



Federal Register

**Monday,
October 18, 2010**

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 31, 301 et al.

**Basis Reporting by Securities Brokers and
Basis Determination for Stock; Final Rule**

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1, 31, 301, and 602**

[TD 9504]

RIN 1545-B166

Basis Reporting by Securities Brokers and Basis Determination for Stock**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

SUMMARY: This document contains final regulations on broker reporting of sales of securities and on the basis of securities. These final regulations reflect amendments under the Energy Improvement and Extension Act of 2008 that require brokers to report a customer's adjusted basis in sold securities and classify gain or loss as long-term or short-term, and that allow taxpayers to compute the basis of certain stock by averaging. The regulations affect brokers and custodians that make sales or transfer securities on behalf of customers, issuers of securities, and taxpayers that purchase or sell securities. The regulations also reflect amendments that provide brokers and others until February 15 to furnish certain information statements to customers.

DATES: Effective Date: These regulations are effective on October 18, 2010.

Applicability Date: For dates of applicability, see §§ 1.1012-1(c)(10), 1.1012-1(e)(12), 1.6045A-1(d), and 1.6045B-1(g).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations under sections 408, 6039, 6042, 6044, 6045, 6045A, 6045B, 6049, 6051, 6721, and 6722, Stephen Schaeffer of the Office of Associate Chief Counsel (Procedure and Administration) at (202) 622-4910; concerning the regulations under section 1012, Edward C. Schwartz of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 622-4960 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

The collection of information contained in these final regulations related to the furnishing of information in connection with the transfer of securities has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2186. The collection of information in these final regulations in

§§ 1.6045-1(c)(3)(xi)(C) and 1.6045A-1 is required to comply with the provisions of section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343 (122 Stat. 3765, 3854 (2008)).

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.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1), the Regulations on Employment Tax and Collection of Income Tax at the Source (26 CFR part 31), and the Regulations on Procedure and Administration (26 CFR part 301).

On December 17, 2009, the Treasury Department and the IRS published in the **Federal Register** (74 FR 67010) proposed regulations (REG-101896-09) relating to information reporting by brokers, transferors, and issuers of securities under sections 6045, 6045A, and 6045B of the Internal Revenue Code (Code), and the computation of basis under section 1012. Written and electronic comments responding to the notice of proposed rulemaking were received, and a public hearing was held on February 17, 2010.

After considering the comments, the proposed regulations are adopted as amended by this Treasury decision. The comments and revisions are discussed in the preamble.

Summary of Comments and Explanation of Revisions*1. Effective Date*

Commentators requested a delay in the effective date of the reporting requirements to allow adequate time to administratively implement the rules. The final regulations do not adopt this request as inconsistent with the statutorily mandated effective dates. However, in order to promote industry readiness to comply with the reporting requirements beginning in 2011, a separate notice is being issued with these final regulations to provide transitional relief from the transfer reporting requirements under section 6045A (discussed in more detail later in this preamble). See Notice 2010-67. The notice provides that the IRS will not assert penalties under section 6722 for a failure to furnish a transfer statement

for any transfer of stock in 2011 that is not incidental to the stock's purchase or sale. Further, a receiving broker may treat this stock as a noncovered security. See § 601.601(d)(2). Additionally, the IRS will continue to work closely with stakeholders to ensure the smooth implementation of the provisions in these regulations, including the mitigation of penalties in the early stages of implementation for all but particularly egregious cases.

*2. Basis Determination—Average Basis Method**a. Definition of Dividend Reinvestment Plan**i. Acquisition of Stock*

Consistent with section 1012(d)(4)(B), the proposed regulations provided that stock is acquired in connection with a dividend reinvestment plan (DRP) if the stock is acquired under the DRP or if the dividends paid on the stock are subject to the DRP. A commentator stated that DRP classification under the proposed regulations is highly factual and brokers will have difficulty determining if stock is in a DRP. The commentator recommended that the final regulations provide that a broker should be required to treat stock as DRP stock only if the broker receives documentation that a plan is a DRP and knows or has reason to know that the stock is subject to the plan. The final regulations do not adopt this recommendation as unduly restrictive.

ii. Dividend Reinvestment

Section 1012(d)(4)(A) defines a *dividend reinvestment plan* as an arrangement under which dividends are reinvested in identical stock. The proposed regulations provided that a plan qualifies as a DRP if the written plan documents require that at least 10 percent of every dividend paid on any share of stock is reinvested in identical stock.

Several commentators recommended eliminating the 10 percent rule because it will require many existing plans to amend their plan documents at considerable expense. The commentators suggested that a plan should qualify as a DRP if the plan documents merely allow the reinvestment of dividends.

The final regulations do not adopt this comment, which is inconsistent with the legislative intent that basis averaging is appropriate when dividends actually are reinvested. If a stock pays dividends, a plan should be required to reinvest a minimum percentage of dividends to qualify as a DRP. Ten percent is a reasonable minimum percentage.

iii. Definition of Dividend

The proposed regulations did not define the term dividend. Commentators recommended that the final regulations define dividend broadly to include any distribution on stock, including ordinary dividends, capital gains distributions, non-taxable returns of capital, and cash in lieu of fractional shares.

The final regulations do not define dividend. They provide that only dividends within the meaning of section 316 are subject to the 10 percent reinvestment requirement. The final regulations also clarify that a DRP may average the basis of stock acquired by reinvesting distributions that are not dividends under section 316.

b. Definition of Regulated Investment Company

The proposed regulations did not address the definition of a regulated investment company (RIC). Under § 1.1012-1(e)(5)(ii), a unit investment trust (UIT) is treated as a RIC for basis averaging purposes only if the UIT meets certain requirements. A commentator suggested that the regulations should delete this provision and allow all UITs that elect to be treated as RICs to use the average basis method.

The proposed regulations did not address this issue. Therefore, the final regulations do not adopt this suggestion. The treatment of UITs as RICs for purposes of allowing basis averaging may be considered for future guidance.

c. Definition of Identical Stock

The proposed regulations provided that stock is identical if it has the same Committee on Uniform Security Identification Procedures (CUSIP) number, except that stock in a DRP is not identical to stock not in a DRP. The proposed regulations also provided that stock acquired in connection with a DRP includes transfers of identical stock into a DRP. A commentator noted that, if stock in a DRP is not identical to stock not in a DRP, then a taxpayer could not transfer identical stock into a DRP.

To address this comment, the final regulations delete from the definition of identical stock the rule that stock in a DRP is not identical to stock not in a DRP. Because this rule served to limit the average basis method to stock in a DRP, the final regulations provide that, for purposes of computing the average basis of identical stock, stock in a DRP is not identical to stock with the same CUSIP number that is not in a DRP.

d. Time and Manner of Making the Average Basis Method Election

i. Requirement for Affirmative Election

A commentator requested clarification on whether a taxpayer is treated as electing the average basis method if the taxpayer fails to affirmatively elect a basis determination method and the average basis method is the broker's default method. In response to this comment, the final regulations clarify that a taxpayer's failure to notify a broker that the taxpayer elects a basis determination method is not an election of a method. Thus, a taxpayer that fails to affirmatively elect the average basis method has not made an election that the taxpayer may revoke. If the average basis method is the broker's default method, the taxpayer may change from that method prospectively.

ii. Scope of Average Basis Method Election

The proposed regulations required a taxpayer to elect the average basis method separately for each account holding stock that is a covered security for which the method is permissible. A commentator suggested that the final regulations permit one average basis method election to encompass all eligible accounts with a custodian or agent, as well as future accounts with that custodian or agent. The final regulations adopt this comment. The final regulations also clarify that the average basis method election must identify each account and the stock in the account to which the election applies.

iii. Written Average Basis Method Election

The proposed regulations provided that a taxpayer must notify a custodian or agent of the average basis method election in writing. A commentator stated that this requirement should be eliminated because it is difficult to implement and confusing to taxpayers who use the average basis method for RIC stock acquired before 2012. The commentator opined that the writing requirement will prevent brokers from using the average basis method as their default method.

The final regulations do not adopt this comment. The writing requirement ensures that both taxpayers and brokers have a record of the fact and scope of the election. The requirement applies to a taxpayer's election to use average basis and does not prevent a broker from selecting average basis as a default method.

Commentators requested that the final regulations clarify that a taxpayer may

make a written average basis election electronically. The final regulations adopt this comment.

iv. Transition Rule From Double-Category Method

The proposed regulations provided a transition rule effective on the publication date of the final regulations for stock for which a taxpayer uses the double-category method of determining average basis. A commentator requested that the final regulations delay the effective date of the transition rule to allow time for programming and accounting system changes. The final regulations adopt this comment and provide an April 1, 2011, effective date for the transition rule.

e. Change in Method of Accounting

The proposed regulations stated that a change in basis determination method is a change in method of accounting requiring the consent of the Commissioner. A commentator opined that a change to or from the average basis method is not a change in method of accounting that requires the consent of the Commissioner. Another commentator requested that a change to or from the average basis method be allowed without the Commissioner's consent or that the process be simplified. The commentator suggested that the final regulations require taxpayers to notify their custodians or agents of the change.

The final regulations provide rules governing the time and manner of electing or changing from the average basis method, determining the basis of stock following a change between the average basis method and a cost basis method, and identifying stock sold. The regulations permit taxpayers to elect or change from the average basis method at any time during a taxable year and to choose a method to identify stock sold on a sale-by-sale basis. These rules do not involve the elements of consistency and regularity inherent in methods of tax accounting, which generally apply on the basis of a taxable year. Therefore, the final regulations provide that a basis determination method for stock is not a method of accounting and a change in a method of determining basis for stock is not a change in method of accounting to which sections 446 and 481 apply.

f. Account by Account Rules

The proposed regulations provided that DRP or RIC stock acquired before January 1, 2012, is treated as held in a separate account from DRP or RIC stock acquired on or after that date. The proposed regulations also provided that

covered and noncovered securities are treated as held in separate accounts.

The purpose of the separate account rule is to ensure that covered securities and noncovered securities are treated as held in separate accounts. DRP and RIC stock acquired before January 1, 2012, are noncovered securities. Therefore, the two separate account rules are duplicative. The final regulations eliminate the separate account rule for DRP and RIC stock based on the date the stock is acquired and retain the separate account rule for covered and noncovered securities because this rule is more precise.

g. Single-Account Election

i. Identity of Account Ownership

A commentator requested clarification on whether a single-account election may apply to an account owned by a taxpayer singly and an account a taxpayer owns jointly with another party. In response to this comment, the final regulations clarify that a single-account election applies only to accounts with the same ownership.

ii. Effect on the Single-Account Election of Revoking or Changing From the Average Basis Method

The proposed regulations provided that a RIC, DRP, or broker may make an irrevocable election to treat as held in a single account identical RIC stock or DRP stock held or treated as held in separate accounts for which the taxpayer has elected to use the average basis method. The proposed regulations also allowed a taxpayer to revoke an average basis method election by the earlier of one year from the date of the election or the first disposition of the stock. The basis of stock to which a revocation applies is its basis before averaging. After the revocation period expires, a taxpayer may change from the average basis method to another method prospectively. The basis of stock to which a change applies is the basis immediately before the change.

Commentators asked how a taxpayer's revocation of or change from the average basis method affects a single-account election. In response to this comment, the final regulations provide that a taxpayer's revocation of an average basis method election for a particular stock voids the single-account election for that stock. Thus, taxpayers and brokers must retain pre-election basis information for averaged shares for as long as the taxpayer may revoke the average basis method election. Stock that becomes a covered security only as a result of a single-account election no

longer is a covered security after the single-account election is voided.

After a taxpayer changes from, rather than revokes, the average basis method, the shares that were treated as held in a single account before the change continue to be covered securities and treated as held in a single account, and the basis of each share of stock remains the same as the basis immediately before the change.

iii. Accurate Basis Information Requirement

Under the proposed regulations, a RIC, DRP, or broker may make a single-account election only for stock for which it has accurate basis information, which is information that the RIC, DRP, or broker neither knows nor has reason to know is inaccurate.

Commentators suggested eliminating the accuracy requirement for the single-account election because it is subjective and increases uncertainty. A commentator noted that the accuracy requirement may deter RICs from making a single-account election because of uncertainty over whether basis determination practices in earlier years satisfy the standard. A commentator suggested permitting the use of any data that has been maintained to determine the basis of noncovered stock included in the single-account election. A commentator recommended that brokers be permitted to use taxpayer-provided information to determine the basis of noncovered stock in making the single-account election. A commentator requested penalty relief if a broker lacks actual knowledge that information is inaccurate.

The final regulations retain the accuracy requirement and the "neither knows nor has reason to know" standard as striking an appropriate balance between the need for accuracy and flexibility. The "neither knows nor has reason to know" test is consistent with existing standards familiar to brokers for demonstrating reasonable cause for penalty relief under section 6724.

3. Other Basis Determination Issues

a. Use of Agent To Select Basis Determination Method

Commentators suggested that the final regulations explicitly allow a taxpayer's agent, such as an asset manager, investment advisor, or introducing broker, to select a basis determination method for a taxpayer. The final regulations do not adopt this comment. However, a taxpayer may authorize an agent to select a basis determination method under general agency principles.

b. Cost Basis of Multiple Lots Purchased on One Day

Commentators suggested that the final regulations allow brokers to average the basis of identical stock purchased or sold on the same day. In response to this comment, the final regulations provide that a taxpayer must determine the basis of identical stock by averaging the basis of each share if the stock is purchased at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation that reports an aggregate total cost or an average cost per share. However, a taxpayer may determine the basis of the stock by the actual cost per share if the taxpayer notifies the broker in writing of this intent. The taxpayer must notify the broker by the earlier of the date of the sale of any of the stock for which the taxpayer received the confirmation or one year after the date of the confirmation. A broker may extend the one-year period but the taxpayer must notify the broker no later than the date of sale of any of the stock.

c. Identification of Securities Sold

i. Standing Orders

The proposed regulations stated that a standing order for the specific identification of stock is treated as an adequate identification. A commentator suggested that the final regulations clarify that brokers are not required to accept standing orders. The proposed regulations allowed standing orders to serve as an adequate identification but did not require taxpayers or brokers to use or accept them. Therefore, the final regulations do not adopt this comment.

ii. Confirmation of Sales

The proposed regulations retained the rule that brokers or other agents must supply written confirmation of a taxpayer's specific identification following a sale or transfer. A commentator stated that the final regulations should eliminate this requirement and opined that the Form 1099-B, "Proceeds From Broker and Barter Exchange Transactions," provides a sufficient confirmation of the transaction. Alternatively, the commentator suggested eliminating the confirmation requirement if the stock was identified by standing order. Another commentator suggested that a periodic customer account statement should qualify as a written confirmation.

The final regulations retain the requirement for written confirmation of all sales and transfers of specifically identified stock as a reasonable

safeguard that specific identification orders are properly executed. However, in response to these comments, the final regulations provide that account statements or other documents a broker or agent periodically provides to a taxpayer may serve as written confirmation if provided to the taxpayer within a reasonable time after the sale or transfer.

iii. Application of FIFO Rule Account by Account

The proposed regulations provided that if a taxpayer sells or transfers stock and does not adequately identify the stock sold or transferred, the shares of stock deemed sold or transferred are the earliest acquired shares (FIFO rule). A commentator suggested that the final regulations clarify that the FIFO rule applies on an account by account basis.

The account by account rule in section 1012(c)(1) relates to stock eligible for the average basis method. This rule overrides the earlier requirement that taxpayers must apply the average basis method across accounts and does not mandate similar treatment for cost basis stock. Incorporating an account by account requirement into the FIFO rule creates unnecessary complexity. Therefore, the final regulations do not adopt this comment.

4. Returns of Brokers

a. Form and Manner of Broker Reporting Requirements

The proposed regulations provided that brokers must report on Form 1099-B adjusted basis and whether any gain or loss is long-term or short-term for a covered security. A commentator suggested that the final regulations allow long-term and short-term sales to be reported on the same return to improve reconciliation between the broker's Form 1099-B and the customer's Schedule D, "Capital Gains and Losses." The final regulations do not adopt the suggestion. As noted by another commentator, brokers that use substitute statements may already segregate long-term sales from short-term sales on the same statement in the same manner as on Schedule D, which segregates long-term transactions from short-term transactions.

Consistent with the rule for aggregating the cost basis of multiple lots purchased on one day (discussed earlier in this preamble), the final regulations provide that a broker must report the basis of purchased stock and the gross proceeds of sold stock by averaging the basis or proceeds of each share if the stock is purchased or sold

at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the taxpayer that reports an aggregate total price or an average price per share. However, the final regulations do not permit a broker to average the basis or proceeds of stock if the customer timely notifies the broker in writing of an intent to determine the basis or proceeds by the actual cost or proceeds per share. A notification of an intent to determine the basis by the actual cost per share is timely if made in accordance with § 1.1012-1(c)(1)(ii). A notification of an intent to determine the proceeds by the actual proceeds per share is timely if the broker receives the notification by January 15 of the calendar year following the year of the sale. A broker may extend the January 15 deadline but not beyond the due date for filing Form 1099-B.

The proposed regulations moved the modifier "for cash" in the definition of sale to clarify that Form 1099-B reporting is required under section 6045 for a sale only when and to the extent cash proceeds are paid to the seller. Commentators suggested further clarifying that this limitation applied to all disposition events listed in the definition. The final regulations adopt this request.

Currently, sales of fractional shares of less than \$20 are exempted from broker reporting. Commentators recommended expanding this exception to sales of fractional shares of less than \$100. The final regulations do not adopt this request.

b. Identification of a Security as Stock

Under section 6045(g)(3)(C), the reporting requirements before 2013 apply only to stock. The proposed regulations provided that, for basis reporting purposes, any security an issuer classifies solely as stock is treated as stock. If an issuer has not classified the security, the security is not treated as stock unless the broker knows, or has reason to know, that the security reasonably is classified as stock under general tax principles.

Commentators suggested that issuers should be required to classify securities and that a security should be classified as stock only if the issuer has classified it as stock. The final regulations do not adopt these suggestions. It is appropriate to require a broker to report basis if the broker knows the security is stock for Federal tax purposes even if the issuer has not classified the security.

Commentators suggested that the IRS create and maintain a list of every

security classified as stock. The final regulations do not adopt this comment.

Commentators requested that brokers only treat securities as stock if they know that the security is reasonably classified as stock under general tax principles instead of when they have reason to know. The final regulations adopt this comment.

