1, 2012, that the taxpayer holds in the same account. By contrast, a taxpayer's change in basis determination method applies to all identical stock the taxpayer acquires before January 1, 2012, that the taxpayer holds in any account. Unless the taxpayer revokes the average basis method election, discussed earlier in this preamble, the taxpayer must change from the average basis method prospectively. Thus, the basis of each share of stock to which the change applies is the basis immediately before the change.

A commentator requested clarification on how often a taxpayer may change a basis method election. Commentators suggested that changes should be limited, for example to once per year. The proposed regulations do not limit the number of times or frequency a taxpayer may change basis determination methods.

A commentator suggested that the proposed regulations should require taxpayers to obtain the Commissioner's permission to change basis determination methods. Another commentator recommended that taxpayers be allowed to change from the average basis method without the Commissioner's permission. The proposed regulations clarify that a change in basis determination method is a change in method of accounting to which the provisions of sections 446 and 481 and the associated regulations apply. A taxpayer may change its basis determination method by obtaining the consent of the

Commissioner under applicable administrative procedures. The IRS may publish additional guidance of general applicability, see §601.601(d)(2), that provides broad consent for taxpayers to change basis determination methods.

#### *7. Applying Average Basis Method Account by Account*

Section 1.1012-1(e)(2) provides that a taxpayer must use the same basis determination method for all of the taxpayer's accounts in the same RIC. Section 1.1012-1(e)(6)(ii) provides that a taxpayer must apply an average basis method election to all shares (except certain gift shares) of a particular RIC that the taxpayer holds in any account.

##### *a. Definition of Account*

Commentators requested that the proposed regulations define the term "account." Commentators noted that each fund of a RIC is treated as a single account, while a broker may hold other securities with different CUSIP numbers in a single account. Commentators suggested that accounts should be treated as separate accounts if they have different account numbers, and that subaccounts such as cash and margin accounts should not be treated as separate accounts.

The proposed regulations do not define the term account. Instead, the proposed regulations provide rules prescribing when stock must be treated as held in separate accounts and the result of that treatment.

##### *b. Basis Determination Methods Applied Account by Account*

Commentators suggested that the proposed regulations allow a taxpayer to make separate basis calculations for the same stock held in two separate accounts, even if held by the same broker. The proposed regulations adopt this suggestion. Consistent with section 1012(c), the proposed regulations provide that the average basis method election applies to all identical RIC stock or DRP stock in an account. For sales or other dispositions of stock after 2011, a taxpayer may use different basis determination methods for identical stock held in two separate accounts, even if held by the same broker. A taxpayer also may

use different basis determination methods for shares of stock held in the same account that are not identical.

For sales or other dispositions before 2012 of RIC stock or DRP stock for which a taxpayer has used the average basis method, the proposed regulations retain the rules requiring that the taxpayer use the average basis method for identical stock held in separate accounts. However, a taxpayer may use different basis determination methods for shares of stock held in the same account that are not identical.

##### *c. Separate Accounts*

Consistent with section 1012(c)(2)(A), the proposed regulations provide that, absent a single-account election (explained later in this preamble), RIC stock or DRP stock that a taxpayer acquires before January 1, 2012, is treated as held in a separate account from any stock acquired on or after that date. The proposed regulations further provide that any stock that is a covered security (within the meaning of section 6045(g)(3)) is treated as held in a separate account from any stock that is a non-covered security regardless of when acquired, as is consistent with Congressional intent. The proposed regulations include an example in which a security acquired on or after January 1, 2012, is a noncovered security.

#### *8. Single-Account Election*

Section 1012(c)(2) provides that, with respect to RIC stock, a RIC may elect (at the time and in the form and manner prescribed by the Secretary), on a stockholder by stockholder basis, to treat all stock in the RIC held by the stockholder as one account without regard to when the stock was acquired (single-account election). Section 1012(d)(3) provides that the account by account rules of section 1012(c), including the single-account election available to RICs, also apply to DRP stock.

##### *a. Application and Scope of Election*

The proposed regulations provide that a RIC or DRP may make a single-account election to treat identical RIC stock or identical DRP stock held in separate accounts for which the taxpayer has elected to use the average basis method as held

in a single account. If a broker holds the stock as a nominee, the broker, and not the RIC or DRP, makes the election. The single-account election is irrevocable. Commentators opined that a single-account election should not encompass stock a taxpayer acquires before January 1, 2012, if the basis information is unreliable. A commentator requested that the proposed regulations include a standard of reliability or, alternatively, allow brokers to exclude stock for which reliable basis information is not available from the single-account election. Another commentator requested penalty relief if reliable basis information is not available for pre-effective date shares.

The proposed regulations provide that a RIC, DRP, or broker may make a single-account election only for stock for which it has accurate basis information. A RIC, DRP, or broker has accurate basis information if the RIC, DRP, or broker neither knows nor has reason to know that the basis information is inaccurate. See also section 6724 and the regulations thereunder regarding standards for relief from information reporting penalties. Stock for which accurate basis information is unavailable may not be included in the single-account election and must be treated as held in a separate account.

The proposed regulations provide that, once the single-account election is made, it applies to all identical stock that is a covered security a taxpayer later acquires in an account. If a taxpayer acquires identical stock that is a noncovered security in an account, a RIC, DRP, or broker may make another single-account election if the RIC, DRP, or broker has accurate basis information. In addition to allowing a RIC, DRP, or broker to make a single-account election for some taxpayers and not others, consistent with section 1012(c)(2)(B), the proposed regulations allow a RIC, DRP, or broker to make the election for some identical stocks held for a taxpayer and not for other stocks.

#### b. *Time and Manner for Making the Single-Account Election*

The proposed regulations provide that a RIC, DRP, or broker makes the single-account election by clearly noting it on its books and records. The books and records must reflect the date of the election; the

taxpayer's name, account number, and taxpayer identification number; the stock subject to the election; and the taxpayer's basis in the stock. The books and records reflecting the election must be provided to the taxpayer upon request. The proposed regulations provide that the single-account election may be made at any time and more than once for a specific stock.

The proposed regulations require a RIC, DRP, or broker to use reasonable means to notify a taxpayer of a single-account election. Reasonable means include mailings, circulars, and electronic mail. The notification may be sent separately to the taxpayer or included with the taxpayer's account statement, or by other means calculated to provide actual notice. The notice must identify the securities subject to the election and advise the taxpayer that the stock will be treated as covered securities without regard to the date acquired.

### 9. *FIFO and Specific Identification Methods*

Section 1.1012-1(c)(1) provides that if a taxpayer acquires shares of stock on different dates or at different prices and sells or transfers some of those shares, and does not adequately identify the lot from which the shares are sold or transferred, the shares deemed sold or transferred are the earliest acquired shares (the FIFO rule). If a taxpayer makes an adequate identification of the shares sold under §1.1012-1(c)(2), (3), or (4), the shares treated as sold are the shares the taxpayer identified.

#### a. *FIFO Rule*

A commentator verbally requested that the proposed regulations clarify how the FIFO rule of §1.1012-1(c)(1) applies to stock splits. The commentator asked whether shares acquired from the split are treated as acquired on the date of the purchase of the original shares or on the date of the split. In general, the shares that are first acquired are the shares with the longest holding period. Therefore, this question is addressed by rules under sections 307 and 1223 and the associated regulations and is outside the scope of these regulations.

A commentator requested clarification on whether the FIFO rule applies to stock

that is part of a stock certificate that includes multiple lots. In response to this comment, the proposed regulations clarify that the FIFO rule also applies to multiple lots represented by a single stock certificate.

#### b. *Timing of Lot Selection*

Commentators suggested that taxpayers that wish to identify a specific lot of stock to be sold should be required to do so at the time of trade. Some commentators recommended that taxpayers should be allowed to wait to identify stock until the settlement date or until the end of the year. Other commentators opined that post-sale changes to specific identification of stock should not be allowed.

Rev. Rul. 67-436, 1967-2 C.B. 266, holds that an identification of stock by the time of delivery, which was within four days of the sale date, complied with the requirement to identify stock at the time of the sale or transfer. Consistent with Rev. Rul. 67-436, the proposed regulations provide that a taxpayer makes an adequate identification of stock at the time of sale, transfer, delivery, or distribution if the taxpayer identifies the stock no later than the earlier of the settlement date or the time for settlement under Securities and Exchange Commission regulations. Rev. Rul. 67-436 will be obsoleted when these regulations are published as final regulations. See §601.601(d)(2).

#### c. *Standing Lot Selection Orders*

Several commentators recommended that the proposed regulations allow taxpayers to specify a lot selection method to their brokers through standing orders such as last-in-first-out or highest-in-first-out. In response to these comments, the proposed regulations clarify that taxpayers may establish a lot selection method by standing order.

#### d. *Method of Communicating Lot Selection*

To provide maximum flexibility, the proposed regulations do not designate how taxpayers must communicate lot selection to brokers. Any reasonable method of communication, including electronic and oral communication, is permissible.

#### e. *Confirmation of Sales*

Section 1.1012-1(c)(3)(i)(b) and (ii)(b) requires a broker or agent to provide written confirmation of the sale of stock a taxpayer has specifically identified within a reasonable time after sale. Commentators suggested that the broker or agent should determine whether to provide a confirmation and its form, and that current technology renders the confirmation requirement obsolete. Another commentator suggested that the proposed regulations allow brokers to provide lot information to taxpayers either by trade confirmation, monthly statements, or year-end reports. The proposed regulations do not amend the current confirmation requirement, which ensures that taxpayers receive necessary information in a timely manner. What is reasonable depends on the facts and circumstances.

#### f. *Writing in Electronic Format*

Commentators suggested that the proposed regulations specifically authorize electronic written confirmation or record-keeping. In response to these comments, the proposed regulations clarify that a written confirmation, record, document, instruction, or advice includes a writing in electronic format.

#### g. *Identification by Trustee or Executor*

Section 1.1012-1(c)(4) provides that a trustee of a trust or executor or administrator of an estate makes an adequate identification if the trustee, executor, or administrator specifies the stock in writing in the books and records of the trust or estate. If the stock is distributed, the trustee, executor, or administrator must identify the stock in writing to the distributee.

A commentator verbally noted that this rule does not require a trustee, executor, or administrator to identify stock to a broker or other agent selling the stock. The proposed regulations add the requirement that the trustee, executor, or administrator identify the stock to the broker or agent.

#### 10. *Reporting of Wash Sales*

Section 6045(g)(2)(B)(ii) provides that, unless the Secretary instructs otherwise, a broker is required to report the adjusted basis of a covered security without taking

into account the effect on basis of the wash sale rules of section 1091 unless the purchase and sale transactions resulting in a wash sale occur in the same account and are for identical securities (rather than substantially identical securities).

The proposed regulations provide that a broker is required to report adjusted basis in accordance with section 1091 only if both the purchase and sale transactions occur with respect to covered securities in the same account with the same CUSIP number (or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin). If a broker is required to apply section 1091 for reporting purposes, the broker must report the amount of the disallowed loss in addition to adjusted basis and gross proceeds for the sold security. The proposed regulations further provide that the broker must adjust the basis of the purchased security by the amount of the disallowed loss when reporting the eventual sale of the purchased security.

Commentators requested exceptions from reporting wash sales resulting in *de minimis* adjustments and wash sales triggered by scheduled periodic investments such as in an employee stock purchase plan or by automatic dividend reinvestment. Because the underlying substantive rules disallow losses in these situations, the proposed regulations do not adopt these recommendations. In addition, commentators requested an exception from reporting for wash sales for high frequency traders such as day traders based on the belief that high frequency traders generally make timely and valid elections to use the mark-to-market method of accounting under section 475(e) or (f) and that section 475(d)(1) therefore exempts them from the wash sale rules. Commentators also requested that the regulations provide a general exception from basis reporting for high frequency traders based on the belief that section 475 makes basis reporting superfluous for most high frequency traders. The proposed regulations do not adopt these recommendations, in part because the proposed regulations provide generally that reporting should occur without regard to the mark-to-market method of accounting. The Treasury Department and IRS request further comments on the treatment of high frequency traders, including

specifics about the burden that basis reporting may impose, and how brokers can identify customers that have made valid and timely mark-to-market accounting method elections under section 475(e) or (f) and which transactions by these persons are subject to the provisions of section 475.

Commentators asserted that identical securities could have separate CUSIP numbers, potentially after a change to the name of the issuer. To facilitate administration of wash sale reporting, the proposed regulations interpret identical securities to mean securities with the same CUSIP number (or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin).

#### 11. *Reporting of Short Sales*

In the case of a short sale, section 6045(g)(5) provides that gross proceeds and basis reporting under section 6045 is generally required for the year in which the short sale is closed rather than, as under the present law rule for gross proceeds reporting, the year in which the short sale is entered into.

The proposed regulations implement this change to reporting of short sales by requiring brokers to report all short sales opened on or after January 1, 2010, for the year in which the short sale is closed. For sales that are opened and closed in 2010, the proposed regulations require brokers to report only gross proceeds information with respect to the securities sold to open the short sale, which is consistent with how brokers currently report short sale transactions. For sales closed on or after January 1, 2011, using covered securities, however, the proposed regulations require brokers to report both the information concerning the securities sold to open the short sale and the information concerning the securities acquired to close the short sale on a single return of information. For sales closed on or after January 1, 2011, using noncovered securities, the proposed regulations require brokers to report only the information concerning the securities sold to open the short sale and permit, but do not require, brokers to report adjusted basis for the securities acquired to close the short sale and whether any gain or loss on the short sale is long-term

or short-term. The proposed regulations provide that reporting adjusted basis and whether any gain or loss on the short sale is long-term or short-term is not subject to penalty under section 6721 or 6722 if the Form 1099-B indicates that the sale reported is a sale of a noncovered security. These requirements are in line with the reporting beginning with calendar year 2011 of both adjusted basis and gross proceeds on Form 1099-B.

Under section 1233, satisfaction of a short sale obligation through other borrowed property does not close a short sale. The proposed regulations address this situation and provide that, if an obligation arising from a short sale is satisfied by the receipt of transferred securities that themselves are borrowed from or through the person effecting the transfer, the receiving broker should not file a Form 1099-B but should instead provide the information regarding the short sale of the borrowed securities to the person effecting the transfer. Under the proposed regulations, the person effecting the transfer must file Form 1099-B when the obligation is finally satisfied and the short sale is closed.

The proposed regulations modify the backup withholding rules for short sales to provide that backup withholding can occur only at the time the short sale is closed and becomes subject to reporting under section 6045(g)(5).

Commentators requested that brokers not be responsible for the additional reporting requirements related to short sales that are opened before January 2011 but also requested clear guidance on how to implement reporting for short sales opened prior to January 2011 to prevent duplicate reporting. The proposed regulations prevent duplicate reporting by requiring brokers to report short sales opened prior to January 2011 under current rules except for short sales opened in 2010 that remain open into 2011. Instead of reporting the sale for calendar year 2010, the proposed regulations require that brokers report these sales for the year in which the sale is closed.

Finally, commentators requested that the reporting of short sales not require brokers to apply the constructive sale rules of section 1259, which can trigger the recognition of gain if the investor also holds or acquires an appreciated position in the same securities, or the rules under section

1233(h) concerning limitations imposed on investors that own property substantially identical to the short sale property. The proposed regulations provide for these exclusions from reporting.

## 12. Reporting of Sales by S Corporations

Under §1.6045-1(c)(3)(i)(B)(I), a broker currently is not required to report sales of securities by corporations. Section 1.6045-1(c)(3)(i)(C) currently permits a broker to treat a customer as a corporation if the broker has actual knowledge that the customer is a corporation, if the customer files a Form W-9, “Request for Taxpayer Identification Number and Certification,” exemption certificate claiming an exemption as a corporation, or, absent knowledge to the contrary, if the name of the customer contains an unambiguous expression of corporate status such as “Corporation” or “Incorporated.”

To comply with the new requirement under section 6045(g)(4) that brokers report sales by customers that are S corporations of covered securities acquired on or after January 1, 2012, the proposed regulations exclude S corporations from the list of exempt Form 1099-B recipients, but only for sales of covered securities acquired on or after January 1, 2012. The proposed regulations also curtail the ability of brokers to rely solely on the name of the customer to determine whether the customer is a corporation exempt from reporting, but only for sales of covered securities acquired on or after January 1, 2012. Commentators requested that the proposed regulations retain this rule because its removal potentially requires brokers to seek a certification from all corporate customers. The proposed regulations do not adopt this recommendation, however, because brokers cannot infer from a customer’s name whether the customer is taxed as an S corporation or C corporation. Commentators also requested that accounts opened by corporations before January 2012 be excepted from reporting. The proposed regulations do not adopt this request as contrary to the statute.

Commentators requested that Form W-9 be updated to facilitate a customer’s statement to its broker of its current election to be taxed as an S corporation and that the proposed regulations require brokers to solicit or re-solicit Form W-9 from

each existing corporate customer. The IRS is currently considering the requested modification to Form W-9. The proposed regulations do not impose a requirement to solicit or re-solicit Form W-9 from all existing corporate customers because, under §1.6045-1(c)(3)(i)(C), Form W-9 is only one method by which brokers may determine whether a corporate customer is exempt from all reporting beginning in 2012. However, if a broker does not have actual knowledge that a corporate customer is taxed as a C corporation or is otherwise exempt (for example, because it is a bank or organization exempt from tax under section 501(a)), a broker must request a Form W-9 exemption certificate or else must make a return of information for any sales by the corporation of covered securities acquired on or after January 1, 2012. A broker also may be required to backup withhold on gross proceeds paid to the customer.

Commentators requested that brokers be permitted to report other Form 1099 information such as interest and dividends for S corporations because reporting of the sales of securities is done on composite statements containing all such information. The proposed regulations do not address this topic directly because no penalty is imposed for the act of filing a nonrequired return.

## 13. Reporting to Trust Interest Holders in a WHFIT

Commentators requested that the proposed regulations except trustees and middlemen from any requirement to report information under sections 6045(g) to trust interest holders in a widely held fixed investment trust (WHFIT) with respect to both the securities held by a WHFIT and trust interests in a WHFIT because the WHFIT rules in §1.671-5 already provide a framework for communicating similar information to trust interest holders. These proposed regulations clarify that the sale of a trust interest in a WHFIT by a trust interest holder is required to be reported under section 6045(a). However, to the extent that a trustee or middleman has a requirement to provide information under section 6045(g), the trustee or middleman is deemed to meet those requirements by complying with the WHFIT rules in §1.671-5. The Treasury Department

and IRS request additional comments on whether any basis reporting rules are needed in addition to those provided under §1.671-5 to accommodate trust interest holders in a WHFIT.

#### 14. Due Date for Payee Statements Furnished in a Consolidated Reporting Statement

Section 6045(b) extends the due date to furnish all of the payee statements required under section 6045 to customers from January 31 to February 15, effective for statements required to be furnished after December 31, 2008. Thus, in addition to Form 1099-B, “*Proceeds From Broker and Barter Exchange Transactions*,” the February 15 due date applies to Form 1099-S, “*Proceeds From Real Estate Transactions*,” and, when reporting payments to attorneys or substitute payments by brokers in lieu of dividends or interest, Form 1099-MISC, “*Miscellaneous Income*.” This February 15 due date also applies to any other statement required to be furnished on or before January 31 of a calendar year if furnished with a statement required under section 6045 in a consolidated reporting statement. The Act did not define consolidated reporting statement but provided that the term would be defined in regulations. See Notice 2009-11, 2009-5 I.R.B. 420, providing that, with respect to reportable items from calendar year 2008, brokers had until February 17, 2009, to report all items that they customarily reported on their annual composite form recipient statements. See §601.601(d)(2).

