

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.602: Tax forms and instructions.

(Also Part I, §§ 138, 220, 408, 408A, 529, 530, 1441, 1442, 1443, 3402, 3405, 3406, 6011, 6041, 6041A, 6042, 6043, 6044, 6045, 6047, 6049, 6050A, 6050B, 6050D, 6050E, 6050H, 6050J, 6050N, 6050P, 6050Q, 6050R, 6050S, 1.408-7, 1.408A-7, 1.1461-1, 1.1461-2, 31.3402(q)-1, 31.3404(r)-1, 31.3405(c)-1, 35.3405-1, 31.3406(a)-1, 31.3406(g)-2, 35a.3406-2, 1.6011-1, 1.6011-3, 1.6041-1, 7.6041-1, 1.6041A-1, 1.6042-2, 1.6044-2, 1.6045-1, 1.6045-2, 1.6045-4, 1.6049-4, 1.6050A-1, 1.6050E-1, 1.6050H-1, 1.6050J-1T, 1.6050N-1, and 1.6050P-1)

Rev. Proc. 99-50

SECTION 1. PURPOSE

This revenue procedure permits combined information reporting by a successor business entity (i.e., a corporation, partnership, or sole proprietorship) in certain situations following a merger or an acquisition and supersedes Rev. Proc. 90-57, 1990-2 C.B. 641 and Rev. Rul. 69-556, 1969-2 C.B. 242. This revenue procedure explains both the procedure otherwise required under the regulations (the “standard procedure”) and an elective procedure (the “alternative procedure”) for preparing and filing certain Forms 1042-S, all forms in the series 1098, 1099, and 5498, and Forms W-2G, in certain situations involving a successor business entity and a predecessor business

entity (i.e., a corporation, partnership, or sole proprietorship) when the successor acquires substantially all of the property (1) used in the trade or business of the predecessor (including certain situations when one or more corporations are absorbed by another corporation pursuant to a merger agreement), or (2) used in a separate unit of a trade or business of the predecessor.

SECTION 2. BACKGROUND

.01 *General Requirement of Return or Statement.* Section 6011(a) of the Internal Revenue Code provides that, when required by regulations, any person made liable for any tax imposed by the Code, or for the collection of the tax, must make a return or statement according to the forms and regulations prescribed by the Secretary.

.02 *Certain Payments Reported on Forms 1042-S.* Payments under the Code sections described in this paragraph are reported on Forms 1042-S. Section 1441(a) generally provides that persons having the control, receipt, custody, disposal, or payment of items of gross income specified in § 1441(b) from sources within the United States of any nonresident alien individual or foreign partnership must deduct and withhold a tax equal to either 30 percent or 14 percent of those amounts. Section 1442 provides that, in the case of certain foreign corporations, a tax equal to 30 percent shall be deducted and withheld in the same manner and on the same items of income as provided in § 1441. Section 1443(a) provides that, in the case of certain foreign tax-exempt organizations, a tax equal to 30 percent of the amount of the unrelated business taxable income shall be deducted and withheld in the same manner as provided in § 1441. Section 1443(b) provides that, in the case of certain foreign tax-

exempt organizations, a tax on gross investment income derived from sources within the United States equal to 4 percent of such amount shall be deducted and withheld in the same manner as provided in § 1441(a) or § 1442(a). Persons required to deduct and withhold taxes under § 1441, 1442, or 1443 generally must file Forms 1042-S reporting aggregate amounts for the calendar year, as provided in the Income Tax Regulations under § 1461.

.03 *Payments Reported on Forms 1098.* Payments and receipts under the following Code sections are reported on forms in the series 1098: §§ 6050H (returns relating to mortgage interest received in trade or business from individuals); and 6050S (returns relating to higher education tuition and related expenses).

