

Section 6038A.—Information With Respect to Certain Foreign-Owned Corporations

26 CFR 1.6038A-2: Requirement of return.

T.D. 9113

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Electronic Filing of Duplicate Forms 5472

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations providing that a Form 5472 that is timely filed electronically is treated as satisfying the requirement timely to file a duplicate Form 5472 with the Internal Revenue Service Center in Philadelphia, Pennsylvania. This action is necessary to clarify how the duplicate filing requirements for Form 5472 apply when a reporting corporation electronically files its income tax return (including any attachments such as Form 5472). This document affects corporations subject to the reporting requirements in sections 6038A and 6038C that file Form 5472 electronically. The text of the temporary regulations also serves as the text of the

proposed regulations (REG-167217-03) set forth in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective February 9, 2004.

Applicability Date: For the dates of applicability, see §§1.6038A-2(h) and 1.6038A-2T(h).

FOR FURTHER INFORMATION CONTACT: Edward R. Barret, (202) 435-5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 6038A of the Internal Revenue Code (Code) requires information reporting by 25-percent foreign-owned domestic corporations with respect to certain transactions between such domestic corporations and foreign or domestic related parties. Section 6038C of the Code requires foreign corporations engaged in a trade or business within the United States at any time during a taxable year to report the information described in section 6038A with respect to certain transactions between such foreign corporations and foreign related parties. On June 19, 1991, the Treasury Department and the IRS published in the **Federal Register** final regulations (T.D. 8353, 1991-2 C.B. 402 [56 FR 28056]) under section 6038A. A correction to T.D. 8353, 1991-2 C.B. 402, was published in the **Federal Register** on August 23, 1991, at 56 FR 41792.

The 1991 final regulations under section 6038A contain guidance at §§1.6038A-1 and 1.6038A-2 regarding the information reporting requirements under sections 6038A and 6038C. Section 1.6038A-2(a)(1) generally requires a reporting corporation to file a separate annual information return on Form 5472 with respect to each related party with which the reporting corporation has had a reportable transaction during the taxable year. Section 1.6038A-1(c)(1) defines a reporting corporation as either a domestic corporation that is 25-percent foreign-owned or a foreign corporation engaged in a trade or business within the United States at any time during a taxable year. Section 1.6038A-2(d) provides that Form 5472 shall be filed with the reporting corporation's income tax return for the taxable year by the due date of that return.

A duplicate Form 5472 shall be filed at the same time with the Internal Revenue Service Center in Philadelphia, Pennsylvania (the Philadelphia Service Center). Section 1.6038A-2(e) provides that even if the reporting corporation's income tax return is not timely filed, Form 5472 (with a duplicate to the Philadelphia Service Center) nonetheless is required to be timely filed at the service center where the return is due, with a copy of Form 5472 to be attached to the income tax return when ultimately filed. However, neither §1.6038A-2(d) nor §1.6038A-2(e) directly addresses the duplicate filing requirements for Form 5472 when a reporting corporation electronically files its income tax return (including any attachments such as Form 5472).

Explanation of Provisions

To clarify how the duplicate filing requirements for Form 5472 apply when a reporting corporation electronically files its income tax return (including any attachments such as Form 5472), the temporary regulations amend §1.6038A-2(d) to provide that a Form 5472 that is timely filed electronically is treated as satisfying the requirement timely to file a duplicate Form 5472 with the Philadelphia Service Center. Accordingly, the filing of a copy of such timely filed electronic Form 5472 with the Philadelphia Service Center will not be required.

The temporary regulations do not amend the requirement of §1.6038A-2(e) that Form 5472 be timely filed (with a duplicate to the Philadelphia Service Center) even if the income tax return of the reporting corporation is not timely filed. As a transitional matter, for the filing season for taxable year 2003 returns it is anticipated that electronic filing of Form 5472 will be possible only as an attachment to an electronically filed income tax return; electronic filing of Form 5472 separately rather than as an attachment to an electronically filed income tax return will not be technically possible. Accordingly, if a reporting corporation's income tax return is filed after its due date (including extensions), regardless of whether that return is filed electronically, §1.6038A-2(e) requires the reporting corporation timely to file Form 5472 on paper (with a copy

to the Philadelphia Service Center) at the service center where the income tax return is due. In subsequent filing seasons, it is anticipated that electronic filing technology will allow separate electronic filing of Form 5472. The Treasury Department and the IRS intend that the guidance contained in the amendment to §1.6038A-2(d) in these temporary regulations would apply to any such separate electronic filing of Form 5472. Accordingly, a Form 5472 that is timely and separately filed electronically would be treated as satisfying the requirement timely to file a duplicate Form 5472 with the Philadelphia Service Center.

Similarly, an electronic attachment of a copy of Form 5472 to an income tax return that is not timely filed satisfies the requirement of the second sentence of §1.6038A-2(e).

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

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

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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 continues to read in part as follows:

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

Par. 2. Section 1.6038A-2 is amended by revising paragraph (d) to read as follows:

§1.6038A-2 Requirement of return.

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(d) [Reserved]. For further guidance, see §1.6038A-2T(d).

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Par. 3. Section 1.6038A-2T is added to read as follows:

§1.6038A-2T Requirement of return (temporary).

(a) through (c) [Reserved]. For further guidance, see §1.6038A-2(a) through (c).

(d) *Time and place for filing returns.* A Form 5472 required under this section shall be filed with the reporting corporation's income tax return for the taxable year by the due date (including extensions) of that return. A duplicate Form 5472 (including any attachments and schedules) shall be filed at the same time with the Internal Revenue Service Center, Philadelphia, PA 19255. A Form 5472 that is timely filed electronically satisfies the duplicate filing requirement.

(e) through (g) [Reserved]. For further guidance, see §1.6038A-2(e) through (g).

(h) *Effective date.* (1) This section applies for taxable years ending on or after January 1, 2003. For taxable years ending prior to January 1, 2003, see §1.6038A-2(d) in effect prior to January 1, 2003 (see 26 CFR part 1 revised as of April 1, 2002).

(2) The applicability of this section expires on or before February 6, 2007.

Mark E. Matthews,
*Deputy Commissioner for
Services and Enforcement.*

Approved January 28, 2004.

Pamela F. Olson,
Assistant Secretary of the Treasury.

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