Commentators requested guidance addressing when an issuer fails to classify a security and brokers disagree whether the security is stock for Federal tax purposes. The final regulations clarify that a broker is not bound by another broker's classification. As long as the issuer has not classified the security as stock, a broker is not required to treat a security as stock despite another broker's classification unless the broker knows that the security is stock for Federal tax purposes.

The proposed regulations treated any share of stock in a corporation described in § 301.7701-2(b) as stock for basis reporting purposes. Commentators asked whether interests in a real estate investment trust (REIT) or exchange-traded fund (ETF) are treated as stock under that definition. The final regulations clarify that any share of stock or any interest treated as stock in an entity organized as, or treated for Federal tax purposes as, a corporation (foreign or domestic) is stock for basis reporting purposes. Therefore, interests treated as stock in REITs and ETFs are treated as stock for basis reporting purposes if the issuers are taxable as corporations under the Code.

Commentators also asked whether a depositary receipt representing shares of stock in a foreign corporation (an ADR) is treated as stock. The final regulations clarify that an ADR is stock for basis reporting purposes.

c. Covered Securities

The proposed regulations defined covered security to include a specified security acquired through a sale transaction. Commentators asked whether stock acquired through a stock split, the exercise of rights distributed by an issuer, the grant of restricted stock by an employer, and other scenarios constituted acquisitions through sale transactions. In response to these comments, the final regulations eliminate the sale-transaction rule and define covered security to include a specified security acquired for cash. Therefore, stock acquired through the exercise of rights distributed by an issuer is a covered security while restricted stock granted by an employer is not a covered security because the former is acquired for cash and the latter

is not. The final regulations also treat a security acquired due to a stock dividend, stock split, reorganization, redemption, stock conversion, recapitalization, corporate division, or other similar action as if it were acquired for cash and, therefore, as a covered security if the basis of the new security is determined from the basis of a covered security.

The proposed regulations treated all stock acquired in 2011 as covered securities except RIC stock and DRP stock, which are not covered securities unless acquired in 2012 or later. Commentators suggested that stock acquired in 2011 no longer be a covered security if placed into a DRP. In response to this comment, the final regulations provide that stock acquired in 2011 no longer is a covered security if transferred to a DRP in 2011, but remains a covered security if transferred to a DRP after 2011.

The final regulations also clarify that a security acquired by a foreign person that § 1.6045-1(g)(1)(i) exempts from Form 1099-B reporting at the time of acquisition is not a covered security even if the customer later loses this exemption, unless the broker knows or should have known (including by reason of information that the broker is required to collect under section 1471 or 1472) that the customer is not a foreign person when the security is acquired.

A commentator requested that a broker selling stock owned by a domestic partnership be exempted from basis reporting if the broker also prepared the customer's Form 1065, "U.S. Return of Partnership Income," because the partnership return also reports the basis of securities sold by the partnership. The final regulations do not adopt this request. The commentator also requested that a broker selling stock owned by a foreign partnership be exempted from basis reporting when reporting the sale directly to U.S. partners under § 1.6049-5(d)(3)(ii) because any cost basis information reported by the broker would be erroneous. The final regulations adopt this request.

d. Foreign Intermediaries

The proposed regulations included in the definition of broker non-U.S. payors and non-U.S. middlemen to the extent provided in a withholding agreement described in § 1.1441-1(e)(5)(iii) between a qualified intermediary and the IRS. Commentators requested that the regulations instead exempt all foreign qualified intermediaries from basis reporting. In response to these comments, the final regulations do not adopt the proposed changes to the

definition of broker. Thus, a qualified intermediary that is not a U.S. payor or U.S. middleman as described in § 1.6049-5(c)(5) will not be treated as a broker with respect to sales effected at an office outside the United States. The Treasury Department and the IRS also note that the recently enacted provisions of chapter 4 of Subtitle A of the Code will impose certain information reporting requirements on foreign financial institutions that enter into an agreement with the IRS under section 1471(b). The Treasury Department and the IRS intend to issue future guidance coordinating the reporting requirements under section 6045 with the reporting requirements under section 1471. In addition, section 1471 allows a person who has entered into an agreement under section 1471(b) to elect to report certain information required under sections 6041, 6042, 6045, and 6049. The Treasury Department and IRS anticipate that, if a foreign financial institution that has entered into an agreement under section 1471(b) makes such an election, the agreement would specify the extent of such person's reporting obligations with respect to information required to be reported under section 6045.

Commentators requested that the regulations also exempt nonqualified intermediaries from basis reporting, even if the nonqualified intermediary is treated as a broker under § 1.6045-1 (for example, where the nonqualified intermediary effects the sale within the United States). The regulations do not adopt this request as contrary to the purposes of the statute.

e. Treatment of Foreign Securities

Commentators requested that a security issued by a non-U.S. issuer be excluded from the definition of a covered security. The commentators questioned whether foreign issuers will comply with section 6045B and report the U.S. tax consequences of their corporate actions. The final regulations do not adopt this comment because section 6045 does not distinguish between U.S. and non-U.S. issuers of securities. The regulations permit but do not require a broker to adjust basis for unreported corporate actions.

f. Determination of Basis and Whether Gain or Loss on the Sale Is Long-Term or Short-Term

The proposed regulations required brokers to adjust the reported basis to reflect information received on a transfer statement or issuer return (discussed in more detail later in this preamble) but otherwise do not require brokers to consider transactions,

elections, or events occurring outside the account. Commentators asked whether brokers must apply certain Code provisions in determining reported basis.

i. Regulated Investment Companies and Real Estate Investment Trusts

Under sections 852(b)(4)(A) and 857(b)(8), a loss on the sale of RIC or REIT shares held 6 months or less is long-term to the extent of capital gain dividends (distributed and undistributed) on the shares. One commentator asked whether brokers are required to adjust the character of the loss for the effects of sections 852(b)(4)(A) or 857(b)(8). Under section 852(b)(4)(B), if a shareholder in a RIC sells shares at a loss and held the shares for six months or less, the loss is disallowed to the extent the shareholder received a tax-exempt dividend. One commentator asked whether brokers are required to adjust the amount of the loss for the effects of section 852(b)(4)(B). The final regulations clarify that adjustments under sections 852(b)(4)(A), 857(b)(8), and 852(b)(4)(B) are not required because the payment of tax-exempt dividends and the existence of capital gain dividends (distributed and undistributed) may or may not occur in the same account as the sale. Further, requiring adjustments would also necessitate requiring brokers to include information on transfer statements about whether and when these types of dividends have been received or reported.

A commentator requested the IRS to exercise its authority under section 852(b)(4)(E) to shorten the holding period under section 852(b)(4) to 31 days. This request is outside the scope of the current project and may be considered for future guidance.

A commentator requested limiting the application of section 852(f), relating to load charges on the purchase of RIC stock, to reinvestments in securities with the same CUSIP consistent with proposed legislation that would limit section 852(f) to reinvestments by January 31st of the year following the disposition of the load-paying shares. The final regulations do not adopt this suggestion.

ii. Straddles and Hedging Transactions

Several commentators asked whether brokers are required to adjust their determination of holding period for securities in a single account if the securities are part of a hedging transaction, as defined in § 1.1221-2(b), or a straddle, as defined in section 1092. They also asked whether the provisions of section 1233(b) must be applied to

adjust the holding period or character of gain of a security when a customer has, in a single account, sold short some securities and holds or later acquires substantially identical securities. The fact patterns that fall under sections 1092 and 1233(b) and § 1.1221-2(b) include situations when the CUSIPs of the positions may not be identical as well as situations when the CUSIPs of the positions are identical. Regardless, under the final regulations, brokers are not required to adjust the holding period or character of gain under sections 1092 and 1233(b) and § 1.1221-2(b).

iii. Events Occurring Outside the Account

The proposed regulations required a broker to take into account in determining basis any corporate action reported by an issuer of the security. Commentators requested clarification on how to determine basis after a corporate action that results in different treatment for minority shareholders than for a majority shareholder. The final regulations permit a broker to treat all customers after a corporate action as minority shareholders of the corporation unless the broker knows that the customer is a majority shareholder and the issuer reports the action's effect on the basis of majority shareholders.

The proposed regulations did not permit brokers to apply section 1259 (regarding constructive sales) and section 475 (regarding the mark-to-market method of accounting) when reporting adjusted basis and whether any gain or loss on the sale of a security is long-term or short-term. A commentator requested that reporting adjustments be permitted under these sections even if not required. The final regulations adopt this request. Another commentator asked whether brokers must apply section 1296 (regarding mark-to-market accounting for marketable stock in a passive foreign investment company). The final regulations provide that these adjustments are not required. A broker should inform customers of any non-required adjustments so that customers will not duplicate these adjustments.

iv. Basis Determination Method

The proposed regulations required brokers to report basis using the basis determination method a customer elects. Commentators requested that brokers be permitted to offer limited basis reporting methods even if this practice would force a customer that wanted a different method to move his or her account to a broker that offered reporting under that method. The final

regulations do not adopt this request because section 1012 permits customers to report basis by a different permissible method than the default method selected by the broker and section 6045 requires brokers to follow instructions from customers regarding this selection.

v. Long-Term or Short-Term Gain or Loss

Section 1222 defines long-term or short-term gain or loss by reference to whether a taxpayer has held a capital asset for more than one year. A commentator noted that accounting standards may define a year in different ways and requested that the final regulations adopt a uniform definition of a year for reporting purposes, such as 360 or 365 days. The final regulations do not adopt this comment. The rules for determining whether a taxpayer has held an asset for more than one year are well established. No good justification exists for adopting a different rule solely for broker reporting purposes.

vi. Commissions and Options Proceeds

The proposed regulations required brokers to adjust basis for commissions and transfer taxes incurred from a purchase and, if not subtracted from gross proceeds, commissions charged for a sale and transfer taxes incurred on a sale. Commentators requested that the final regulations expand the definition of gross proceeds to explicitly permit adjustments for transfer taxes incurred on sale. The final regulations incorporate this suggestion.

The proposed regulations did not alter the current rule under which some brokers report proceeds reduced by sales commissions and inform customers of this fact through a flag in Box 2 on Form 1099-B. Instead, in requiring brokers to account for sales commissions, the proposed regulations permitted brokers to either reduce the reported proceeds or increase the reported basis by the amount of the sales commissions. Commentators requested that all brokers be required to reduce the reported proceeds for commissions and transfer taxes from the sale. This suggestion is not adopted but may be considered in future guidance.

Commentators requested that brokers be permitted to adjust basis for option premiums when an option is exercised in purchasing or selling a security even though this reporting is not mandatory until 2013. The proposed regulations permitted this treatment, which is also permitted under the final regulations.

vii. Employee Compensation-Related Issues

Section 6045(h) requires certain basis reporting adjustments to account for income recognized on options granted or acquired beginning in 2013. Because the option reporting requirements do not take effect until 2013, the proposed regulations provided that, for stock acquired in 2011 and 2012 in connection with employee stock purchase plans and incentive stock options, brokers did not need to adjust basis to account for the income recognized by the purchaser. Commentators suggested that this stock be excluded from basis reporting until 2013 because purchasers may improperly rely on the reported basis. The final regulations do not adopt this suggestion. Purchasers will be assisted by IRS forms and publications, including Form 3921, "Exercise of an Incentive Stock Option Under Section 422(b)" (in development), and Form 3922, "Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)" (in development), in determining basis for stock acquired in 2011 and 2012.

Commentators also requested that the final regulations not require basis reporting for stock acquired through an employee stock purchase plan because Form 3922 will report the exercise price per share and the fair market value of the stock on both the grant date and the exercise date. The final regulations do not adopt this comment because Form 3922 must be filed when a purchaser first transfers legal title to the stock, not necessarily when the purchaser sells the stock, and these events may occur many years apart. Further, Form 3922 will not identify which shares are sold and will not reflect stock splits or other corporate actions between the date of reporting on Form 3922 and the date of sale.

viii. Payments in a Foreign Currency

The proposed regulations provided that brokers receiving payments made in foreign currency should report the amounts paid by converting each payment to a U.S. dollar amount using a spot rate or spot rate convention determined at the time the broker receives the payment. Commentators expressed the concern that determining the spot rate on the payment receipt date treats all sales as if the customer had elected under section 988 to incorporate the amount of gain or loss on the currency into the gain or loss on the sale of the security. However, the section 988(d) election is only relevant in the context of certain hedges. In the non-hedging context, long-standing

rules provide that investors must always compute gain or loss by determining adjusted basis using the spot rate as of the payment receipt date. *See* Rev. Rul. 54-105 (1954-1 CB 12). Even in the hedging context, investors must compute gain or loss under these same rules unless they make the election under section 988. The final regulations therefore adopt the proposed rule. *See* § 601.601(d)(2).

Commentators asked whether the payment receipt date is the date the broker receives payment from the customer or the settlement date of the purchase. The final regulations continue to treat the payment receipt date as the date the broker receives payment but clarify that, for securities traded on an established securities market, the payment receipt date is the settlement date of the purchase. *See* § 1.988-2(a)(2)(iv). The final regulations also clarify that the same foreign currency reporting rules apply to transfer statements.

g. Customer Identification of Securities

The proposed regulations required brokers to report the sales of securities on a first-in, first-out basis within an account unless the customer notified the broker by means of making an adequate and timely identification of the securities to be sold. Commentators asked that, for reporting purposes, brokers be permitted to rely on customers' standing orders or instructions for the sale or transfer of shares of stock. The proposed rule by cross reference to § 1.1012-1(c) already permitted standing orders to serve as an adequate identification for both sales and transfers of stock. Therefore, the final regulations adopt the proposed rule.

Commentators asked how to apply the first-in, first-out reporting rule when the broker does not know the acquisition date of some shares of the security within the account. The final regulations clarify that brokers must report the sale of any shares or units of a security in the account with unknown acquisition dates first. Customers are expected to report basis consistently with broker reporting.

h. Reporting of Wash Sales

Section 6045(g)(2)(B)(ii) requires that, except as otherwise provided by the Secretary, a broker must apply the wash sale rules of section 1091 when reporting the adjusted basis of a covered security if the purchase and sale transactions resulting in a wash sale occur in the same account and are for identical securities (rather than substantially identical securities). A

commentator objected to limiting broker reporting of wash sales to instances in which the purchase and sale transactions occur in the same account and are for identical securities. The final regulations retain these two statutory limitations but do not prohibit brokers from reporting wash sales across accounts or for substantially identical securities.

A commentator asked whether brokers must report wash sales when the purchase and sale transactions are initiated in different accounts but the purchased shares are later transferred into the account of the sold shares. The final regulations clarify that brokers need not report wash sales in these circumstances because the purchase and sale transactions do not occur in the same account.

Another commentator asked whether brokers must report wash sales when the purchase and sale transactions occur in the same account but the purchased security is transferred out of the account prior to the wash sale. The commentator opposed applying the wash sale reporting rules in this scenario because the rules would require a broker to adjust basis for a security no longer in the broker's custody. The final regulations clarify that brokers do not need to report a wash sale if the purchased security is transferred to another account before the wash sale.

Commentators asked whether brokers must report wash sales when stock is treated as held in a separate account under the basis method determination rules of § 1.1012-1. The final regulations clarify that the account limitation for wash sale reporting applies to stock treated as held in separate accounts. Thus, a broker is not required to report a wash sale involving a covered security and a noncovered security unless a single-account election is in effect. Similarly, a broker is not required to report a wash sale involving stock in a DRP and identical stock that is not in a DRP.

Commentators requested exclusions from broker reporting of wash sales for de minimis amounts, sales of fractional shares, automatic dividend reinvestments, or compensation-related acquisitions. The final regulations do not adopt these proposals because, as other commentators noted, the substantive wash sale rules under section 1091 do not exclude these items. Creating additional exclusions solely for broker reporting purposes would introduce further discrepancies between broker reporting and customer reporting of wash sales.

Commentators requested an exclusion from broker reporting of wash sales for

customers that have made valid and timely mark-to-market accounting method elections under section 475 or, in the alternative, for customers that execute 10,000 trades in a single year. Other commentators stated that excluding these customers may be more burdensome than reporting wash sales for these accounts. The final regulations permit brokers to exclude from wash sales reporting a customer that has informed the broker in writing that the customer has made an election under section 475(f)(1). The exclusion only applies to the accounts identified by the customer as solely containing securities subject to the election. The final regulations also clarify that a taxpayer that is not a trader in securities within the meaning of section 475(f)(1) does not become a trader in securities, or create an inference that it is a trader in securities, by notifying a broker that it has made a valid and timely election under section 475(f)(1).

Commentators asked that Form 1099-B and the transfer statement indicate whether the holding period of a security has been adjusted to reflect a wash sale. The final regulations do not adopt this suggestion. The rules require the holding period reported on Form 1099-B and transfer statements to reflect any wash sale adjustments.

Commentators asked how the holding period rules such as section 1223(3) apply to wash sales. One commentator asked about the proper treatment of a wash sale when the sale and purchase transactions occur over a period of time and a corporate event occurs during that period that causes one pre-event share to not be economically equivalent to one post-event share. These and other comments requesting guidance on how the wash sale reporting rule applies to various types of activity within an account relate to the substantive rules under section 1091 and are outside the scope of these regulations.

i. Reporting of Short Sales

Beginning in 2011, section 6045(g)(5) requires gross proceeds and basis reporting for short sales for the year in which the short sale is closed rather than, as under the present law rule for gross proceeds reporting, the year in which the short sale is opened. The proposed regulations included a transition rule requiring brokers to report all short sales opened on or after January 1, 2010, for the year in which the short sale is closed. Commentators asked that this transition rule be modified to permit 2010 reporting of all short sales opened in 2010 even if the short sale remained open at the end of

2010. The final regulations adopt this request.

Commentators requested that, for short sales opened before 2011 and closed in 2011 or later years, the regulations permit brokers to report the short sale for both the year the short sale is opened and the year the short sale is closed. The final regulations do not adopt this suggestion because no penalty is imposed for filing a nonrequired return.

Reportable payments on securities sales under section 6045 are subject to backup withholding as provided in section 3406(b)(3)(C). When backup withholding applies to a short sale, current regulations at § 31.3406(b)(3)-2(b)(4) require backup withholding when the short sale is opened but permit a broker to delay withholding until the short sale is closed if, at the time the short sale is opened, the broker expects that the amount of gain realized upon the closing of the short sale will be determinable from the broker's records. The proposed regulations required backup withholding only when the short sale was closed and the short sale became subject to reporting under section 6045(g)(5). Commentators asked that backup withholding on short sales continue to be permitted when the short sale is opened because the broker has cash proceeds from the sale on which to withhold. The final regulations adopt this comment and leave in place the current rule permitting a broker to perform backup withholding when the short sale is opened or closed. The proposed amendment to § 31.3406(b)(3)-2(b)(4) is therefore not adopted.