The proposed regulations define *consolidated reporting statement* as a grouping of statements furnished to the same customer or same group of customers on the same date whether or not the statements are furnished with respect to the same or different accounts or transactions. Importantly, the proposed regulations require that the grouping of statements be limited to those furnished to the customer based on the same relationship as the statement furnished under section 6045 (for example, broker, payor, or real estate settlement agent), and not as a result of any other relationship between the parties such as debtor to creditor or employer to employee. Based on this limitation, the following forms may be furnished in a

consolidated reporting statement with a statement required under section 6045: Form 1099-DIV, “*Dividends and Distributions*”; Form 1099-INT, “*Interest Income*”; Form 1099-MISC, “*Miscellaneous Income*”; Form 1099-OID, “*Original Issue Discount*”; Form 1099-PATR, “*Taxable Distributions Received From Cooperatives*”; Form 1099-Q, “*Payments From Qualified Education Programs (Under Sections 529 and 530)*”; Form 1099-R, “*Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*”; Form 3921, “*Exercise of an Incentive Stock Option Under Section 422(b)*” (in development); Form 3922, “*Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)*” (in development); and Form 5498, “*IRA Contribution Information*.” The Treasury Department and IRS request further comments regarding whether any other forms should be included in the definition of consolidated reporting statement.

For statements filed by brokers with respect to sales, the proposed regulations acknowledge that a customer may not sell securities in an account in every year and, thus, may not receive Form 1099-B every year. The proposed regulations provide that a broker may treat any customer as receiving a required statement under section 6045 if the customer has an account for which a statement would be required to be furnished under section 6045 had a sale occurred during the year.

#### 15. Reporting Required in Connection With Transfers of Securities

Under new section 6045A, a broker and any other person specified in Treasury regulations (applicable person) that transfers to a broker a security that is a covered security in the hands of the applicable person must furnish to the receiving broker a written statement for purposes of enabling the receiving broker to satisfy the reporting requirements of section 6045(g). Section 6045A(c) provides that, unless the Secretary provides otherwise, the statement required by this rule must be furnished to the receiving broker not later than fifteen days after the transfer of the covered security.

#### a. Transfer Reporting Generally

The proposed regulations create a presumption that every transfer of custody effected by an applicable person to a broker or other professional custodian of any share of stock in a corporation on or after January 1, 2011, that is not a sale is a transfer of a covered security subject to reporting. Thus, the proposed regulations provide that a transfer statement must be furnished for every such transfer. This duty applies even if the security transferred is a noncovered security or is treated as a noncovered security because it was excepted from all reporting under section 6045 (for example, because the customer was an exempt recipient) at the time of its acquisition. In either situation, the transfer statement is not required to include any other required information provided that the transfer statement indicates that the security transferred is a noncovered security. This presumption that all transferred securities are covered securities and the requirement to provide a transfer statement for noncovered or excepted securities solely for the purpose of establishing that the security is a noncovered or excepted security will reduce uncertainty for receiving brokers and custodians. The person initiating the transfer of custody is permitted, but not required, to provide other information about the noncovered or excepted security.

The proposed regulations place the duty to furnish the transfer statement on the person effecting the transfer of custody if the person is an applicable person. Under the proposed regulations, an *applicable person* is a broker within the meaning of §1.6045-1(a)(1), any person that acts as a custodian of securities in the ordinary course of a trade or business, any issuer of securities, and any agent of these persons. An applicable person does not include the beneficial owner of the securities, any governmental unit or agency or instrumentality of a governmental unit with respect to escheated securities, or any person that acts solely as a clearing house for the transfer.

Under the proposed regulations, an applicable person has a duty to furnish a transfer statement if that person effects the transfer of custody of the securities. For securities held by direct registration with the issuer, including certificated shares,

the person effecting the transfer is the issuer or its transfer agent. For securities held in street name, the person effecting the transfer is the broker or other firm carrying the securities.

Although the person responsible for providing a transfer statement will often be a broker or other applicable person that effects sales, the proposed regulations also impose this duty on issuers, transfer agents, professional custodians, and other applicable persons that may not effect sales. For these applicable persons, this duty is limited to a duty to receive the statement when receiving custody of transferred securities and then to retransmit the information on the statement when transferring custody of those securities to a broker (or, if no statement is received, to furnish a statement that the securities are noncovered securities). The proposed regulations regarding transfer statements do not impose a duty on those that do not effect sales to update basis in response to adjustments announced by issuers under section 6045B or to compute basis by average cost under section 1012. These computations apply only to basis reporting at the time of sale under section 6045 and, thus, apply only to brokers effecting sales. The Treasury Department and IRS request further comments regarding the scope of the transfer statement requirement.

Because the transfer statement is not filed with the IRS, no official form or format will be required. Instead, the proposed regulations specify the information required on the statement. At the request of commentators, the proposed regulations permit flexibility in the format and method by which the information is furnished pursuant to agreement of the parties. The Treasury Department and IRS request further comments about the form and format for the transfer statement and any substitutes thereto.

Under the proposed regulations, the transfer statement must identify the applicable person furnishing the statement, the broker receiving the statement, the owner or owners transferring the securities, and, if different, the owner or owners of the securities after any transfer other than a sale, such as a transfer of gifted or inherited securities. The transfer statement must also identify the securities being transferred and information about the transfer such as the date the transfer was initiated and the

settlement date of the transfer (if known when reporting).

Under the proposed regulations, a transfer statement must include the total adjusted basis of the securities, the original date of acquisition, and the date for determining whether any gain or loss with respect to the security would be long-term or short-term at the time of sale. The transfer statement must also indicate the extent to which the reported basis amount has been adjusted to reflect any corporate actions that affect the basis of the security by reporting the number from the issuer statement required under section 6045B (discussed later in this preamble) of the most recent corporate action that is reflected on the transfer statement. Additionally, if the average basis method is used to determine basis, the proposed regulations permit reporting an original acquisition date of "VARIOUS" for securities owned at least five years.

Commentators suggested that additional information items be required on the statement such as the original purchase amount, the reason why the securities are (or are treated as) noncovered securities (if applicable), and the basis method used by the taxpayer immediately prior to the transfer. The proposed regulations do not require this additional information on the statement because the proposed regulations do not require this information to be reported on Form 1099-B. Additional information may be communicated with the statement, even if not required.

If an applicable person furnishing a transfer statement later receives a statement for an earlier transfer that reports that the transferred securities are covered securities and includes information inconsistent with the subsequent transfer statement, the proposed regulations require that a corrected statement be furnished to correct the inconsistent information within fifteen days following the receipt of the prior transfer statement.

#### *b. Reporting Required in Connection With Transfers of Gifted and Inherited Securities*

Under section 6045(g)(3)(A)(ii), a covered security includes stock or indebtedness acquired on or after the applicable date if the security is transferred from an account in which the security was a cov-

ered security (but only if the receiving broker or other professional custodian receives a transfer statement). Therefore, under the proposed regulations, gifted and inherited securities that were covered securities in the account of the donor or decedent remain covered securities when transferred to the recipient's account and accompanied by a transfer statement.

Under the proposed regulations, when covered securities are transferred from a decedent, the transfer statement must indicate that the securities are inherited. The transfer statement must also report the date of death as the acquisition date and must report adjusted basis in accordance with the instructions and valuations provided by an authorized representative of the estate. The proposed regulations require that the selling broker take these basis adjustments into account in reporting adjusted basis upon the subsequent sale or other disposition of these securities.

When covered securities are transferred to a different owner as a gift, the proposed regulations require the statement to indicate that the transfer consists of gifted securities and to state the adjusted basis of the securities in the hands of the donor and the donor's original acquisition date of the securities. The transfer statement must also report the date of the gift (if known when furnishing the statement) and the fair market value of the gift on that date (if known or readily ascertainable). Upon the subsequent sale or other disposition of these securities, the selling broker must apply the relevant basis rules for gifts when reporting adjusted basis.

Commentators opposed subjecting transfers of gifted and inherited securities to the requirements of transfer reporting because the substantive rules governing basis computation for these securities are complex. The proposed rules do not exclude transfers of gifted and inherited securities, however, because these transfers fall within the plain language of the statute. The proposed regulations provide workable rules to minimize complexity.

Issuers and transfer agents commented that they often do not know the reason for the transfer of shares from one owner to another. The proposed regulations provide that, if the request to transfer ownership between different people is silent as to the reason for the transfer, the transfer should generally be treated as a gift.

Commentators expressed concern regarding gifted and inherited securities about the potential burden to value privately traded securities or other securities for which fair market value is not easily determined. For inherited securities, the proposed regulations allow the applicable person effecting the transfer to rely on the authorized estate representative to provide the instructions and valuations necessary to report correct basis for any transferred securities. If the applicable person effecting the transfer does not receive instructions and valuations from the authorized estate representative, the applicable person must request this information from the authorized estate representative before preparing the transfer statement. If this information is not provided before the transfer statement is prepared, then the transfer statement must indicate that the transfer consists of an inherited security but must report the security as a noncovered security. If this information is provided after the transfer statement is sent, the applicable person effecting the transfer must send a corrected transfer statement.

For gifted securities, the proposed regulations only require the applicable person effecting the gift transfer to report the date of the gift if known at the time the transfer statement is prepared and the fair market value of the securities on the date of the gift if known or readily ascertainable at that time. However, the proposed regulations provide that, if the gifted securities are subsequently transferred to a different account of the same owner, the applicable person must include the date of the gift on the subsequent transfer statement and, if known or readily ascertainable at the time the subsequent transfer statement is prepared, the fair market value of the securities as of the date of the gift. The proposed regulations provide a special reporting rule for brokers that applies on the sale of a gifted security when the security's adjusted basis depends upon its fair market value as of the date of the gift but the transfer statement received by the selling broker does not report this amount and this amount is not readily ascertainable by the broker. Under these circumstances, the proposed regulations provide that the broker must report adjusted basis equal to the gross proceeds from the sale.

### *c. Reporting Required in Connection With Transfers of Borrowed Securities*

To facilitate the correct reporting of short sales involving transfers of borrowed securities, the proposed regulations require the transfer statement to indicate that the transferred securities are borrowed and provide instructions on how the receiving broker can provide information to the applicable person effecting the transfer about any short position potentially being closed by the transfer or other sale of the securities. This information is required to alert the receiving broker that, if the transferred securities are used to satisfy a short sale obligation, the short sale remains open and should not be reported as closed to the IRS or to the customer.

### *16. Reporting by Issuers of Actions Affecting Basis of Securities*

If an organizational action (such as a stock split or a merger or acquisition) by an issuer affects the basis of a specified security, new section 6045B requires the issuer to file a return with the IRS and furnish to each nominee (or to each certificate holder if there is no nominee) a written statement regarding the action. The return filing and information statement requirements may be waived under section 6045B(e) if the issuer makes the information about the action publicly available, in the form and manner determined by the Secretary.

The proposed regulations require a reporting issuer to identify itself and the security on the return and provide information about the organizational action and the quantitative effect on the basis resulting from the action. The proposed regulations also require the issuer to assign and report a sequential number determined separately by security for each information report the issuer files.

The proposed regulations require a domestic or foreign issuer to furnish a written statement to each holder of record that is not an exempt recipient as defined in §1.6045B-1(b)(5) as of the record date of the corporate action and all subsequent holders of record through the date the issuer furnishes the statement. The Treasury Department and IRS request comments as to the extent to which foreign issuers will be able to comply with such a reporting re-

quirement, and whether it may be appropriate to limit foreign issuers' reporting requirements (such as, for example, limiting foreign issuers' reporting requirements to securities that are traded on a securities exchange in the United States).

If the security is held in the name of someone other than the holder of record on the books of the issuer, the proposed regulations require the issuer to furnish the statement to the nominee listed on its books unless such nominee is the issuer or the issuer's agent. For example, an issuer must furnish statements to the participants of the issuer's direct stock purchase plan even if the plan is listed as a nominee for the participants. The proposed regulations permit an issuer to furnish to its holders and nominees a copy of the return that it files with the IRS.

The proposed regulations provide that both the return filing and information statement requirements under section 6045B are waived if an issuer posts a statement with the required information in a readily accessible format in an area of its primary public website dedicated to this purpose by the same due date for reporting the organizational action to the IRS and keeps the form accessible to the public. Under the proposed regulations, this public reporting relieves the issuer of its duty both to file the return with the IRS and to furnish the statement to its nominees and certificate holders.

Commentators have questioned how issuers could report the effect on basis within 45 days of a corporate action when the effect may not be determinable until the conclusion of other events such as the end of the issuer's fiscal year. Any request to extend the due date was not adopted as inconsistent with the 45-day statutory due date. The proposed regulations provide that an issuer may make reasonable assumptions about facts that cannot be determined prior to this due date and must file a corrected return once the facts are determined if necessary to report the correct quantitative effect on basis. Under the proposed regulations, it is expected that an issuer will treat a payment that may be a dividend consistently with its treatment of the payment under section 6042(b)(3) and §1.6042-3(c).

Some commentators suggested that the IRS establish a central repository on its website for posting information statements from issuers that wish to report publicly

in lieu of filing returns. This suggestion was not adopted in the proposed regulations due to IRS resource and system constraints. The Treasury Department and IRS request comments on the definition of public reporting including rules about retaining the returns on the website and alternatives other than the use of a central repository.

Commentators requested that the proposed regulations except actions by S corporations from reporting under section 6045B because adjustments are specific to the shareholder and are reported on Schedule K-1 (Form 1120S), “*Shareholder’s Share of Income, Deductions, Credits, etc.*” The proposed regulations do not except reporting by S corporations, but deem an S corporation to satisfy the requirements under section 6045B if it reports the effect of the organizational action on the proper Schedule K-1 for each shareholder, timely files the schedules with the IRS, and timely furnishes the schedules to all proper parties.

#### 17. Penalty Provisions

The current regulations impose penalties on brokers for failing to file or furnish complete and correct returns and statements after the sale of a security. The proposed regulations expand the list of required statements and returns filed with the IRS in §301.6721-1 and the list of required statements furnished to payees in §301.6722-1 to include the new penalties associated with the new transfer statements and issuer statements. The proposed regulations also update the full list of returns and statements included in section 6724(d).

Commentators expressed concern that the IRS would assert penalties against a broker for reporting an incorrect adjusted basis or incorrectly reporting whether any gain or loss on a sale is long-term or short-term after relying on incorrect information provided by others. Under the proposed regulations, brokers generally must adjust basis reported for covered securities to reflect: (1) Information received on any transfer statement under section 6045A; and (2) information reported by the issuer under section 6045B regarding the effect on basis of any organizational actions. The proposed regulations provide that any failure to report correct information that arises

solely from this reliance is deemed to be due to reasonable cause with respect to the penalties under sections 6721 and 6722.

The proposed regulations permit, but do not require, a broker to adjust the reported basis in accordance with information that is not reflected on a transfer statement or issuer statement, including any information the broker has about securities held by the same customer in other accounts with the broker. The proposed regulations deem that a broker that takes into account information received from a customer or third party other than information reflected on a transfer statement or issuer statement relies upon such information in good faith in accordance with existing rules found in §301.6724-1(c)(6) if the broker neither knows nor has reason to know that the information is incorrect.

#### Proposed Effective and Applicability Dates

These regulations are proposed to take effect when published in the **Federal Register** as final regulations except as follows. The regulations regarding reporting basis and whether any gain or loss on a sale is long-term or short-term under section 6045(g) are proposed to apply to: (1) Any share of stock other than RIC stock or DRP stock acquired on or after January 1, 2011; and (2) any share of RIC stock or DRP stock acquired on or after January 1, 2012. The regulations regarding the determination of basis under section 1012 are proposed to apply for taxable years beginning after the date the regulations are published as final regulations in the **Federal Register**. However, the rules in §1.1012-1(e)(1)(i), in part, apply to stock acquired on or after January 1, 2011, the rules in §1.1012-1(e)(2) and (e)(9), in part, apply to stock acquired on or after January 1, 2012, and the rules in §1.1012-1(e)(7)(i), in part, and in §1.1012-1(e)(10), in part, apply to sales, exchanges, or other dispositions of stock on or after January 1, 2012.

The regulations regarding transfer statement reporting under section 6045A are proposed to apply to: (1) Transfers of stock other than RIC stock or DRP stock that occur on or after January 1, 2011; and (2) transfers of RIC stock or DRP stock that occur on or after January 1, 2012. The regulations regarding issuer report-

ing under section 6045B are proposed to apply to: (1) Organizational actions affecting basis of stock other than RIC stock that occur on or after January 1, 2011; and (2) organizational actions affecting basis of RIC stock that occur on or after January 1, 2012. The regulations regarding the timing for reporting short sales of securities under section 6045 and for collecting backup withholding in connection with short sales under section 3406 are proposed to apply to short sales opened on or after the date the final regulations are published in the **Federal Register** but no earlier than January 1, 2010.

#### Effect on Other Documents

Rev. Rul. 67-436 will be obsoleted as of the date these regulations are published as final regulations in the **Federal Register**.

#### 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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities, because any effect on small entities by the rules proposed in this document flows directly from section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343 (122 Stat. 3765, 3854 (2008)).

Section 403(a) of the Act modifies section 6045 to require that brokers report the adjusted basis of the securities and whether any gain or loss with respect to the securities is long-term or short-term when reporting the sale of a covered security. It is anticipated that this statutory requirement will fall only on financial services firms with annual receipts greater than \$7 million and, therefore, on no small entities. Further, in implementing the statutory requirement, the regulation proposes to limit reporting to the information described in

the Act: Adjusted basis and whether any gain or loss with respect to the securities is long-term or short-term.

Section 403(c) of the Act adds new section 6045A, which requires applicable persons to furnish a transfer statement in connection with the transfer of custody of a covered security. In implementing this statutory requirement, the regulation proposes to define applicable person to include brokers, professional custodians of securities, and issuers of securities. This definition effectuates the Act by giving the broker who receives the transfer statement the information necessary to determine and report adjusted basis and whether any gain or loss with respect to the security is long-term or short-term as required by section 6045 when the security is subsequently sold. Consequently, the regulation does not add to the impact on small entities imposed by the statutory scheme. Instead, it limits reporting to only these necessary entities. It also limits the information to be reported to only those items necessary to effectuate the statutory scheme.

Section 403(d) of the Act adds new section 6045B, which requires issuer reporting by all issuers of specified securities regardless of size and even when the securities are not publicly traded. In implementing this statutory requirement, the regulation proposes to limit reporting to those items necessary to meet the Act's requirements. Additionally, the regulation proposes to mitigate the burden imposed by the Act by providing rules to permit issuers to report each action publicly as permitted by the Act instead of filing a return and furnishing each nominee or holder a statement about the action. The regulation therefore does not add to the statutory impact on small entities but instead eases this impact to the extent the statute permits.

Therefore, because this regulation will not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required. The Treasury Department and IRS request comments on the accuracy of this statement. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Comments and 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 timely submitted to the IRS. The Treasury Department and IRS request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 17, 2010, beginning at 10 a.m., in the auditorium of the IRS New Carrollton Federal Building, 5000 Ellin Road, Lanham, Maryland 20706. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by February 8, 2010 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by February 8, 2010. A period of ten minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

## Drafting Information

The principal authors of these proposed regulations are Edward C. Schwartz, Amy J. Pfalzgraf, and William L. Candler, Office of Associate Chief Counsel (Income Tax and Accounting), and Stephen Schaeffer, Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

## Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, and 301 are 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 \* \* \*

Section 1.6045A-1 also issued under 26 U.S.C. 6045A(a), (b), (c).

