

Instructions for Form 926

(Rev. October 1998)

Return by a U.S. Transferor of Property to a Foreign Corporation

Section references are to the Internal Revenue Code unless otherwise noted.



Department of the Treasury
Internal Revenue Service

Changes To Note

- The information now requested on Form 926 only applies to certain transfers of tangible or intangible property to foreign corporations. Do not report the information relating to foreign estates and trusts and foreign partnerships on Form 926. Use **Form 3520**, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, to report transfers to foreign trust and estates. At the time Form 926 went to print, new **Form 8865**, Information Return of U.S. Persons With Respect to Certain Foreign Partnerships, was being developed to report certain transfers to foreign partnerships. Check the Internal Revenue Service web site at www.irs.ustreas.gov for the availability of this form.

As a result of changes made by the Taxpayer Relief Act of 1997:

- The excise tax under section 1491 was repealed with respect to transfers after August 4, 1997.
- The penalty for failure to file was modified. See **Penalties for Failure To File** below.

General Instructions

Purpose of Form

Use Form 926 to report certain transfers of tangible or intangible property to a foreign corporation when required by section 6038B.

Who Must File

Generally, a U.S. citizen or resident, a domestic corporation, or an estate or trust (other than a foreign estate or trust) must file Form 926 to report a transfer of property (even if such property is not appreciated property) to a foreign corporation described in sections 6038B(a)(1)(A) or 367(d).

Special Rules

- **Transfers by a partnership.** If the transferor is a partnership (domestic or foreign), the partners of the partnership, not the partnership itself, are required to comply with section 6038B and file Form 926.
- **Transfers by a husband and wife.** A husband and wife may file Form 926 jointly but only if they file a joint income tax return.
- **Transfers subject to section 367(e)(1).** See Temporary Regulations section 1.6038B-1T(e).

Exceptions to filing for transfers after July 19, 1998.

- **Transfers of cash.** When this form was published, transfers of cash were not currently required to be reported. This may change. Check the regulations under section 6038B to determine whether transfers of cash are required to be reported at the time of your transfer.
- **Transfers by a tax-exempt entity.** A transferor that is a tax-exempt entity need not report the transfer unless the income was unrelated business income.
- **Transfers of stock or securities.** Transfers of stock or securities need not be reported on Form 926. Certain transferors (5% shareholders) may be required, however, to file a gain recognition agreement to qualify for nonrecognition treatment on the transfer but other transferors may be taxable on their transfers. See Regulations sections 1.367(a)-3 and 1.367-8. Penalties under section 6038B may apply if the transferor fails to file a gain recognition agreement or report the gain from the transfer.

Exceptions to filing for transfers before July 20, 1998.

- **Transfers of cash.** No reporting required.
- **Transfers by a tax-exempt entity.** No reporting required.
- **Transfers of stock or securities.** No reporting is required if either (1) the transferor owned less than 5 percent of both the total voting power and the total value of the transferee foreign corporation immediately after the transfer (taking into account the attribution rules under section 318 as modified by section 958(b)), and the U.S. transferor qualified for nonrecognition treatment with respect to the transfer, or (2) the transfer was taxable to the U.S. transferor and such person properly reported the income on its timely filed return. See Regulations section 1.6038-1(b)(2).

When and How To File

Form 926 (and the additional information required under Regulations section 1.6038B-1(c) and Temporary Regulations sections 1.6038B-1T(c) and 1.6038B-1T(d)) must be filed with the U.S. transferor's annual tax return for the tax year that includes the date of the transfer.

Other Forms That May Be Required

Persons filing this form may be required to file **Form TD F 90-22.1**, Report of Foreign Bank and Financial Accounts.

A U.S. transferor that is required to enter into a gain recognition agreement under section 367 to qualify for nonrecognition treatment must file **Form 8838**, Consent To Extend the Time To Assess Tax Under Section 367-Gain Recognition Agreement (or a similar statement) to extend the statute of limitations with respect to the gain realized but not recognized on the transfer.

Who Must Sign

Form 926 must be signed and dated by the transferor. If the transferor is a partnership, each partner is treated as a transferor of its proportionate share of the property. If the transferor is a corporation, the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other authorized officer (such as a tax officer) must sign. However, if the transferor is a corporation that is a member of an affiliated group (under section 1504(a)(1)) that files a consolidated Federal income tax return, but the transferor is not the common parent corporation, an authorized officer of the common parent corporation must sign.

