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(3) 2 OR MORE PERSONS REQUIRED TO FURNISH INFORMATION WITH RESPECT TO SAME FOREIGN CORPORATION.—If, but for this paragraph, 2 or more persons would be required to furnish information under subsection (a) with respect to the same foreign corporation for the same taxable year, the Secretary may by regulations provide that such information shall be required only from 1 person.

.01 Amended by P.L. 97-248 and P.L. 94-455 (Deadwood Act). For details, see the Code Volumes.

Committee Report on P.L. 97-248

.197 The bill replaces the current foreign personal holding company reporting requirements. The bill imposes its reporting requirements on 10-percent (rather than 50-percent) shareholders of a foreign personal holding company as well as on officers and directors. The calculation of whether a person is a 10-percent shareholder involves indirect ownership as well as direct ownership.

The required information includes both shareholder information and income information as well as such other necessary information as the Secretary shall prescribe. Required shareholder information includes the names and addresses of all persons who held shares, options, and convertible securities during the taxable year; a description of each class of shares and the total number of shares of each class outstanding at year's end; the number of shares of each class, options, or convertible securities held by each person; and any changes in the holdings of shares, options, or convertible securities during the year. Required income information includes the foreign personal holding company's gross income, credits, taxable income, and undistributed foreign personal holding company income for the year.

The bill changes present law to give the Internal Revenue Service more flexibility in establishing filing

dates for reports relating to foreign personal holding companies and to make it possible for the Internal Revenue Service to include the foreign personal holding company reports in a combined international report. In particular, it authorizes the Commissioner to designate the time when the foreign personal holding company reports and returns must be filed.

Whether a person is required to file a return is determined on the date the return is due. If, on that date, no person is required to file (because, for example, the corporation has been dissolved), then filing is required of the persons who were officers, directors or 10-percent shareholders on the last day of the corporation's taxable year for which there was a person required to file.

If two or more persons are required to file, the bill provides that the Secretary may, by regulations, require only one of them to file.

The bill also adds a \$1,000 civil penalty for failure to file a proper foreign personal holding company information return. This penalty does not apply, however, if the failure is shown to be due to reasonable cause.

This provision applies to failures to furnish information that was due on the day after the date of enactment and thereafter.—Senate Finance Committee Report.

20 Committee Reports on 1954 Code Sec. 6035 were reproduced at 583 CCH ¶ 5058.10.

● Regulations

§ 1.6035-1. Returns of U.S. officers, directors and 10-percent shareholders of foreign personal holding companies for taxable years beginning after September 3, 1982.—(a) Requirement of returns—(1) In general. For taxable years of a foreign personal holding company beginning after September 3, 1982, each United States citizen or resident who is an officer, director, or 10-percent shareholder of the foreign personal holding company (as defined in section 552) shall file with his income tax return, on or before the date that return is due, Form 5471¹ and the applicable schedules to be completed in accordance with the instructions setting forth corporate, shareholder, and income information for the foreign personal holding company's annual accounting period that ends with or within the officer's, director's, or shareholder's taxable year.

(2) General corporate information. The general foreign personal holding company information required by this section with respect to each taxable year is as follows:

- (i) The name and address and employer identification number (if any) of the corporation;
- (ii) The kind of business in which the corporation is engaged;
- (iii) The date of its incorporation;
- (iv) The country under the laws of which the corporation is incorporated;
- (v) A description of each class of stock issued and outstanding by the corporation for the beginning and end of the annual accounting period;
- (vi) The number of shares and par value of common stock of the corporation issued and outstanding as of the beginning and end of the taxable year;

Information Return of S Corporation

● ● CCH Explanation

the omission of information or inclusion of incorrect information on information returns or payee statements, see ¶ 40,985.

Form 1120-S is not strictly an information return because, under certain conditions, the corporation may be liable for a capital gains tax, which is computed on Schedule D of the form. See ¶ 33,603.01.—CCH.

.75 Statute of limitations.—Where a corporation makes a valid S corporation election, the statute contemplates that no income taxes are to be paid by it and therefore there is no occasion for a period of limitations on assessment and collection with regard to the corporation. It is only where the election for some reason is determined to have been ineffective that the return filed by the subchapter S corporation is treated as a corporate return for the purposes of the statute of limitations. Therefore, the Commissioner was not prevented by the statute of limitations from adjusting the taxpayer's income arising from the adjustments made in the income and deductions of the subchapter S corporation.