Section 1.6045B-1 also issued under 26 U.S.C. 6045B(a), (c), (e). \* \* \*

Par. 2. Section 1.408-7 is amended by adding two new sentences at the end of paragraph (d)(2) to read as follows:

*§1.408-7 Reports on distributions from individual retirement plans.*

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \* However, if the statement is furnished in a consolidated reporting statement under section 6045, the February 15 due date set forth in section 6045 applies to the statement. See §§1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

\* \* \* \* \*

Par. 3. Section 1.1012-1 is amended by:

1. Revising paragraphs (c)(1), (c)(4), (c)(7)(ii), and (c)(7)(iii)(a).

2. Adding new paragraphs (c)(8), (c)(9), and (c)(10).

3. Revising the heading of paragraph (e), and paragraphs (e)(1), (e)(2), (e)(3), (e)(4), (e)(6), and (e)(7).

4. Revising the heading of paragraph (e)(5).

5. Adding new paragraphs (e)(8), (e)(9), (e)(10), (e)(11), and (e)(12).

The additions and revisions read as follows:

*§1.1012-1 Basis of property.*

\* \* \* \* \*

(c) *Sale of stock*—(1) *In general.* Except as provided in paragraph (e)(2) of this section (dealing with stock for which the average basis method is permitted), if a taxpayer sells or transfers shares of

stock in a corporation that the taxpayer purchased or acquired on different dates or at different prices and the taxpayer does not adequately identify the lot from which the stock is sold or transferred, the stock sold or transferred is charged against the earliest lot the taxpayer purchased or acquired to determine the basis and holding period of the stock for purposes of subchapter P, chapter 1 of the Internal Revenue Code. If the earliest lot purchased or acquired is held in a stock certificate that represents multiple lots of stock, and the taxpayer does not adequately identify the lot from which the stock is sold or transferred, the stock sold or transferred is charged against the earliest lot included in the certificate. See paragraphs (c)(2), (c)(3), and (c)(4) of this section for rules on what constitutes an adequate identification.

\* \* \* \* \*

(4) *Stock held by a trustee, executor, or administrator.* (i) A trustee or executor or administrator of an estate holding stock (not left in the custody of a broker) makes an adequate identification if the trustee, executor, or administrator—

(a) Specifies in writing in the books and records of the trust or estate the particular stock to be sold, transferred, or distributed;

(b) In the case of a distribution, furnishes the distributee with a written document identifying the particular stock distributed; and

(c) In the case of a sale or transfer through a broker or other agent, specifies to the broker or agent the particular stock to be sold or transferred, and within a reasonable time thereafter the broker or agent confirms the specification in a written document.

(ii) The stock the trust or estate identifies under paragraph (c)(4)(i) of this section is the stock treated as sold, transferred, or distributed, even if the trustee, executor, or administrator delivers stock certificates from a different lot.

\* \* \* \* \*

(7) \* \* \*

(ii) In applying paragraph (c)(3)(i)(b) of this section to a sale or transfer of a book-entry security pursuant to a taxpayer's written instruction, a confirmation is made by furnishing to the taxpayer a written advice of transaction from the Reserve Bank or other person through whom

the taxpayer sells or transfers the securities. The confirmation document must describe the securities and specify the date of the transaction and amount of securities sold or transferred.

(iii) \* \* \*

(a) For purposes of this paragraph (c), the term *book-entry security* means a transferable Treasury bond, note, certificate of indebtedness, or bill issued under the Second Liberty Bond Act (31 U.S.C. 774(2)), as amended, or other security of the United States (as defined in paragraph (c)(7)(iii)(b) of this section) in the form of an entry made as prescribed in 31 CFR Part 306, or other comparable Federal regulations, on the records of a Reserve Bank.

(8) *Time for making identification.* For purposes of this paragraph (c), an adequate identification of stock is made at the time of sale, transfer, delivery, or distribution if the identification is made no later than the earlier of the settlement date or the time for settlement required by Rule 15c6-1 under the Securities Exchange Act of 1934, 17 CFR 240.15c6-1 (or its successor). A standing order or instruction for the specific identification of stock is treated as an adequate identification made at the time of sale, transfer, delivery, or distribution.

(9) *Method of writing.* A written confirmation, record, document, instruction, or advice includes a writing in electronic format.

(10) *Effective/applicability date.* Paragraphs (c)(1), (c)(4), (c)(8) and (c)(9) of this section apply for taxable years beginning after these regulations are published as final regulations in the **Federal Register**.

\* \* \* \* \*

(e) *Election to use average basis method—*(1) *In general.* Notwithstanding paragraph (c) of this section, and except as provided in paragraph (e)(8) of this section, a taxpayer may use the average basis method described in paragraph (e)(7) of this section to determine the cost or other basis of identical shares of stock if—

(i) The taxpayer leaves shares of stock in a regulated investment company (as defined in paragraph (e)(5) of this section) or shares of stock acquired after December 31, 2010, in connection with a dividend reinvestment plan (as defined in paragraph (e)(6) of this section) with a custodian or agent in an account maintained for the ac-

quisition or redemption, sale, or other disposition of shares of the company; and

(ii) The taxpayer acquires identical shares of stock at different prices or bases in the account.

(2) *Determination of method.* (i) If a taxpayer places shares of stock described in paragraph (e)(1)(i) of this section acquired on or after January 1, 2012, in the custody of a broker (as defined by section 6045(c)(1)), including by transfer from an account with another broker, the basis of the shares is determined in accordance with the broker's default method, unless the taxpayer notifies the broker that the taxpayer elects another permitted method. The taxpayer must report gain or loss using the method the taxpayer elects or, if the taxpayer fails to make an election, the broker's default method.

(ii) The provisions of this paragraph (e)(2) are illustrated by the following example:

*Example.* (i) In connection with a dividend reinvestment plan, Taxpayer B acquires 100 shares of G Company in 2012 and 100 shares of G Company in 2013, in an account B maintains with R Broker. B notifies R in writing that B elects to use the average basis method to compute the basis of the shares of G Company. In 2014, B transfers the shares of G Company to an account with S Broker. B does not notify S of the basis determination method B chooses to use for the shares of G Company, and S's default method is first-in, first-out. In 2015, B instructs S to sell 100 shares of G Company.

(ii) Because B does not notify S of a basis determination method for the shares of G Company, under paragraph (e)(2)(i) of this section, the basis of the 100 shares of G Company S sells for B in 2015 must be determined under S's default method, first-in, first-out.

(3) *Shares of stock.* For purposes of this paragraph (e), securities issued by unit investment trusts (as defined in the Investment Company Act of 1940, as amended) are treated as shares of stock and the term *share* or *shares* includes fractions of a share.

(4) *Identical stock.* For purposes of this paragraph (e), *identical shares of stock* means stock with the same Committee on Uniform Security Identification Procedures (CUSIP) number or other security identifier number as permitted in published guidance of general applicability, see §601.601(d)(2) of this chapter. However, shares of stock in a dividend reinvestment plan are not identical to shares of the same stock that are not in a dividend reinvestment plan even if the shares have the same CUSIP number.

(5) *Regulated investment company.* \* \*

(6) *Dividend reinvestment plan*—(i) *In general.* For purposes of this paragraph (e), the term *dividend reinvestment plan* means any written plan, arrangement, or program under which at least 10 percent of every dividend on any share of stock is reinvested in stock identical to the stock on which the dividend is paid. A plan is a dividend reinvestment plan if the plan documents require that at least 10 percent of any dividend paid is reinvested in identical stock even if the plan includes stock on which no dividends have ever been declared or paid or on which an issuer ceases paying dividends. A plan that holds one or more different stocks may permit a taxpayer to reinvest a different percentage of dividends in the stocks held. The term dividend reinvestment plan includes both issuer administered dividend reinvestment plans and non-issuer administered dividend reinvestment plans.

(ii) *Acquisition of stock.* Stock is acquired in connection with a dividend reinvestment plan if the stock is acquired under that plan, arrangement, or program, or if the dividends paid on the stock are subject to that plan, arrangement, or program. Shares of stock acquired in connection with a dividend reinvestment plan include the initial purchase of stock in the dividend reinvestment plan, transfers of identical stock into the dividend reinvestment plan, additional periodic purchases of identical stock in the dividend reinvestment plan, and identical stock acquired through reinvestment of the dividends paid under the plan.

(iii) *Dividends paid after reorganization.* For purposes of this paragraph (e)(6), dividends declared before or pending a corporate action (such as a merger, consolidation, acquisition, split-off, or spin-off) involving the issuer of the dividend and subsequently paid and reinvested in shares of stock in the successor entity or entities are treated as reinvested in shares of stock identical to the shares of stock of the issuer of the dividends.

(iv) *Withdrawal from or termination of plan.* If a taxpayer withdraws stock from a dividend reinvestment plan or the plan administrator terminates the dividend reinvestment plan, the shares of identical stock the taxpayer acquires after the withdrawal

or termination are not acquired in connection with a dividend reinvestment plan. The taxpayer may not use the average basis method after the withdrawal or termination but may use any other permissible basis determination method. See paragraph (e)(7)(v) of this section for the basis of the shares after withdrawal or termination.

(7) *Computation of average basis*—(i) *In general.* Average basis is determined by averaging the basis of all shares of identical stock in an account regardless of holding period. The basis of each share of identical stock in the account is the aggregate basis of all shares of that stock in the account divided by the aggregate number of shares. A taxpayer may not average together the basis of identical stock held in separate accounts that the taxpayer sells, exchanges, or otherwise disposes of on or after January 1, 2012.

(ii) *Order of disposition of shares sold or transferred.* In the case of the sale or transfer of shares of stock to which the average basis method election applies, shares sold or transferred are deemed to be the shares first acquired. Thus, the first shares sold or transferred are those with a holding period of more than 1 year (long-term shares) to the extent that the account contains long-term shares. If the number of shares sold or transferred exceeds the number of long-term shares in the account, the excess shares sold or transferred are deemed to be shares with a holding period of 1 year or less (short-term shares). Any gain or loss attributable to shares held for more than 1 year constitutes long-term gain or loss, and any gain or loss attributable to shares held for 1 year or less constitutes short-term gain or loss. For example, if a taxpayer sells 50 shares from an account containing 100 long-term shares and 100 short-term shares, the shares sold or transferred are all long-term shares. If, however, the account contains 40 long-term shares and 100 short-term shares, the taxpayer has sold 40 long-term shares and 10 short-term shares.

(iii) *Transition rule from double category method.* This paragraph (e)(7)(iii) applies to stock for which a taxpayer uses the double-category method under §1.1012-1(e)(3) (April 1, 2009) that the taxpayer acquired before the date these regulations are published as final regulations in the **Federal Register** and the

taxpayer sells, exchanges, or otherwise disposes of after that date. The taxpayer must calculate the average basis of this stock by averaging together all identical shares of stock in the account on the date these regulations are published as final regulations in the **Federal Register** regardless of holding period.

(iv) *Wash sales.* A taxpayer must apply section 1091 and the associated regulations (dealing with wash sales of substantially identical securities) in computing average basis regardless of whether the stock or security sold or otherwise disposed of and the stock acquired are in the same account or in different accounts.

(v) *Basis after change from average basis method.* Unless a taxpayer revokes an average basis method election under paragraph (e)(9)(iii) of this section, if a taxpayer changes from the average basis method to another basis determination method (including a change resulting from a withdrawal from or termination of a dividend reinvestment plan), the basis of each share of stock immediately after the change is the same as the basis immediately before the change. See paragraph (e)(9)(iv) of this section for rules for changing from the average basis method.

(vi) The provisions of this paragraph (e)(7) are illustrated by the following examples:

*Example 1.* (i) In 2011, Taxpayer C acquires 100 shares of H Company and enrolls them in a dividend reinvestment plan administered by T Custodian. C elects to use the average basis method for the shares of H Company enrolled in the dividend reinvestment plan. T also acquires for C's account 50 shares of H Company and does not enroll these shares in the dividend reinvestment plan.

(ii) Under paragraph (e)(4) of this section, the 50 shares of H Company not in the dividend reinvestment plan are not identical to the 100 shares of H Company enrolled in the dividend reinvestment plan, even if they have the same CUSIP number. Accordingly, under paragraphs (e)(1) and (e)(7)(i) of this section, C may not average the basis of the 50 shares of H Company with the basis of the 100 shares of H Company. Under paragraph (e)(1)(i) of this section, C may not use the average basis method for the 50 shares of H Company because the shares are not acquired in connection with a dividend reinvestment plan.

*Example 2.* (i) Taxpayer D enters into an agreement with W Custodian establishing an account for the periodic acquisition of shares of L Company, a regulated investment company. W acquires for D's account shares of L Company stock on the following dates and amounts:

<u>Date</u>	<u>Number of shares</u>	<u>Cost</u>
January 8, 2009	25 shares	\$200
February 8, 2009	24 shares	200
March 8, 2009	20 shares	200
April 8, 2009	20 shares	200

(ii) At D's direction, W sells 40 shares from the account on January 15, 2010, for \$10 per share or a total of \$400. D elects to use the average basis method for the shares of L Company. The average basis for the shares sold on January 15, 2010, is \$8.99 (total cost of shares, \$800, divided by the total number of shares, 89).

(iii) Under paragraph (e)(7)(ii) of this section, the shares sold are the shares first acquired. Thus, D realizes \$25.25 ( $\$1.01 \times 25$ ) long-term capital gain for the 25 shares acquired on January 8, 2009, and \$15.15 ( $\$1.01 \times 15$ ) short-term capital gain for 15 of the shares acquired on February 8, 2009.

*Example 3.* (i) The facts are the same as in *Example 2*, except that on February 8, 2010, D changes to the first-in, first-out basis determination method. W purchases 25 shares of L Company for D on March 8, 2010, at \$12 per share. D sells 40 shares on May 8, 2010, and 34 shares on July 8, 2011.

(ii) Because D uses the first-in, first-out method, the 40 shares sold on May 8, 2010 are 9 shares purchased on February 8, 2009, 20 shares purchased on March 8, 2009, and 11 shares purchased on April 8, 2009. Because, under paragraph (e)(7)(v) of this section, the basis of the shares D owns when D changes from the average basis method remains the same, the basis of the shares sold on May 8, 2010, is \$8.99 per share, not the original cost of \$8.34 for the shares purchased on February 8, 2009, or \$10 per share for the shares purchased on March 8, 2009, and April 8, 2009. The basis of the shares sold on July 8, 2011, is \$8.99 for 9 shares purchased on April 8, 2009, and \$12 per share for 25 shares purchased on March 8, 2010.

(8) *Limitation on use of average basis method for certain gift shares.* (i) Except as provided in paragraph (e)(8)(ii) of this section, a taxpayer may not use the average basis method for shares of stock a taxpayer acquires by gift after December 31, 1920, if the basis of the shares (adjusted for the period before the date of the gift as provided in section 1016) in the hands of the donor or the last preceding owner by whom the shares were not acquired by gift was greater than the fair market value of the shares at the time of the gift. This paragraph (e)(8)(i) does not apply to shares the taxpayer acquires as a result of a taxable dividend or capital gain distribution on the gift shares.

(ii) Notwithstanding paragraph (e)(8)(i) of this section, a taxpayer may use the average basis method if the taxpayer states in writing that the taxpayer will treat the basis of the gift shares as the fair market

value of the shares at the time the taxpayer acquires the shares. The taxpayer must provide this statement when the taxpayer makes the election under paragraph (e)(9) of this section or when transferring the shares to an account for which the taxpayer has made this election, whichever occurs later. The statement must be effective for any gift shares identical to the gift shares to which the average basis method election applies that the taxpayer acquires at any time and must remain in effect as long as the election remains in effect.

(iii) The provisions of this paragraph (e)(8) are illustrated by the following examples:

*Example 1.* (i) Taxpayer E owns an account for the periodic acquisition of shares of M Company, a regulated investment company. On April 15, 2010, E acquires identical shares by gift and transfers those shares into the account. These shares had an adjusted basis in the hands of the donor that was greater than the fair market value of the shares on that date. On June 15, 2010, E sells shares from the account and elects to use the average basis method.

(ii) Under paragraph (e)(8)(ii) of this section, E may elect to use the average basis method for shares sold or transferred from the account if E includes a statement with E's election that E will treat the basis of the gift shares in the account as the fair market value of the shares at the time E acquired them. See paragraph (e)(9)(ii) of this section.

*Example 2.* (i) The facts are the same as in *Example 1*, except E acquires the gift shares on April 15, 2012, transfers those shares into the account, and used the average basis method for sales of shares of M Company before acquiring the gift shares. E sells shares of M Company on June 15, 2012.

(ii) Under paragraph (e)(8)(ii) of this section, the basis of the gift shares may be averaged with the basis of the other shares of M Company in E's account if, when E transfers the gift shares to the account, E provides a statement to E's broker that E will treat the basis of the gift shares in the account as the fair market value of the shares at the time E acquired them. See paragraph (e)(9)(i) of this section.

(9) *Time and manner for making the average basis method election—*(i) *In general.* A taxpayer makes an election to use the average basis method for shares of stock described in paragraph (e)(1)(i) of this section that are covered securities (within the meaning of section 6045(g)(3)) by notifying the custodian or agent in writing by any reasonable means. The tax-

payer may make the average basis method election at any time, effective for sales or other dispositions of stock occurring after the taxpayer notifies the custodian or agent. The taxpayer makes the election separately for each account holding stock for which the average basis method is permissible. If the election applies to gift shares, the taxpayer must provide the statement required by paragraph (e)(8)(ii) of this section, if applicable, to the custodian or agent with the taxpayer's election.

(ii) *Average basis method election for securities that are noncovered securities.*

A taxpayer makes an election to use the average basis method for shares of stock described in paragraph (e)(1)(i) of this section that are noncovered securities (as described in §1.6045-1(a)(16)) on the taxpayer's income tax return for the first taxable year for which the election applies. A taxpayer may make the election on an amended return filed no later than the time prescribed (including extensions) for filing the original return for the taxable year for which the election applies. The taxpayer must indicate on the return that the taxpayer used the average basis method in reporting gain or loss on the sale or other disposition. A taxpayer must attach to the return the statement described in paragraph (e)(8)(ii) of this section, if applicable. A taxpayer making the election must maintain records necessary to substantiate the average basis reported.

(iii) *Revocation of election.* A taxpayer may revoke an election under paragraph (e)(9)(i) of this section by the earlier of one year after the taxpayer makes the election or the date of the first sale or other disposition of that stock following the election. A custodian or agent may extend the one-year period but a taxpayer may not revoke an election after the first sale or other disposition of the stock. A revocation applies to all stock the taxpayer holds in an account that is identical to the shares of stock for which the taxpayer revokes the election. A revocation is effective when the taxpayer notifies, by any reasonable

means, the custodian or agent holding the stock to which the revocation applies. After revocation, the taxpayer's basis in the shares of stock to which the revocation applies is determined using another permissible basis determination method.