As a result of retaining the current backup withholding rule, a broker may perform backup withholding in a year before the short sale is closed. Current regulations at § 31.6051-4 require the broker to report the withholding on a Form 1099-B for the year of the withholding in addition to reporting the sale for the year the short sale is closed. The final regulations amend § 31.6051-4 to permit the IRS to determine whether to require gross proceeds to be reported only when the short sale is closed.

j. Reporting of Sales by S Corporations

Currently, no broker reporting on Form 1099-B is required for customers that are corporations, including S corporations. Section 6045(g)(4) requires brokers to begin Form 1099-B reporting for S corporations (other than a financial institution) for sales of covered securities acquired on or after January 1, 2012. The proposed regulations accordingly removed corporations for

which an election under section 1362(a) is in effect from the list of exempt Form 1099-B recipients for sales of covered securities acquired beginning in 2012. Commentators requested that the regulations instead refer to the definition of S corporation at section 1361(a). The final regulations adopt this comment for all references to an S corporation.

Also, for sales of covered securities acquired beginning in 2012, the proposed regulations eliminated the so-called "eyeball test" allowing brokers to rely solely on the name of the customer to determine whether the customer is a corporation exempt from reporting. The proposed regulations retained the actual knowledge rule so that a broker does not need to obtain an exemption certificate for a customer that the broker knows is exempt. Commentators asked that the final regulations retain the eyeball test because brokers otherwise may be required to seek a certification from all corporate customers. The regulations do not adopt this comment because brokers generally cannot determine from a customer's name alone whether the customer is taxed as an S corporation or C corporation. The final regulations retain a limited eyeball test for insurance companies and foreign corporations, however, because insurance companies and foreign corporations are ineligible to be S corporations.

Commentators requested that the final regulations retain current rules that allow brokers to determine that a customer is a foreign corporation by relying upon the name of the customer or upon a certification on a Form W-8 such as Form W-8BEN, "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding." These current rules were not retained in the proposed regulations. The final regulations adopt the suggestion to retain these current rules.

A commentator requested that brokers be permitted to rely on Form 8832, "Entity Classification Election," to determine that a customer is a C corporation if the customer has elected on Form 8832 to be classified as an association taxable as a corporation. According to the commentator, reliance on Form 8832 is appropriate because the form's instructions provide that an entity that is separately filing an election to be classified as an S corporation need not file Form 8832. The final regulations do not adopt the suggestion because an S corporation may still file Form 8832 or may have filed Form 8832 before electing to be classified as an S corporation.

Commentators requested that accounts opened by S corporations before 2012 be excepted from reporting. The regulations do not adopt this request as contrary to the statute.

k. Reporting to Trust Interest Holders in a WHFIT

The proposed regulations provided that, with respect to a widely held fixed investment trust (WHFIT), the requirements of section 6045(g), to the extent applicable, are met by compliance with the WHFIT reporting rules in § 1.671-5. One commentator noted that § 1.671-5(d)(2)(ii)(H) requires that a trustee or middleman filing a Form 1099 for an interest in a WHFIT provide, in addition to the items listed in § 1.671-5(d)(2)(ii), any other information required by the Form 1099. The commentator noted that this requirement could create confusion for reporting basis information to the extent the Form 1099-B is modified to require basis information. In response, the final regulations continue to provide that the requirements of section 6045(g) are met by compliance with the WHFIT rules. The IRS intends to address the commentator's concern in the instructions to the Form 1099-B.

l. Due Date for Payee Statements Furnished in a Consolidated Reporting Statement

Section 6045(b) extended the due date to furnish payee statements to customers from January 31 to February 15, effective for statements required to be furnished after December 31, 2008. Section 6045(b) also provides that this February 15 due date applies to any other statement required to be furnished on or before January 31 of the same year if furnished in a consolidated reporting statement with a statement required under section 6045.

The proposed regulations defined *consolidated reporting statement* as a grouping of statements that includes a required section 6045 statement and is furnished to the same customer or group of customers on the same date. The proposed regulations also permitted a broker to treat any customer as receiving a required section 6045 statement if the customer had an account for which section 6045 would require a statement if a sale occurred during the year. In response to a request from a commentator, the final regulations clarify that a customer may be treated as receiving a required section 6045 statement under this rule even if the customer's account holds only cash or shares of money market funds.

Commentators requested that the definition of consolidated reporting

statement include all statements a broker sends to a customer, whether or not the broker includes a required section 6045 statement to that customer, if the broker includes a required section 6045 statement to one of its customers. Other commentators supported the rule in the proposed regulations requiring brokers to continue to furnish in January pension statements and other statements to customers that hold only nontaxable accounts. The final regulations do not adopt the suggestion to broaden the definition of consolidated reporting statement. The suggested definition is inconsistent with statutory intent to limit the extended due date to statements that are or can be provided with other required section 6045 reporting.

A commentator also requested that the rules for consolidated reporting by brokers refer to "reporting entities" instead of "brokers" because custodians for individual retirement accounts (IRAs) may not stand ready to effect sales to be made by others and, therefore, may not be considered brokers under section 6045. The final regulations do not adopt this comment because an entity that is not considered a broker under section 6045 may not furnish a consolidated reporting statement.

5. Reporting Required in Connection With Transfers of Securities

a. Scope of Transfer Reporting

The proposed regulations identified brokers, persons acting as custodians of securities in the ordinary course of a trade or business, issuers of securities, and their agents as applicable persons required to furnish a transfer statement. Commentators asked whether agents of an issuer such as a transfer agent or administrator of an employee stock purchase plan are applicable persons. The final regulations clarify that agents of an issuer are applicable persons required to furnish transfer statements and provide additional examples to illustrate these agency arrangements.

A commentator requested that stock transfer agents that do not file Form 1099-B be excluded from transfer reporting. The final regulations do not adopt this comment as inconsistent with the statutory purpose of transfer reporting. A broker selling a transferred security is only able to report basis if informed of the basis. The regulations properly place the duty to furnish the transfer statement to the selling broker on the person transferring custody of the security.

Commentators requested an exclusion for transfers excepted from all section

6045 reporting (including gross proceeds reporting) at the time of the transfer. The final regulations adopt this suggestion. Commentators also requested exclusions for transfers to or from a nontaxable account. Sales of securities in nontaxable accounts are always excepted from all reporting under section 6045. The final regulations accordingly provide an exclusion for transfers to trustees and custodians of individual retirement plans. However, the exclusion does not apply to transfers from these accounts to a customer subject to reporting under section 6045(a).

Commentators requested that transfer statements for securities distributed from a nontaxable account to an owner or an heir report the new owner's basis as the fair market value of the security as of the date of distribution or date of death, whichever applies. The final regulations do not adopt this comment because securities held in individual retirement plans generally are treated as noncovered securities. Transfers of securities from nontaxable accounts need not report basis although they may choose to do so.

Commentators requested that all trustees or fiduciaries of a trust or estate be required to furnish transfer statements when assets are distributed to the beneficiaries or heirs. The final regulations do not adopt this suggestion. A trustee or fiduciary must furnish a transfer statement if the trustee is also the broker effecting the transfer. If a trustee merely distributes securities in a transfer effected by a separate broker, then the broker must furnish the transfer statement.

Commentators requested an exclusion for securities transferred in connection with a loan or under a repurchase agreement or securities collateral agreement because the lender's basis in the securities is not relevant to the borrower. The final regulations adopt this request only to the extent that the transferor lends or borrows securities as a principal (for example, when a customer opens or closes a short sale). When a transferor otherwise lends or borrows securities for a customer whose transfers are not otherwise exempt from transfer reporting, transfer statements will ensure that securities returned to the lender or collateral provider remain covered securities even if the securities are returned to a different account. Further, the broker for the borrower or secured party may not know that the securities it receives are exempted from reporting under the proposed exclusion and would be compelled to ask for a transfer statement if none were provided.

Commentators requested an exclusion for money market funds because brokers do not currently report their sales on Form 1099-B. The final regulations adopt this comment and also exempt money market funds from issuer reporting under section 6045B.

b. Information Furnished on a Transfer Statement

The proposed regulations required transfer statements to include information regarding the "beneficial owner" of securities. Commentators suggested that "beneficial owner" is not an appropriate term because securities are often transferred for accounts titled in the name of someone other than a beneficial owner, such as an agent of an undisclosed principal. Accordingly, the final regulations use the designation "customer" instead of "beneficial owner."

Commentators asked whether separate transfer statements must be furnished to identify noncovered securities at the lot level. The final regulations clarify that the transfer statement need not identify noncovered securities at the lot level and that a single transfer statement may report the transfer of multiple noncovered securities.

Commentators requested that transfer statements exclude sensitive customer information due to privacy concerns. Commentators also suggested that transfer statements not include the security symbol and lot number of the transferred security or the date of any previous transfer statement for the same transfer. In response to these comments, the final regulations provide that a transfer statement need not include the taxpayer identification number, address, or phone number of the customer; the security symbol or lot number of the transferred security; or the date of any previous transfer statement. Although the transfer statement must include the customer's name and account number, this information may be reported in coded format.

Commentators requested that transfer statements not include the transferor's classification of the security (for example, as stock or debt) because the receiving broker might classify the security differently. The final regulations do not adopt this suggestion. The receiving broker need not accept the transferor's classification unless it is the same as the issuer's classification. Nonetheless, the transferor's classification may clarify how the transferor computed adjustments to the security's basis.

Commentators asked whether the parties to a transfer statement could agree to substitute a security identifier

for the CUSIP. The final regulations clarify that the parties may use codes to substitute for other information, including a security symbol or other identification number or scheme to substitute for the CUSIP.

Section 1012(c)(2)(B)(ii) provides that all stock for which a broker or fund has made a single-account election shall be treated as covered securities regardless of the date of the acquisition of the stock. Commentators asked whether pre-effective date stock for which a broker or fund has made the single-account election remains a covered security when transferred to another broker. Because stock subject to the single-account election must be treated as a covered security and reported as a covered security on the transfer statement, it remains a covered security after the transfer under section 6045(g)(3)(A)(ii), provided the receiving broker receives a transfer statement.

c. Reporting of Transfers of Gifted and Inherited Securities

Under the proposed regulations, gifted and inherited securities that were covered securities in the account of the donor or decedent remained covered securities when transferred to the recipient's account and accompanied by a transfer statement. Commentators recommended that transfers of gifted and inherited securities be excluded from the transfer statement requirement because these transfers are outside the scope of the statute. Section 6045(g)(3)(A)(ii) provides that the term "covered security" includes all transferred securities that are covered securities in the account from which transferred, provided the receiving broker receives a transfer statement. Therefore, the final regulations do not adopt this recommendation.

The proposed regulations required that a transfer statement for gifted securities indicate that the transfer consists of gifted securities and state the adjusted basis of the securities in the hands of the donor (carryover basis) and the donor's original acquisition date of the securities. The proposed regulations also required that the transfer statement report the date of the gift (if known when furnishing the statement) and the fair market value of the gift on that date (if known or readily ascertainable). The proposed regulations required that, upon the subsequent sale or other disposition of these securities, the selling broker apply the relevant basis rules for gifts, such as rules disallowing loss on the sale of gifted securities to the extent of built-in loss at the time of the gift.

Commentators requested simplified conventions for reporting the basis of gifted securities. They asked that the rules require reporting of carryover basis without regard to rules disallowing loss to the extent of built-in loss at the time of the gift. They stated that gifts of depreciated securities were rare and did not justify the burden of obtaining the fair market value of the securities as of the date of the gift. They suggested instead that a subsequent sale be identified as a sale of gifted securities on Form 1099-B to alert the seller that the reported basis may not be correct. The final regulations do not adopt these suggestions. The burden on brokers to determine fair market value in applying the gift basis rules is not excessive. If fair market value as of the date of the gift is not readily ascertainable, a broker may substitute gross proceeds on a subsequent sale for this amount in determining the initial basis and the gain or loss on the subsequent sale.

Commentators also requested simplified conventions for reporting the basis of inherited securities. The proposed regulations required that basis be reported on the transfer statement in accordance with the instructions and valuations furnished by an authorized representative of the estate, which the transferor must request before reporting. Commentators asked that the rules require only reporting of basis equal to the fair market value of the security on the date of death and eliminate the requirement to request instructions from the estate representative. This suggestion was adopted. The final regulations provide that the transferor must report adjusted basis equal to the fair market value of the security on the date of death unless the broker receives different instructions from the estate representative. If the transferor neither knows nor can readily ascertain the fair market value of a security on the date of death, the final regulations provide that the transferor may treat the security as noncovered. If the transferor cannot identify which securities in a joint account have been transferred from the decedent, the final regulations require the transferor to treat each security in the account as if it were a noncovered security.

A commentator requested that the transfer statement for a subsequent transfer of an inherited security include the information necessary to apply section 1223(9), relating to the holding period of property acquired from a decedent that is sold or otherwise disposed of within one year after the decedent's death. This suggestion was adopted. The final regulations require transfer statements for both initial and

subsequent transfers of an inherited security to indicate that the security is inherited.

d. Other Transfer Reporting Issues

The proposed regulations permitted combined transfer reporting of a security acquired on different dates or at different prices when the security's basis is determined using an average basis method and the security has been held for more than five years. Commentators requested that combined transfer reporting be permitted for averaged securities held for more than one year consistent with the two categories of capital gain (long term and short term). The final regulations do not adopt this comment. In 2011, absent a statutory change, lower income tax rates will apply to securities held more than five years.

Commentators asked how a broker determines if a transfer statement is complete. The final regulations clarify that a statement is complete if, in the view of the receiving broker, it provides sufficient information to report the sale of the transferred security as a covered security (or states that the security is a noncovered security). For example, if the transfer statement fails to specify whether the security is stock, the receiving broker may treat the transfer statement as complete if the receiving broker otherwise has sufficient information to report the sale of the security as a covered security (or the transfer statement states that the security is a noncovered security).

Commentators asked how transfer reporting applies to purchases and sales of securities involving multiple brokers or to a cash-on-delivery account. The final regulations clarify that, for a transfer in connection with a sale, a custodian or other transferor that transfers custody of a security to a broker in order to effect a sale must furnish a transfer statement only to the broker that effects the sale. However, no transfer statement is required if the transferor itself either effects the sale or is required to report the sale on Form 1099-B. The final regulations also provide that, for a transfer in connection with a purchase, a broker that effects a purchase but does not receive custody of the purchased security must furnish a transfer statement to the broker that receives custody. However, no transfer statement is required if the broker effects a purchase solely at the instruction of the broker receiving custody.

The proposed regulations proposed to exclude "any person acting solely as a clearing organization with respect to the transfer" from the transfer reporting

requirements. Commentators asked that the final regulations clarify what it means to act “solely as a clearing organization.” The final regulations clarify that the exception applies to an organization that holds and transfers obligations among its members as a service to its members.

Commentators requested a requirement that all transfer statements for covered securities reflect the quantitative effect of any organizational actions on basis reported by issuers under section 6045B while the transferor holds custody instead of identifying which corporate action statements are reflected on the transfer statement. The final regulations adopt this comment.

Commentators requested a default rule requiring transferors to furnish the transfer statement electronically unless the parties agree to a different method. The final regulations do not adopt this suggestion. A consent requirement ensures that both parties have the ability to submit and receive transfer statements electronically.

6. Reporting by Issuers of Actions Affecting Basis of Securities

Under section 6045B, if an organizational action (such as a stock split or a merger or acquisition) by an issuer affects the basis of a specified security, the issuer must file a return with the IRS and furnish an information statement to each certificate holder or nominee reporting the quantitative effect on basis. The proposed regulations required the issuer to assign a sequential number determined separately by security for each organizational action reported. Several commentators requested that the final regulations delete the sequential number requirement. Another commentator requested that the rules create a standardized number system.

The purpose of the sequential number requirement was to indicate which basis adjustments for organizational actions are reflected on the transfer statement. The final regulations require transfer statements to reflect all organizational actions that occur while the transferor holds custody. Therefore, the final regulations eliminate the sequential number requirement.

A commentator asked that a RIC be deemed to comply with issuer reporting of an organizational action if it follows existing industry procedures for transmitting information to brokers. The commentator asserted that reporting under section 6045B would be duplicative and unnecessary. The final regulations do not adopt this comment

as inconsistent with the statutory reporting requirement.

A commentator asked whether a RIC or REIT must file an issuer return under section 6045B for undistributed capital gains reported under section 852(b)(3)(D) or 857(b)(3)(D) on Form 2438, “Undistributed Capital Gain Tax Return,” and Form 2439, “Notice to Shareholder of Undistributed Long-Term Capital Gains.” Because these forms report the information required under § 1.6045B-1, the final regulations provide that an issuer that files and furnishes both forms is deemed to meet the requirements under section 6045B for undistributed capital gains affecting the basis of its stock reported on the forms. The final regulations also provide that RICs, REITs, and brokers holding custody of RIC and REIT stock must adjust basis in accordance with the information reported on the forms.

Commentators asked whether an ADR is subject to issuer reporting under section 6045B. Because an ADR is a specified security, a foreign corporation that takes an organizational action that affects the basis of an ADR that represents stock in the foreign corporation must file an issuer return. The final regulations clarify that an issuer may use an agent, including a depository, to satisfy the requirements of this section. Nonetheless, the issuer remains liable for penalty for any failure to comply unless, as under current law, the failure is due to reasonable cause and not willful neglect.

The proposed regulations permitted issuers to make reasonable assumptions about facts having a quantitative effect on basis that could not be determined before the reporting due date and required corrected reporting within forty-five days of determining the necessary facts. A commentator asked to what extent an issuer is required to amend a return with additional facts that may affect taxability once the facts are known. The final regulations clarify that corrected reporting is required whenever an issuer determines additional facts that result in a different quantitative effect on basis from what the issuer previously reported.

