

**Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulation and Notice of Public Hearing**

**Section 6038—Returns Required With Respect to Controlled Foreign Partnerships**

**REG-124069-02**

AGENCY: Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulation and notice of public hearing.

**SUMMARY:** In this issue of the Bulletin, the IRS is issuing a temporary regulation (T.D. 9033) relating to controlled foreign partnerships. That document requires that the United States partner must follow the filing requirements that are specified in the instructions for Form 8865. The text of that regulation also serves as the text of this proposed regulation. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by March 24, 2003. Outlines of topics to be discussed at the public hearing scheduled for March 12, 2003, at 10 a.m., must be received by February 19, 2003.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG-124069-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-124069-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS internet site at [www.irs.gov/regs](http://www.irs.gov/regs). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Tasheya Warren, (202) 622-3860; concerning submissions and the hearing, LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### **Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review 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, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by February 21, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

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 service to provide information.

The collection of information in this regulation is in § 1.6038-3T. This information is required by the IRS to identify foreign partnerships which are controlled by United States persons and verify amounts reported by the partners. The collection of information is mandatory. The likely respondents will be individuals and business or other for-profit organizations.

The burden of complying with the collection of information required to be reported on Form 8865 is reflected in the burden for Form 8865. The estimated number of respondents is 5000. The estimated burden for the 2001 Form 8865 per respondent is 89 hours.

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.

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.

### **Background and Explanation of Provisions**

The temporary regulation in this issue of the Bulletin amends 26 CFR part 1. If a foreign partnership files Form 1065 or Form 1065-B and a United States partner is required to file Form 8865 with respect to that partnership, the temporary regulation amends Treas. Reg. § 1.6038-3 to provide that the United States partner must follow the filing requirements that are specified in the instructions for Form 8865. The text of the temporary regulation also serves as the text of this proposed regulation. The preamble to the temporary regulation explains the temporary regulation and this proposed regulation.

### **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 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 and because this regulation does not impose a collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

### **Comments and Public Hearing**

Before this proposed regulation is adopted as a final regulation, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules 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 March 12, 2003, at 10 a.m., in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the immediate en-

trance area more than 30 minutes before the hearing starts. For information about having your name on the building access list to attend the hearing, see the For Further Information Contact portion of this preamble. The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments 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 19, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the 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.

(Filed by the Office of the Federal Register on December 20, 2002, 8:45 a.m., and published in the issue of the Federal Register for December 23, 2002, 67 F.R. 78202)

### Drafting Information

The principal author of this regulation is Tasheaya Warren, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

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### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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 1.6038-3 is amended by revising paragraph (j) to read as follows:

*§ 1.6038-3 Information returns required of certain United States persons with respect to controlled foreign partnerships (CFPs).*

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(j) [The text of the proposed amendment to § 1.6038-3(j) is the same as the text for § 1.6038-3T(j) published elsewhere in this issue of the **Federal Register**.]

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Robert E. Wenzel,  
*Deputy Commissioner  
of Internal Revenue.*