W.H. Leonhart, 27 TCM 443, Dec. 28, 975(M), TC Memo. 1968-98. Aff'd on another issue, (CA-4) 69-2 USTC ¶ 9597, 414 F. 2d 749.

Followed.

J.A. Jacobson, 54 TCM 1043, Dec. 44, 317(M), TC Memo 1987-559.

A notice of deficiency attributable to a disallowed corporate loss which was sent to the sole shareholder of an S corporation prior to the expiration of the three-year period for assessment against the individual, but after the three-year period for assessment against the S corporation, was characterized as timely. The statute of limitations was properly applied at the shareholder level and not at the corporate level since the information return filed by an S corporation func-

tions as a corporate income tax return, for limitations purposes, only when the S corporation election is otherwise ineffective.

Felthaber, R., 94 TC 863, Dec. 46, 647.

Followed.

F.A. Aries, 61 TCM 1769, Dec. 47, 149(M), TC Memo. 1991-41.

M. Brady, 61 TCM 1993, Dec. 47, 190(M), TC Memo. 1991-78.

To the contrary. The IRS could not adjust a shareholder's return based on an adjustment to an S corporation's return after the statute of limitations had run on the corporate return. The taxpayers had deducted a pass-through loss on a 50%-owned S corporation. The IRS obtained an extension of the statute of limitations from the taxpayers but did not obtain an extension from the S corporation. The IRS's argument that the statute of limitations is triggered by the filing of an information return only if it is determined that the corporation itself owes a tax because of an invalid election or because of a valid application of one of the exceptions to no payment of tax by the S corporation was rejected. Adjustments to an S corporation's return are barred after the three-year limitations period unless the IRS obtains an extension from the corporation.

D.M. Kelley, CA-9, 89-1 USTC ¶ 9360, 877 F.2d 756. Cert. denied, 10/2/89.

[136,740]

INFORMATION WITH RESPECT TO CERTAIN FOREIGN CORPORATIONS

Sec. 6038 [1986 Code]. (a) REQUIREMENTS.—

(1) IN GENERAL.—Every United States person shall furnish, with respect to any foreign corporation which such person controls (within the meaning of subsection (e)(1)), such information as the Secretary may prescribe by regulations relating to—

(A) the name, the principal place of business, and the nature of business of such foreign corporation, and the country under whose laws incorporated;

(B) the post-1986 undistributed earnings (as defined in section 902(c)) of such foreign corporation,

(C) a balance sheet for such foreign corporation listing assets, liabilities, and capital;

(D) transactions between such foreign corporation and—

(i) such person,

(ii) any other corporation which such person controls, and

(iii) any United States person owning, at the time the transaction takes place, 10 percent or more of the value of any class of stock outstanding of such foreign corporation; and

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(E) a description of the various classes of stock outstanding, and a list showing the name and address of, and number of shares held by, each United States person who is a shareholder of record owning at any time during the annual accounting period 5 percent or more in value of any class of stock outstanding of such foreign corporation.

(F) such information as the Secretary may require for purposes of carrying out the provisions of section 453C.

The Secretary may also require the furnishing of any other information which is similar or related in nature to that specified in the preceding sentence or which the Secretary determines to be appropriate to carry out the provisions of this title.

(2) PERIOD FOR WHICH INFORMATION IS TO BE FURNISHED, ETC.—The information required under paragraph (1) shall be furnished for the annual accounting period of the foreign corporation ending with or within the United States person's taxable year. The information so required shall be furnished at such time and in such manner as the Secretary shall by regulations prescribe.

(3) LIMITATION.—No information shall be required to be furnished under this subsection with respect to any foreign corporation for any annual accounting period unless such information was required to be furnished under regulations in effect on the first day of such annual accounting period.

(4) INFORMATION REQUIRED FROM CERTAIN SHAREHOLDERS IN CERTAIN CASES.—If any foreign corporation is treated as a controlled foreign corporation for any purpose under subpart F of part III of subchapter N of chapter 1, the Secretary may require any United States person treated as a United States shareholder of such corporation for any purpose under subpart F to furnish the information required under paragraph (1).