Commentators requested that issuer reporting under section 6045B be coordinated with reporting under section 6043(c) for certain changes in corporate control and capital structure. One commentator requested relief from duplicate reporting of a corporate action under section 6043(c) when reporting the action under section 6045B. This request was not adopted. Reporting on Form 1099-CAP, “Changes in Corporate Control and Capital Structure,” is specific to each shareholder and

includes each shareholder’s name and aggregate value of cash and other property received by each shareholder. Similarly, reporting on Form 8806, “Information Return for Acquisition of Control or Substantial Change in Capital Structure,” while not shareholder-specific, includes information not required under section 6045B and permits the issuer to consent to IRS disclosure of some of the contents of the return.

Section 6045B(e) waives the requirements to file issuer returns and furnish issuer statements if the issuer makes the information about the organizational action publicly available in the form and manner determined by the Secretary. The proposed regulations provided that an issuer may publicly report by posting a statement with the required information in a readily accessible format in an area of its primary public Web site dedicated to this purpose by the same due date for reporting the organizational action to the IRS and keeps the form accessible to the public.

Some commentators objected to the public reporting method in the proposed regulations on the ground that it would be too burdensome for brokers to monitor issuer Web sites. Commentators suggested that the IRS permit issuers to consent to public disclosure by the IRS and that the IRS establish a central repository on its Web site for posting information statements from issuers that wish to report publicly. Commentators also suggested that the IRS formally recognize a clearing facility to serve as a central repository. Other commentators suggested that the final regulations require issuers to send their public reports or copies of their returns to clearing organizations, which will disseminate the information to brokers, holders, and their nominees. Commentators also suggested that issuers should be required to furnish a copy of their public report or issuer return to any entity that requests it. Other commentators supported the public reporting method in the proposed regulations. The final regulations adopt the public reporting method in the proposed regulations and do not adopt any of the suggested changes.

Commentators requested that the regulations limit the time period for which issuers must keep the public report posted on their Web site. The final regulations limit the required period to 10 years.

7. Penalty Provisions

The proposed regulations generally required brokers to adjust basis of covered securities reported on Form 1099-B to reflect information from any transfer statement received as well as any issuer reporting through the date of sale. The proposed regulations provided that any failure to report correct information that arises solely from reliance on transfer statements and issuer reporting is deemed to be due to reasonable cause for purposes of penalties under sections 6721 and 6722. The proposed regulations permitted, but did not require, a broker to further adjust the reported basis for information not reflected on one of these sources, including any information the broker has about securities held by the same customer in other accounts with the broker. The proposed regulations further provided that a broker that takes into account additional information received from a customer or third party is deemed to have relied upon this information in good faith in accordance with current rules in § 301.6724-1(c)(6) for purposes of penalty relief under sections 6721 and 6722 if the broker neither knows nor has reason to know that the information is incorrect.

Commentators expressed concern that a “know or reason to know” standard would require an excessive level of due diligence and asked that brokers be subject to penalties only if they have actual knowledge that the information is incorrect, the same standard for reliance on transfer statements and issuer statements. The final regulations do not adopt this suggestion. A “know or reason to know” standard is consistent with the existing standard for penalty relief and better ensures the integrity of the information reported on the return.

The proposed regulations provided that brokers and transferors must correct their Form 1099-B or transfer statement to account for late or corrected transfer statements or issuer reports. Commentators requested time limits on the correction requirement. This suggestion was adopted. The final regulations require corrected reporting only when brokers receive corrected information within 3 years after issuing a Form 1099-B or 18 months after issuing a transfer statement. Commentators also suggested that corrected Forms 1099-B or transfer statements not be required for de minimis changes or for closed accounts. The final regulations do not adopt this suggestion.

A commentator also asked about the interaction of the basis reporting rules with the requirements for tax return

preparers under section 6694. The commentator expressed concern that a duly diligent preparer could be subject to penalties under section 6694 for preparing a return or claim for refund that reports (1) information that the preparer believes to be accurate after exercising due diligence but that differs from the information reported on Form 1099-B or (2) inaccurate information from Form 1099-B that the preparer does not know (or have reason to know) is incorrect.

In many cases, basis reported on Form 1099-B may not reflect the taxpayer's correct basis. For example, brokers need not adjust basis for wash sales unless the transactions that trigger the wash sale occur in the same account with respect to identical securities. Additionally, brokers are permitted, but not required, to report basis for noncovered securities. Taxpayers are expected to report the correct basis on Schedule D regardless of the amount reported on Form 1099-B. The IRS is currently revising Schedule D and the related instructions and publications to facilitate reconciliation.

With respect to tax return preparer penalties under section 6694, these regulations do not alter current rules governing preparer reliance on client information. Generally, § 1.6694-1(e)(1) permits tax return preparers to rely in good faith upon information furnished by a client taxpayer or another party so long as the preparer does not ignore other information furnished to or actually known by the preparer and makes reasonable inquiries if the furnished information appears to be incorrect or incomplete. This same standard applies to information furnished on Form 1099-B.

Effective/Applicability Dates

The regulations on broker basis reporting under section 6045(g) apply to: (1) Any share of stock or any interest treated as stock in an entity organized as, or treated for Federal tax purposes as, a corporation (foreign or domestic) acquired on or after January 1, 2011, other than RIC stock or DRP stock; and (2) any share of RIC stock or DRP stock acquired on or after January 1, 2012. The regulations regarding the timing for reporting short sales of securities under section 6045 apply to short sales opened on or after January 1, 2011.

These regulations regarding the determination of basis under section 1012 apply for taxable years beginning after October 18, 2010. However, the rules in § 1.1012-1(e)(1)(i), in part, apply to stock acquired on or after January 1, 2011; the rules in § 1.1012-1(e)(2) apply to stock acquired on or

after January 1, 2012; the rules in § 1.1012-1(e)(7)(iii) apply to stock acquired before and sold, exchanged, or disposed of on or after April 1, 2011; and the rules in § 1.1012-1(e)(7)(i), in part, § 1.1012-1(e)(9), in part, and in § 1.1012-1(e)(10), in part, apply to sales, exchanges, or other dispositions of stock on or after January 1, 2012.

The regulations regarding transfer statement reporting under section 6045A apply to: (1) Transfers of stock other than RIC stock on or after January 1, 2011; and (2) transfers of RIC stock on or after January 1, 2012. The regulations regarding issuer reporting under section 6045B apply to: (1) Organizational actions affecting basis of stock in an entity organized as, or treated for Federal tax purposes as, a corporation (foreign or domestic) other than RIC stock on or after January 1, 2011; and (2) organizational actions affecting basis of RIC stock on or after January 1, 2012.

Effect on Other Documents

As of October 18, 2010, Rev. Rul. 67-436 (1967-2 CB 266) is obsolete and Rev. Proc. 2008-52 (2008-2 CB 587), as modified, amplified, and clarified by Rev. Proc. 2009-39 (2009-38 IRB 371), is modified by deleting Section 30 of the Appendix. See § 601.601(d)(2).

Special Analyses

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.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Any effect on small entities by these regulations flows from section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343 (122 Stat. 3765, 3854 (2008)) (the Act).

Section 403(a) of the Act requires that brokers reporting the sale of a covered security report the adjusted basis of the security and whether any gain or loss is long-term or short-term. It is anticipated that this statutory requirement will affect only financial services firms with annual receipts greater than \$7 million that, therefore, are not small entities. Further, the regulations under this section impose no reporting requirements not found in the Act.

Section 403(c) of the Act requires applicable persons to furnish a transfer statement in connection with the

transfer of custody of a covered security. The regulations define applicable person to include brokers, professional custodians of securities, issuers of securities, and trustee and custodians of individual retirement plans. This definition effectuates the Act by giving the broker that receives the transfer statement the information necessary to accurately report the sale of the security regardless of how the owner previously held its custody. The regulations limit the impact on small entities by limiting reporting to necessary entities and information.

Section 403(d) of the Act requires reporting by all issuers of specified securities regardless of size or whether the securities are publicly traded. The regulations limit the reporting burden by requiring only necessary information and by permitting issuers to report actions publicly instead of by furnishing a statement to each nominee or holder. The regulations therefore mitigate the statutory impact on small entities.

Therefore, because this regulation will not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these proposed regulations are Edward C. Schwartz, Amy J. Pflanzgraf, and William L. Candler, Office of Associate Chief Counsel (Income Tax and Accounting), and Stephen Schaeffer, Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 31, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.6045A-1 also issued under 26 U.S.C. 6045A(a), (b), (c).

Section 1.6045B-1 also issued under 26 U.S.C. 6045B(a), (c), (e). * * *

■ **Par. 2.** Section 1.408-7 is amended by adding two new sentences at the end of paragraph (d)(2) to read as follows:

§ 1.408-7 Reports on distributions from individual retirement plans.

* * * * *

(d) * * *

(2) * * * However, for a distribution after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. See §§ 1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

* * * * *

■ **Par. 3.** Section 1.1012-1 is amended by:

■ 1. Revising paragraphs (c)(1), (c)(4), (c)(6), (c)(7)(ii), (c)(7)(iii) introductory text, and (c)(7)(iii)(a).

■ 2. Adding new paragraphs (c)(8), (c)(9), (c)(10), and (c)(11).

■ 3. Revising the heading of paragraphs (e) and (e)(5).

■ 4. Revising paragraphs (e)(1), (e)(2), (e)(3), (e)(4), (e)(6), and (e)(7).

■ 5. Adding new paragraphs (e)(8), (e)(9), (e)(10), (e)(11), and (e)(12).

The additions and revisions read as follows:

§ 1.1012-1 Basis of property.

* * * * *

(c) *Sale of stock*—(1) *In general.* (i) Except as provided in paragraph (e)(2) of this section (dealing with stock for which the average basis method is permitted), if a taxpayer sells or transfers shares of stock in a corporation that the taxpayer purchased or acquired on different dates or at different prices and the taxpayer does not adequately identify the lot from which the stock is sold or transferred, the stock sold or transferred is charged against the

earliest lot the taxpayer purchased or acquired to determine the basis and holding period of the stock. If the earliest lot purchased or acquired is held in a stock certificate that represents multiple lots of stock, and the taxpayer does not adequately identify the lot from which the stock is sold or transferred, the stock sold or transferred is charged against the earliest lot included in the certificate. See paragraphs (c)(2), (c)(3), and (c)(4) of this section for rules on what constitutes an adequate identification.

(ii) A taxpayer must determine the basis of identical stock (within the meaning of paragraph (e)(4) of this section) by averaging the cost of each share if the stock is purchased at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation that reports an aggregate total cost or an average cost per share. However, the taxpayer may determine the basis of the stock by the actual cost per share if the taxpayer notifies the broker in writing of this intent. The taxpayer must notify the broker by the earlier of the date of the sale of any of the stock for which the taxpayer received the confirmation or one year after the date of the confirmation. A broker may extend the one-year period but the taxpayer must notify the broker no later than the date of sale of any of the stock.

* * * * *

(4) *Stock held by a trustee, executor, or administrator.* (i) A trustee or executor or administrator of an estate holding stock (not left in the custody of a broker) makes an adequate identification if the trustee, executor, or administrator—

(a) Specifies in writing in the books and records of the trust or estate the particular stock to be sold, transferred, or distributed;

(b) In the case of a distribution, furnishes the distributee with a written document identifying the particular stock distributed; and

(c) In the case of a sale or transfer through a broker or other agent, specifies to the broker or agent the particular stock to be sold or transferred, and within a reasonable time thereafter the broker or agent confirms the specification in a written document.

(ii) The stock the trust or estate identifies under paragraph (c)(4)(i) of this section is the stock treated as sold, transferred, or distributed, even if the trustee, executor, or administrator delivers stock certificates from a different lot.

* * * * *

(6) *Bonds*. Paragraphs (1) through (5), (8), and (9) of this section apply to the sale or transfer of bonds.

(7) * * *

(ii) In applying paragraph (c)(3)(i)(b) of this section to a sale or transfer of a book-entry security pursuant to a taxpayer's written instruction, a confirmation is made by furnishing to the taxpayer a written advice of transaction from the Reserve Bank or other person through whom the taxpayer sells or transfers the securities. The confirmation document must describe the securities and specify the date of the transaction and amount of securities sold or transferred.

(iii) For purposes of this paragraph (c)(7):

(a) The term *book-entry security* means a transferable Treasury bond, note, certificate of indebtedness, or bill issued under the Second Liberty Bond Act (31 U.S.C. 774(2)), as amended, or other security of the United States (as defined in paragraph (c)(7)(iii)(b) of this section) in the form of an entry made as prescribed in 31 CFR Part 306, or other comparable Federal regulations, on the records of a Reserve Bank.

* * * * *

(8) *Time for making identification*. For purposes of this paragraph (c), an adequate identification of stock is made at the time of sale, transfer, delivery, or distribution if the identification is made no later than the earlier of the settlement date or the time for settlement required by Rule 15c6-1 under the Securities Exchange Act of 1934, 17 CFR 240.15c6-1 (or its successor). A standing order or instruction for the specific identification of stock is treated as an adequate identification made at the time of sale, transfer, delivery, or distribution.

(9) *Method of writing*. (i) A written confirmation, record, document, instruction, notification, or advice includes a writing in electronic format.

(ii) A broker or agent may include the written confirmation required under this paragraph (c) in an account statement or other document the broker or agent periodically provides to the taxpayer if the broker or agent provides the statement or other document within a reasonable time after the sale or transfer.

(10) *Method for determining basis of stock*. A method of determining the basis of stock, including a method of identifying stock sold under this paragraph (c) and the average basis method described in paragraph (e) of this section, is not a method of accounting. Therefore, a change in a method of determining the basis of stock

is not a change in method of accounting to which sections 446 and 481 apply.

(11) *Effective/applicability date*.

Paragraphs (c)(1), (c)(4), (c)(6), (c)(7)(ii), (c)(7)(iii)(a), (c)(8), (c)(9), and (c)(10) of this section apply for taxable years beginning after October 18, 2010.

* * * * *

(e) *Election to use average basis method*—(1) *In general*.

Notwithstanding paragraph (c) of this section, and except as provided in paragraph (e)(8) of this section, a taxpayer may use the average basis method described in paragraph (e)(7) of this section to determine the cost or other basis of identical shares of stock if—

(i) The taxpayer leaves shares of stock in a regulated investment company (as defined in paragraph (e)(5) of this section) or shares of stock acquired after December 31, 2010, in connection with a dividend reinvestment plan (as defined in paragraph (e)(6) of this section) with a custodian or agent in an account maintained for the acquisition or redemption, sale, or other disposition of shares of the stock; and

(ii) The taxpayer acquires identical shares of stock at different prices or bases in the account.

(2) *Determination of method*. (i) If a taxpayer places shares of stock described in paragraph (e)(1)(i) of this section acquired on or after January 1, 2012, in the custody of a broker (as defined by section 6045(c)(1)), including by transfer from an account with another broker, the basis of the shares is determined in accordance with the broker's default method, unless the taxpayer notifies the broker that the taxpayer elects another permitted method. The taxpayer must report gain or loss using the method the taxpayer elects or, if the taxpayer fails to make an election, the broker's default method. See paragraphs (e)(9)(i) and (e)(9)(v), *Example 2*, of this section.

(ii) The provisions of this paragraph (e)(2) are illustrated by the following example:

Example. (i) In connection with a dividend reinvestment plan, Taxpayer B acquires 100 shares of G Company in 2012 and 100 shares of G Company in 2013, in an account B maintains with R Broker. B notifies R in writing that B elects to use the average basis method to compute the basis of the shares of G Company. In 2014, B transfers the shares of G Company to an account with S Broker. B does not notify S of the basis determination method B chooses to use for the shares of G Company, and S's default method is first-in, first-out. In 2015, B purchases 200 shares of G Company in the account with S. In 2016, B instructs S to sell 150 shares of G Company.

(ii) Because B does not notify S of a basis determination method for the shares of G Company, under paragraph (e)(2)(i) of this section, the basis of the 150 shares of G Company S sells for B in 2016 must be determined under S's default method, first-in, first-out.

(3) *Shares of stock*. For purposes of this paragraph (e), securities issued by unit investment trusts described in paragraph (e)(5) of this section are treated as shares of stock and the term *share* or *shares* includes fractions of a share.

(4) *Identical stock*. For purposes of this paragraph (e), *identical shares of stock* means stock with the same Committee on Uniform Security Identification Procedures (CUSIP) number or other security identifier number as permitted in published guidance of general applicability, see § 601.601(d)(2) of this chapter.

(5) *Regulated investment company*.

* * *

(6) *Dividend reinvestment plan*—(i) *In general*. For purposes of this paragraph (e), the term *dividend reinvestment plan* means any written plan, arrangement, or program under which at least 10 percent of every dividend (within the meaning of section 316) on any share of stock is reinvested in stock identical to the stock on which the dividend is paid. A plan is a dividend reinvestment plan if the plan documents require that at least 10 percent of any dividend paid is reinvested in identical stock even if the plan includes stock on which no dividends have ever been declared or paid or on which an issuer ceases paying dividends. A plan that holds one or more different stocks may permit a taxpayer to reinvest a different percentage of dividends in the stocks held. A dividend reinvestment plan may reinvest other distributions on stock, such as capital gain distributions, non-taxable returns of capital, and cash in lieu of fractional shares. The term dividend reinvestment plan includes both issuer administered dividend reinvestment plans and non-issuer administered dividend reinvestment plans.

(ii) *Acquisition of stock*. Stock is acquired in connection with a dividend reinvestment plan if the stock is acquired under that plan, arrangement, or program, or if the dividends and other distributions paid on the stock are subject to that plan, arrangement, or program. Shares of stock acquired in connection with a dividend reinvestment plan include the initial purchase of stock in the dividend reinvestment plan, transfers of identical stock into the dividend reinvestment plan, additional periodic purchases of

identical stock in the dividend reinvestment plan, and identical stock acquired through reinvestment of the dividends or other distributions paid on the stock held in the plan.

(iii) *Dividends and other distributions paid after reorganization.* For purposes of this paragraph (e)(6), dividends and other distributions declared or announced before or pending a corporate action (such as a merger, consolidation, acquisition, split-off, or spin-off) involving the issuer and subsequently paid and reinvested in shares of stock in the successor entity or entities are treated as reinvested in shares of stock identical to the shares of stock of the issuer.

(iv) *Withdrawal from or termination of plan.* If a taxpayer withdraws stock from a dividend reinvestment plan or the plan administrator terminates the dividend reinvestment plan, the shares of identical stock the taxpayer acquires after the withdrawal or termination are not acquired in connection with a dividend reinvestment plan. The taxpayer may not use the average basis method after the withdrawal or termination but may use any other permissible basis determination method. See paragraph (e)(7)(v) of this section for the basis of the shares after withdrawal or termination.