If the transferor is a fiduciary, the fiduciary or officer representing the fiduciary must sign.

Anyone who is paid to prepare the return must sign it and fill in the Paid Preparer's Use Only area. However, anyone who prepares Form 926 but does not charge the transferor should not sign.

The paid preparer must complete the required preparer information and:

- Sign the return, by hand, in the space provided for the preparer's signature (signature stamps and labels are not acceptable).
- Provide a social security number (or, if permitted by regulations, an alternative preparer identification number).
- Give a copy of the return to the transferor.

Penalties for Failure To File

If a taxpayer fails to comply with section 6038B for a transfer occurring after August 5, 1997, the penalty equals 10% of the fair market value of the property at the time of the transfer. The

penalty shall not apply if the failure to comply is due to reasonable cause and not to willful neglect. The penalty is limited to \$100,000 unless the failure to comply was due to intentional disregard. Moreover, the period of limitations for assessment of tax upon the transfer of that property is extended to the date which is 3 years after the date on which the information required to be reported under this section is provided (by filing Form 926).

Specific Instructions

Part I—U.S. Transferor Information

Address

Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the transferor has a P.O. box, use the box number instead of the street address.

Foreign address. Enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code, if any. Please do not abbreviate the country name.

Identification Number

Use the employer identification number for any other entity. Use the social security number for an individual.

Lines 1 and 2

Line 1a. If you answered "Yes" to question 1a and the asset is a tangible asset, section 367(a)(5) may require basis adjustments. If you answered "No" to question 1a and the asset is a tangible asset, the transfer is taxable under sections 367(a)(1) and (a)(5). If the asset transferred is an intangible, see section 367(d) and the regulations thereunder.

Line 1b. If the transferor went out of existence pursuant to the transfer (e.g., as in a reorganization described in section 368(a)(1)(C) or 368(a)(1)(F)), list the controlling shareholders.

Line 1c. If the transferor was a member of an affiliated group filing a consolidated tax return (see sections 1501 through 1504), but was not the parent corporation, list the name and EIN of the parent corporation and file Form 926 with the parent corporation's consolidated return.

Line 2. If the actual transferor was a partnership, the partners of the partnership, not the partnership itself, are deemed to be the transferors. See Temporary Regulations section 1.367(a)-1T(c)(3). List the name and identification number of the partnership.

Part II—Transferee Foreign Corporation Information

Line 7. List the entity classification of the transferee foreign corporation in its place of organization (e.g., partnership, corporation, etc.).

Line 8. See section 957(a) to determine whether the corporation is a controlled foreign corporation immediately after the transfer.

Part III—Information Regarding Transfer of Property

Line 10. List the type of nonrecognition transaction that gave rise to the reporting obligation (e.g., section 332, 351, 354, 356, or 361).

Line 11. Give a brief description of the property transferred and attach to Form 926 the more comprehensive reporting required under Regulations sections 1.6038B-1(c) and Temporary Regulations sections 1.6038B-1T(c)(1) through 1.6038B-1T(c)(5) and 1.6038B-1T(d).

Line 12. If this transfer resulted from a change in the classification of the transferee to that of a foreign corporation (a deemed transfer resulting from, e.g., a check-the-box election pursuant to **Form 8832**, Entity Classification Election, or a termination of a section 1504(d) election), check the "Yes" box. If the transfer was an actual transfer of property to a foreign corporation, check the "No" box.

Line 13. See Temporary Regulations sections 1.367(a)-4T through 1.367-6T for instances in which a transferor must recognize income on the transfer of tangible property that qualifies for nonrecognition treatment under section 367(a)(3) and Temporary Regulations section 1.367(a)-2T. Additional information is required to be attached to this Form 926. See Temporary Regulations sections 1.6038B-1T(c)(4)(iii) and (vii), and 1.6038B-1T(c)(5).

Line 14a. If you check "Yes," additional information is required to be attached to Form 926. See Temporary Regulations section 1.6038B-1T(d).

Line 14b. See Temporary Regulations section 1.6038B-1T(d).

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	6 hr., 56 min.
Learning about the law or the form	4 hr., 4 min.
Preparing and sending the form to the IRS	4 hr., 22 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.