(iv) *Change from average basis method.*

(a) A taxpayer may change basis determination methods from the average basis method to another method prospectively at any time. A change from the average basis method applies to all identical stock the taxpayer sells or otherwise disposes of before January 1, 2012, that was held in any account. A change from the average ba-

sis method applies on an account by account basis (within the meaning of paragraph (e)(10) of this section) to all identical stock the taxpayer sells or otherwise disposes of on or after January 1, 2012. Unless paragraph (e)(9)(iii) of this section applies, the basis of each share of stock to which the change applies is the basis immediately before the change. See paragraph (e)(7)(v) of this section.

(b) Unless paragraph (e)(9)(iii) of this section applies, a change in basis determination method is a change in method of accounting to which the provisions of sections 446 and 481 and the associ-

ated regulations apply. A taxpayer that wishes to change its basis determination method must obtain the consent of the Commissioner in accordance with applicable administrative procedures, *see* §601.601(d)(2) of this chapter.

(v) *Example.* The provisions of this paragraph (e)(9) are illustrated by the following example:

*Example.* (i) Taxpayer F enters into an agreement with W Custodian establishing an account for the periodic acquisition of shares of N Company, a regulated investment company. W acquires for F's account shares of N Company on the following dates and amounts:

<u>Date</u>	<u>Number of shares</u>	<u>Cost</u>
January 8, 2012	25 shares	\$200
February 8, 2012	24 shares	200
March 8, 2012	20 shares	200

(ii) F elects, under paragraph (e)(9)(i) of this section, to use the average basis method for the shares of N Company. On May 8, 2012, F revokes the average basis method election under paragraph (e)(9)(iii) of this section. On June 1, 2012, F sells 60 shares of N Company using the first-in, first-out basis determination method.

(iii) Under paragraph (e)(9)(iii) of this section, the basis of the N Company shares upon revocation, and for purposes of determining gain on the sale, is \$8.00 per share for each of the 25 shares purchased on January 8, 2012, \$8.34 per share for each of the 24 shares purchased on February 8, 2012, and \$10 per share for the remaining 11 shares purchased on March 8, 2012.

(10) *Application of average basis method account by account—(i) In general.* For sales, exchanges, or other dispositions on or after January 1, 2012, of any stock described in paragraph (e)(1)(i) of this section, the average basis method applies on an account by account basis. A taxpayer may use the average basis method for stock in a regulated investment company or stock acquired in connection with a dividend reinvestment plan in one account but use a different basis determination method for the identical stock in a different account. If a taxpayer uses the average basis method for a stock described in paragraph (e)(1)(i) of this section, the taxpayer must use the average basis method for all identical stock within that account. The taxpayer may use different basis determination methods for stock within an account that is not identical. Except as provided in paragraph (e)(10)(ii) of this section, a taxpayer must make separate elections to use the average

basis method for stock held in separate accounts.

(ii) *Account rule for stock sold before 2012.* A taxpayer's election to use the average basis method for shares of stock described in paragraph (e)(1)(i) of this section that a taxpayer sells, exchanges, or otherwise disposes of before January 1, 2012, applies to all identical shares of stock the taxpayer holds in any account.

(iii) *Separate account.* Unless the single-account election described in paragraph (e)(11)(i) of this section applies, any stock described in paragraph (e)(1)(i) of this section that a taxpayer acquires before January 1, 2012, is treated as held in a separate account from any stock acquired on or after that date, and any stock that is a covered security (within the meaning of section 6045(g)(3)) is treated as held in a separate account from any stock that is a noncovered security (as described in §1.6045-1(a)(16)) regardless of when acquired.

(iv) *Examples.* The provisions of this paragraph (e)(10) are illustrated by the following examples:

*Example 1.* (i) In 2012, Taxpayer G enters into an agreement with Y Broker establishing three accounts (G-1, G-2, and G-3) for the periodic acquisition of shares of P Company, a regulated investment company. Y makes periodic purchases of P Company for each of G's accounts. G elects to use the average basis method for account G-1. On July 1, 2013, G sells shares of P Company from account G-1.

(ii) G is not required to use the average basis method for the shares of P Company that G holds

in accounts G-2 and G-3 because, under paragraph (e)(10)(i) of this section, the average basis method election applies to shares sold after 2011 on an account by account basis.

*Example 2.* The facts are the same as in *Example 1*, except that G also instructs Y to acquire shares of Q Company, a regulated investment company, for account G-1. Under paragraph (e)(10)(i) of this section, G may use any permissible basis determination method for the shares of Q Company because, under paragraph (e)(4) of this section, the shares of Q Company are not identical to the shares of P Company.

*Example 3.* (i) The facts are the same as in *Example 1*, except that G establishes the accounts in 2011 and Y sells shares of P Company from account G-1 on July 1, 2011.

(ii) G must use the average basis method for the shares of P Company in accounts G-2 and G-3 because, under paragraph (e)(10)(ii) of this section, for sales before 2012, G's election applies to all accounts in which G holds identical stock. G must average together the basis of the shares in all accounts.

*Example 4.* (i) In 2011, Taxpayer H acquires 80 shares of R Company and enrolls them in R Company's dividend reinvestment plan. In 2012, H acquires 50 shares of R Company in the dividend reinvestment plan. H elects to use the average basis method for the shares of R Company in the dividend reinvestment plan. R Company does not make the single-account election under paragraph (e)(11)(i) of this section.

(ii) Under paragraph (e)(10)(iii) of this section, the 80 shares acquired in 2011 are treated as held in a separate account from the 50 shares acquired in 2012. H must make a separate average basis method election for each account and must average the basis of the shares in each account separately from the shares in the other account.

*Example 5.* (i) B, a broker within the meaning of section 6045(c)(1), maintains an account for Taxpayer J for the periodic acquisition of shares of S Company, a regulated investment company. In 2013, B purchases shares of S Company for J's account that

are covered securities within the meaning of section 6045(g)(3). On April 15, 2014, J inherits shares of S Company that are noncovered securities and transfers the shares into the account with B.

(ii) Under paragraph (e)(10)(iii) of this section, J must treat the purchased shares and the inherited shares of S Company as held in separate accounts. J may elect to apply the average basis method to all the shares of S Company, but must make a separate election for each account, and must average the basis of the shares in each account separately from the shares in the other account.

(11) *Single-account election*—(i) *In general.* Paragraph (e)(10)(iii) of this section does not apply if a regulated investment company or dividend reinvestment plan elects to treat all identical shares of stock described in paragraph (e)(1)(i) of this section as held in a single account (single-account election). The single-account election applies only to stock for which a taxpayer elects to use the average basis method that is held in separate accounts or treated as held in separate accounts maintained for the taxpayer. If a broker (as defined by section 6045(c)(1)) holds the stock as a nominee, the broker, and not the regulated investment company or dividend reinvestment plan, makes the election. The single-account election is irrevocable.

(ii) *Scope of election.* A company, plan, or broker may make a single-account election for one or more taxpayers for which it maintains an account, and for one or more stocks it holds for a taxpayer. The company, plan, or broker may make the election only for the shares of stock for which it has accurate basis information. A company, plan, or broker has accurate basis information if the company, plan, or broker neither knows nor has reason to know that the basis information is inaccurate. See also section 6724 and the regulations thereunder regarding standards for relief from information reporting penalties. Stock for which accurate basis information is unavailable may not be included in the single-account election and must be treated as held in a separate account.

(iii) *Effect of single-account election.* If a company, plan, or broker makes the single-account election, the basis of all identical shares of stock to which the election applies must be averaged together regardless of when the taxpayer acquires the shares, and all the shares are treated as covered securities. Once made, the single-account election applies to all identical

stock a taxpayer later acquires in the account that is a covered security (within the meaning of section 6045(g)(3)). A company, plan, or broker may make another single-account election if a taxpayer acquires identical stock in the account that is a noncovered security (as described in §1.6045-1(a)(16)) for which the company, plan, or broker has accurate basis information.

(iv) *Time and manner for making the single-account election.* A company, plan, or broker makes the single-account election by clearly noting it on its books and records. The books and records must reflect the date of the election; the taxpayer's name, account number, and taxpayer identification number; the stock subject to the election; and the taxpayer's basis in the stock. The company, plan, or broker must provide copies of the books and records regarding the election to the taxpayer upon request. A company, plan, or broker may make the single-account election at any time.

(v) *Notification to taxpayer.* A company, plan, or broker making the single-account election must use reasonable means to notify the taxpayer of the election. Reasonable means include mailings, circulars, or electronic mail sent separately to the taxpayer or included with the taxpayer's account statement, or other means reasonably calculated to provide actual notice to the taxpayer. The notice must identify the securities subject to the election and advise the taxpayer that the securities will be treated as covered securities regardless of when acquired.

(vi) *Examples.* The provisions of this paragraph (e)(11) are illustrated by the following examples:

*Example 1.* (i) C Broker maintains an account for Taxpayer K for the acquisition and disposition of shares of T Company, a regulated investment company, and shares of V Company that K enrolls in C's dividend reinvestment plan. In 2011, C purchases for K's account 100 shares of T Company in multiple lots and 80 shares of V Company in multiple lots that are enrolled in the dividend reinvestment plan. C has accurate basis information for all 100 shares of T Company and 80 shares of V Company. In 2012, C acquires for K's account 150 shares of T Company and 160 shares of V Company that are enrolled in the dividend reinvestment plan. K elects to use the average basis method for all the shares of T Company and V Company.

(ii) Under paragraphs (e)(11)(i) and (ii) of this section, C may make a single-account election for the T Company stock or the V Company stock, or both.

After making a single-account election for each stock, under paragraph (e)(11)(iii) of this section, the basis of all T Company stock is averaged together and the basis of all V Company stock is averaged together, regardless of when acquired, and all the shares of T Company and V Company are covered securities.

*Example 2.* The facts are the same as in *Example 1*, except that K transfers the 100 shares of T Company acquired in 2011 from an account with another broker into K's account with C. C does not have accurate basis information for 30 of the 100 shares of T Company, which K had acquired in two lots. Under paragraph (e)(11)(ii) of this section, C may make the single-account election only for the 70 shares of T Company stock for which C has accurate basis information. The 30 shares of T Company for which C does not have accurate basis information must be treated as held in a separate account. K may use the average basis method for the 30 shares of T Company, but must make a separate average basis method election for these shares and must average the basis of these shares separately from the 70 shares subject to C's single-account election.

*Example 3.* The facts are the same as in *Example 1*, except that in 2013 K acquires additional shares of T Company that are covered securities in K's account with C. Under paragraph (e)(11)(iii) of this section, these shares of T Company are subject to C's single-account election.

*Example 4.* The facts are the same as in *Example 1*, except that following C's single-account election, in 2013, K inherits shares of T Company that are noncovered securities and transfers the shares into the account with C. C has accurate basis information for these shares. Under paragraph (e)(11)(iii) of this section, C may make a second single-account election to include the inherited T Company shares.

(12) *Effective/applicability date.* Except as otherwise provided in paragraphs (e)(1), (e)(2), (e)(7), (e)(9), and (e)(10) of this section, this paragraph (e) applies for taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

\* \* \* \* \*

Par. 4. Section 1.6039-2 is amended by adding two new sentences at the end of paragraph (c)(1) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \* However, if the statement is furnished in a consolidated reporting statement under section 6045, the February 15 due date set forth in section 6045 applies to the statement. See §§1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

\* \* \* \* \*

Par. 5. Section 1.6042-4 is amended by adding two new sentences at the end of paragraph (e)(1) to read as follows:

*§1.6042-4 Statements to recipients of dividend payments.*

\* \* \* \* \*  
(e) \* \* \*

(1) \* \* \* If the statement is furnished in a consolidated reporting statement under section 6045, the February 15 due date set forth in section 6045 applies to the statement. See §§1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

\* \* \* \* \*

Par. 6. Section 1.6044-5 is amended by adding two new sentences at the end of paragraph (b) to read as follows:

*§1.6044-5 Statements to recipients of patronage dividends.*

\* \* \* \* \*

(b) \* \* \* If the statement is furnished in a consolidated reporting statement under section 6045, the February 15 due date set forth in section 6045 applies to the statement. See §§1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

\* \* \* \* \*

Par. 7. Section 1.6045-1 is amended by:

1. Revising paragraphs (a)(1) and (a)(9), and adding paragraphs (a)(14), (a)(15), and (a)(16).

2. Revising paragraphs (c)(2), (c)(3)(i)(B)(I), and (c)(3)(i)(C).

3. Removing paragraph (c)(3)(xii) and redesignating paragraph (c)(3)(xi) as (c)(3)(xii) and adding a new paragraph (c)(3)(xi).

4. Adding *Examples 7, 8, 9, 10, and 11* to paragraph (c)(4).

5. Revising paragraphs (d)(1), (d)(2), and (d)(5).

6. Redesignating paragraphs (d)(6) and (d)(7) as (d)(8) and (d)(9) respectively and adding new paragraphs (d)(6) and (d)(7).

7. Revising newly designated paragraphs (d)(8) and (d)(9).

8. Revising paragraphs (e)(2)(i), (f)(1), (f)(2)(i), (k)(1), and (k)(2).

9. Redesignating paragraph (k)(3) as (k)(4) and adding a new paragraph (k)(3).

10. Removing paragraphs (p) and (q) and redesignating paragraph (r) as (p).

The additions and revisions read as follows:

*§1.6045-1 Returns of information of brokers and barter exchanges.*

(a) \* \* \*

(1) The term *broker* means any person (other than a person who is required to report a transaction under section 6043), U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. A broker includes an obligor that regularly issues and retires its own debt obligations or a corporation that regularly redeems its own stock. However, with respect to a sale (including a redemption or retirement) effected at an office outside the United States, except as otherwise provided in a withholding agreement with the Internal Revenue Service under §1.1441-1(e)(5)(iii), a broker includes only a person described as a U.S. payor or U.S. middleman in §1.6049-5(c)(5). In addition, a broker does not include an international organization described in §1.6049-4(c)(1)(ii)(G) that redeems or retires an obligation of which it is the issuer.

\* \* \* \* \*

(9) The term *sale* means any disposition for cash of securities, commodities, regulated futures contracts, or forward contracts, and includes redemptions of stock, retirements of indebtedness, and enterings into short sales when these actions are conducted for cash. In the case of a regulated futures contract or a forward contract, the term “sale” means any closing transaction. When a closing transaction in a regulated futures contract involves making or taking delivery, the profit or loss on the contract is a sale, and, if delivery is made, such delivery is a separate sale. When a closing transaction in a forward contract involves making or taking delivery, the delivery is a sale without separation of the profit or loss on the contract from the profit or loss on the delivery, except that taking delivery for United States dollars is not a sale. The term “sale” does not include grants or purchases of options, exercises of call options, or enterings into contracts that require delivery of personal property or an

interest therein. For purposes of this section only, the term “sale” does not include a constructive sale under section 1259 or a mark to fair market value under section 475.

\* \* \* \* \*

(14) The term *specified security* means any share of stock (including a certificate of beneficial interest) in a corporation (foreign or domestic) described in §301.7701-2(b) of this chapter. Solely for purposes of this paragraph (a)(14), a security classified as stock by the issuer is treated as stock. If no issuer classification has been made, the security is not treated as stock unless the broker knows, or has reason to know, that the security is reasonably classified as stock under general Federal tax principles.

(15) The term *covered security* means the following specified securities:

(i) Any specified security acquired through a sale transaction in an account on or after January 1, 2011, except for stock in a regulated investment company (as described in §1.1012-1(e)(5)) and stock that is considered acquired in connection with a dividend reinvestment plan (as described in §1.1012-1(e)(6)) on the date of acquisition.

(ii) Stock in a regulated investment company if acquired through a sale transaction in an account on or after January 1, 2012.

(iii) Stock acquired in connection with a dividend reinvestment plan if acquired through a sale transaction in an account on or after January 1, 2012.

(iv) Any specified security transferred to an account in a non-sale transaction provided that the broker or other custodian of the account receives a transfer statement (as described in §1.6045A-1) reporting the security as a covered security.

(16) The term *noncovered security* means any security that is not a covered security.

\* \* \* \* \*

(c) \* \* \*

(2) *Sales required to be reported.* Except as provided in paragraphs (c)(3), (c)(5), and (g) of this section, a broker is required to make a return of information with respect to each sale by a customer of the broker if, in the ordinary course of a trade or business in which the broker stands ready to effect sales to be made by

others, the broker effects the sale or closes the short position opened by the sale.

(3) \* \* \*

(i) \* \* \*

(B) \* \* \*

(I) A corporation as defined in section 7701(a)(3), whether domestic or foreign, except that this exclusion does not apply to sales of covered securities acquired on or after January 1, 2012, by a corporation for which an election under section 1362(a) is in effect;

\* \* \* \* \*

(C) *Exemption certificate.* A broker may treat a person described in paragraph (c)(3)(i)(B) of this section as an exempt recipient based on a properly completed exemption certificate (as provided in §31.3406(h)-3 of this chapter), on the broker's actual knowledge that the payee is a person described in paragraph (c)(3)(i)(B) of this section, or on the applicable indicators described in §1.6049-4(c)(1)(ii)(A) through (M), except a broker must not treat a person described in paragraph (c)(3)(i)(B) of this section as an exempt recipient based on the indicator described in §1.6049-4(c)(1)(ii)(A) (relating to corporations) with respect to sales of covered securities acquired on or after January 1, 2012. A broker may require an exempt recipient to file a properly completed exemption certificate and may treat an exempt recipient that fails to do so as a recipient that is not exempt.

\* \* \* \* \*

(xi) *Short sales.* A return of information for a short sale of a security entered into on or after January 1, 2010, is not made until the year in which securities are acquired or delivered to close the short sale. The return must be made without regard to the constructive sale rule in section 1259 and, if the short sale remains open, without regard to section 1233(h). The return is required to include the following information:

(A) With respect to short sales closed by covered securities (other than short sales described in paragraph (c)(3)(xi)(C) of this section), a broker is required to report, on a single return of information, the information required by paragraph (d)(2)(i) of this section including the relevant information regarding the securities sold to open the short sale and the adjusted basis for the securities acquired or delivered to close the short sale and whether any gain or loss on

the closing of the short sale is long-term or short-term (within the meaning of section 1222).

(B) With respect to short sales closed by noncovered securities (other than short sales described in paragraph (c)(3)(xi)(C) of this section), a broker is required to report the relevant information required by paragraph (d)(2)(i) of this section for the securities sold to open the short sale. Adjusted basis and whether any gain or loss on the closing of a short sale is long-term or short-term (within the meaning of section 1222) are not reportable for short sales closed before January 1, 2011. With respect to short sales closed on or after January 1, 2011, a broker is not required to report adjusted basis and whether any gain or loss on the closing of the short sale is long-term or short-term for noncovered securities acquired or delivered to close a short sale provided that the broker indicates on Form 1099 or any successor form that the securities acquired or delivered to close a short sale are noncovered securities. A broker that chooses to report this information with respect to short sales closed by noncovered securities is not subject to penalties under section 6721 or 6722 for any failure to report such information correctly, provided that the broker indicates on Form 1099 or any successor form that securities acquired or delivered to close a short sale are noncovered securities.

