



[4830-01-P]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9707]

RIN 1545-BM08

Filing of Form 5472

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the manner of filing Form 5472, “Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.” The final regulations affect certain 25-percent foreign-owned domestic corporations and certain foreign corporations that are engaged in a trade or business in the United States that are required to file Form 5472.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: For dates of applicability, see §§1.6038A-1(n)(2) and (n)(3) and 1.6038A-2(g).

FOR FURTHER INFORMATION CONTACT: Anand Desai at (202) 317-6939 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2014, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-114942-14) in the **Federal Register** (79 FR 32687, 2014-26 IRB 1117) under sections 6038A and 6038C of the Internal Revenue Code (Code) (proposed regulations). The proposed regulations proposed removing a provision for timely filing Form 5472 separately from an income tax return that is untimely filed (“untimely filed return provision”). As a result, Form 5472 would be required to be filed in all cases only with the filer’s income tax return for the taxable year by the due date (including extensions) of that return. No public hearing was requested or held. The Treasury Department and the IRS received two written comments on the proposed regulations, which are available at www.regulations.gov. After consideration of the comments, this Treasury decision adopts the proposed regulations, without substantive change, as final regulations.

Summary of Comments

One comment recommended that the “untimely filed return provision” be retained because the IRS may not timely receive the information required by Form 5472 if the untimely filed return provision is removed. The comment also recommended conforming changes to permit the filing of Form 5471, “Information Return of U.S. Persons With Respect to Certain Foreign Corporations,” and Form 8865, “Return of U.S. Persons With Respect to Certain Foreign Partnerships,” separately from an income tax return that is untimely filed.

The Treasury Department and the IRS decline to adopt this comment. The Treasury Department and the IRS have determined that tax administration generally is

more efficient when forms (for example, Form 5471, Form 5472, and Form 8865) are filed with the filer's timely filed income tax return.

The second comment addressed issues unrelated to the proposed regulatory change. The final regulations do not incorporate the suggestions contained in this comment, which are outside the scope of the proposed regulations.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 the regulations do not impose a collection of information, 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 business.

Drafting information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 the third sentence of, and adding a new fourth sentence to, paragraph (n)(2), and adding a third sentence to paragraph (n)(3), to read as follows:

§1.6038A-1 General requirements and definitions.

* * * * *

(n) * * *

(2) Section 1.6038A-2. * * * Section 1.6038A-2(d) applies for taxable years ending on or after June 10, 2011. For taxable years ending on or after June 10, 2011, but before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see §1.6038A-2(e) as contained in 26 CFR part 1 revised as of April 1, 2014. * * *

(3) Section 1.6038A-4. * * * For taxable years ending before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see §1.6038A-4(a)(1) as contained in 26 CFR part 1 revised as of April 1, 2014.

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§1.6038A-2 [Amended]

Par. 3. Section 1.6038A-2 is amended by:

1. Removing paragraph (e).
2. Redesignating paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g), respectively.

Par. 4. Section 1.6038A-4 is amended by revising paragraph (a)(1) to read as follows:

§1.6038A-4 Monetary penalty.

(a) * * *

(1) In general. If a reporting corporation fails to furnish the information described in §1.6038A-2 within the time and manner prescribed in §1.6038A-2(d), fails to maintain or cause another to maintain records as required by §1.6038A-3, or (in the case of records maintained outside the United States) fails to meet the non-U.S. record maintenance requirements within the applicable time prescribed in §1.6038A-3(f), a penalty of \$10,000 shall be assessed for each taxable year with respect to which such failure occurs. The filing of a substantially incomplete Form 5472 constitutes a failure to file Form 5472. Where, however, the information described in §1.6038A-2(b)(3) through (5) is not required to be reported, a Form 5472 filed without such information is not a substantially incomplete Form 5472.

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John Dalrymple

Deputy Commissioner for Services and Enforcement.

Approved: December 8, 2014

Mark J. Mazur

Assistant Secretary for the Treasury (Tax Policy).

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