(7) *Computation of average basis—(i) In general.* Average basis is determined by averaging the basis of all shares of identical stock in an account regardless of holding period. However, for this purpose, shares of stock in a dividend reinvestment plan are not identical to shares of stock with the same CUSIP number that are not in a dividend reinvestment plan. The basis of each share of identical stock in the account is the aggregate basis of all shares of that stock in the account divided by the aggregate number of shares. Unless a single-account election is in effect, see paragraph (e)(11) of this section, a taxpayer may not average together the basis of identical stock held in separate accounts that the taxpayer sells, exchanges, or otherwise disposes of on or after January 1, 2012.

(ii) *Order of disposition of shares sold or transferred.* In the case of the sale or transfer of shares of stock to which the average basis method election applies, shares sold or transferred are deemed to be the shares first acquired. Thus, the first shares sold or transferred are those with a holding period of more than 1 year (long-term shares) to the extent that the account contains long-term shares. If the number of shares sold or transferred exceeds the number of long-term shares in the account, the excess shares sold or transferred are deemed to be shares with

a holding period of 1 year or less (short-term shares). Any gain or loss attributable to shares held for more than 1 year constitutes long-term gain or loss, and any gain or loss attributable to shares held for 1 year or less constitutes short-term gain or loss. For example, if a taxpayer sells 50 shares from an account containing 100 long-term shares and 100 short-term shares, the shares sold or transferred are all long-term shares. If, however, the account contains 40 long-term shares and 100 short-term shares, the taxpayer has sold 40 long-term shares and 10 short-term shares.

(iii) *Transition rule from double-category method.* This paragraph (e)(7)(iii) applies to stock for which a taxpayer uses the double-category method under § 1.1012-1(e)(3) (April 1, 2010), that the taxpayer acquired before April 1, 2011, and that the taxpayer sells, exchanges, or otherwise disposes of on or after that date. The taxpayer must calculate the average basis of this stock by averaging together all identical shares of stock in the account on April 1, 2011, regardless of holding period.

(iv) *Wash sales.* A taxpayer must apply section 1091 and the associated regulations (dealing with wash sales of substantially identical securities) in computing average basis regardless of whether the stock or security sold or otherwise disposed of and the stock acquired are in the same account or in different accounts.

(v) *Basis after change from average basis method.* Unless a taxpayer revokes an average basis method election under paragraph (e)(9)(iii) of this section, if a taxpayer changes from the average basis method to another basis determination method (including a change resulting from a withdrawal from or termination of a dividend reinvestment plan), the basis of each share of stock immediately after the change is the same as the basis immediately before the change. See paragraph (e)(9)(iv) of this section for rules for changing from the average basis method.

(vi) The provisions of this paragraph (e)(7) are illustrated by the following examples:

Example 1. (i) In 2011, Taxpayer C acquires 100 shares of H Company and enrolls them in a dividend reinvestment plan administered by T Custodian. C elects to use the average basis method for the shares of H Company enrolled in the dividend reinvestment plan. T also acquires for C's account 50 shares of H Company and does not enroll these shares in the dividend reinvestment plan.

(ii) Under paragraph (e)(7)(i) of this section, the 50 shares of H Company not in the dividend reinvestment plan are not identical to the 100 shares of H Company enrolled in the dividend reinvestment plan,

even if they have the same CUSIP number. Accordingly, under paragraphs (e)(1) and (e)(7)(i) of this section, C may not average the basis of the 50 shares of H Company with the basis of the 100 shares of H Company. Under paragraph (e)(1)(i) of this section, C may not use the average basis method for the 50 shares of H Company because the shares are not acquired in connection with a dividend reinvestment plan.

Example 2. (i) Taxpayer D enters into an agreement with W Custodian establishing an account for the periodic acquisition of shares of L Company, a regulated investment company. W acquires for D's account shares of L Company stock on the following dates and amounts:

Date	Number of shares	Cost
January 8, 2010	25	\$200
February 8, 2010	24	200
March 8, 2010	20	200
April 8, 2010	20	200

(ii) At D's direction, W sells 40 shares from the account on January 15, 2011, for \$10 per share or a total of \$400. D elects to use the average basis method for the shares of L Company. The average basis for the shares sold on January 15, 2011, is \$8.99 (total cost of shares, \$800, divided by the total number of shares, 89).

(iii) Under paragraph (e)(7)(ii) of this section, the shares sold are the shares first acquired. Thus, D realizes \$25.25 ($\1.01×25) long-term capital gain for the 25 shares acquired on January 8, 2010, and \$15.15 ($\1.01×15) short-term capital gain for 15 of the shares acquired on February 8, 2010.

Example 3. (i) The facts are the same as in *Example 2*, except that on February 8, 2011, D changes to the first-in, first-out basis determination method. W purchases 25 shares of L Company for D on March 8, 2011, at \$12 per share. D sells 40 shares on May 8, 2011, and 34 shares on July 8, 2012.

(ii) Because D uses the first-in, first-out method, the 40 shares sold on May 8, 2011 are 9 shares purchased on February 8, 2010, 20 shares purchased on March 8, 2010, and 11 shares purchased on April 8, 2010. Because, under paragraph (e)(7)(v) of this section, the basis of the shares D owns when D changes from the average basis method remains the same, the basis of the shares sold on May 8, 2011, is \$8.99 per share, not the original cost of \$8.33 per share for the shares purchased on February 8, 2010, or \$10 per share for the shares purchased on March 8, 2010, and April 8, 2010. The basis of the shares sold on July 8, 2012, is \$8.99 per share for 9 shares purchased on April 8, 2010, and \$12 per share for 25 shares purchased on March 8, 2011.

Example 4. (i) The facts are the same as in *Example 2*, except that D uses the first-in, first-out method for the 40 shares sold on January 15, 2011. W purchases 25 shares of L Company for D on March 8, 2011, at \$12 per share. D sells 40 shares on May 8, 2011, and elects the average basis method.

(ii) Because D uses the first-in, first-out method for the sale on January 15, 2011, the 40 shares sold are the 25 shares acquired on

January 8, 2010, for \$200 (basis \$8 per share) and 15 of the 24 shares purchased on February 8, 2010, for \$200 (basis \$8.33 per share).

(iii) Under paragraph (e)(7)(i) of this section, under the average basis method, the basis of all of the shares of identical stock in D's account is averaged. Thus, the basis of each share D sells on May 8, 2011, after electing the average basis method, is \$10.47. This figure is the total cost of the shares in D's account (\$74.97 for the 9 shares acquired on February 8, 2010, \$200 for the 20 shares acquired on March 8, 2010, \$200 for the 20 shares acquired on April 8, 2010, and \$300 for the 25 shares acquired on March 8, 2011) divided by 74, the total number of shares (\$74.97/74).

(8) *Limitation on use of average basis method for certain gift shares.* (i) Except as provided in paragraph (e)(8)(ii) of this section, a taxpayer may not use the average basis method for shares of stock a taxpayer acquires by gift after December 31, 1920, if the basis of the shares (adjusted for the period before the date of the gift as provided in section 1016) in the hands of the donor or the last preceding owner by whom the shares were not acquired by gift was greater than the fair market value of the shares at the time of the gift. This paragraph (e)(8)(i) does not apply to shares the taxpayer acquires as a result of a taxable dividend or capital gain distribution on the gift shares.

(ii) Notwithstanding paragraph (e)(8)(i) of this section, a taxpayer may use the average basis method if the taxpayer states in writing that the taxpayer will treat the basis of the gift shares as the fair market value of the shares at the time the taxpayer acquires the shares. The taxpayer must provide this statement when the taxpayer makes the election under paragraph (e)(9) of this section or when transferring the shares to an account for which the taxpayer has made this election, whichever occurs later. The statement must be effective for any gift shares identical to the gift shares to which the average basis method election applies that the taxpayer acquires at any time and must remain in effect as long as the election remains in effect.

(iii) The provisions of this paragraph (e)(8) are illustrated by the following examples:

Example 1. (i) Taxpayer E owns an account for the periodic acquisition of shares of M Company, a regulated investment company. On April 15, 2010, E acquires identical shares of M Company by gift and transfers those shares into the account. These shares had an adjusted basis in the hands of the donor that was greater than the fair market value of the shares on that date. On June 15, 2010, E sells shares from the account and elects to use the average basis method.

(ii) Under paragraph (e)(8)(ii) of this section, E may elect to use the average basis method for shares sold or transferred from the account if E includes a statement with E's election that E will treat the basis of the gift shares in the account as the fair market value of the shares at the time E acquired them. See paragraph (e)(9)(ii) of this section.

Example 2. (i) The facts are the same as in *Example 1*, except E acquires the gift shares on April 15, 2012, transfers those shares into the account, and used the average basis method for sales of shares of M Company before acquiring the gift shares. E sells shares of M Company on June 15, 2012.

(ii) Under paragraph (e)(8)(ii) of this section, the basis of the gift shares may be averaged with the basis of the other shares of M Company in E's account if, when E transfers the gift shares to the account, E provides a statement to E's broker that E will treat the basis of the gift shares in the account as the fair market value of the shares at the time E acquired them. See paragraph (e)(9)(i) of this section.

(9) *Time and manner for making the average basis method election—(i) In general.* A taxpayer makes an election to use the average basis method for shares of stock described in paragraph (e)(1)(i) of this section that are covered securities (within the meaning of section 6045(g)(3)) by notifying the custodian or agent in writing by any reasonable means. For purposes of this paragraph (e), a writing may be in electronic format. A taxpayer has not made an election within the meaning of this section if the taxpayer fails to notify a broker of the taxpayer's basis determination method and basis is determined by the broker's default method under paragraph (e)(2) of this section. A taxpayer may make the average basis method election at any time, effective for sales or other dispositions of stock occurring after the taxpayer notifies the custodian or agent. The election must identify each account with that custodian or agent and each stock in that account to which the election applies. The election may specify that it applies to all accounts with a custodian or agent, including accounts the taxpayer later establishes with the custodian or agent. If the election applies to gift shares, the taxpayer must provide the statement required by paragraph (e)(8)(ii) of this section, if applicable, to the custodian or agent with the taxpayer's election.

(ii) *Average basis method election for securities that are noncovered securities.* A taxpayer makes an election to use the average basis method for shares of stock described in paragraph (e)(1)(i) of this section that are noncovered securities (as described in § 1.6045-1(a)(16)) on the taxpayer's income tax return for the first taxable year for which the election applies. A

taxpayer may make the election on an amended return filed no later than the time prescribed (including extensions) for filing the original return for the taxable year for which the election applies. The taxpayer must indicate on the return that the taxpayer used the average basis method in reporting gain or loss on the sale or other disposition. A taxpayer must attach to the return the statement described in paragraph (e)(8)(ii) of this section, if applicable. A taxpayer making the election must maintain records necessary to substantiate the average basis reported.

(iii) *Revocation of election.* A taxpayer may revoke an election under paragraph (e)(9)(i) of this section by the earlier of one year after the taxpayer makes the election or the date of the first sale, transfer, or disposition of that stock following the election. A custodian or agent may extend the one-year period but a taxpayer may not revoke an election after the first sale, transfer, or disposition of the stock. A revocation applies to all stock the taxpayer holds in an account that is identical to the shares of stock for which the taxpayer revokes the election. A revocation is effective when the taxpayer notifies, in writing by any reasonable means, the custodian or agent holding the stock to which the revocation applies. After revocation, the taxpayer's basis in the shares of stock to which the revocation applies is the basis before averaging.

(iv) *Change from average basis method.* A taxpayer may change basis determination methods from the average basis method to another method prospectively at any time. A change from the average basis method applies to all identical stock the taxpayer sells or otherwise disposes of before January 1, 2012, that was held in any account. A change from the average basis method applies on an account by account basis (within the meaning of paragraph (e)(10) of this section) to all identical stock the taxpayer sells or otherwise disposes of on or after January 1, 2012. The taxpayer must notify, in writing by any reasonable means, the custodian or agent holding the stock to which the change applies. Unless paragraph (e)(9)(iii) of this section applies, the basis of each share of stock to which the change applies remains the same as the basis immediately before the change. See paragraph (e)(7)(v) of this section.

(v) *Examples.* The provisions of this paragraph (e)(9) are illustrated by the following examples:

Example 1. (i) Taxpayer F enters into an agreement with W Custodian establishing an account for the periodic acquisition of shares of N Company, a regulated investment company. W acquires for F's account shares

of N Company on the following dates and amounts:

Date	Number of shares	Cost
January 8, 2012	25	\$200
February 8, 2012	24	200
March 8, 2012	20	200

(ii) F notifies W that F elects, under paragraph (e)(9)(i) of this section, to use the average basis method for the shares of N Company. On May 8, 2012, under paragraph (e)(9)(iii) of this section, F notifies W that F revokes the average basis method election. On June 1, 2012, F sells 60 shares of N Company using the first-in, first-out basis determination method.

(iii) Under paragraph (e)(9)(iii) of this section, the basis of the N Company shares upon revocation, and for purposes of determining gain on the sale, is \$8.00 per share for each of the 25 shares purchased on January 8, 2012, \$8.34 per share for each of the 24 shares purchased on February 8, 2012, and \$10 per share for the remaining 11 shares purchased on March 8, 2012.

Example 2. (i) The facts are the same as in *Example 1*, except that F does not notify W that F elects a basis determination method. W's default basis determination method is the average basis method and W maintains an averaged basis for F's shares of N Company on W's books and records.

(ii) F has not elected the average basis method under paragraph (e)(9)(i) of this section. Therefore, F's notification to W on May 8, 2012, is not an effective revocation under paragraph (e)(9)(iii) of this section. F's attempted revocation is, instead, notification of a change from the average basis method under paragraph (e)(9)(iv) of this section. Accordingly, the basis of each share of stock F sells on June 1, 2012, is the basis immediately before the change, \$8.70 (total cost of shares, \$600, divided by the total number of shares, 69).

(10) *Application of average basis method account by account—(i) In general.* For sales, exchanges, or other dispositions on or after January 1, 2012, of stock described in paragraph (e)(1)(i) of this section, the average basis method applies on an account by account basis. A taxpayer may use the average basis method for stock in a regulated investment company or stock acquired in connection with a dividend reinvestment plan in one account but use a different basis determination method for identical stock in a different account. If a taxpayer uses the average basis method for a stock described in paragraph (e)(1)(i) of this section, the taxpayer must use the average basis method for all identical stock within that account. The taxpayer may use different basis determination methods for stock within an account that is not identical. Except as provided in paragraph (e)(10)(ii) of this section, a taxpayer must make separate elections

to use the average basis method for stock held in separate accounts.

(ii) *Account rule for stock sold before 2012.* A taxpayer's election to use the average basis method for shares of stock described in paragraph (e)(1)(i) of this section that a taxpayer sells, exchanges, or otherwise disposes of before January 1, 2012, applies to all identical shares of stock the taxpayer holds in any account.

(iii) *Separate account.* Unless the single-account election described in paragraph (e)(11)(i) of this section applies, stock described in paragraph (e)(1)(i) of this section that is a covered security (within the meaning of section 6045(g)(3)) is treated as held in a separate account from stock that is a noncovered security (as described in § 1.6045-1(a)(16)), regardless of when acquired.

(iv) *Examples.* The provisions of this paragraph (e)(10) are illustrated by the following examples:

Example 1. (i) In 2012, Taxpayer G enters into an agreement with Y Broker establishing three accounts (G-1, G-2, and G-3) for the periodic acquisition of shares of P Company, a regulated investment company. Y makes periodic purchases of P Company for each of G's accounts. G elects to use the average basis method for account G-1. On July 1, 2013, G sells shares of P Company from account G-1.

(ii) G is not required to use the average basis method for the shares of P Company that G holds in accounts G-2 and G-3 because, under paragraph (e)(10)(i) of this section, the average basis method election applies to shares sold after 2011 on an account by account basis.

Example 2. The facts are the same as in *Example 1*, except that G also instructs Y to acquire shares of Q Company, a regulated investment company, for account G-1. Under paragraph (e)(10)(i) of this section, G may use any permissible basis determination method for the shares of Q Company because, under paragraph (e)(4) of this section, the shares of Q Company are not identical to the shares of P Company.

Example 3. (i) The facts are the same as in *Example 1*, except that G establishes the accounts in 2011 and Y sells shares of P Company from account G-1 on July 1, 2011.

(ii) For sales before 2012, under paragraph (e)(10)(ii) of this section, G's election applies to all accounts in which G holds identical stock. G must average together the basis of the shares in all accounts to determine the basis of the shares sold from account G-1.

Example 4. (i) In 2011, Taxpayer H acquires 80 shares of R Company and enrolls them in R Company's dividend reinvestment plan. In 2012, H acquires 50 shares of R Company in the dividend reinvestment plan. H elects to use the average basis method for the shares of R Company in the dividend reinvestment plan. R Company does not make the single-account election under paragraph (e)(11)(i) of this section.

(ii) Under section 6045(g)(3) and § 1.6045-1(a)(16), the 80 shares acquired in 2011 are

noncovered securities and the 50 shares acquired in 2012 are covered securities. Therefore, under paragraph (e)(10)(iii) of this section, the 80 shares are treated as held in a separate account from the 50 shares. H must make a separate average basis method election for each account and must average the basis of the shares in each account separately from the shares in the other account.

Example 5. (i) B Broker maintains an account for Taxpayer J for the periodic acquisition of shares of S Company, a regulated investment company. In 2013, B purchases shares of S Company for J's account that are covered securities within the meaning of section 6045(g)(3). On April 15, 2014, J inherits shares of S Company that are noncovered securities and transfers the shares into the account with B.

(ii) Under paragraph (e)(10)(iii) of this section, J must treat the purchased shares and the inherited shares of S Company as held in separate accounts. J may elect to apply the average basis method to all the shares of S Company, but must make a separate election for each account, and must average the basis of the shares in each account separately from the shares in the other account.

Example 6. (i) In 2010, Taxpayer K purchases stock in T Company in an account with C Broker. In 2012, K purchases additional T Company stock and enrolls that stock in a dividend reinvestment plan maintained by C. K elects the average basis method for the T Company stock. In 2013, K transfers the T Company stock purchased in 2010 into the dividend reinvestment plan.