(C) With respect to short sales closed by securities transferred into a customer's account accompanied by a transfer statement (as described in §1.6045A-1) indicating that the securities were borrowed from or through the applicable person effecting the transfer (within the meaning of §1.6045A-1(a)(3)), the broker receiving custody of the securities must not file a return of information. In this situation, the broker receiving custody of the securities must furnish a statement to the applicable person effecting the transfer that reports the amount of gross proceeds received from the short sale, the date the short sale was opened, and the CUSIP or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter) of the securities that opened the short sale. The statement must also contain the date that the transfer was initiated as reported on the transfer statement

and the name and contact information of the broker receiving custody of the securities, the applicable person that effected the transfer, and the customer. The applicable person that effected the transfer must take the information furnished by the broker receiving custody of the securities under this paragraph (c)(3)(xi)(C) into account when making the return of information required by this section at the time the short sale is closed unless the applicable person that effected the transfer knows that the information on the statement is incorrect. Any failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause with respect to penalties under sections 6721 and 6722. See §301.6724-1(a)(1) of this chapter. This paragraph (c)(3)(xi)(C) applies only if a short sale is not considered closed under section 1233 by the delivery of property borrowed from a lender.

(4) \* \* \*

\* \* \* \* \*

*Example 7.* On April 17, 2009, H, an individual who is not an exempt recipient, opens a short sale of stock in an account with M, a broker. Because the short sale is entered into prior to January 1, 2010, paragraph (c)(3)(xi) of this section does not apply. Under paragraphs (c)(2) and (j) of this section, M must make a return of information for the year of the sale regardless of when the short sale is closed.

*Example 8.* (i) On June 24, 2010, H opens a short sale of stock in an account with M, a broker. H closes the short sale with M on August 25, 2010, by purchasing stock of the same corporation in the account in which H opened the short sale.

(ii) Because the short sale is entered into on or after January 1, 2010, under paragraphs (c)(2) and (c)(3)(xi) of this section, the broker closing the short sale must make a return of information reporting the sale for the year in which the short sale is closed. Thus, M is required to report the sale for 2010.

(iii) Because the stock used to close the short sale was acquired before January 1, 2011, the stock is a noncovered security under paragraph (a)(16) of this section, and paragraph (c)(3)(xi)(B) of this section applies. Under paragraph (c)(3)(xi)(B) of this section, because the short sale was closed prior to January 1, 2011, M must report the relevant information for the sold stock. The adjusted basis and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222) are not reportable for transactions occurring prior to January 1, 2011.

*Example 9.* (i) On December 20, 2010, H opens a short sale of stock that is not stock in a regulated investment company in an account with M, a broker. H closes the short sale with M on January 20, 2011, by purchasing stock of the same corporation in the account in which H opened the short sale. The purchased stock is not considered to be acquired in connection with a dividend reinvestment plan.

(ii) Because the short sale is entered into on or after January 1, 2010, under paragraphs (c)(2) and (c)(3)(xi) of this section, the broker closing the short sale must make a return of information reporting the sale for the year in which the short sale is closed. Thus, M is required to report the sale for 2011.

(iii) Because the stock used to close the short sale is not stock in a regulated investment company or acquired in connection with a dividend reinvestment plan and was acquired on or after January 1, 2011, the stock is a covered security under paragraph (a)(15)(i) of this section, and paragraph (c)(3)(xi)(A) of this section applies. Under paragraph (c)(3)(xi)(A) of this section, M must report on a single return the relevant information for the sold stock, the adjusted basis of the acquired stock, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222). Thus, M must report the information about the transactions opening and closing the short sale on a single return for taxable year 2011.

*Example 10.* Assume the same facts as in *Example 9* except that H satisfies the short sale obligation with M by delivering stock of the same corporation that H acquired on December 29, 2010. Because the stock used to close the short sale was acquired before January 1, 2011, the stock is a noncovered security under paragraph (a)(16) of this section and paragraph (c)(3)(xi)(B) of this section applies. Under paragraph (c)(3)(xi)(B) of this section, because the short sale was closed on or after January 1, 2011, M must report the relevant information for the sold stock and is permitted to report the adjusted basis of the stock acquired to close the short sale, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222). Whether M chooses to report the last two items or to leave these two fields blank, M will not be subject to penalties for failing to report the correct adjusted basis or whether any gain or loss on the closing of the short sale is long-term or short-term provided that M indicates on Form 1099 or any successor form that the securities acquired or delivered to close the short sale are noncovered securities.

*Example 11.* Assume the same facts as in *Example 9* except that H satisfies the short sale obligation with M by borrowing stock of the same corporation from another broker, N, and transferring the borrowed stock from the custody of N to M. N indicates on the transfer statement that the transferred stock was borrowed from or through N. Because H is not considered to have closed H's short sale under section 1233, under paragraph (c)(3)(xi)(C) of this section, M is not permitted to file the return of information required under this section. Instead, M must furnish a statement to N that reports the gross proceeds from the short sale, the date the short sale was opened, and the CUSIP number or other security identifier number for the sale of the stock borrowed from M to open the short sale on December 20, 2010, along with the date N initiated the transfer as reported by N on the transfer statement and the name and contact information of H, M, and N. N must report the gross proceeds from the short sale, the date the short sale was opened, the adjusted basis of the stock acquired to close the short sale, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222) on the return of information N is required to file under paragraph (c)(2) of this sec-

tion when H closes the short sale in the account with N.

\* \* \* \* \*

(d) *Information required*—(1) *In general.* A broker that is required to make a return of information under paragraph (c) of this section during a reporting period is required to report on a separate Form 1096, “*Annual Summary and Transmittal of U.S. Information Returns*,” or any successor form for each filing group, showing such information as may be required by Form 1096, in the form, manner, and number of copies required by Form 1096.

(2) *Transactional reporting*—(i) *Required information.* For each sale for which a broker is required to make a return of information under this section, the broker, except as provided in paragraph (c)(5) of this section, must report on Form 1099 or any successor form the name, address, and taxpayer identification number of the customer, the property sold, the Committee on Uniform Security Identification Procedures (CUSIP) number of the security sold (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter), the adjusted basis of the security sold, whether any gain or loss with respect to the security sold is long-term or short-term (within the meaning of section 1222), the gross proceeds of the sale, the sale date, and such other information as may be required by Form 1099, in the form, manner, and number of copies required by Form 1099.

(ii) *Specific identification of securities.* In the case of a sale of securities acquired on different dates or at different prices but involving less than the entire position of the security held in an account, a broker must report the sale on a first-in, first-out basis within the account unless the customer notifies the broker by means of making an adequate and timely identification of the securities to be sold. If the customer makes an adequate and timely identification of the securities to be sold, the broker must report the sale consistently with the customer's identification. For rules governing the requirements and timing for making an adequate identification, see §1.1012-1(c).

(iii) *Sales of noncovered securities and certain excepted securities.* In the case of a sale of a noncovered security, reporting of the adjusted basis of the security sold and whether any gain or loss with respect to the security sold is long-term or short-term (within the meaning of section 1222) is not required provided that a broker indicates on Form 1099 or any successor form that the sale is a sale of a noncovered security. A broker that chooses to report this information with respect to a noncovered security is not subject to penalties under section 6721 or 6722 for any failure to report such information correctly, provided that the broker indicates on Form 1099 or any successor form that the sale is a sale of a noncovered security. For purposes of this paragraph (d)(2)(iii), a security that was excepted from all reporting under this section as described in paragraph (c)(3) of this section at the time of its acquisition is treated in the same manner as a noncovered security.

(iv) *Information from other parties and other accounts*—(A) *Transfer and issuer statements.* When reporting the sale of a covered security, a broker must take into account all information reported on any transfer statement (as described in §1.6045A-1) received in connection with the transfer of the security to the customer's account with the broker, and all information reported on any issuer statement (as described in §1.6045B-1) regarding the effect on the security of any organizational actions prior to the sale of the security unless the broker knows that the information presented on the transfer statement or issuer statement is incorrect. With respect to penalties under sections 6721 and 6722, any failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause. See §301.6724-1(a)(1) of this chapter.

(B) *Other information.* A broker is permitted, but not required, to take into account any information with respect to a covered security that is not reflected on a transfer statement or issuer statement, including any information the broker has about securities held by the same customer in other accounts with the broker. With respect to penalties under sections 6721 and 6722, a broker that takes into account information received from a customer or third party other than information reflected

on a transfer statement or issuer statement is deemed to have relied upon it in good faith if the broker neither knows nor has reason to know that the information is incorrect. See §301.6724-1(c)(6) of this chapter.

(v) *Failures by other parties.* A broker that does not receive a complete transfer statement by the transfer statement due date (as described in §1.6045A-1(a)(5) and (b)) in connection with the receipt of transferred securities must notify the person effecting the transfer and request a complete statement. The broker is not required to make this request more than once. If the broker does not receive a complete transfer statement after making the request, the broker may treat the security as noncovered when sold. If the broker receives a complete transfer statement after the sale indicating that the security was a covered security, the broker must file a corrected Form 1099 within thirty days of receiving the statement unless the required information was reported on the original Form 1099 consistently with the complete transfer statement. Similarly, if an issuer does not furnish a complete issuer statement (as described in §1.6045B-1) regarding a corporate organizational action that occurs prior to the sale of a covered security until after the broker has reported the sale of the security, the broker must file a corrected Form 1099 within thirty days of receiving the statement unless the required information was reported on the original Form 1099 consistently with the complete issuer statement.

(vi) *Examples.* The following examples illustrate the rules of this paragraph (d)(2):

*Example 1.* (i) J is an organization exempt from taxation under section 501(a). On February 22, 2012, J purchases stock in an account with F, a broker. On October 1, 2012, J loses its exemption under section 501(a). On January 15, 2013, J sells the shares of stock.

(ii) Because J was exempt from reporting under section 6045 at the time it acquired the shares of stock, under paragraph (d)(2)(iii) of this section, F is not required to report the adjusted basis of the stock and whether any gain or loss on the sale is long-term or short-term (within the meaning of section 1222). Whether F chooses to report this information or to leave these fields blank, under paragraph (d)(2)(iii) of this section, F is not subject to penalties for failing to report the correct adjusted basis or whether any gain or loss on the sale is long-term or short-term provided that F indicates on Form 1099 that the sale is a sale of a noncovered security.

*Example 2.* (i) On March 1, 2012, K sells 100 shares of stock of C, a corporation, at a loss in an

account held with F, a broker. On March 15, 2012, K purchases 100 shares of stock of the same corporation in an account with G, a different broker. Because the shares purchased on March 15, 2012, are acquired through a sale transaction in an account after January 1, 2012, under paragraph (a)(15) of this section, the shares are covered securities. K asks G to increase K's adjusted basis in the shares to account for the application of the wash sale rules under section 1091 to the loss transaction in the account held with F.

(ii) Under paragraph (d)(2)(iv)(B) of this section, G is not required to take into account the information provided by K when subsequently reporting the adjusted basis and whether any gain or loss on the sale is long-term or short-term (within the meaning of section 1222). If G chooses to take this information into account, under paragraph (d)(2)(iv)(B) of this section, G is deemed to have relied upon the information received from K in good faith on any subsequent reporting for purposes of penalties under section 6721 and 6722 if G neither knows nor has reason to know that the information provided by K is incorrect.

*Example 3.* (i) L purchases shares of stock of the same corporation in an account with F, a broker, on November 21, 1962, November 21, 2012, November 21, 2013, and November 21, 2014. In January 2015, L sells all the stock.

(ii) Under paragraph (d)(2)(i) of this section, F must separately report the gross proceeds and adjusted basis attributable to those shares purchased in 2014, for which the gain or loss on the sale is short-term, and the combined gross proceeds and adjusted basis attributable to those shares purchased in 2012 and 2013, for which the gain or loss on the sale is long-term. Under paragraph (d)(2)(iii) of this section, F must also separately report the gross proceeds attributable to the shares purchased in 1962 as the sale of noncovered securities in order to avoid treatment of this sale as the sale of covered securities.

*Example 4.* (i) On June 1, 2015, M makes a gift to N of shares of stock originally purchased by M on March 1, 2013, in an account with F, a broker. In connection with the transfer, F provides a complete transfer statement (as described in §1.6045A-1) to G, N's broker, stating that the shares are covered securities. N subsequently sells the shares.

(ii) Because G received a complete transfer statement stating that the shares are covered securities, under paragraph (d)(2)(iv)(A) of this section, G must take into account the information reported on the transfer statement in reporting N's subsequent sale of the shares unless G knows that the information is incorrect. Under paragraph (d)(2)(iv)(A) of this section, any failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause.

*Example 5.* Assume the same facts as in *Example 4* except that G does not receive a complete transfer statement by the transfer statement due date. Under paragraph (d)(2)(v) of this section, G must notify F and request a complete statement. If G still does not receive a complete statement, G may treat the securities as noncovered securities at the time of sale.

\* \* \* \* \*

(5) *Gross proceeds.* For purposes of this section, *gross proceeds* on a sale are the total amount paid to the customer or

credited to the customer's account as a result of such sale reduced by the amount of any interest reported under paragraph (d)(3) of this section and increased by any amount not so paid or credited by reason of repayment of margin loans. In the case of a closing transaction which results in a loss, gross proceeds are the amount debited from the customer's account. A broker may, but is not required to, take commissions into account in determining gross proceeds, provided the treatment chosen is consistent with the books of the broker. For securities sold pursuant to the exercise of an option granted or acquired before January 1, 2013, a broker may, but is not required to, take the option premiums into account in determining the gross proceeds of the securities sold pursuant to the exercise of the option, provided the treatment chosen is consistent with the books of the broker.

(6) *Adjusted basis—(i) In general.* For purposes of this section, the adjusted basis of a security is determined from the basis determined under paragraph (d)(6)(ii) of this section as of the date the security is acquired in an account, increased by the commissions and transfer taxes related to its sale to the extent not accounted for in gross proceeds as described in paragraph (d)(5) of this section. When reporting adjusted basis, a broker must take into account organizational actions affecting the basis of the security if reported on any issuer statement (as described in §1.6045B-1) but is not otherwise required to consider transactions, elections, or events occurring outside the account.

(ii) *Initial basis—(A) Cost basis.* For a security acquired through a sale transaction in an account, the initial basis is the total amount paid by the customer or credited against the customer's account for the security, increased by the commissions and transfer taxes related to its acquisition to the extent not accounted for in gross proceeds as described in paragraph (d)(5) of this section. For securities purchased or acquired pursuant to the exercise of an option granted or acquired before January 1, 2013, a broker may, but is not required to, take option premiums into account in determining the adjusted basis of the securities purchased or acquired pursuant to the exercise of the option. A broker may, but is not required to, take into account income recognized upon the exercise of a compen-

satory option or other equity-based compensation arrangement before January 1, 2013, in determining adjusted basis.

(B) *Transferred basis*—(1) *In general.* In the case of a security acquired through a non-sale transfer, the initial basis is generally the basis reported on the transfer statement (as described in §1.6045A-1).

(2) *Securities acquired by gift.* If the transfer statement indicates that the security is acquired as a gift, the broker must apply the relevant basis rules under this Title for property acquired by gift in determining the initial basis, except that the broker is not required to account for adjustments to basis arising solely from gift tax paid with respect to the gift. If the application of the relevant basis rules for property acquired by gift prevents both gain and loss from being recognized, or if the initial basis of the security depends upon its fair market value as of the date of the gift but the transfer statement does not report its fair market value as of the date of the gift and this amount is not readily ascertainable by the broker, the broker must treat the initial basis as equal to the gross proceeds from the sale determined under paragraph (d)(5) of this section.

(iii) *Adjustments for wash sales.* A broker must apply the wash sale rules under section 1091, but only if both the sale and purchase transactions occur with respect to covered securities in the same account with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter). When reporting the sale transaction that triggered the wash sale, the broker must report the amount of loss that is disallowed by section 1091 in addition to gross proceeds and adjusted basis for the sale transaction. Additionally, the broker must take the amount of loss disallowed on the sale transaction into account in determining the adjusted basis of the purchased securities.

(iv) *No constructive sale or mark-to-market adjustments.* A broker must report adjusted basis for a security without regard to the provisions of section 1259 (regarding constructive sales) or section 475 (regarding the mark-to-market method of accounting).

(v) *Average basis method adjustments.* For securities for which basis may be de-

termined by the average basis method, a broker must compute basis using the average basis method if the owner validly elects that method for the securities sold or, in the absence of any instruction from the customer, if the broker chooses that method as its default basis determination method. See §1.1012-1(e).

(vi) *Examples.* The following examples, in which all the securities are covered securities, illustrate the rules of this paragraph (d)(6):

*Example 1.* (i) M makes a gift to N of shares of stock which M holds in an account with F, a broker. The shares are stock of a publicly traded company with a readily ascertainable fair market value. In connection with the transfer, F provides a transfer statement (as described in §1.6045A-1) to G, N's broker, reporting that the transfer was a gift of covered securities originally acquired on April 2, 2012. G receives custody of the shares on June 4, 2015. G sells the shares on March 24, 2016.

(ii) Because the transfer statement reported the transfer as a gift, under paragraph (d)(6)(ii)(B)(2) of this section, G must apply the relevant basis rules for property acquired by gift in determining adjusted basis when reporting the sale of the shares. Depending on the gross proceeds of the sale, G may determine the reported adjusted basis from the basis reported on the transfer statement, the fair market value of the gifted shares on June 4 that G determines from readily ascertainable records, or the gross proceeds determined from the sale.

*Example 2.* Assume the same facts as in *Example 1* except that the shares are stock of a privately held company with no readily ascertainable fair market value and the transfer statement did not report a fair market value of the securities as of the date of the gift to N. Under paragraph (d)(6)(ii)(B)(2) of this section, if G must determine the reported adjusted basis from the fair market value of the shares, G must treat the gross proceeds from the sale as the adjusted basis. Under paragraph (d)(2)(iv)(B) of this section, G may instead rely on a fair market value provided by N in determining basis under the relevant basis rules for property acquired by gift and is deemed to have relied upon the fair market value provided by N in good faith on any subsequent reporting for purposes of penalties under sections 6721 and 6722 if G neither knows nor has reason to know that the fair market value provided by N is incorrect.

*Example 3.* (i) On September 21, 2012, P purchases 100 shares of common stock of C, a corporation, in an account with J, a broker. In the same account with J, on December 14, 2012, P purchases 50 shares of C common stock. All of the C common stock purchased by P has the same CUSIP number. On January 4, 2013, P sells the 100 shares purchased on September 21, 2012 at a loss.

(ii) J must apply the rules of paragraph (d)(6)(iii) of this section for reporting the basis of the covered securities sold in a wash sale when reporting the January 4, 2013 sale of the shares purchased on September 21, 2012, because this sale and the purchase of shares on December 14, 2012, occurred with respect to covered securities in the same account with the same CUSIP number.

(iii) Under the rules of paragraph (d)(6)(iii) of this section for reporting the basis of covered securities sold in a wash sale, for the January 4, 2013 sale, J must report the amount of the disallowed loss determined under section 1091 in addition to gross proceeds and adjusted basis of the September 21, 2012 stock. If P later sells the shares acquired on December 14, 2012, J must take the amount of loss disallowed on the January 4, 2013 sale transaction into account in determining adjusted basis.

*Example 4.* Assume the same facts as in *Example 3* except that the December 14, 2012 purchase occurs in another account maintained by P with J. Because the December 14, 2012 purchase did not occur in the same account as the sale of the September 21, 2012 stock, under paragraph (d)(6)(iii) of this section, J is not required to apply the wash sale reporting rules to determine amounts to be reported for the sale of stock acquired on September 21, 2012, or December 14, 2012. Under paragraph (d)(2)(iv)(B) of this section, J may choose to apply the wash sale rules as if the transactions occurred in the same account and report the sales of the securities as in *Example 3*.

