

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

*26 CFR 1.6038A-1: General requirements and definitions.*

## **T.D. 9161**

### **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 regulation and removal of temporary regulation.

**SUMMARY:** This document contains a final regulation 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.

**DATES: Effective Date:** This regulation is effective on September 15, 2004.

**Applicability Date:** For the dates of applicability, see §§1.6038A-1(n) and 1.6038A-2(h).

**FOR FURTHER INFORMATION CONTACT:** Edward R. Barret, (202) 622-3880 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On February 9, 2004, final and temporary regulations (T.D. 9113, 2004-9 I.R.B. 524) relating to the duplicate filing requirements for Form 5472 were published in the **Federal Register** (69 FR 5931). The temporary regulation addressed 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). On February 9, 2004, a notice of proposed rulemaking and public hearing (REG-167217-03, 2004-9 I.R.B. 540) was also published in the **Federal Register** (69 FR 5940) with respect to the provisions of the temporary regulation. No written or electronic comments were received in response to the notice of proposed rulemaking. No requests to speak at the public hearing were received, and, accordingly, the hearing was canceled.

##### **Explanation of Provisions**

This Treasury decision adopts the language of the proposed regulation without change. The temporary regulation is removed.

##### **Special Analysis**

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 this regulation, and because this regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was 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 this regulation is Edward R. Barret, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in its development.

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#### **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 continues to read in part as follows:

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

Par. 2. Section 1.6038A-1 is amended by revising paragraph (n)(2) to read as follows:

*§1.6038A-1 General requirements and definitions.*

\* \* \* \*

(n) \* \* \* (1) \* \* \*

(2) *Section 1.6038A-2.* Section 1.6038A-2 (relating to the requirement to file Form 5472) generally applies for taxable years beginning after July 10, 1989. However, §1.6038A-2 as it applies to reporting corporations whose sole trade or business in the United States is a banking, financing, or similar business as defined in §1.864-4(c)(5)(i) applies for taxable years beginning after December 10, 1990. The final sentence of §1.6038A-2(d) 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).

\* \* \* \*

Par. 3. Section 1.6038A-2 is amended by revising paragraph (d) to read as follows:

*§1.6038A-2 Requirement of return.*

\* \* \* \* \*

*(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.

\* \* \* \* \*

**§1.6038A-2T [Removed]**

Par. 4. Section 1.6038A-2T is removed.

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

Approved August 30, 2004.

Gregory Jenner,  
*Acting Assistant Secretary of the Treasury.*

(Filed by the Office of the Federal Register on September 14, 2004, 8:45 a.m., and published in the issue of the Federal Register for September 15, 2004, 69 F.R. 55499)