(b) DOLLAR PENALTY FOR FAILURE TO FURNISH INFORMATION.—

(1) IN GENERAL.—If any person fails to furnish, within the time prescribed under paragraph (2) of subsection (a), any information with respect to any foreign corporation required under paragraph (1) of subsection (a), such person shall pay a penalty of \$1,000 for each annual accounting period with respect to which such failure exists.

(2) INCREASE IN PENALTY WHERE FAILURE CONTINUES AFTER NOTIFICATION.—If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the United States person, such person shall pay a penalty (in addition to the amount required under paragraph (1)) of \$1,000 for each 30-day period (or fraction thereof) during which such failure continues with respect to any annual accounting period after the expiration of such 90-day period. The increase in any penalty under this paragraph shall not exceed \$24,000.

(c) PENALTY OF REDUCING FOREIGN TAX CREDIT.—

(1) IN GENERAL.—If a United States person fails to furnish, within the time prescribed under paragraph (2) of subsection (a), any information with respect to any foreign corporation required under paragraph (1) of subsection (a), then—

(A) in applying section 901 (relating to taxes of foreign countries and possessions of the United States) to such United States person for the taxable year, the amount of taxes (other than taxes reduced under subparagraph (B)) paid or deemed paid (other than those deemed paid under section 904(c)) to any foreign country or possession of the United States for the taxable year shall be reduced by 10 percent, and

(B) in applying sections 902 (relating to foreign tax credit for corporate stockholder in foreign corporation) and 960 (relating to special rules for foreign tax credit) to any such United States person which is a corporation (or to any person who acquires from any other person any portion of the interest of such other person in any such foreign corporation, but only to the extent of such portion) for any taxable year, the amount of taxes paid or deemed paid by each foreign corporation with respect to which such person is required to furnish information during the annual accounting period or periods with respect to which such information is required under paragraph (2) of subsection (a) shall be reduced by 10 percent.

If such failure continues 90 days or more after notice of such failure by the Secretary to the United States person, then the amount of the reduction under this paragraph shall be 10 percent plus an additional 5 percent for each 3-month period, or fraction thereof, during which such failure to furnish information continues after the expiration of such 90-day period.

of qualified mortgage bonds, report the name, address (of the residence purchased with the subsidized financing) and social security number (SSN) of taxpayers receiving such financing, in accordance with the form to be developed and its instructions. The SSN may be solicited and collected by the use of Form W-9 and must be solicited and collected by the issuer at or before the time the financing is provided. The issuer may rely on the mortgage lender's solicitation and collection of the mortgagor's SSN. However, the issuer is ultimately responsible for the timely, accurate filing of the information return.

Reserve reporting under section 6045(e)(4)

The Service will reserve, until otherwise provided in regulations or forms and instructions, its authority under sections 6045(a) and 6045(e)(4) of the Code to require the real estate reporting person to report with respect to the presence of federally-subsidized indebtedness. Any such reporting requirements will not be effective for financing provided (or certificates issued) prior to the issuance of those requirements.

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Notice 90-70, 1990-2 CB 351.

.25 Form 1099-B.—Form 1099-B, Statement for Recipients of Proceeds from Broker and Barter Exchange Transactions, will be changed for 1985 to require brokers to indicate whether gross proceeds or gross proceeds less commissions and option premiums are being reported to the Service.

Announcement 84-72, I.R.B. 1984-28, 14.

.30 Magnetic media.—Procedures are set out to provide filers of information returns with meth-

ods for applying for approval to use a particular form of magnetic media or to request a waiver from the magnetic media filing requirements because of undue hardship.

IR News Rel. IR-86-81, June 18, 1986.

.45 Real estate reporting persons.—Information reporting requirements were supplied to a real estate broker that offered various sale options in connection with management relocation plans. The broker was required to file an information return on certain plan options, depending on whether it constituted a purchaser under the particular sale plan executed.

IRS Letter Ruling 9041046, July 16, 1990.

.50 Reproduction of forms.—See ¶ 43,602 and following.

.60 Treasury bonds and notes.—The Bureau of the Public Debt has assumed responsibility for reporting to the Internal Revenue Service redemptions of all registered Treasury notes and bonds.

Treasury Department News Rel., June 28, 1983.