*Example 5.* On January 20, 2012, Q purchases shares of stock of C, a corporation, in an account with K, a broker. In 2014, C makes a distribution to shareholders that it classifies as a nondividend (nontaxable) distribution on an issuer statement (as described in §1.6045B-1). On July 1, 2015, Q sells the shares. Under section (d)(6)(i) of this section, K must take into account the reduction to adjusted basis based on the 2014 distribution when reporting the sale of the shares.

*Example 6.* (i) L, a regulated investment company, offers two funds for sale, Fund D and Fund E. On April 22, 2012, R purchases shares of Fund D and pays a separate load charge. By reason of the payment of the load charge, R acquires a reinvestment right in shares of Fund E. On April 23, 2012, at the request of R, Fund D redeems the shares. R uses the proceeds to purchase shares of Fund E in a separate account. As a result of the reinvestment right acquired by R, R pays no load charge on the purchase of shares of Fund E. Without the reinvestment right, R would have paid a load charge on the purchase of the shares of Fund E.

(ii) Under paragraph (d)(6)(i) of this section, when reporting adjusted basis at the time of sale, L is not required to take into account any deferral of the load charge under section 852(f), because the transactions concerning Fund D and Fund E occur in separate accounts. Under paragraph (d)(2)(iv)(B) of this section, L may choose to apply the provisions of section 852(f).

*Example 7.* S, an employee of C, a corporation, participates in C's stock option plan. On April 2, 2012, C grants S a nonstatutory option under the plan to buy 100 shares of stock. The option becomes substantially vested on April 2, 2013. On October 2, 2013, S exercises the option and purchases 100 shares. On December 2, 2013, S sells the 100 shares acquired through the plan. Under paragraphs (d)(2)(i) and (d)(6)(ii)(A) of this section, C is required to report adjusted basis based on the amount paid by S under the terms of the option. Under paragraph (d)(6)(ii)(A) of this section, C is not required to take any amount includible as wage income by S with respect to the October 2, 2013, purchase of the shares into account when reporting adjusted basis, but has the choice to take income

recognized upon the exercise of the compensatory option into account when determining adjusted basis. The same result would occur if C had granted S a statutory option.

(7) *Long-term or short-term gain or loss*—(i) *In general.* For purposes of this section, a broker determines whether any gain or loss on the sale of a security is long-term or short-term within the meaning of section 1222. In making this determination, a broker is not required to consider transactions, elections, or events occurring outside the account except for the following:

(A) Information reported on the transfer statement (as described in §1.6045A-1), if any, received in connection with a non-sale transfer of a security to the account. For a security acquired from a decedent, a broker must apply the relevant rules under this Title for property acquired from a decedent. For a security acquired (or treated as acquired) as a gift, a broker must apply the relevant rules under this Title for property acquired by gift in coordination with the application of the rules in paragraph (d)(6) of this section.

(B) Information reported on any issuer statement (as described in §1.6045B-1) regarding the effect on the security of any organizational actions.

(ii) *Adjustments for wash sales.* When reporting the sale of a security whose acquisition triggers a wash sale, a broker must apply section 1091 when determining whether any gain or loss on the sale of a security is long-term or short-term within the meaning of section 1222, but only if both the sale and purchase transactions occur with respect to covered securities in the same account with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* §601.601(d)(2) of this chapter).

(iii) *No constructive sale or mark-to-market adjustments.* A broker must determine whether any gain or loss on the sale of a security is long-term or short-term within the meaning of section 1222 without regard to the provisions of section 1259 (regarding constructive sales) or section 475 (regarding the mark-to-market method of accounting).

(iv) *Examples.* The following examples illustrate the rules of this paragraph (d)(7):

*Example 1.* (i) M makes a gift to N of shares of stock that M holds in an account with F, a broker. The shares are stock of a publicly traded company with a readily ascertainable fair market value. In connection with the transfer, F provides a transfer statement (as described in §1.6045A-1) to G, N's broker, reporting that the transfer was a gift of covered securities originally acquired on April 2, 2012. G receives custody of the shares on June 4, 2015. N sells the shares on March 24, 2016.

(ii) Because the transfer statement reported the transfer as a gift, under paragraph (d)(7)(i)(A) of this section, G must apply the relevant rules for property acquired by gift in determining whether any gain or loss on the sale is long-term or short-term within the meaning of section 1222 when reporting the sale of the shares and, depending on the gross proceeds of the sale, may determine holding period based on the date M acquired the shares or the June 4, 2015 date of the gift.

*Example 2.* O's aunt dies on May 15, 2013. In her will, she directs that O receive all of her shares of stock in C, a corporation. H, O's broker, receives a transfer statement reporting that the transfer is an inheritance or bequest of covered securities with an original acquisition date of May 15, 2013. O then sells the shares on July 15, 2013. Under paragraph (d)(7)(i)(A) of this section, H must apply the relevant rules for property acquired from a decedent when reporting whether any gain or loss on the sale is long-term or short-term within the meaning of section 1222.

*Example 3.* On June 20, 2012, Y purchases shares of stock in an account with P, a broker. On December 20, 2012, the corporation distributes stock to shareholders. Y receives 10 shares of stock in the distribution. On January 10, 2013, the corporation reports on an issuer statement (as described in §1.6045B-1) that the distribution is a nondividend (nontaxable) distribution that has resulted in an adjustment to the basis of the shares owned prior to the distribution. On July 1, 2014, Y sells the distributed stock. Under section (d)(7)(i)(B) of this section, P must apply the relevant holding period rules when reporting whether any gain or loss on the sale is long-term or short-term within the meaning of section 1222.

(8) *Conversion into United States dollars of proceeds paid or received in foreign currency*—(i) *Conversion rules.* When a payment is made or received in a foreign currency, the U.S. dollar amount shall be determined by converting such foreign currency into U.S. dollars on the date of payment at the spot rate (as defined in §1.988-1(d)(1)) or pursuant to a reasonable spot rate convention. For example, a broker may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts reported and from year to year. Such convention cannot be changed without the consent of the Commissioner or his or her delegate.

(ii) *Effect of identification under §1.988-5(a), (b), or (c) where the taxpayer effects a sale and a hedge through the same broker*—(A) *In general.* In lieu of the amount reportable under paragraph (d)(8)(i) of this section, the amount subject to reporting shall be the integrated amount computed under §1.988-5(a), (b) or (c) if—

(1) A taxpayer effects through a broker a sale or exchange of nonfunctional currency (as defined in §1.988-1(c)) and hedges all or a part of such sale as provided in §1.988-5(a), (b) or (c) with the same broker; and

(2) The taxpayer complies with the requirements of §1.988-5(a), (b) or (c) and so notifies the broker prior to the end of the calendar year in which the sale occurs.

(B) *Effective/applicability date.* The provisions of this paragraph (d)(8)(ii) apply to transactions entered into after December 31, 2000.

(9) *Coordination with reporting rules for widely held fixed investment trusts under §1.671-5.* The information required to be reported under section 6045(a) must be provided with respect to the sale of an interest in a widely held fixed investment trust (as defined under §1.671-5). To the extent that any additional information reporting is required under section 6045(g), those requirements are deemed to be met through compliance with the rules in §1.671-5.

(e) \* \* \*

(2) *Exchanges required to be reported*—(i) *In general.* Except as provided in paragraphs (e)(2)(ii) and (g) of this section, a barter exchange shall make a return of information with respect to exchanges of personal property or services through the barter exchange during the calendar year among its members or clients or between such persons and the barter exchange. For this purpose, property or services are exchanged through a barter exchange if payment for property or services is made by means of a credit on the books of the barter exchange or scrip issued by the barter exchange or if the barter exchange arranges a direct exchange of property or services among its members or clients or exchanges property or services with a member or client.

\* \* \* \* \*

(f) *Information required*—(1) *In general.* A person that is a barter exchange during a calendar year shall report on Form 1099-B, “*Proceeds From Broken and Barter Exchange Transactions*,” or any successor form showing the information required thereon for such year.

(2) *Transactional reporting*—(i) *In general.* As to each exchange with respect to which a barter exchange is required to make a return of information under this section, the barter exchange shall show on Form 1099-B, “*Proceeds From Broker and Barter Exchange Transactions*,” or any successor form the name, address, and taxpayer identification number of each member or client providing property or services in the exchange, the property or services provided, the amount received by the member or client for such property or services, the date on which the exchange occurred, and such other information as may be required by Form 1099, in the form, manner, and number of copies required by Form 1099.

\* \* \* \* \*

(k) *Requirement and time for furnishing statement; cross-reference to penalty*—(1) *General requirements.* A broker or barter exchange making a return of information under this section with respect to a transaction shall furnish to the person whose identifying number is (or is required to be) shown on such return a written statement showing the information required by paragraph (c)(5), (d), or (f) of this section and containing a legend stating that such information is being reported to the Internal Revenue Service. If the return of information is not made on magnetic media, this requirement may be satisfied by furnishing to such person a copy of all Forms 1099 or any successor form with respect to such person filed with the Internal Revenue Service Center. A statement shall be considered to be furnished to a person to whom a statement is required to be made under this paragraph (k) if it is mailed to such person at the last address of such person known to the broker or barter exchange.

(2) *Time for furnishing statements.* A broker or barter exchange may furnish the statements required under this paragraph (k) yearly, quarterly, monthly, or on any other basis, without regard to the reporting period elected by the broker or barter exchange, provided that all statements re-

quired to be furnished under this paragraph (k) for a calendar year shall be furnished on or before February 15 of the following calendar year.

(3) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements furnished by the same broker to the same customer or same group of customers on the same date that includes a statement required to be furnished under this section. A consolidated reporting statement is limited to those statements furnished to the customer based on the same relationship of broker to customer as the statement required to be furnished under this section. For purposes of this paragraph (k)(3)(i), a broker may treat a shareholder of the broker as a customer of the broker and may treat a grouping of statements for a customer as including a statement required to be furnished under this section if the customer has an account with the broker for which a statement would be required to be furnished under this section had a sale occurred during the year.

(ii) A consolidated reporting statement must be furnished on or before February 15. Any statement that otherwise must be furnished on or before January 31 may be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (k)(3):

*Example 1.* D has a taxable account with B, a broker, consisting solely of shares of stock in a single corporation. D receives reportable dividends from this stock in 2010, and sells the stock in 2010. Under this section and §1.6042-4, B must furnish a Form 1099-B, “*Proceeds From Broker and Barter Exchange Transactions*,” and Form 1099-DIV, “*Dividends and Distributions*,” to D in 2011 with respect to the sale and the dividends. Under paragraph (k)(2) of this section, B is required to furnish the required statement under this section to D by February 15, 2011. Under paragraph (k)(3)(ii) of this section, the statement reporting the dividends, if furnished in a consolidated reporting statement as defined in paragraph (k)(3)(i) of this section, must also be furnished by February 15, 2011. Otherwise, the statement reporting the dividends must be furnished by the due date set forth in §1.6042-4.

*Example 2.* Assume the same facts as in *Example 1* except that D does not sell the stock. B is not required to issue a statement required under this section. However, under paragraph (k)(3)(i) of this section, B may treat a grouping of statements for D as including a required statement under this section because D has an account for which a statement would be required under this section had a sale occurred during the year. The statement reporting the dividends may

still be furnished by February 15, 2011, under paragraph (k)(3)(ii) of this section.

*Example 3.* E has a non-taxable IRA account with B, a broker. This account is the only account E holds with B. E sells stock in 2010 in this account. E also receives a cash distribution from the account in 2010. The cash distribution from the IRA is reportable on Form 1099-R, “*Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*,” under §1.408-7. Because the account is not taxable, sales in the account are not subject to reporting under this section. Therefore, because no statement is or would be required under this section, paragraph (k)(3) of this section does not permit B to include any statements to E in a consolidated reporting statement. Additionally, the February 15 due date for furnishing a statement does not apply to the statement reporting the distribution or any other customer statements.

*Example 4.* Assume the same facts as in *Example 3* except that E also has a taxable account with B. Under paragraph (k)(3) of this section, all customer statements that B must otherwise furnish to E on or before January 31, 2011, including the statement reporting the cash distribution from the IRA, may be furnished by February 15, 2011, if furnished on the same date in a consolidated reporting statement with the required statements under this section for any sales in E’s taxable account.

*Example 5.* Assume the same facts as in *Example 3* except that E and F have a joint taxable account with B. Because sales in the joint taxable account are subject to reporting under this section, all customer statements that B must otherwise furnish jointly to E and F on or before January 31, 2011, may be furnished by February 15, 2011, under paragraph (k)(3) of this section if furnished on the same date in a consolidated reporting statement with the required statements under this section for any sales in the joint taxable account. However, B may not include any statement with respect to E’s IRA account in the consolidated reporting statement furnished jointly to E and F because the statements are not furnished to the same customer or group of customers.

\* \* \* \* \*

Par. 8. Section 1.6045-2 is amended by revising paragraph (d) to read as follows:

*§1.6045-2 Furnishing statement required with respect to certain substitute payments.*

\* \* \* \* \*

(d) *Time for furnishing statements*—(1) *General requirements.* A broker must furnish the statements required by paragraph (a) of this section for each calendar year. Such statements shall be furnished after April 30th of such calendar year but in no case before the final substitute payment for the calendar year is made, and on or before February 15 of the following calendar year.

(2) *Consolidated reporting.* (i) The term *consolidated reporting statement*

means a grouping of statements furnished by the same broker to the same customer or same group of customers on the same date that includes a statement required to be furnished under this section. A consolidated reporting statement is limited to those statements furnished to the customer based on the same relationship of broker to customer as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15. Any statement that otherwise must be furnished on or before January 31 may be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

\* \* \* \* \*

Par. 9. Section 1.6045-3 is amended by revising paragraph (e) to read as follows:

*§1.6045-3 Information reporting for an acquisition of control or a substantial change in capital structure.*

\* \* \* \* \*

(e) *Furnishing of forms to customers*—(1) *General requirements.* The Form 1099-B prepared for each customer must be furnished to the customer on or before February 15 of the year following the calendar year in which the customer receives stock, cash or other property.

(2) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements furnished by the same broker to the same customer or same group of customers on the same date that includes a statement required to be furnished under this section. A consolidated reporting statement is limited to those statements furnished to the customer based on the same relationship of broker to customer as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15. Any statement that otherwise must be furnished on or before January 31 may be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

\* \* \* \* \*

Par. 10. Section 1.6045-4 is amended by revising paragraph (m)(2) and adding paragraph (m)(3) to read as follows:

*§1.6045-4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.*

\* \* \* \* \*

(m) \* \* \*

(2) *Time for furnishing statement.* The statement required under this paragraph (m) must be furnished to the transferor on or after the date of closing and on or before February 15 of the following calendar year.

(3) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements furnished by the same reporting person to the same transferor or same group of transferors on the same date that includes a statement required to be furnished under this section. A consolidated reporting statement is limited to those statements furnished to the transferor based on the same relationship of reporting person to transferor as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15. Any statement that otherwise must be furnished on or before January 31 may be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

\* \* \* \* \*

Par. 11. Section 1.6045-5 is amended by revising paragraph (a)(3) to read as follows:

*§1.6045-5 Information reporting on payments to attorneys.*

(a) \* \* \*

(3) *Requirement to furnish statement*—(i) *General requirements.* A person required to file an information return under paragraph (a)(1) of this section must furnish to the attorney a written statement of the information required to be shown on the return. This requirement may be met by furnishing a copy of the return to the attorney. The written statement must be furnished to the attorney on or before February 15 of the year following the calendar year in which the payment was made.

(ii) *Consolidated reporting.* (A) The term *consolidated reporting statement* means a grouping of statements furnished by the same payor to the same payee or

same group of payees on the same date, provided that the grouping of statements includes a statement required to be furnished under this section. A consolidated reporting statement is limited to those statements furnished to the payee based on the same relationship of payor to payee as the statement required to be furnished under this section.

(B) A consolidated reporting statement must be furnished on or before February 15. Any statement that otherwise must be furnished on or before January 31 may be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

\* \* \* \* \*

Par. 12. Section 1.6045A-1 is added to read as follows:

*§1.6045A-1 Statements of information required in connection with transfers of securities.*

(a) *Duty to furnish transfer statement*—(1) *In general.* Every applicable person (as described in paragraph (a)(3) of this section) that transfers to a broker (as described in paragraph (a)(4) of this section) the custody of a specified security in a transaction that is not a sale must furnish to the broker a transfer statement setting forth the information described in paragraph (b) of this section with respect to the transferred securities. Except as provided in paragraph (b)(1)(vii) of this section for certain securities for which basis is determined under an average basis method, a separate statement must be furnished for each security and, if transferring the same security acquired on different dates or at different prices, for each acquisition. For purposes of this section, the terms sale and specified security have the same meaning as in §1.6045-1(a)(9) and (a)(14).

(2) *Format of transfer statement.* The transfer statement must be furnished in writing unless both the furnishing party and the receiving party agree to a different format or method prior to the transfer. If a transfer occurs between accounts at the same or affiliated entities, the transfer statement is deemed to have been furnished and received if the required information, including any adjustments required under this section to the basis, acquisition date, or date for computing

whether any gain or loss with respect to the security is long-term or short-term (within the meaning of section 1222) of the transferred securities, is incorporated into the records for the recipient account.

(3) *Applicable person effecting transfer.* A person effecting a transfer of custody of securities must furnish a transfer statement if the person is an applicable person. *Applicable person* means a broker as described in §1.6045-1(a)(1), any person that acts as a custodian of securities in the ordinary course of a trade or business, any issuer of securities, and any agent of these persons. Applicable person does not include the beneficial owner of the securities, any governmental unit or agency or instrumentality of a governmental unit with respect to escheated securities, or any person that acts solely as a clearing organization with respect to the transfer.

(4) *Broker receiving custody.* An applicable person must furnish the statement required under this section when transferring securities to the custody of any broker. Solely for purposes of this section, *broker* means any person described in §1.6045-1(a)(1), any person that acts as a custodian of securities in the ordinary course of a trade or business, any issuer of securities, and any agent of these persons. Broker does not include the beneficial owner of the securities, any governmental unit or agency or instrumentality of a governmental unit with respect to escheated securities, or any person acting solely as a clearing organization with respect to the transfer.

(5) *Time for furnishing statement.* Each transfer statement with respect to a transfer must be furnished not later than fifteen days after the date of settlement for the transfer.

(6) *Examples.* The following examples illustrate the rules of this paragraph (a):

*Example 1.* Q owns securities in an account with J, a broker. J partners with K, a broker, so that K holds custody of the securities of J's customers including Q. Q instructs J to transfer his securities to an account with L, another broker. J informs K of the instruction. K transfers the securities to L. Because K is a broker, K is an applicable person within the meaning of paragraph (a)(3) of this section. Because K effects the transfer of custody, under paragraph (a)(3) of this section, K is the applicable person that must furnish the transfer statement. Because L is the broker receiving custody under paragraph (a)(4) of this section, K must furnish the transfer statement to L.

*Example 2.* R owns securities in an account with L, a broker. R instructs L to transfer the securities to

an account with M, a bank that acts as a custodian of securities in the ordinary course of a trade or business but does not stand ready to effect sales of securities. L transfers the securities to M. Because L effects the transfer of custody, under paragraph (a)(3) of this section, L is the applicable person that must furnish the transfer statement. Because M receives custody of the stock and acts as a custodian of securities in the ordinary course of a trade or business, M is the broker receiving custody under paragraph (a)(4) of this section. Therefore, L must furnish the transfer statement to M.