(ii) Under paragraphs (e)(1)(i) and (e)(6)(ii) of this section, the stock purchased in 2010 is not stock acquired after December 31, 2010, in connection with a dividend reinvestment plan before transfer into the dividend reinvestment plan. Therefore, the stock is not eligible for the average basis method at that time.

(iii) Once transferred into the dividend reinvestment plan in 2013, the stock K purchased in 2010 is acquired after December 31, 2010, in connection with a dividend reinvestment plan within the meaning of paragraph (e)(6)(ii) of this section and is eligible for the average basis method. Because stock purchased in 2010 is a noncovered security under § 1.6045-1(a)(16), under paragraph (e)(10)(iii) of this section, the 2010 stock and the 2012 stock must be treated as held in separate accounts. Under paragraph (e)(7)(i) of this section, the basis of the 2010 shares may not be averaged with the basis of the 2012 shares.

Example 7. The facts are the same as in *Example 6*, except that K purchases the initial T Company stock in January 2011. Because this stock is a covered security under section 6045(g)(3) and § 1.6045-1(a)(15)(iv)(A), the 2011 stock and the 2012 stock are not required under paragraph (e)(10)(iii) of this section to be treated as held in separate accounts. Under paragraph (e)(7)(i) of this section, the basis of the 2011 shares must be averaged with the basis of the 2012 shares.

Example 8. (i) The facts are the same as in *Example 7*, except that K purchases the additional T Company stock and enrolls in

the dividend reinvestment plan in March 2011. In September 2011, K transfers the T Company stock purchased in January 2011 into the dividend reinvestment plan. K sells some of the T Company stock in 2012.

(ii) Under section 6045(g)(3) and § 1.6045-1(a)(16), the stock K purchases in January 2011 is a covered security at the time of purchase but the stock K purchases and enrolls in the dividend reinvestment plan in March 2011 is a noncovered security. However, under § 1.6045-1(a)(15)(iv)(A), the stock purchased in January 2011 becomes a noncovered security after it is transferred to the dividend reinvestment plan. Because all the shares in the dividend reinvestment plan in September 2011 are noncovered securities, when K sells stock in 2012, the January 2011 stock and the March 2011 stock are not required under paragraph (e)(10)(iii) of this section to be treated as held in separate accounts. Under paragraph (e)(7)(i) of this section, the basis of the January 2011 shares must be averaged with the basis of the March 2011 shares.

(11) *Single-account election*—(i) *In general.* Paragraph (e)(10)(iii) of this section does not apply if a regulated investment company or dividend reinvestment plan elects to treat all identical shares of stock described in paragraph (e)(1)(i) of this section as held in a single account (single-account election). The single-account election applies only to stock for which a taxpayer elects to use the average basis method that is held in separate accounts or treated as held in separate accounts maintained for the taxpayer and only to accounts with the same ownership. If a broker (as defined by section 6045(c)(1)) holds the stock as a nominee, the broker, and not the regulated investment company or dividend reinvestment plan, makes the election. The single-account election is irrevocable, but is void if the taxpayer revokes the average basis election under paragraph (e)(9)(iii) of this section.

(ii) *Scope of election.* A company, plan, or broker may make a single-account election for one or more taxpayers for which it maintains an account, and for one or more stocks it holds for a taxpayer. The company, plan, or broker may make the election only for the shares of stock for which it has accurate basis information. A company, plan, or broker has accurate basis information if the company, plan, or broker neither knows nor has reason to know that the basis information is inaccurate. See also section 6724 and the associated regulations regarding reporting penalties. Stock for which accurate basis information is unavailable may not be included in the single-account election and must be treated as held in a separate account.

(iii) *Effect of single-account election.* If a company, plan, or broker makes the single-account election, the basis of all identical shares of stock to which the election applies must be averaged together regardless of when the taxpayer acquires the shares, and all the shares are treated as covered securities. The single-account election applies to all identical stock a taxpayer later acquires in the account that is a covered security (within the meaning of section 6045(g)(3)). A company, plan, or broker may make another single-account election if, for example, the broker later acquires accurate basis information for a stock, or a taxpayer acquires identical stock in the account that is a noncovered security (as described in § 1.6045-1(a)(16)) for which the company, plan, or broker has accurate basis information.

(iv) *Time and manner for making the single-account election.* A company, plan, or broker makes the single-account election by clearly noting it on its books and records. The books and records must reflect the date of the election; the taxpayer's name, account number, and taxpayer identification number; the stock subject to the election; and the taxpayer's basis in the stock. The company, plan, or broker must provide copies of the books and records regarding the election to the taxpayer upon request. A company, plan, or broker may make the single-account election at any time.

(v) *Notification to taxpayer.* A company, plan, or broker making the single-account election must use reasonable means to notify the taxpayer of the election. Reasonable means include mailings, circulars, or electronic mail sent separately to the taxpayer or included with the taxpayer's account statement, or other means reasonably calculated to provide actual notice to the taxpayer. The notice must identify the securities subject to the election and advise the taxpayer that the securities will be treated as covered securities regardless of when acquired.

(vi) *Examples.* The provisions of this paragraph (e)(11) are illustrated by the following examples:

Example 1. (i) E Broker maintains Accounts A and B for Taxpayer M for the acquisition and disposition of shares of T Company, a regulated investment company. In 2011, E purchases 100 shares of T Company for M's Account A. E has accurate basis information for these shares. In 2012, E purchases 150 shares of T Company for M's Account A and 80 shares of T Company for M's Account B. M elects to use the average basis method for all shares of T Company. E makes a single-account election for M's T Company stock.

(ii) The shares of T Company in Accounts A and B are held in separate accounts. Under section 6045(g)(3) and § 1.6045-1(a)(16), of the shares purchased in Account A, the 100 shares purchased in 2011 are noncovered securities and the 150 shares purchased in 2012 are covered securities. Under paragraph (e)(10)(iii) of this section, the 100 shares are treated as held in a separate account from the 150 shares. Under paragraph (e)(11)(i) of this section, the single-account election applies to all 330 shares of T Company in Accounts A and B. Thus, under paragraph (e)(11)(iii) of this section, the basis of the 330 shares of stock is averaged together and all the shares are treated as covered securities.

Example 2. The facts are the same as in *Example 1*, except that M owns Account B jointly with Taxpayer N. E may make a single-account election for the 250 shares of stock in M's Account A. However, under paragraph (e)(11)(i) of this section, E may not make a single-account election for Accounts A and B because the accounts do not have the same ownership.

Example 3. (i) C Broker maintains an account for Taxpayer K for the acquisition and disposition of shares of T Company, a regulated investment company, and shares of V Company that K enrolls in C's dividend reinvestment plan. In 2011, C purchases for K's account 100 shares of T Company in multiple lots and 80 shares of V Company in multiple lots that are enrolled in the dividend reinvestment plan. C has accurate basis information for all 100 shares of T Company and 80 shares of V Company. In 2012, C acquires for K's account 150 shares of T Company and 160 shares of V Company that are enrolled in the dividend reinvestment plan. K elects to use the average basis method for all the shares of T Company and V Company.

(ii) Under paragraphs (e)(11)(i) and (ii) of this section, C may make a single-account election for the T Company stock or the V Company stock, or both. After making a single-account election for each stock, under paragraph (e)(11)(iii) of this section, the basis of all T Company stock is averaged together and the basis of all V Company stock is averaged together, regardless of when acquired, and all the shares of T Company and V Company are treated as covered securities.

Example 4. The facts are the same as in *Example 3*, except that K transfers the 100 shares of T Company acquired in 2011 from an account with another broker into K's account with C. C does not have accurate basis information for 30 of the 100 shares of T Company, which K had acquired in two lots. Under paragraph (e)(11)(ii) of this section, C may make the single-account election only for the 70 shares of T Company stock for which C has accurate basis information. C must treat the 30 shares of T Company for which C does not have accurate basis information as held in a separate account. K may use the average basis method for the 30 shares of T Company, but must make a separate average basis method election for these shares and must average the basis of these shares separately from the 70 shares subject to C's single-account election.

Example 5. The facts are the same as in *Example 3*, except that C has made the single-account election and in 2013 K acquires additional shares of T Company that are covered securities in K's account with C. Under paragraph (e)(11)(iii) of this section, these shares of T Company are subject to C's single-account election.

Example 6. The facts are the same as in *Example 3*, except that C has made the single-account election and in 2013 K inherits shares of T Company that are noncovered securities and transfers the shares into the account with C. C has accurate basis information for these shares. Under paragraph (e)(11)(iii) of this section, C may make a second single-account election to include the inherited T Company shares.

Example 7. (i) Between 2002 and 2011, Taxpayer L acquires 1,500 shares of W Company, a regulated investment company, in an account with D Broker, for which L uses the average basis method, and sells 500 shares. On January 5, 2012, based on accurate basis information, the averaged basis of L's remaining 1,000 shares of W Company is \$24 per share. On January 5, 2012, L acquires 100 shares of W Company for \$28 per share and makes an average basis election for those shares under paragraph (e)(9)(i) of this section.

(ii) On February 1, 2012, D makes a single-account election that includes all 1,100 of L's shares in W Company. Thereafter, the basis of L's shares of W Company is \$24.36 per share $((\$24,000 + \$2,800)/1,100)$. On September 12, 2012, under paragraph (e)(9)(iii) of this section, L revokes the average basis election for the 100 shares acquired on January 5, 2012.

(iii) Under paragraph (e)(11)(i) of this section, D's single-account election is void. Therefore, the basis of the 1,000 shares of W Company that L acquires before 2012 is \$24 per share and the basis of the 100 shares of W Company that L acquires in 2012 is \$28 per share.

(12) Effective/applicability date.

Except as otherwise provided in paragraphs (e)(1), (e)(2), (e)(7), (e)(9), and (e)(10) of this section, this paragraph (e) applies for taxable years beginning after October 18, 2010.

* * * * *

■ **Par. 4.** Section 1.6039-2 is amended by adding two new sentences at the end of paragraph (c)(1) to read as follows:

§ 1.6039-2 Statements to persons with respect to whom information is reported.

* * * * *

(c) * * *

(1) * * * However, for a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. See §§ 1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

* * * * *

■ **Par. 5.** Section 1.6042-4 is amended by adding two new sentences at the end of paragraph (e)(1) to read as follows:

§ 1.6042-4 Statements to recipients of dividend payments.

* * * * *

(e) * * *

(1) * * * For a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. See §§ 1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

* * * * *

■ **Par. 6.** Section 1.6044-5 is amended by adding two new sentences at the end of paragraph (b) to read as follows:

§ 1.6044-5 Statements to recipients of patronage dividends.

* * * * *

(b) * * * For a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. See §§ 1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

* * * * *

■ **Par. 7.** Section 1.6045-1 is amended by:

- 1. Revising paragraph (a)(9) and adding paragraphs (a)(14), (a)(15), and (a)(16).
- 2. Adding *Examples 9, 10, and 11* to paragraph (b).
- 3. Revising paragraphs (c)(2), (c)(3)(i)(B)(1), and (c)(3)(i)(C).
- 4. Removing paragraph (c)(3)(xii) and redesignating paragraph (c)(3)(xi) as (c)(3)(xii) and adding a new paragraph (c)(3)(xi).
- 5. Adding *Examples 7, 8, and 9* to paragraph (c)(4).
- 6. Revising paragraphs (d)(1), (d)(2), and (d)(5).
- 7. Redesignating paragraphs (d)(6) and (d)(7) as (d)(8) and (d)(9) respectively and adding new paragraphs (d)(6) and (d)(7).
- 8. Revising newly designated paragraphs (d)(8) and (d)(9).
- 9. Revising paragraphs (e)(2)(i), (f)(2)(i), (k)(1), and (k)(2).
- 10. Redesignating paragraph (k)(3) as (k)(4) and adding a new paragraph (k)(3).
- 11. Removing paragraphs (p) and (q) and redesignating paragraph (r) as (p).

The additions and revisions read as follows:

§ 1.6045-1 Returns of information of brokers and barter exchanges.

(a) * * *

(9) The term *sale* means any disposition of securities, commodities, regulated futures contracts, or forward contracts, and includes redemptions of stock, retirements of indebtedness, and enterings into short sales, but only to the extent any of these actions are conducted for cash. In the case of a regulated futures contract or a forward contract, a sale is any closing transaction. When a closing transaction in a regulated futures contract involves making or taking delivery, the profit or loss on the contract is a sale and the delivery is a separate sale. When a closing transaction in a forward contract involves making or taking delivery, the delivery is a sale without separating the profit or loss on the contract from the profit or loss on the delivery, except that taking delivery for United States dollars is not a sale. Grants or purchases of options, exercises of call options, and enterings into contracts that require delivery of personal property or an interest therein are not sales. For purposes of this section only, a constructive sale under section 1259 and a mark to fair market value under sections 475 or 1296 are not sales.

* * * * *

(14) The term *specified security* means any share of stock (or any interest treated as stock, including, for example, an American Depositary Receipt) in an entity organized as, or treated for Federal tax purposes as, a corporation (foreign or domestic). Solely for purposes of this paragraph (a)(14), a security classified as stock by the issuer is treated as stock. If the issuer has not classified the security, the security is not treated as stock unless the broker knows that the security is reasonably classified as stock under general Federal tax principles.

(15) The term *covered security* means a specified security described in this paragraph (a)(15).

(i) *In general.* Except as provided in paragraph (a)(15)(iv) of this section, the following securities are covered securities:

(A) A specified security acquired for cash in an account on or after January 1, 2011, except stock for which the average basis method is available under § 1.1012-1(e).

(B) Stock for which the average basis method is available under § 1.1012-1(e) acquired for cash in an account on or after January 1, 2012.

(C) A specified security transferred to an account if the broker or other custodian of the account receives a

transfer statement (as described in § 1.6045A-1) reporting the security as a covered security.

(ii) *Acquired in an account.* For purposes of this paragraph (a)(15), a security is considered acquired in a customer's account at a broker or custodian if the security is acquired by the customer's broker or custodian or acquired by another broker and delivered to the customer's broker or custodian.

(iii) *Corporate actions and other events.* For purposes of this paragraph (a)(15), a security acquired due to a stock dividend, stock split, reorganization, redemption, stock conversion, recapitalization, corporate division, or other similar action is considered acquired for cash in an account.

(iv) *Exceptions.* Notwithstanding paragraph (a)(15)(i) of this section, the following securities are not covered securities:

(A) Stock acquired in 2011 that is transferred to a dividend reinvestment plan (as described in § 1.1012-1(e)(6)) in 2011. However, a covered security acquired in 2011 that is transferred to a dividend reinvestment plan after 2011 remains a covered security.

(B) A security acquired through an event described in paragraph (a)(15)(iii) of this section if the basis of the acquired security is determined from the basis of a noncovered security.

(C) A security that is excepted at the time of its acquisition from reporting under paragraph (c)(3) or (g) of this section. However, a broker cannot treat a security as acquired by an exempt foreign person under paragraph (g)(1)(i) of this section at the time of acquisition if, at that time, the broker knows or should have known (including by reason of information that the broker is required to collect under section 1471 or 1472) that the customer is not a foreign person.

(D) A security for which reporting under this section is required by § 1.6049-5(d)(3)(ii) (certain securities owned by a foreign intermediary or flow-through entity).

(16) The term *noncovered security* means any security that is not a covered security.

(b) * * *
* * * * *

Example 9. E, an individual not otherwise exempt from reporting, maintains an account with S, a broker. On June 1, 2012, E instructs S to purchase stock that is a specified security for cash. S places an order to purchase the stock with T, another broker. E does not maintain an account with T. T executes the purchase. Custody of the purchased stock is transferred to E's account

at S. Under paragraph (a)(15)(ii) of this section, the stock is considered acquired for cash in E's account at S. Because the stock is acquired on or after January 1, 2012, under paragraph (a)(15)(i) of this section, it is a covered security.

Example 10. F, an individual not otherwise exempt from reporting, is granted 100 shares of stock in F's employer by F's employer. Because F does not acquire the stock for cash or through a transfer to an account with a transfer statement (as described in § 1.6045A-1), under paragraph (a)(15) of this section, the stock is not a covered security.

Example 11. G, an individual not otherwise exempt from reporting, owns 400 shares of stock in Q, a corporation, in an account with U, a broker. Of the 400 shares, 100 are covered securities and 300 are noncovered securities. Q takes a corporate action to split its stock in a 2-for-1 split. After the stock split, G owns 800 shares of stock. Because the adjusted basis of 600 of the 800 shares that G owns is determined from the basis of noncovered securities, under paragraphs (a)(15)(iii) and (a)(15)(iv)(B) of this section, these 600 shares are not covered securities and the remaining 200 shares are covered securities.

(c) * * *
(2) *Sales required to be reported.* Except as provided in paragraphs (c)(3), (c)(5), and (g) of this section, a broker is required to make a return of information for each sale by a customer of the broker if, in the ordinary course of a trade or business in which the broker stands ready to effect sales to be made by others, the broker effects the sale or closes the short position opened by the sale.

(3) * * *
(i) * * *
(B) * * *
(1) A corporation as defined in section 7701(a)(3), whether domestic or foreign, except that this exclusion does not apply to sales of covered securities acquired on or after January 1, 2012, by an S corporation as defined in section 1361(a);

(C) *Exemption certificate—(1) In general.* Except as provided in paragraph (c)(3)(i)(C)(2) of this section, a broker may treat a person described in paragraph (c)(3)(i)(B) of this section as an exempt recipient based on a properly completed exemption certificate (as provided in § 31.3406(h)-3 of this chapter); the broker's actual knowledge that the customer is a person described in paragraph (c)(3)(i)(B) of this section; or the applicable indicators described in § 1.6049-4(c)(1)(ii)(A) through (M). A broker may require an exempt recipient to file a properly completed exemption certificate and may treat an exempt recipient that fails to do so as a recipient that is not exempt.

(2) *Limitation for corporate customers.* For sales of covered

securities acquired on or after January 1, 2012, a broker may not treat a customer as an exempt recipient described in paragraph (c)(3)(i)(B)(1) of this section based on the indicators of corporate status described in § 1.6049-4(c)(1)(ii)(A). However, for sales of all securities, a broker may treat a customer as an exempt recipient if one of the following applies:

(i) The name of the customer contains the term "insurance company," "indemnity company," "reinsurance company," or "assurance company."

(ii) The name of the customer indicates that it is an entity listed as a per se corporation under § 301.7701-2(b)(8)(i) of this chapter.