.04 *Payments Reported on Forms 1099.* (1) *In general.* Payments under the following Code sections are reported on forms in the series 1099: §§ 220(h) (medical savings accounts); 408(i) (individual retirement arrangements); 529(d) (qualified state tuition programs); 530(h) (education individual retirement accounts); 6041 (information at source); 6041A (returns regarding payments of remuneration for services and direct sales); 6042 (returns regarding payments of dividends and corporate earnings and profits); 6043 (liquidating, etc., transactions); 6044 (returns regarding payments of patronage dividends); 6045 (returns of brokers); 6047 (information relating to certain trusts and annuity plans); 6049 (returns regarding payments of interest); 6050A (reporting requirements of certain fishing boat operators); 6050B (returns relating to unemployment compensation); 6050D (returns relating to energy grants and financing); 6050E (state and local income tax refunds); 6050J (returns relating to foreclosures and

abandonments of security); 6050N (returns regarding payments of royalties); 6050P (returns relating to the cancellation of indebtedness by certain entities); 6050Q (certain long-term care benefits); and 6050R (returns relating to certain purchases of fish).

(2) *Persons Made Liable for Backup Withholding.* Section 3406 provides that payors of reportable payments (as defined in § 3406(b)) must, in certain circumstances, deduct and withhold a tax equal to 31 percent of the payment (“backup withholding”). Under § 3406(b), reportable payments generally are payments required to be shown on a return under §§ 6041 (relating to certain information at source), 6041A(a) (relating to payments of remuneration for services), 6042(a) (relating to payments of dividends), 6044 (relating to patronage dividends), 6045 (relating to returns of brokers), 6049(a) (relating to payments of interest), 6050A (relating to reporting requirements of certain fishing boat operators), and 6050N (relating to payments of royalties).

(3) *Persons Made Liable for Withholding on Pensions, Annuities, and Other Deferred Income.* Section 3405 provides that payors of pensions, annuities and certain other deferred income must, in certain circumstances, deduct and withhold a tax: (1) on periodic payments as defined in § 3405(e)(2), an amount that would be required to be withheld from such payment if such payment were a payment of wages; (2) on nonperiodic distributions as defined in § 3405(e)(3), 10 percent of the distribution; and (3) on eligible rollover distributions as defined in § 3405(c)(3), 20 percent of the distribution. Generally, the persons required to deduct and withhold taxes under § 3405 must file Forms 1099 reporting payments and distributions, as

provided under § 35.3405-1 of the Temporary Employment Tax Regulations and § 31.3405(c)-1 of the Employment Tax Regulations.

.05 *Contributions Reported on Forms 5498.* Contributions under the following Code sections are reported on forms in the series 5498: §§ 138 (medicare+choice MSA); 220 (medical savings accounts); 408(a) (individual retirement account); 408(b) (individual retirement annuity); 408(k) (simplified employee pension); 408(p) (simple retirement account); 408A (Roth IRA); and 530 (education individual retirement account).

.06 *Payments Reported on Forms W-2G.* (1) *In general.* Section 7.6041-1 of the Temporary Income Tax Regulations provides that payments of winnings of \$1,200 or more from a bingo game or slot machine play, and payments of winnings of \$1,500 or more from a keno game, are reportable on Forms W-2G. Section 31.3406(g)-2(d) generally provides that under § 3406 a reportable gambling winning is any gambling winning subject to information reporting under § 6041. In addition, a gambling winning (other than a winning from bingo, keno, or slot machines) is a reportable gambling winning only if the amount paid with respect to the wager is \$600 or more and if the proceeds are at least 300 times as large as the amount wagered.

(2) *Extension of Withholding to Certain Gambling Winnings.* Section 3402(q) provides that every person making a payment of winnings that are subject to withholding (defined in §§ 3402(q)(3) and 31.3402(q)-1) shall deduct and withhold a tax in an amount equal to 28 percent of such payment.