*Example 3.* (i) S owns shares of stock in C, a corporation, in an account with N, a broker. S instructs N to transfer the C shares to C so that ownership is held on the books of the issuer. C uses the services of T, a transfer agent, to keep records of ownership of the company's stock, how that stock is held, and how many shares each investor owns. N transfers the securities to T.

(ii) Because N effects the transfer of custody, under paragraph (a)(3) of this section, N is the applicable person that must furnish the transfer statement. Because T records ownership of S's stock on the books of C and is the agent of C, T is the broker receiving custody under paragraph (a)(4) of this section. Therefore, N must furnish the transfer statement to T.

*Example 4.* Assume the same facts as in *Example 3* except that S later instructs T to transfer the shares back to an account held by S with O, another broker. Because T is an agent of C, the issuer of the securities, T is an applicable person within the meaning of paragraph (a)(3) of this section. Under paragraphs (a)(3) and (a)(4) of this section, T must furnish a transfer statement to O.

(b) *Information required—(1) In general.* Each transfer statement must include the information described in this paragraph (b)(1). The applicable person furnishing the transfer statement and the broker receiving the transfer statement may agree to combine the information in any format. For example, a single code representing the broker receiving custody of the security may substitute for a separate listing of the person's name, address, and telephone number.

(i) *Statement dates.* The date the statement is furnished and the date of any previous statement with respect to the same transfer.

(ii) *Applicable person effecting transfer.* The name, address, and telephone number of the applicable person furnishing the statement.

(iii) *Broker receiving custody.* The name, address, and telephone number of the broker receiving custody of the security.

(iv) *Beneficial owners.* The name, address, telephone number, taxpayer identification number, and account number of the

beneficial owner or owners of the security prior to the transfer and, if different, the beneficial owner or owners after the transfer.

(v) *Security identifiers.* The Committee on Uniform Security Identification Procedures (CUSIP) number of the security transferred (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter), quantity of shares or units, security symbol (if applicable), lot numbers (if applicable), and classification of the security (such as stock).

(vi) *Transfer dates.* The date the transfer was initiated and the settlement date of the transfer (if known when furnishing the statement).

(vii) *Adjusted basis and acquisition date.* The total adjusted basis of the security, the original acquisition date of the security, and the date for computing whether any gain or loss with respect to the security is long-term or short-term (within the meaning of section 1222) upon the subsequent sale. This information must be determined as provided under §1.6045-1(d), except that any information reported on any issuer statement (as described in §1.6045B-1) regarding the effect on the security of any organizational actions does not need to be taken into account. If organizational actions reportable on an issuer statement are taken into account, the transfer statement must include the identifying number of the last issuer statement taken into account to indicate that the organizational action identified and all relevant prior organizational actions reported by the issuer are reflected on the transfer statement. The transfer statement must also identify and describe any other organizational actions reflected on the statement that the applicable person did not derive from an issuer statement. If the basis of the transferred security is determined using an average basis method (as described in §1.1012-1(e)), any securities acquired more than five years prior to the transfer may be reported on a single statement on which the original acquisition date is reported as "VARIOUS," but only if the other information reported on the statement applies to all of the securities.

(viii) *Examples.* The following examples illustrate the rules of this paragraph (b)(1):

*Example 1.* (i) In a single account with P, a broker, T purchases three lots of 100 shares of stock each in C, a corporation, at different prices on April 2, 2012, July 2, 2012, and October 1, 2012. T instructs P to enroll the shares of the C stock in P's dividend reinvestment plan and to average the basis of the shares of the C stock. All of the C stock purchased by P has the same CUSIP number. On September 13, 2013, less than five years after the acquisition dates for all three lots, T transfers all 300 shares of the C stock to an account with another broker.

(ii) Under paragraphs (a)(1) and (b)(1) of this section, P must furnish three transfer statements in connection with the transfer: One reporting the transfer of 100 shares with an original acquisition date of April 2, 2012; One reporting the transfer of 100 shares with an original acquisition date of July 2, 2012; and one reporting the transfer of 100 shares with an original acquisition date of October 1, 2012.

*Example 2.* Assume the same facts as in *Example 1* except that T transfers the shares to the account with the other broker on September 13, 2017. For the 100 shares purchased on April 2, 2012, and the 100 shares purchased on July 2, 2012, under paragraph (b)(1)(vii) of this section, P may furnish a single transfer statement reporting the transfer of 200 shares with the original acquisition date as "VARIOUS" instead of furnishing two separate transfer statements.

*Example 3.* (i) Assume the same facts as in *Example 1* except that, on June 15, 2012, T sells the 100 shares purchased on April 2, 2012 at a loss.

(ii) When reporting the transfer, under paragraph (b)(1)(vii) of this section (incorporating §1.6045-1(d)(6)(iii) and (d)(7)(ii)), P must determine adjusted basis and the date for computing whether any gain or loss with respect to the stock is long-term or short-term (within the meaning of section 1222) by taking the rules for broker reporting of wash sales into account. On the transfer statement reporting the transfer of the 100 shares purchased on July 2, 2012, P must adjust the basis of this stock for the amount of the loss disallowed under section 1091 on the sale of the 100 shares purchased on April 2, 2012, and must also adjust the date for computing whether any gain or loss with respect to the stock is long-term or short-term (within the meaning of section 1222) in accordance with section 1091.

(2) *Transfers of noncovered or excepted securities.* (i) In the case of a transfer of a specified security that is a noncovered security (as described in §1.6045-1(a)(16)), reporting of the information described in paragraphs (b)(1)(vii), (b)(3), and (b)(4) of this section is not required provided that the transfer statement indicates that the transfer is a transfer of a noncovered security. An applicable person that chooses to report the information described in paragraphs (b)(1)(vii), (b)(3), and (b)(4) of this section with respect to a noncovered specified security is not subject to penalties under section 6722 for any failure to re-

port such information correctly, provided that the transfer statement indicates that the transfer is a transfer of a noncovered security. For purposes of this paragraph (b)(2)(i), a security that was excepted from all reporting under §1.6045-1 as described in §1.6045-1(c)(3) at the time of its acquisition is treated in the same manner as a noncovered security.

(ii) *Example.* The following example illustrates the rules of this paragraph (b)(2):

*Example.* X instructs S, a broker, to give to Z shares of stock that X holds in an account with S. The stock consists of noncovered securities. On X's instruction, S transfers custody of the shares to T, Z's broker. The transfer settles on August 15, 2013. Under paragraph (b)(2)(i) of this section, S is not required to state adjusted basis or acquisition date for the shares, the date of the gift, the fair market value of the shares on that date, or that the shares are gifted securities on the transfer statement, provided that S indicates that the transfer is a transfer of a noncovered security. If the transfer statement fails to indicate that the transfer is a transfer of a noncovered security, the transfer is deemed to be a transfer of covered securities and S is subject to penalties for any failure to report the required information.

(3) *Transfers pursuant to an inheritance—(i) In general.* In the case of a transfer of a security described in paragraph (a) of this section from a decedent or decedent's estate, in addition to the information described in paragraph (b)(1) of this section, the transfer statement must indicate that the transfer consists of an inherited security. The transfer statement must also report the date of death as the original acquisition date and must report adjusted basis according to the instructions or valuations provided by an authorized representative of the estate, taking into account any additional adjustments to basis required under this Title for property acquired from a decedent.

(ii) *Transfers without instructions from the estate.* If the authorized estate representative does not provide complete instructions or valuations to the applicable person effecting the transfer regarding the basis of the transferred security at the time the representative requests the transfer of the security, the applicable person effecting the transfer must ask the representative for instructions or valuations regarding such basis before preparing the transfer statement. The applicable person is not required to make this request more than once for each transferred security. Subsequent to this request, if complete instructions are not received before the transfer statement

is prepared, the transfer statement must indicate that the transfer consists of an inherited security but may otherwise report the security as if it were a noncovered security. If the applicable person receives complete instructions or valuations from an authorized estate representative after furnishing a transfer statement for a security that was a covered security in the hands of the decedent, the applicable person must furnish, within fifteen days of receiving the complete instructions or valuations, a corrected statement that no longer reports the security as a noncovered security and includes the information required in paragraph (b)(3)(i) of this section.

(iii) *Transfers of shares to satisfy a cash legacy.* If the security is transferred from a decedent or a decedent's estate in order to satisfy a cash legacy, then the rules of paragraph (b)(1) of this section apply, and paragraphs (b)(3)(i) and (b)(3)(ii) of this section do not apply.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (b)(3):

*Example 1.* V owns shares of stock in C, a publicly traded company, in an account with Q, a broker. The shares of stock are covered securities. V dies on May 15, 2013. In her will, V directs that W receive all of her shares of stock in C. Following the terms of V's will and upon the instruction of an authorized representative of the estate that the basis of the transferred securities should be adjusted to the fair market value as of the date of V's death, Q transfers custody of the stock to R, W's broker. Under paragraph (b)(3)(i) of this section, the transfer statement must report that the shares are inherited or bequeathed securities with an original acquisition date of May 15, 2013, and an adjusted basis that reflects the instructions of the authorized representative of the estate.

*Example 2.* Assume the same facts as in *Example 1* except that the instruction from the authorized representative of the estate to transfer the securities to W does not include an instruction regarding the basis of the shares of stock in C. Under paragraph (b)(3)(ii) of this section, Q must contact the authorized representative and ask for an instruction or valuation regarding the basis of the shares of stock in C before preparing the transfer statement. Under paragraph (b)(3)(ii) of this section, if Q still does not receive an instruction regarding the basis of the shares of stock in C, Q may treat the shares of stock in C as noncovered securities when transferring the stock. If Q receives complete instructions or valuations from the authorized representative after furnishing the transfer statement, under paragraph (b)(3)(ii) of this section, Q must furnish a corrected statement within fifteen days of receiving the instruction or valuation from the authorized representative that no longer reports the shares of stock in C as a noncovered security and reflects the instruction or valuation from the authorized representative.

*Example 3.* Assume the same facts as in *Example 1* except that V directs in her will that W receive

\$3,000. To satisfy this legacy, Q transfers custody of the shares of stock in C to R on a date when the stock has a fair market value of \$3,000. Because the shares are transferred from V's estate to satisfy a cash legacy, under paragraph (b)(3)(iii) of this section, paragraph (b)(1) of this section applies and paragraphs (b)(3)(i) and (b)(3)(ii) of this section do not apply. Under paragraph (b)(1) of this section, the transfer statement must report that the adjusted basis is \$3,000 and that the original acquisition date is the date of settlement for the transfer. Additionally, the transfer statement must not indicate that the securities are inherited or bequeathed securities.

(4) *Gift or deemed gift transfers*—(i) *In general.* In the case of a transfer of securities described in paragraph (a) of this section that effects a change of ownership of a security (other than transfers from a decedent or decedent's estate), in addition to the information described in paragraph (b)(1) of this section, the transfer statement must indicate that the security is a gift and must report the date of the gift (if known when furnishing the statement) and the fair market value of the gift on that date (if known or readily ascertainable at the time the transfer statement is prepared). Additionally, for purposes of paragraph (b)(1) of this section, the adjusted basis and original acquisition date are equal to the adjusted basis and original acquisition date of the security in the hands of the donor. The requirement to identify the security as a gift does not apply to a transfer between persons for whom gift-related basis adjustments are inapplicable or to a transfer between accounts that share at least one common owner.

(ii) *Subsequent transfers of gifts with no change in ownership.* If a security described in paragraph (b)(4)(i) of this section is subsequently transferred to a different account of the same owner, the applicable person effecting the subsequent transfer must include the information described in paragraphs (b)(1) and (b)(4)(i) of this section on the transfer statement. The date of the gift and the fair market value of the gift on that date must be included on the transfer statement unless they are not known or readily ascertainable at the time the transfer statement is prepared and if the applicable person effecting the subsequent transfer has not received a transfer statement that included them.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (b)(4):

*Example 1.* X instructs S, a broker, to give to Y shares of stock in a publicly traded company that X holds in an account with S. The shares of stock are

covered securities. On X's instruction, S transfers custody of the stock to T, Y's broker. The transfer settles on August 15, 2013. Under paragraph (b)(4)(i) of this section, S must indicate on the transfer statement that the transfer is a transfer of gifted securities and report X's adjusted basis and original acquisition date. S must also indicate that the date of the gift was August 15, 2013, if the settlement date was known when S furnished the statement, and the fair market value of the shares on that date.

*Example 2.* Assume the same facts as in *Example 1* except that, one year later, Y transfers the shares to an account in his name with U, another broker. Under paragraph (b)(4)(ii) of this section, T must indicate on the transfer statement that the transfer is a transfer of gifted securities and report the adjusted basis and original acquisition date of the shares. Under paragraph (b)(4)(ii) of this section, if the date of the gift and its fair market value were not reported on the initial transfer statement, T must indicate on the transfer statement that the date of the gift was August 15, 2013, and include the fair market value of the shares on that date, if known or readily ascertainable.

(5) *Transfers of borrowed securities.* If the transferred security is borrowed from or through the applicable person effecting the transfer (for example, as part of a transaction to close a short position with the broker receiving custody of the security), the transfer statement must indicate that the transferred security is borrowed and that the adjusted basis of the security is zero. The transfer statement must also instruct the broker receiving custody to provide the applicable person effecting the transfer with information about any short position potentially being closed by the transfer or other disposition of the securities. See §1.6045-1(c)(3)(xi)(C).

(6) *Transfers of less than the entire position of a security in an account.* In the case of a transfer of less than the entire position of a security described in paragraph (a) of this section acquired in an account on different dates or at different prices, the transfer statement must report the transfer on a first-in, first-out basis within the account unless the customer notifies the applicable person furnishing the transfer statement by means of making an adequate and timely identification in the same manner as for a sales transaction under the rules in §1.1012-1(c).

(7) *Information from other parties and other accounts*—(i) *Prior transfer statements.* When reporting the transfer of a covered security, an applicable person furnishing the transfer statement must take into account all information reported on any transfer statement (as described in this section) received in connection with

a previous transfer of the security to the custody of the applicable person and all instructions and valuations provided by an authorized representative of the estate of a decedent unless the applicable person knows that the information presented on the previous transfer statement or by the personal representative is incorrect. With respect to penalties under section 6722, any failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause. See §301.6724-1(a)(1) of this chapter.

(ii) *Other information.* An applicable person furnishing a transfer statement is permitted, but not required, to take into account any other information that is not reflected on a prior transfer statement within the meaning of paragraph (b)(7)(i) of this section, including any information the applicable person has about securities held by the same customer in the custody of the applicable person furnishing the transfer statement. With respect to penalties under section 6722, an applicable person that takes into account information received from a customer or third party other than information reflected on a prior transfer statement or information received from an authorized representative of the estate of a decedent is deemed to have relied upon the information in good faith if the applicable person neither knows nor has reason to know that the information is incorrect. See §301.6724-1(c)(6) of this chapter.

(8) *Failure to receive a complete transfer statement.* A broker that receives custody of a security but does not receive a complete transfer statement by the transfer statement due date as described in paragraph (a)(5) of this section must notify the applicable person effecting the transfer and request a complete statement. The broker receiving custody of the security is not required to make this request more than once. If the broker receiving custody of the security does not receive a complete transfer statement after making this request, the broker receiving custody of the security may designate the security as noncovered on any subsequent transfer statement. A transfer statement is incomplete if it fails to include the information described in paragraph (b) of this section. A failure to include the information listed in paragraph (b)(1)(vii) of this section does not make a transfer statement incomplete if the trans-

fer statement reports that the transferred securities are noncovered securities.

(c) *Corrected transfer statements.* If a person that furnishes a transfer statement receives a statement for an earlier transfer of the securities that reports that the transferred securities are covered securities and includes information inconsistent with the subsequent transfer statement, the person that furnished the subsequent transfer statement must furnish a corrected transfer statement within fifteen days of receipt of the prior transfer statement.

(d) *Effective/applicability dates.* This section applies to transfers of specified securities other than shares of stock in a regulated investment company (as described in §1.1012-1(e)(5)) that occur on or after January 1, 2011, and to transfers of shares of stock in a regulated investment company that occur on or after January 1, 2012.

Par. 13. Section 1.6045B-1 is added to read as follows:

*§1.6045B-1 Returns relating to actions affecting basis of specified securities.*

(a) *General rule*—(1) *In general.* Any issuer of a specified security (within the meaning of §1.6045-1(a)(14)) that takes an organizational action that affects the basis of the security must file an issuer return setting forth the following information and any other information specified in the return form and instructions:

(i) *Reporting issuer.* The name and taxpayer identification number of the reporting issuer.

(ii) *Security identifiers.* The identifiers of each security involved in the organizational action including, as applicable, the Committee on Uniform Security Identification Procedures (CUSIP) number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* §601.601(d)(2) of this chapter), classification of the security (such as stock), account number, serial number, and ticker symbol, as well as any descriptions about the class of security affected.

(iii) *Contact at reporting issuer.* The name, address, e-mail address, and telephone number of a contact person at the issuer.

(iv) *Information about action.* The type or nature of the organizational action including, as applicable, the date of the action or the date against which shareholders' ownership is measured for the action.

(v) *Effect of the action.* The quantitative effect of the organizational action on the basis of the security in the hands of a U.S. taxpayer as an adjustment per share or as a percentage of old basis, including a description of the calculation, the applicable Internal Revenue Code section and subsection upon which the tax treatment is based, the data supporting the calculation such as the market values of securities and valuation dates, any other information necessary to implement the adjustment including the reportable taxable year, and whether any resulting loss may be recognized.

(vi) *Reporting date and sequence number.* A sequential identification number determined separately by security and assigned to each announced organizational action or corrected action for each security prefixed by the year the return is filed (for example, 2013003 for the third issuer return regarding the quantitative effect of a corporate action on the basis of a security with a specific CUSIP number that is reported in 2013).

(2) *Time for filing the return*—(i) *In general.* The issuer return must be filed with the Internal Revenue Service (IRS) pursuant to the prescribed form and instructions on or before the 45th day following the organizational action, or, if earlier, January 15 of the year following the calendar year in which the organizational action occurs. The issuer may file the return prior to the date of the organizational action if the quantitative effect on basis is determinable beforehand.

(ii) *Reasonable assumptions.* In order to report the quantitative effect on basis by the due date in paragraph (a)(2)(i) of this section, an issuer may make reasonable assumptions about facts that cannot be determined prior to this due date and must file a corrected return within forty-five days of determining the facts necessary to report the correct quantitative effect on basis. Under this paragraph (a)(2)(ii), it is expected that an issuer will treat a payment that may be a dividend consistently with its treatment of the payment under section 6042(b)(3) and §1.6042-3(c).

(3) *Exception for public reporting.* An issuer is not required to file a return with

the IRS under this paragraph (a) if, by the due date described in paragraph (a)(2)(i) of this section, the issuer posts the return with the required information in a readily accessible format in an area of its primary public Web site dedicated to this purpose and keeps the return accessible to the public.

(4) *Exception when holders are exempt recipients.* No reporting is required under this paragraph (a) if the issuer reasonably determines that all of the holders of the security are exempt recipients under paragraph (b)(5) of this section.

(b) *Statements to nominees and certificate holders*—(1) *In general.* An issuer required to file an information return under this section must furnish a written statement with the same information to each holder of record of the security or to the holder's nominee, if any. This issuer statement must indicate that the information is being reported to the IRS. An issuer may satisfy this requirement by furnishing a copy of the information return.

(2) *Time for furnishing statements.* The issuer statement must be furnished on or before January 15th of the year following the year of the organizational action. The issuer may furnish the statement prior to the date of the organizational action if the quantitative effect on basis is determinable beforehand.