(iii) The broker receives a properly completed exemption certificate (as provided in § 31.3406(h)-3 of this chapter) that asserts that the customer is not an S corporation as defined in section 1361(a).

(iv) The broker receives a withholding certificate described in § 1.1441-1(e)(2)(i) that includes a certification that the person whose name is on the certificate is a foreign corporation.

* * * * *
(xi) *Short sales—(A) In general.* A broker may not make a return of information under this section for a short sale of a security entered into on or after January 1, 2011, until the year a customer delivers a security to satisfy the short sale obligation. The return must be made without regard to the constructive sale rule in section 1259 or to section 1233(h). In general, the broker must report on a single return the information required by paragraph (d)(2)(i) of this section for the short sale except that the broker must report the date the short sale was closed in lieu of the sale date. In applying paragraph (d)(2)(i) of this section, the broker must report the relevant information regarding the security sold to open the short sale and the adjusted basis of the security delivered to close the short sale and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222).

(B) *Short sale closed by delivery of a noncovered security.* A broker is not required to report adjusted basis and whether any gain or loss on the closing of the short sale is long-term or short-term if the short sale is closed by delivery of a noncovered security and the return so indicates. A broker that chooses to report this information is not subject to penalties under section 6721 or 6722 for failure to report this information correctly if the broker indicates on the return that the short

sale was closed by delivery of a noncovered security.

(C) *Short sale obligation transferred to another account.* If a short sale obligation is satisfied by delivery of a security transferred into a customer's account accompanied by a transfer statement (as described in § 1.6045A-1(b)(4)) indicating that the security was borrowed, the broker receiving custody of the security may not file a return of information under this section. The receiving broker must furnish a statement to the transferor that reports the amount of gross proceeds received from the short sale, the date of the sale, the quantity of shares or units sold, and the Committee on Uniform Security Identification Procedures (CUSIP) number of the sold security (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter). The statement to the transferor also must include the transfer date, the name and contact information of the receiving broker, the name and contact information of the transferor, and sufficient information to identify the customer. If the customer subsequently closes the short sale obligation in the transferor's account with non-borrowed securities, the transferor must make the return of information required by this section. In that event, the transferor must take into account the information furnished under this paragraph (c)(3)(xi)(C) on the return unless the transferor knows that the information furnished under this paragraph is incorrect or incomplete. A failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause for purposes of penalties under sections 6721 and 6722. See § 301.6724-1(a)(1) of this chapter.

* * * * *
(4) * * *
* * * * *

Example 7. On June 24, 2010, H, an individual who is not an exempt recipient, opens a short sale of stock in an account with M, a broker. Because the short sale is entered into before January 1, 2011, paragraph (c)(3)(xi) of this section does not apply. Under paragraphs (c)(2) and (j) of this section, M must make a return of information for the year of the sale regardless of when the short sale is closed.

Example 8. (i) On August 25, 2011, H opens a short sale of stock in an account with M, a broker. H closes the short sale with M on January 25, 2012, by purchasing stock of the same corporation in the account in which H opened the short sale and delivering the stock to satisfy H's short sale obligation. The stock H purchased is a covered security.

(ii) Because the short sale is entered into on or after January 1, 2011, under paragraphs (c)(2) and (c)(3)(xi) of this section, the broker closing the short sale must make a return of information reporting the sale for the year in which the short sale is closed. Thus, M is required to report the sale for 2012. M must report on a single return the relevant information for the sold stock, the adjusted basis of the purchased stock, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222). Thus, M must report the information about the short sale opening and closing transactions on a single return for taxable year 2012.

Example 9. (i) Assume the same facts as in *Example 8* except that H also has an account with N, a broker, and satisfies the short sale obligation with M by borrowing stock of the same corporation from N and transferring custody of the borrowed stock from N to M. N indicates on the transfer statement that the transferred stock was borrowed in accordance with § 1.6045A-1(b)(4).

(ii) Under paragraph (c)(3)(xi)(C) of this section, M may not file the return of information required under this section. M must furnish a statement to N that reports the gross proceeds from the short sale on August 25, 2011, the date of the sale, the quantity of shares sold, the CUSIP number or other security identifier number of the sold stock, the transfer date, the name and contact information of M and N, and information identifying H such as H's name and the account number from which H transferred the borrowed stock.

(iii) N must report the gross proceeds from the short sale, the date the short sale was closed, the adjusted basis of the stock acquired to close the short sale, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222) on the return of information N is required to file under paragraph (c)(2) of this section when H closes the short sale in the account with N.

* * * * *
(d) * * * (1) *In general.* A broker that is required to make a return of information under paragraph (c) of this section during a reporting period is required to report for each filing group on a separate Form 1096, "Annual Summary and Transmittal of U.S. Information Returns," or any successor form, the information required by the form in the manner and number of copies required by the form.

(2) *Transactional reporting—(i) Required information.* Except as provided in paragraph (c)(5) of this section, for each sale for which a broker is required to make a return of information under this section, the broker must report on Form 1099-B, "Proceeds From Broker and Barter Exchange Transactions," or any successor form the name, address, and taxpayer identification number of the customer, the property sold, the CUSIP

number of the security sold (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), the adjusted basis of the security sold, whether any gain or loss with respect to the security sold is long-term or short-term (within the meaning of section 1222), the gross proceeds of the sale, the sale date, and other information required by the form in the manner and number of copies required by the form.

(ii) *Specific identification of securities.* Except as provided in § 1.1012-1(e)(7)(ii), a broker must report a sale on or after January 1, 2011, of less than the entire position in an account of a specified security that was acquired on different dates or at different prices consistently with a customer's adequate and timely identification of the security to be sold. See § 1.1012-1(c). If the customer does not provide an adequate and timely identification for the sale, the broker must first report the sale of any shares or units in the account for which the broker does not know the acquisition or purchase date followed by the earliest shares or units purchased or acquired, whether covered securities or noncovered securities.

(iii) *Sales of noncovered securities.* A broker is not required to report adjusted basis and whether any gain or loss on the sale is long-term or short-term for the sale of a noncovered security if the return identifies the sale as a sale of a noncovered security. A broker that chooses to report this information for a noncovered security is not subject to penalties under section 6721 or 6722 for failure to report this information correctly if the return identifies the sale as a sale of a noncovered security. For purposes of this paragraph (d)(2)(iii), a broker must treat a security for which a broker makes the single-account election described in § 1.1012-1(e)(11)(i) as a covered security.

(iv) *Information from other parties and other accounts—(A) Transfer and issuer statements.* When reporting a sale of a covered security, a broker must take into account all information, other than the classification of the security (such as stock), furnished on a transfer statement (as described in § 1.6045A-1) and all information furnished or deemed furnished on an issuer statement (as described in § 1.6045B-1), unless the statement is incomplete or the broker has actual knowledge that it is incorrect. A broker may treat a customer as a minority shareholder when taking the information on an issuer statement into account unless the broker knows that

the customer is a majority shareholder and the issuer statement reports the action's effect on the basis of majority shareholders. A failure to report correct information that arises solely from reliance on information furnished on a transfer statement or issuer statement is deemed to be due to reasonable cause for purposes of penalties under sections 6721 and 6722. See § 301.6724-1(a)(1) of this chapter.

(B) *Other information.* A broker is permitted, but not required, to take into account information about a covered security other than what is furnished on a transfer statement or issuer statement, including any information the broker has about securities held by the same customer in other accounts with the broker. For purposes of penalties under sections 6721 and 6722, a broker that takes into account information received from a customer or third party other than information furnished on a transfer statement or issuer statement is deemed to have relied upon this information in good faith if the broker neither knows nor has reason to know that the information is incorrect. See § 301.6724-1(c)(6) of this chapter.

(v) *Failure to receive a complete transfer statement.* A broker that has not received a complete transfer statement as required under § 1.6045A-1(a)(3) for a transfer of a specified security must request a complete statement from the applicable person effecting the transfer unless, under § 1.6045A-1(a), the transferor has no duty to furnish a transfer statement for the transfer. The broker is only required to make this request once. If the broker does not receive a complete transfer statement after requesting it, the broker may treat the security as a noncovered security upon its subsequent sale or transfer. A transfer statement for a covered security is complete if, in the view of the receiving broker, it provides sufficient information to comply with this section when reporting the sale of the security. A transfer statement for a noncovered security is complete if it indicates that the security is a noncovered security.

(vi) *Reporting by other parties after a sale—(A) Transfer statements.* If a broker receives a transfer statement indicating that a security is a covered security after the broker reports the sale of the security, the broker must file a corrected return within thirty days of receiving the statement unless the broker reported the required information on the original return consistently with the transfer statement.

(B) *Issuer statements.* If a broker receives or is deemed to receive an issuer statement after the broker reports the sale of a covered security, the broker

must file a corrected return within thirty days of receiving the issuer statement unless the broker reported the required information on the original return consistently with the issuer statement.

(C) *Exception.* A broker is not required to file a corrected return under this paragraph (d)(2)(vi) if the broker receives the transfer statement or issuer statement more than three years after the broker filed the return.

(vii) *Examples.* The following examples illustrate the rules of this paragraph (d)(2):

Example 1. (i) On February 22, 2012, K sells 100 shares of stock of C, a corporation, at a loss in an account held with F, a broker. On March 15, 2012, K purchases 100 shares of C stock for cash in an account with G, a different broker. Because K acquires the stock purchased on March 15, 2012, for cash in an account after January 1, 2012, under paragraph (a)(15) of this section, the stock is a covered security. K asks G to increase K's adjusted basis in the stock to account for the application of the wash sale rules under section 1091 to the loss transaction in the account held with F.

(ii) Under paragraph (d)(2)(iv)(B) of this section, G is not required to take into account the information provided by K when subsequently reporting the adjusted basis and whether any gain or loss on the sale is long-term or short-term. If G chooses to take this information into account, under paragraph (d)(2)(iv)(B) of this section, G is deemed to have relied upon the information received from K in good faith for purposes of penalties under sections 6721 and 6722 if G neither knows nor has reason to know that the information provided by K is incorrect.

Example 2. (i) L purchases shares of stock of a single corporation in an account with F, a broker, on April 17, 1969, April 17, 2012, April 17, 2013, and April 17, 2014. In January 2015, L sells all the stock.

(ii) Under paragraph (d)(2)(i) of this section, F must separately report the gross proceeds and adjusted basis attributable to the stock purchased in 2014, for which the gain or loss on the sale is short-term, and the combined gross proceeds and adjusted basis attributable to the stock purchased in 2012 and 2013, for which the gain or loss on the sale is long-term. Under paragraph (d)(2)(iii) of this section, F must also separately report the gross proceeds attributable to the stock purchased in 1969 as the sale of noncovered securities in order to avoid treatment of this sale as the sale of covered securities.

* * * * *

(5) *Gross proceeds.* For purposes of this section, *gross proceeds* on a sale are the total amount paid to the customer or credited to the customer's account as a result of the sale reduced by the amount of any interest reported under paragraph (d)(3) of this section and increased by any amount not paid or credited by reason of repayment of margin loans. In the case of a closing transaction that results in a loss, gross proceeds are the amount debited from the customer's

account. A broker may, but is not required to, reduce gross proceeds by the amount of commissions and transfer taxes, provided the treatment chosen is consistent with the books of the broker. For securities sold pursuant to the exercise of an option granted or acquired before January 1, 2013, a broker may, but is not required to, take the option premiums into account in determining the gross proceeds of the securities sold, provided the treatment chosen is consistent with the books of the broker. A broker must report the gross proceeds of identical stock (within the meaning of § 1.1012-1(e)(4)) by averaging the proceeds of each share if the stock is sold at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the customer that reports an aggregate total price or an average price per share. However, a broker may not average the proceeds if the customer notifies the broker in writing of an intent to determine the proceeds of the stock by the actual proceeds per share and the broker receives the notification by January 15 of the calendar year following the year of the sale. A broker may extend the January 15 deadline but not beyond the due date for filing the return required under this section.

(6) *Adjusted basis—(i) In general.* For purposes of this section, the adjusted basis of a security is determined from the initial basis under paragraph (d)(6)(ii) of this section as of the date the security is acquired in an account, increased by the commissions and transfer taxes related to its sale to the extent not accounted for in gross proceeds as described in paragraph (d)(5) of this section. A broker is not required to consider transactions, elections, or events occurring outside the account except for an organizational action taken by an issuer during the period the broker holds custody of the security (not including the transfer settlement date if the security was transferred) reported on an issuer statement (as described in § 1.6045B-1) furnished or deemed furnished to the broker.

(ii) *Initial basis—(A) Cost basis.* For a security acquired for cash, the initial basis is the total amount of cash paid by the customer or credited against the customer's account for the security, increased by the commissions and transfer taxes related to its acquisition. A broker may, but is not required to, take option premiums into account in determining the initial basis of securities purchased or acquired pursuant to the exercise of an option granted or acquired before January 1,

2013. A broker may, but is not required to, increase initial basis for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangements, granted or acquired before January 1, 2013. A broker must report the basis of identical stock (within the meaning of § 1.1012-1(e)(4)) by averaging the basis of each share if the stock is purchased at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the customer that reports an aggregate total price or an average price per share. However, a broker may not average the basis if the customer timely notifies the broker in writing of an intent to determine the basis of the stock by the actual cost per share in accordance with § 1.1012-1(c)(1)(ii).

(B) *Transferred basis—(1) In general.* The initial basis of a security transferred to an account is generally the basis reported on the transfer statement (as described in § 1.6045A-1).

(2) *Securities acquired by gift.* If a transfer statement indicates that the security is acquired as a gift, a broker must apply the relevant basis rules for property acquired by gift in determining the initial basis, but is not required to adjust basis for gift tax. A broker must treat the initial basis as equal to the gross proceeds from the sale determined under paragraph (d)(5) of this section if the relevant basis rules for property acquired by gift prevent recognizing both gain and loss, or if the relevant basis rules treat the initial basis of the security as its fair market value as of the date of the gift and the broker neither knows nor can readily ascertain this value. If the transfer statement did not report a date for the gift, the broker must treat the settlement date for the transfer as the date of the gift.

(iii) *Adjustments for wash sales—(A) In general.* A broker must apply the wash sale rules under section 1091 if both the sale and purchase transactions are of covered securities with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter). When reporting the sale transaction that triggered the wash sale, the broker must report the amount of loss that is disallowed by section 1091 in addition to gross proceeds and adjusted basis. The broker must increase the adjusted basis of the purchased security by the amount of loss disallowed on the sale transaction.

(B) *Securities in different accounts.* A broker is not required to apply paragraph (d)(6)(iii)(A) of this section if the securities are purchased and sold from different accounts, if the purchased security is transferred to another account before the wash sale, or if the securities are treated as held in separate accounts under § 1.1012-1(e). A security is not purchased in an account if it is purchased in another account and transferred into the account.

(C) *Effect of election under section 475(f)(1).* A broker is not required to apply paragraph (d)(6)(iii)(A) of this section to securities in an account if a customer has in writing both informed the broker that the customer has made a valid and timely election under section 475(f)(1) and identified the account as solely containing securities subject to the election. For purposes of this paragraph (d)(6)(iii)(C), a writing may be in electronic format. If a customer subsequently informs a broker that the election no longer applies to the customer or the account, the broker must prospectively apply paragraph (d)(6)(iii)(A) of this section but is not required to apply paragraph (d)(6)(iii)(A) of this section for the period covered by the customer's prior instruction to the broker. A taxpayer that is not a trader in securities within the meaning of section 475(f)(1) does not become a trader in securities, or create an inference that it is a trader in securities, by notifying a broker that it has made a valid and timely election under section 475(f)(1).

(D) *Reporting at or near the time of sale.* If a wash sale occurs after a broker has completed a return or statement reporting a sale of a covered security, the broker must redetermine adjusted basis under this paragraph (d)(6)(iii) and, if the return or statement included information inconsistent with this redetermination, correct the return or statement by the applicable original due date set forth in this section for the return or statement.

(iv) *Constructive sale and mark-to-market adjustments.* A broker is not required to apply section 1259 (regarding constructive sales), section 475 (regarding the mark-to-market method of accounting), or section 1296 (regarding the mark-to-market method of accounting for marketable stock in a passive foreign investment company) when reporting adjusted basis.

(v) *Average basis method adjustments.* For a covered security for which basis may be determined by the average basis method, a broker must compute basis using the average basis method if a customer validly elects that

method for the securities sold or, in the absence of any instruction from the customer, if the broker chooses that method as its default basis determination method. See § 1.1012-1(e).

(vi) *Regulated investment company and real estate investment trust adjustments.* A broker must adjust the basis of a covered security issued by a regulated investment company or real estate investment trust for the effects of undistributed capital gains reported to or by the broker under section 852(b)(3)(D) or section 857(b)(3)(D).

(vii) *Examples.* The following examples, in which all the securities are covered securities, illustrate the rules of this paragraph (d)(6):

Example 1. (i) On September 21, 2012, P purchases 100 shares of stock in an account with J, a broker. On December 14, 2012, P purchases 100 shares of stock with the same CUSIP number in the same account. On January 4, 2013, P sells the 100 shares purchased on September 21, 2012, at a loss.

(ii) Because the sale of stock on January 4, 2013, and the purchase of stock on December 14, 2012, are of covered securities with the same CUSIP number, under paragraph (d)(6)(iii)(A) of this section, J must report the amount of loss disallowed by section 1091 in addition to the gross proceeds of the sale and the adjusted basis of the September 21, 2012, stock.

(iii) P later sells the stock acquired on December 14, 2012. When reporting the sale of the stock, under paragraph (d)(6)(iii)(A) of this section, J must increase the adjusted basis of the stock acquired on December 14, 2012, by the amount of loss disallowed on the January 4, 2013, sale.

Example 2. Assume the same facts as in *Example 1* except that the December 14, 2012, purchase occurs in another account P maintains with J. Because the December 14, 2012, purchase does not occur in the same account as the sale of the September 21, 2012, stock, under paragraph (d)(6)(iii)(B) of this section, J is not required to apply the wash sale rules in reporting the sale of stock acquired on September 21, 2012, or December 14, 2012. Under paragraphs (d)(2)(iii) and (d)(2)(iv)(B) of this section, J may choose to apply the wash sale rules as if the transactions occurred in the same account. The result is the same whether P keeps the stock purchased on December 14, 2012, in the other account or transfers the stock into the account from which P sells the stock sold on January 4, 2013.