SECTION 3. SCOPE

This revenue procedure applies only when all of the following conditions are met:

(1) One business entity (i.e., a corporation, partnership, or sole proprietorship) (the “successor”) acquires from another business entity (the “predecessor”) substantially all the property (a) used in the trade or business of the predecessor (including when two or more corporations are parties to a merger agreement under which the surviving corporation becomes the owner of all the assets and assumes all the liabilities of the absorbed corporation(s)), or (b) used in a separate unit of a trade or business of the predecessor;

(2) During the pre-acquisition portion of the “acquisition year” (the calendar year in which the acquisition occurs), the predecessor is required to file information returns as a result of making or receiving payments, or withholding or collecting taxes, as provided under the appropriate sections of the Code and regulations set forth above;

(3) During the post-acquisition portion of the acquisition year, the predecessor (for an acquisition described in section 3(1)(a)) or the separate unit of the predecessor (for an acquisition described in section 3(1)(b)) does not make or receive any such payments and does not withhold or collect any such tax;

(4) The requirements of section 5 of this revenue procedure are met; and

(5) The Internal Revenue Service instructions or publications relating to Forms 1042-S, a specific form in the series 1098, 1099, or 5498, or Forms W-2G do not prohibit use of the alternative procedure described in section 5.

SECTION 4. STANDARD PROCEDURE

Each person that makes or receives payments, or withholds or collects taxes, that are reportable on Forms 1042-S, forms in the series 1098, 1099, and 5498, or Forms W-2G, is responsible for information reporting of those transactions. Thus, unless the alternative procedure of section 5 of this revenue procedure is used, both the predecessor and the successor must file certain Forms 1042-S, forms in the series 1098, 1099, and 5498, or Forms W-2G for reportable transactions occurring in the acquisition year.

SECTION 5. ALTERNATIVE PROCEDURE

.01 The predecessor and the successor must agree that the successor assumes the predecessor's entire information reporting obligations for those Forms 1042-S (as described in section 2.02 of this revenue procedure), forms in the series 1098, 1099, and 5498, and Forms W-2G to which their agreement applies. The predecessor is relieved of its information reporting obligations for reportable transactions occurring in the acquisition year only if and to the extent that their agreement meets, and the successor satisfies, each of the requirements of section 5 of this revenue procedure.

.02 The predecessor and successor must agree upon the specific Forms 1042-S, forms in the series 1098, 1099, and 5498, and Forms W-2G to which this alternative procedure applies. The predecessor and successor may agree to (a) use the alternative procedure for all Forms 1042-S, forms in the series 1098, 1099, or 5498, or Forms W-2G; or (b) limit the use of the alternative procedure to (1) specific Forms 1042-S, forms in the series 1098, 1099, or 5498, or Forms W-2G; or (2) specific

reporting entities (i.e., any unit, branch or location within a particular business entity that files its own separate information returns). For example, if the only compatible computer or record keeping systems of a predecessor and successor are their dividends paid ledgers, they may use the alternative procedure for Forms 1099-DIV, and use the standard procedure for Forms 1042-S and all other forms in the series 1098 or 1099. Similarly, if the only compatible computer or record keeping systems of a predecessor and successor are in their branches located in the Midwest, they may use the alternative procedure with respect to the records maintained at those locations, and use the standard procedure with respect to the records maintained at all other locations. The sharing between the predecessor and successor of taxpayer identification numbers and other information obtained under § 3406 for information reporting and backup withholding purposes, for the sole purpose of complying with this revenue procedure, does not violate the confidentiality rules contained in § 3406(f).

.03 On each “appropriate form” (i.e., each form to which the agreement in section 5 of this revenue procedure applies), the successor must combine (1) the payments made or received on account of a person by the predecessor in the pre-acquisition portion of the acquisition year with (2) the payments made or received on account of that person by the successor in that year, if any, and must report the aggregate amount(s) on account of that person for that year. In the case of amounts that are required or permitted to be reported transactionally (for example, broker sales of stock that are required to be reported on Forms 1099-B, Proceeds From Broker and Barter Exchange Transactions) the successor must report each transaction of the

predecessor and each of its transactions on each appropriate form. The successor may include with the form additional information explaining to the recipient the combined reporting by the predecessor and successor.