(3) *Recipients of statements.* An issuer must furnish a separate statement to each holder of record of the security as of the date of the organizational action and all subsequent holders of record up to the date the issuer furnishes the statement required under this section. If the issuer holds the security on its books in the name of a nominee, the issuer must furnish the statement to the nominee recorded on its books unless the nominee is the issuer, an agent of the issuer, or a plan operated by the issuer.

(4) *Exception for public reporting.* An issuer is not required to furnish an issuer statement under this paragraph (b) if the issuer satisfies the public reporting requirements of paragraph (a)(3) of this section.

(5) *Exempt recipients.* An issuer is not required to furnish an issuer statement under this paragraph (b) to the following holders or to persons serving as nominees solely for the following holders:

(i) Any holder that is an exempt recipient under §1.6045-1(c)(3)(i)(B) if the issuer has actual knowledge that the holder is described in that section or has a

properly completed exemption certificate from the holder asserting that the holder is an exempt recipient (as provided in §31.3406(h)-3 of this chapter). The issuer may treat a shareholder as an exempt recipient based on the applicable indicators described in §1.6049-4(c)(1)(ii)(B) through (M).

(ii) Any holder that the issuer, prior to the transaction, associates with documentation upon which the issuer may rely in order to treat payments to the holder as made to a foreign beneficial owner in accordance with §1.1441-1(e)(1)(ii) or as made to a foreign payee in accordance with §1.6049-5(d)(1) or presumed to be made to a foreign payee under §1.6049-5(d)(2) or (3). For purposes of this paragraph (b)(5)(ii), the provisions in §1.6049-5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) apply. Rules similar to the rules of §1.1441-1 apply by using the terms “issuer” and “holder” in place of the terms “withholding agent” and “payee” and without regard to the limitation to amounts subject to withholding under chapter 3 of the Internal Revenue Code. Rules similar to the rules of §1.6049-5(d) apply by using the terms “issuer” and “holder” in place of the terms “payor” and “payee.”

(c) *Special rule for S corporations.* Any corporation for which an election under section 1362(a) is in effect is deemed to have satisfied the requirements of paragraphs (a) and (b) of this section for any organizational action affecting the basis of its stock if the corporation reports the effect of the organizational action on a timely filed Schedule K-1 (Form 1120S), “*Shareholder’s Share of Income, Deductions, Credits, etc.*,” for each shareholder and timely furnishes copies of these schedules to all proper parties.

(d) *Successor entities.* A successor entity of an issuer that fails to satisfy the reporting obligations of paragraphs (a) or (b) of this section must satisfy these reporting obligations. If neither the issuer nor the successor entity satisfies these reporting obligations, both parties are jointly and severally liable for any applicable penalties.

(e) *Penalties.* For penalties for failure to comply with the requirements of this section, see sections 6721 through 6724.

(f) *Examples.* The following examples illustrate the rules of this section:

*Example 1.* (i) C, a corporation, distributes stock to shareholders on March 31, 2013.

(ii) Under paragraph (a)(2)(i) of this section, C must file an issuer return with the IRS on or before May 15, 2013, reporting the quantitative effect of this distribution on the basis of C’s stock. This date is 45 days after the date of the distribution. Under paragraph (b)(2) of this section, C must furnish issuer statements to its nominees and certificate holders on or before January 15, 2014.

(iii) Alternatively, under paragraphs (a)(3) and (b)(4) of this section, C may post by May 15, 2013, the return with the required information in a readily accessible format in an area of its primary public Web site dedicated to this purpose and keep the return accessible to the public.

*Example 2.* (i) D, a corporation, makes a cash distribution to shareholders on December 31, 2013.

(ii) Under paragraphs (a)(2)(i) and (b)(2) of this section, D is required to file an issuer return with the IRS and furnish issuer statements to its nominees and certificate holders on or before January 15, 2014.

(iii) On January 15, 2014, D is unsure whether the distribution will exceed its earnings and profits for the fiscal year. For purposes of section 6042(b)(3) and §1.6042-3(c), the distribution must be treated as a dividend. Therefore, under paragraph (a)(2)(ii) of this section, it is expected that D will treat the distribution as a dividend, and D is therefore not required to file an issuer return. If D later determines that this treatment was incorrect, D must determine and report the correct quantitative effect on basis.

*Example 3.* E, a corporation, undertakes a stock split as of April 1, 2014. E furnishes issuer statements under paragraph (b) of this section on April 1, 2014, at which time the books and records of E show that 90 percent of its outstanding stock is owned by shareholders through a clearing organization as their nominee, 7 percent is owned by 5,000 individuals, and the remaining 3 percent is owned by a dividend reinvestment plan operated by E that has 1,000 members. Under paragraph (b)(3) of this section, E must furnish statements to the clearing organization, the 5,000 individuals, and the 1,000 members of the dividend reinvestment plan.

(g) *Effective/applicability dates.* This section applies to organizational actions affecting the basis of specified securities (as described in §1.6045-1(a)(14)) other than stock in a regulated investment company (as described in §1.1012-1(e)(5)) that occur on or after January 1, 2011, and to organizational actions affecting stock in a regulated investment company that occur on or after January 1, 2012.

Par. 14. Section 1.6049-6 is amended by adding two new sentences to the end of paragraphs (c) and (e)(2) to read as follows:

*§1.6049-6 Statements to recipients of interest payments and holders of*

*obligations for attributed original issue discount.*

\* \* \* \* \*

(c) \* \* \* However, if the statement is furnished in a consolidated reporting statement under section 6045, the February 15 due date set forth in section 6045 applies to the statement. See §§1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \* However, if the statement is furnished in a consolidated reporting statement under section 6045, the February 15 due date set forth in section 6045 applies to the statement. See §§1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

\* \* \* \* \*

#### PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Par. 15. The authority citation for part 31 continues to read in part as follows:

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

Par. 16. Section 31.3406(b)(3)-2 is amended by revising paragraph (b)(4) to read as follows:

*§31.3406(b)(3)-2 Reportable barter exchanges and gross proceeds of sales of securities or commodities by brokers.*

\* \* \* \* \*

(b) \* \* \*

(4) *Security short sales*—(i) *Short sales closed before January 1, 2011*—(A) *Amount subject to backup withholding.* The amount subject to withholding under section 3406 with respect to a short sale of securities closed before January 1, 2011, is the gross proceeds (as defined in §1.6045-1(d)(5) of this chapter) of the short sale. At the option of the broker, however, the amount subject to withholding may be the gain upon the closing of the short sale (if any); consequently, the obligation to withhold under section 3406 is deferred until the closing transaction. A broker may use this alternative method of determining the amount subject to withholding under section 3406 for a short sale

only if at the time the short sale is initiated, the broker expects that the amount of gain realized upon the closing of the short sale will be determinable from the broker's records. If, due to events unforeseen at the time the short sale was initiated, the broker is unable to determine the basis of the property used to close the short sale, the property is assumed for this purpose to have a basis of zero.

(B) *Time of backup withholding.* For short sales closed before January 1, 2011, the determination of whether a short seller is subject to withholding under section 3406 must be made on the date of the initiation or closing, as the case may be, or on the date that the initiation or closing, as the case may be, is entered on the broker's books and records.

(ii) *Short sales closed on or after January 1, 2011.* For short sales closed on or after January 1, 2011, the obligation to withhold under section 3406 is deferred until the short sale is considered closed under section 1233. The determination of whether a short seller is subject to withholding under section 3406 may be made as of either this date or the date that the closing transaction is entered on the broker's books and records. The amount subject to withholding under section 3406 is the gross proceeds (as defined in §1.6045-1(d)(5) of this chapter) of the short sale. At the option of the broker, however, the amount subject to withholding may be the gain upon the closing of the short sale (if any) if the broker reports both the gross proceeds and basis of the securities on the return of information required by section 6045.

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Par. 17. Section 31.6051-4 is amended by adding two new sentences at the end of paragraph (d) to read as follows:

*§31.6051-4 Statement required in case of backup withholding.*

\*\*\*\*\*

(d) \* \* \* However, if the statement is furnished in a consolidated reporting statement under section 6045, the February 15 due date set forth in section 6045 applies to the statement. See §§1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii) of this chapter.

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## PART 301—PROCEDURE AND ADMINISTRATION

Par. 18. The authority citation for part 301 continues to read in part as follows:

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

Par. 19. Section 301.6721-1 is amended by revising paragraphs (g)(2) and (g)(3) to read as follows:

*§301.6721-1 Failure to file correct information returns.*

\*\*\*\*\*

(g) \* \* \*

(2) *Statements.* The statements subject to this section are the statements required by—

(i) Section 6041(a) or (b) (relating to certain information at source, generally reported on Form 1099-MISC, “Miscellaneous Income”; Form W-2, “Wage and Tax Statement”; Form W-2G, “Certain Gambling Winnings”; and Form 1099-INT, “Interest Income”);

(ii) Section 6042(a)(1) (relating to payments of dividends, generally reported on Form 1099-DIV, “Dividends and Distributions”);

(iii) Section 6044(a)(1) (relating to payments of patronage dividends, generally reported on Form 1099-PATR, “Taxable Distributions Received From Cooperatives”);

(iv) Section 6049(a) (relating to payments of interest, generally reported on Form 1099-INT or Form 1099-OID, “Original Issue Discount”);

(v) Section 6050A(a) (relating to reporting requirements of certain fishing boat operators, generally reported on Form 1099-MISC);

(vi) Section 6050N(a) (relating to payments of royalties, generally reported on Form 1099-INT);

(vii) Section 6051(d) (relating to information returns with respect to income tax withheld, generally reported on Form W-2);

(viii) Section 6050R (relating to returns relating to certain purchases of fish, generally reported on Form 1099-MISC);

(ix) Section 110(d) (relating to qualified lessee construction allowances for short-term leases, generally reported by attaching a statement to an income tax return);

(x) Section 408(i) (relating to reports with respect to individual retirement accounts or annuities on Form 1099-R, “Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.”); or

(xi) Section 6047(d) (relating to reports by employers, plan administrators, etc., on Form 1099-R).

(3) *Returns.* The returns subject to this section are the returns required by—

(i) Section 6041A(a) or (b) (relating to returns of direct sellers, generally reported on Form 1099-MISC);

(ii) Section 6043A(a) (relating to returns relating to taxable mergers and acquisitions);

(iii) Section 6045(a) or (d) (relating to returns of brokers, generally reported on Form 1099-B, “Proceeds From Broker and Barter Exchange Transactions,” for broker transactions; Form 1099-S, “Proceeds From Real Estate Transactions,” for gross proceeds from the sale or exchange of real estate; and Form 1099-MISC for certain substitute payments and payments to attorneys);

(iv) Section 6045B(a) (relating to returns relating to actions affecting basis of specified securities);

(v) Section 6050H(a) or (h)(1) (relating to mortgage interest received in trade or business from individuals, generally reported on Form 1098, “Mortgage Interest Statement”);

(vi) Section 6050I(a) or (g)(1) (relating to cash received in trade or business, etc., generally reported on Form 8300, “Report of Cash Payments Over \$10,000 Received In a Trade or Business”);

(vii) Section 6050J(a) (relating to foreclosures and abandonments of security, generally reported on Form 1099-A, “Acquisition or Abandonment of Secured Property”);

(viii) Section 6050K(a) (relating to exchanges of certain partnership interests, generally reported on Form 8308, “Report of a Sale or Exchange of Certain Partnership Interests”);

(ix) Section 6050L(a) (relating to returns relating to certain dispositions of donated property, generally reported on Form 8282, “Donee Information Return”);

(x) Section 6050P (relating to returns relating to the cancellation of indebtedness by certain financial entities, generally re-

ported on Form 1099-C, “Cancellation of Debt”);

(xi) Section 6050Q (relating to certain long-term care benefits, generally reported on Form 1099-LTC, “Long-Term Care and Accelerated Death Benefits”);

(xii) Section 6050S (relating to returns relating to payments for qualified tuition and related expenses, generally reported on Form 1098-E, “Student Loan Interest Statement,” or Form 1098-T, “Tuition Statement”);

(xiii) Section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals, generally reported on Form 1099-H, “Health Coverage Tax Credit (HCTC) Advance Payments”);

(xiv) Section 6052(a) (relating to reporting payment of wages in the form of group-life insurance, generally reported on Form W-2);

(xv) Section 6050V (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests, generally reported on Form 8921, “Applicable Insurance Contract Information Return”);

(xvi) Section 6053(c)(1) (relating to reporting with respect to certain tips, generally reported on Form 8027, “Employer’s Annual Information Return of Tip Income and Allocated Tips”);

(xvii) Section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions, generally reported on Form 8594, “Asset Acquisition Statement”), or section 1060(e) (relating to information required in the case of certain transfers of interests in entities (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition));

(xviii) Section 4101(d) (relating to information reporting with respect to fuel oils (effective for information returns required to be filed after November 30, 1990));

(xix) Section 338(h)(10)(C) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition));

(xx) Section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts);

(xxi) Section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements, generally reported on Form 1099-R);

(xxii) Section 6039(a) (relating to returns required with respect to certain options); or

(xxiii) Section 6050W (relating to information returns with respect to payments made in settlement of payment card and third party network transactions).

\* \* \* \* \*

Par. 20. Section 301.6722-1 is amended by revising paragraph (d)(2) to read as follows:

§301.6722-1 Failure to furnish correct payee statements.

\* \* \* \* \*

(d) \* \* \*

(2) Payee statement. The term *payee statement* means any statement required to be furnished under—

(i) Section 6031(b) or (c), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities, generally a Schedule K-1 (Form 1065), “Partner’s Share of Income, Deductions, Credits, etc.,” for section 6031(b) or (c), a copy of the Schedule K-1 (Form 1041), “Beneficiary’s Share of Income, Deductions, Credits, etc.,” for section 6034A, and a copy of Schedule K-1 (Form 1120S), “Shareholder’s Share of Income, Deductions, Credits, etc.,” for section 6037(b));

(ii) Section 6039(b) (relating to information required in connection with certain options);

(iii) Section 6041(d) (relating to information at source, generally the recipient copy of Form 1099-MISC, “Miscellaneous Income”; Form W-2, “Wage and Tax Statement”; Form 1099-INT, “Interest Income”; and the winner’s copies of Form W-2G, “Certain Gambling Winnings”);

(iv) Section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales, generally the recipient copy of Form 1099-MISC);

(v) Section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits, generally the

recipient copy of Form 1099-DIV, “Dividends and Distributions”);

(vi) Section 6043A(b) or (d) (relating to returns relating to taxable mergers and acquisitions);

(vii) Section 6044(e) (relating to returns regarding payments of patronage dividends, generally the recipient copy of Form 1099-PATR, “Taxable Distributions Received From Cooperatives”);

(viii) Section 6045(b) or (d) (relating to returns of brokers, generally the recipient copy of Form 1099-B, “Proceeds From Broker and Barter Exchange Transactions,” for broker transactions; the transferor copy of Form 1099-S, “Proceeds From Real Estate Transactions,” for reporting proceeds from real estate transactions; and the recipient copy of Form 1099-MISC for certain substitute payments and payments to attorneys);

(ix) Section 6045A (relating to information required in connection with transfers of covered securities to brokers);

(x) Section 6045B(c) or (e) (relating to returns relating to actions affecting basis of specified securities);

(xi) Section 6049(c) (relating to returns regarding payments of interest, generally the recipient copy of Form 1099-INT or Form 1099-OID, “Original Issue Discount”);

(xii) Section 6050A(b) (relating to reporting requirements of certain fishing boat operators, generally the recipient copy of Form 1099-MISC);

(xiii) Section 6050H(d) or (h)(2) (relating to returns relating to mortgage interest received in trade or business from individuals, generally the payor copy of Form 1098, “Mortgage Interest Statement”);

(xiv) Section 6050I(e), (g)(4), or (g)(5) (relating to returns relating to cash received in trade or business, etc., generally a copy of Form 8300, “Report of Cash Payments Over \$10,000 Received In a Trade or Business”);

(xv) Section 6050J(e) (relating to returns relating to foreclosures and abandonments of security, generally the borrower copy of Form 1099-A, “Acquisition or Abandonment of Secured Property”);

(xvi) Section 6050K(b) (relating to returns relating to exchanges of certain partnership interests, generally a copy of Form 8308, “Report of a Sale or Exchange of Certain Partnership Interests”);

(xvii) Section 6050L(c) (relating to returns relating to certain dispositions of donated property, generally a copy of Form 8282, “*Donee Information Return*”);

(xviii) Section 6050N(b) (relating to returns regarding payments of royalties, generally the recipient copy of Form 1099-MISC);

(xix) Section 6050P(d) (relating to returns relating to the cancellation of indebtedness by certain financial entities, generally the recipient copy of Form 1099-C, “*Cancellation of Debt*”);

(xx) Section 6050Q(b) (relating to certain long-term care benefits, generally the policyholder and insured copies of Form 1099-LTC, “*Long-Term Care and Accelerated Death Benefits*”);

(xxi) Section 6050R(c) (relating to returns relating to certain purchases of fish, generally the recipient copy of Form 1099-MISC);

(xxii) Section 6051 (relating to receipts for employees, generally the employee copy of Form W-2);

(xxiii) Section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance, generally the employee copy of Form W-2);

(xxiv) Section 6053(b) or (c) (relating to reports of tips, generally the employee copy of Form W-2);

(xxv) Section 6048(b)(1)(B) (relating to foreign trust reporting requirements, generally copies of the owner and beneficiary statements of Form 3520-A, “*Annual Information Return of Foreign Trust With a U.S. Owner*”);

(xxvi) Section 408(i) (relating to reports with respect to individual retirement plans on the recipient copies of Form 1099-R, “*Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*”);

(xxvii) Section 6047(d) (relating to reports by plan administrators on the recipient copies of Form 1099-R);

(xxviii) Section 6050S(d) (relating to returns relating to qualified tuition and related expenses, generally the borrower copy of Form 1098-E, “*Student Loan In-*

*terest Statement*,” or the student copy of Form 1098-T, “*Tuition Statement*”);

(xxix) Section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts);

(xxx) Section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals, generally the recipient copy of Form 1099-H, “*Health Coverage Tax Credit (HCTC) Advance Payments*”);

(xxxi) Section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements, generally the recipient copy of Form 1099-R); or

(xxxii) Section 6050W (relating to information returns with respect to payments made in settlement of payment card and third party network transactions).

\* \* \* \* \*

Steven T. Miller,  
*Deputy Commissioner for  
Services and Enforcement.*

(Filed by the Office of the Federal Register on December 16, 2009, 8:45 a.m., and published in the issue of the Federal Register for December 17, 2009, 74 F.R. 67010)

## **Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code**

### **Announcement 2010-4**

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not

precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on **February 1, 2010** and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Coinmach Disaster Relief Fund Trust  
Plainview, NW  
Newton County Community Center, Inc  
Covington, GA  
Five Rivers Community Development  
Corporation  
Georgetown, SC  
Interfaith Adopt-A-Building  
New York, NY  
Jeffrey and Sara Brunken Family FDN  
Salt Lake City, UT  
The Hemp & Cannabis Foundation  
Portland, OR  
Nuestra Sra De La Ribida-USA Auxiliary  
Service, Inc.  
Tamarac, FL

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

# Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.

ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.

PRS—Partnership.  
PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2009–27 through 2009–52 is in Internal Revenue Bulletin 2009–52, dated December 28, 2009.







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