.90 Prior law.—

G.C.M. 12433, XII-2 CB 91.

Mim. 4082, XII-2 CB 90.

Mim. 4099, XII-2 CB 93.

Mim. 4139, XIII-1 CB 91.

Mim. 4153, XIII-1 CB 92.

Mim. 4284, XIV-1 CB 128.

Mim. 4346, XIV-2 CB 146.

[¶ 37,040] RETURNS AS TO ORGANIZATION OR REORGANIZATION OF FOREIGN CORPORATIONS AND AS TO ACQUISITIONS OF THEIR STOCK

Sec. 6046 [1986 Code]. (a) REQUIREMENTS OF RETURN.—A return complying with the requirements of subsection (b) shall be made by—

(1) each United States citizen or resident who is on January 1, 1963, an officer or director of a foreign corporation, 5 percent or more in value of the stock of which is owned by a United States person (as defined in section 7701(a)(30)), or who becomes such an officer or director at any time after such date,

(2) each United States person who on January 1, 1963, owns 5 percent or more in value of the stock of a foreign corporation, or who, at any time after such date—

(A) acquires stock which, when added to any stock owned on January 1, 1963, has a value equal to 5 percent or more of the value of the stock of a foreign corporation, or

(B) acquires an additional 5 percent or more in value of the stock of a foreign corporation,

(3) each person (not described in paragraph (2)) who, at any time after January 1, 1987, is treated as a United States shareholder under section 953(c) with respect to a foreign corporation, and

(4) each person who at any time after January 1, 1963, becomes a United States person while owning 5 percent or more in value of the stock of a foreign corporation.

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In the case of a foreign corporation with respect to which any person is treated as a United States shareholder under section 953(c), paragraph (1) shall be treated as including a reference to each United States person who is an officer or director of such corporation.

(b) **FORM AND CONTENTS OF RETURNS.**—The returns required by subsection (a) shall be in such form and shall set forth, in respect of the foreign corporation, such information as the Secretary prescribes by forms or regulations as necessary for carrying out the provisions of the income tax laws, except that in the case of persons described only in subsection (a)(1) the information required shall be limited to the names and addresses of persons described in paragraph (2) or (3) of subsection (a).

(c) **OWNERSHIP OF STOCK.**—For purposes of subsection (a), stock owned directly or indirectly by a person (including, in the case of an individual, stock owned by members of his family) shall be taken into account. For purposes of the preceding sentence, the family of an individual shall be considered as including only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(d) **TIME FOR FILING.**—Any return required by subsection (a) shall be filed on or before the 90th day after the day on which, under any provision of subsection (a), the United States citizen, resident, or person becomes liable to file such return (or on or before such later day as the Secretary may by forms or regulations prescribe).

(e) **LIMITATION.**—No information shall be required to be furnished under this section with respect to any foreign corporation unless such information was required to be furnished under regulations which have been in effect for at least 90 days before the date on which the United States citizen, resident, or person becomes liable to file a return required under subsection (a).

(f) **CROSS REFERENCE.**—

For provisions relating to penalties for violations of this section, see sections 6679 and 7203.

.01 Amended by P.L.s 100-647, 97-248, 94-455 (Deadwood Act), 87-834 and 86-780. For details, see the Code Volumes.

Committee Reports on P.L. 100-647

.09 **Information returns.**—The bill extends the information reporting requirements for U.S. persons who are 5 percent-or-more shareholders of foreign corporations and U.S. citizens or residents who are officers or directors of such corporations so that they apply to all persons who are U.S. shareholders in controlled foreign corporations by virtue of the new captive insurance company rules and all U.S. officers and directors of companies that are controlled foreign corporations by virtue of those rules.—Senate Committee Report.

Conference agreement.—The conference agreement generally follows the Senate amendment.—Conference Committee Report.

Committee Report on P.L. 97-248

.18 The committee bill authorizes the Secretary to delay the reporting of transactions covered by section 6046 (foreign corporations) and section 6048 (foreign trusts) until some date after the 90th day after the transaction that must be reported.

The provision applies to returns due after the date of enactment.—Senate Finance Committee Report.

.19 Committee Reports on P.L. 87-834 are at 1962-3 CB 405.

.20 Committee Report on P.L. 86-780 is at 1960-2 CB 897.