.04 On each appropriate form, the successor must also combine the amount of any tax withheld under §§ 1441, 1442, 1443, 3402(q), 3402(r), 3405, and 3406(a) for a person by the predecessor in the pre-acquisition portion of the acquisition year with the amount withheld under such sections for that person by the successor in that year and, on the appropriate form(s), must report the aggregate amount for the year.

.05 The successor must file a statement with the Internal Revenue Service indicating that the appropriate forms are being filed on a combined basis in accordance with the provisions of this revenue procedure. This statement is needed to assist the Service in processing the forms filed under the alternative procedure. If tax has been withheld by the predecessor pursuant to §§ 3402(q), 3402(r), 3405, and 3406(a) during the acquisition year and reported by the predecessor on Form 945, Annual Return of Withheld Federal Income Tax, the total of the withholding amounts shown on the successor's Forms 1099 and W-2G for that year will exceed the total of the withholding amounts shown on the successor's Form 945. Therefore, the statement that must be filed with the Service must reflect the amount of any tax that has been withheld by the predecessor and by the successor for each type of form (for example, Forms 1099-R or Forms 1099-MISC). Likewise, if any tax has been withheld under §§ 1441 and 1442 during the acquisition year and reported on Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, the total of the withholding amounts shown

on the successor's Forms 1042-S for that year will exceed the total of the withholding amounts shown on the successor's Form 1042. Therefore, the statement that must be filed with the Service must reflect the amount of tax that has been withheld by the predecessor and successor for Form 1042-S.

.06 The statement required by section 5.05 of this revenue procedure must include the name, address, telephone number, and Employer Identification Numbers of both the successor and predecessor, and the name and telephone number of the person responsible for preparing this statement.

.07 The statement for Forms 1042-S must be **attached** to the Form 1042 and mailed to the address for filing the Form 1042 (appearing in the instructions to the form) on or before the date the Form 1042 is due.

.08 The statement for forms in the series 1098, 1099 and 5498, and Forms W-2G must be **filed separately** from such forms and Form 945. Unless directed otherwise by the instructions to the forms, the statement for forms in the series 1098, 1099, and 5498, and Forms W-2G must be mailed to the following address on or before the date those forms are due:

Internal Revenue Service
Martinsburg Computing Center
230 Murall Drive
Attention: Chief, Information Returns Branch
Mail Stop 360
Kearneysville, WV 25430

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 90-57, 1990-2 C.B. 641, and Rev. Rul. 69-556, 1969-2 C.B. 242, are modified and, as modified, are superseded.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for Forms 1042-S, forms in the series 1098, 1099, and 5498, and Forms W-2G filed after December 31, 1999. In addition, if a successor filed forms on or before December 31, 1999, in the circumstances described in section 3 of this revenue procedure, the predecessor's filing obligations are deemed to have been satisfied with respect to amounts shown on those forms if the predecessor and successor have substantially complied with all the requirements of section 5 of this revenue procedure (except for the statement requirement of section 5.05).

SECTION 8. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1667. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information is contained in section 5 of this revenue procedure which requires the filing of a statement that the alternative procedure has been elected. This information is required to aid the Service in processing Forms 1042-S, forms in the

series 1098, 1099, and 5498, and Forms W-2G filed by successors who use the alternative procedure, reconcile discrepancies between the amounts reported on Forms 945 and Forms 1099 and W-2G filed by both predecessors and successors who use the alternative procedure, and reconcile discrepancies between the amounts reported on Forms 1042-S and Forms 1042 filed by predecessors and successors who use the alternative procedure. The likely respondents are business or other for-profit institutions.

The estimated average annual burden to prepare the statement is 5 minutes. The estimated number of respondents that will elect to use the alternate procedure is 6,000 and the estimated total annual reporting burden is 500 hours.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is A. Katharine Jacob Kiss of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure contact Ms. Kiss on (202) 622-4920 (not a toll-free call).