Example 3. (i) K, a regulated investment company, offers two funds for sale, Fund D and Fund E. On April 22, 2012, Q purchases shares of Fund D and pays a separate load charge. By paying the load charge, Q acquires a reinvestment right in shares of Fund E. On April 23, 2012, at the request of Q, Fund D redeems the shares. Q uses the proceeds to purchase shares of Fund E in a separate account. As a result of the reinvestment right, Q pays no load charge in purchasing the Fund E shares.

(ii) Under paragraph (d)(6)(i) of this section, when reporting adjusted basis of the Fund D and Fund E shares at the time of their redemption, K is not required to adjust basis for any deferral of the load charge under section 852(f), because the transactions concerning Fund D and Fund E occur in separate accounts. Under paragraph (d)(2)(iv)(B) of this section, K may choose to apply the provisions of section 852(f).

Example 4. R, an employee of C, a corporation, participates in C's stock option plan. On April 2, 2012, C grants R a nonstatutory option under the plan to buy 100 shares of stock. The option becomes substantially vested on April 2, 2013. On October 2, 2013, R exercises the option and purchases 100 shares. On December 2, 2013, R sells the 100 shares. Under paragraph (d)(6)(ii)(A) of this section, C is required to determine adjusted basis from the amount R pays under the terms of the option. Because C grants the option to R before January 1, 2013, under paragraph (d)(6)(ii)(A) of this section, C is not required to adjust basis for any amount R must include as wage income with respect to the October 2, 2013, stock purchase. The result is the same if C grants R a statutory option.

(7) *Long-term or short-term gain or loss—(i) In general.* In determining whether any gain or loss on the sale of a security is long-term or short-term within the meaning of section 1222 for purposes of this section, a broker must consider the information reported on a transfer statement (as described in § 1.6045A-1) and apply the relevant rules for property acquired from a decedent or by gift. A broker is not required to consider transactions, elections, or events occurring outside the account except for an organizational action taken by an issuer during the period the broker holds custody of the security (not including the transfer settlement date if the security was transferred) reported on an issuer statement (as described in § 1.6045B-1) furnished or deemed furnished to the broker.

(ii) *Adjustments for wash sales—(A) In general.* A broker must apply the wash sale rules under section 1091 if both the sale and purchase transactions are of covered securities with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(B) *Securities in different accounts.* A broker is not required to apply paragraph (d)(7)(ii)(A) of this section if the securities are purchased and sold from different accounts, if the purchased security is transferred to another account before the wash sale, or if the securities are treated as held in separate accounts under § 1.1012-1(e).

A security is not purchased in an account if it is purchased in another account and transferred into the account.

(C) *Effect of election under section 475(f)(1).* A broker is not required to apply paragraph (d)(7)(ii)(A) of this section to securities in an account if a customer has in writing both informed the broker that the customer has made a valid and timely election under section 475(f)(1) and identified the account as solely containing securities subject to the election. For purposes of this paragraph (d)(7)(ii)(C), a writing may be in electronic format. If a customer subsequently informs a broker that the election no longer applies to the customer or the account, the broker must prospectively apply paragraph (d)(7)(ii)(A) of this section but is not required to apply paragraph (d)(7)(ii)(A) of this section for the period covered by the customer's prior instruction to the broker. A taxpayer that is not a trader in securities within the meaning of section 475(f)(1) does not become a trader in securities, or create an inference that it is a trader in securities, by notifying a broker that it has made a valid and timely election under section 475(f)(1).

(D) *Reporting at or near the time of sale.* If a wash sale occurs after a broker has completed a return or statement reporting a sale of a covered security, the broker must redetermine whether gain or loss on the sale is long-term or short-term under this paragraph (d)(7)(ii) and, if the return or statement included information inconsistent with this redetermination, correct the return or statement by the applicable original due date set forth in this section for the return or statement.

(iii) *Constructive sale and mark-to-market adjustments.* A broker is not required to apply section 1259 (regarding constructive sales), section 475 (regarding the mark-to-market method of accounting), or section 1296 (regarding the mark-to-market method of accounting for marketable stock in a passive foreign investment company) when determining whether any gain or loss on the sale of a security is long-term or short-term.

(iv) *Regulated investment company and real estate investment trust adjustments.* A broker is not required to apply sections 852(b)(4)(A) and 857(b)(8) (regarding effect of distributed and undistributed capital gain dividends on a loss on sale of regulated investment company or real estate investment trust shares held six months or less) or section 852(b)(4)(B) (regarding loss disallowance on sale of regulated investment company shares

held six months or less due to receipt of tax-exempt dividends) when determining whether any gain or loss on the sale of a security is long-term or short-term.

(v) *No adjustments for hedging transactions or offsetting positions.* A broker is not required to apply section 1092 (regarding straddles), section 1233(b)(2) (regarding effect of short sale on holding period of substantially identical property), or § 1.1221-2(b) (regarding hedging transactions) when determining whether any gain or loss on the sale of a security is long-term or short-term.

(8) *Conversion into United States dollars of amounts paid or received in foreign currency—(i) Conversion rules.* (A) When a payment is made in a foreign currency, a broker must determine the U.S. dollar amount of the payment by converting the foreign currency into U.S. dollars on the date it receives, credits, or makes the payment, as applicable, at the spot rate (as defined in § 1.988-1(d)(1)) or pursuant to a reasonable spot rate convention. When reporting the sale of a security traded on an established securities market, however, a broker must determine the U.S. dollar amounts at the spot rate or pursuant to a reasonable spot rate convention as of the settlement date of the purchase or sale, as applicable.

(B) A reasonable spot rate convention includes a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently for all non-dollar amounts reported and from year to year. The convention may not be changed without the consent of the Commissioner or his or her delegate.

(ii) *Effect of identification under § 1.988-5(a), (b), or (c) when the taxpayer effects a sale and a hedge through the same broker.* In lieu of the amounts reportable under paragraph (d)(8)(i) of this section, the gross proceeds and adjusted basis must each be the integrated amount computed under § 1.988-5(a), (b) or (c) if—

(A) A taxpayer effects through a broker a sale or exchange of nonfunctional currency (as defined in § 1.988-1(c)) and hedges all or a part of the sale as provided in § 1.988-5(a), (b) or (c) with the same broker; and

(B) The taxpayer complies with the requirements of § 1.988-5(a), (b) or (c) and so notifies the broker prior to the end of the calendar year in which the sale occurs.

(iii) *Example.* The following example illustrates the rules of this paragraph (d)(8):

Example. (i) Z, an individual, is a U.S. citizen. On July 4, 2012, Z purchases stock

of C, SA, a French corporation traded on an established securities market, in an account with Q, a broker. Q uses a daily spot rate for converting euro and U.S. dollars. Z pays €1,200 for the stock. On the settlement date for the purchase, the spot rate is €1 = \$1.30. On October 4, 2012, Z sells the stock for €1,000. On the settlement date for the sale, the spot rate is €1 = \$1.35. On October 5, 2012, Z purchases additional shares of C, SA, that cause the €200 loss on the stock sold on October 4, 2012, to be disallowed under section 1091.

(ii) Under paragraph (d)(8)(i)(A) of this section, Q must determine adjusted basis by converting the €1,200 paid on behalf of Z into U.S. dollars using the €1 = \$1.30 spot rate on the settlement date of the purchase. Q must convert the €1,000 gross proceeds into U.S. dollars using the €1 = \$1.35 spot rate on the settlement date for the sale. Thus, Q must report adjusted basis equal to \$1,560, gross proceeds equal to \$1,350, and \$210 in loss disallowed by section 1091.

(9) *Coordination with the reporting rules for widely held fixed investment trusts under § 1.671-5.* Information required to be reported under section 6045(a) for a sale of a security in a widely held fixed investment trust (WHFIT) (as defined under § 1.671-5) and the sale of an interest in a WHFIT must be reported as provided by this section unless the information is also required to be reported under § 1.671-5. To the extent that this section requires additional information under section 6045(g), those requirements are deemed to be met through compliance with the rules in § 1.671-5.

(e) * * *

(2) * * * (i) *In general.* Except as provided in paragraphs (e)(2)(ii) and (g) of this section, a barter exchange must make a return of information for exchanges of personal property or services through the barter exchange during the calendar year among its members or clients or between these persons and the barter exchange. For this purpose, property or services are exchanged through a barter exchange if payment for property or services is made by means of a credit on the books of the barter exchange or scrip issued by the barter exchange or if the barter exchange arranges a direct exchange of property or services among its members or clients or exchanges property or services with a member or client.

* * * * *

(f) * * *

(2) * * * (i) *In general.* As to each exchange for which a barter exchange is required to make a return of information under this section, the barter exchange must show on Form 1099-B, "Proceeds From Broker and Barter Exchange Transactions," or any successor form the name, address, and taxpayer

identification number of each member or client providing property or services in the exchange, the property or services provided, the amount received by the member or client for the property or services, the date on which the exchange occurred, and other information required by the form in the manner and number of copies required by the form.

* * * * *

(k) * * * (1) *General requirements.* A broker or barter exchange making a return of information under this section must furnish to the person whose identifying number is (or is required to be) shown on the return a written statement showing the information required by paragraph (c)(5), (d), or (f) of this section and containing a legend stating that the information is being reported to the Internal Revenue Service. If the return of information is not made on magnetic media, this requirement may be satisfied by furnishing to the person a copy of all Forms 1099 or any successor form for the person filed with the Internal Revenue Service Center. A statement is considered to be furnished to a person to whom a statement is required to be made under this paragraph (k) if it is mailed to the person at the last address of the person known to the broker or barter exchange.

(2) *Time for furnishing statements.* A broker or barter exchange may furnish the statements required under this paragraph (k) yearly, quarterly, monthly, or on any other basis, without regard to the reporting period the broker or barter exchange elects; however, all statements required to be furnished under this paragraph (k) for a calendar year must be furnished on or before February 15 of the following calendar year.

(3) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements the same broker or barter exchange furnishes to the same customer or group of customers on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of broker or barter exchange to customer as the statement required to be furnished under this section. For purposes of this paragraph (k)(3)(i), a broker may treat a shareholder of a broker as a customer of the broker and may treat a grouping of statements for a customer as including a statement required to be furnished under this section if the customer has an account with the broker for which a statement would be required to be furnished under

this section if the customer purchased and sold stock in a corporation in the account during the year.

(ii) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (k)(3):

Example 1. D has a taxable account with B, a broker, consisting solely of stock in a single corporation. In 2010, D receives reportable dividends from this stock and sells the stock. Under this section and § 1.6042-4, B must furnish a Form 1099-B, "Proceeds From Broker and Barter Exchange Transactions," and Form 1099-DIV, "Dividends and Distributions," to D in 2011 for the sale and the dividends. Under paragraph (k)(2) of this section, B is required to furnish the required statement under this section to D by February 15, 2011. B must furnish the statement reporting the dividends by the January 31, 2011, due date provided in § 1.6042-4. However, under paragraph (k)(3)(ii) of this section, B must furnish the statement reporting the dividends by February 15, 2011, if furnished in a consolidated reporting statement as defined in paragraph (k)(3)(i) of this section.

Example 2. Assume the same facts as in *Example 1* except that D has invested solely in a money market fund for which sales are excepted from the reporting required under this section. B therefore is not required to issue a statement under this section if D sells an interest in the money market fund. Under paragraph (k)(3)(i) of this section, B may treat a grouping of statements for D as including a required statement under this section because D has an account for which a statement would be required under this section if D purchased and sold stock in a corporation in the account during the year. Therefore, under paragraph (k)(3)(ii) of this section, B must furnish the statement reporting the dividends by February 15, 2011.

Example 3. E has a nontaxable IRA account with B, a broker. This account is the only account E holds with B. E sells stock in 2010 in this account. E also receives a cash distribution from the account in 2010. The cash distribution from the IRA is reportable on Form 1099-R, "Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.," under § 1.408-7. Because the account is not taxable, sales in the account are not subject to reporting under this section. Therefore, because no statement is required under this section, under paragraph (k)(3) of this section, B may not furnish any statements to E in a consolidated reporting statement. B must furnish the Form 1099-R by the date required under § 1.408-7.

Example 4. Assume the same facts as in *Example 3* except that E and F have a joint

taxable account with B. Because sales in the joint taxable account are subject to reporting under this section, under paragraph (k)(3) of this section, B must furnish by February 15, 2011, all customer statements for 2010 that B otherwise must furnish jointly to E and F on or before January 31, 2011, if furnished on the same date in a consolidated reporting statement with the required statements under this section for any sales in the joint taxable account. However, B may not include any statement for E's IRA account in the consolidated reporting statement furnished jointly to E and F because the statements are not furnished to the same customer or group of customers.

* * * * *

■ **Par. 8.** Section 1.6045-2 is amended by revising paragraph (d) to read as follows:

§ 1.6045-2 Furnishing statement required with respect to certain substitute payments.

* * * * *

(d) *Time for furnishing statements—*
(1) *General requirements.* A broker must furnish the statements required by paragraph (a) of this section for each calendar year. The statements must be furnished after April 30th of the calendar year but in no case before the final substitute payment for the calendar year is made, and on or before February 15 of the following calendar year.

(2) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements the same broker furnishes to the same customer or group of customers on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of broker to customer as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

* * * * *

■ **Par. 9.** Section 1.6045-3 is amended by revising paragraph (e) to read as follows:

§ 1.6045-3 Information reporting for an acquisition of control or a substantial change in capital structure.

* * * * *

(e) *Furnishing of forms to customers—*
(1) *General requirements.* A broker must furnish Form 1099-B to the customer on or before February 15 of the year following the calendar year in which the customer receives stock, cash or other property.

(2) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements the same broker furnishes to the same customer or group of customers on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of broker to customer as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

* * * * *

■ **Par. 10.** Section 1.6045-4 is amended by revising paragraph (m)(2) and adding paragraph (m)(3) to read as follows:

§ 1.6045-4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.

* * * * *

(m) * * *
(2) *Time for furnishing statement.* The statement required under this paragraph (m) must be furnished to the transferor on or after the date of closing and on or before February 15 of the following calendar year.

(3) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements the same reporting person furnishes to the same transferor or group of transferors on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of reporting person to transferor as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

* * * * *

■ **Par. 11.** Section 1.6045-5 is amended by revising paragraph (a)(3) to read as follows:

§ 1.6045-5 Information reporting on payments to attorneys.

(a) * * *

(3) *Requirement to furnish statement—*(i) *General requirements.* A

person required to file an information return under paragraph (a)(1) of this section must furnish to the attorney a written statement of the information required to be shown on the return. This requirement may be met by furnishing a copy of the return to the attorney. The written statement must be furnished to the attorney on or before February 15 of the year following the calendar year in which the payment was made.

(ii) *Consolidated reporting.* (A) The term *consolidated reporting statement* means a grouping of statements the same payor furnishes to the same payee or group of payees on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of payor to payee as the statement required to be furnished under this section.

(B) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

* * * * *

■ **Par. 12.** Section 1.6045A-1 is added to read as follows:

§ 1.6045A-1 Statements of information required in connection with transfers of securities.

(a) *Duty to furnish transfer statement—*(1) *In general—*(i) *Transfers between accounts.* Except as provided in paragraphs (a)(1)(ii) through (v) of this section, every applicable person (transferor) (as described in paragraph (a)(4) of this section) that transfers custody of a specified security to a broker (as described in paragraph (a)(5) of this section) must furnish to the receiving broker a transfer statement that includes the information described in paragraph (b) of this section with respect to the transferred security. Except as provided in paragraphs (b)(1)(vii) and (b)(3) of this section (relating to noncovered securities and certain securities for which basis is determined under an average basis method), a transferor must furnish a separate statement for each security and, if transferring custody of the same security acquired on different dates or at different prices, for each acquisition.

(ii) *Cash on delivery accounts and multiple broker arrangements—*(A) *Sales.* A custodian or other transferor that transfers custody of a security to a broker solely to effect a sale must furnish a transfer statement only to the

broker that effects the sale. However, no transfer statement is required if the transferor itself either effects the sale or is required to report the sale of the security under § 1.6045-1.

(B) *Purchases*. A broker that effects a purchase but does not receive custody of the security must furnish a transfer statement to the broker receiving custody. However, no transfer statement is required if the broker effects the purchase solely at the instruction of the broker receiving custody.

(iii) *Exempt recipients and exempt foreign payees*. A transferor is not required to furnish a transfer statement for a security that, after the transfer, is held for a customer that is an exempt recipient under § 1.6045-1(c)(3)(i) or an exempt foreign person under § 1.6045-1(g)(1)(i).

(iv) *Securities lending transactions—transferor as principal*. A transferor that lends or borrows securities as a principal is not required to furnish a transfer statement for a security that is transferred pursuant to such lending or borrowing arrangement (for example, when a customer opens or closes a short sale). This exception does not apply when a transferor transfers a security under a lending or borrowing arrangement of the customer. This exception also does not apply when a transferor transfers a previously borrowed security to another account of the same customer (for example, to satisfy an existing short sale obligation). See paragraph (b)(4) of this section.

(v) *Certain money market funds*. A transferor of stock in a regulated investment company described in § 1.6045-1(c)(3)(vi) is not required to furnish a transfer statement.

(2) *Format of transfer statement*. The transfer statement must be furnished in writing unless both the transferor and the receiving broker agree to a different format or method before the transfer. If a transfer occurs between accounts at the same or affiliated entities, a transfer statement is deemed to have been furnished and received if the required information, including any required adjustments, is incorporated into the records for the recipient account.

(3) *Time for furnishing statement*. A transferor must furnish a transfer statement within fifteen days after the date of settlement for the transfer.

(4) *Applicable person effecting transfer*. *Applicable person* means any transferor who is a person described in § 1.6045-1(a)(1), a person that acts as a custodian of securities in the ordinary course of a trade or business, an issuer of securities, a trustee or custodian of an individual retirement plan, or any agent of these persons. *Applicable person*

does not include the beneficial owner of a security or any agent substituted for an undisclosed beneficial owner, any governmental unit or agency or instrumentality of a governmental unit holding escheated securities, or any organization that holds and transfers obligations among members of the organization as a service to its members.

(5) *Broker receiving custody*. Solely for purposes of this section, *broker* means any person described in § 1.6045-1(a)(1), any person that acts as a custodian of securities in the ordinary course of a trade or business, any issuer of securities, and any agent of these persons. *Broker* does not include the beneficial owner of a security or any agent substituted for an undisclosed beneficial owner, any governmental unit or agency or instrumentality of a governmental unit holding escheated securities, or any organization that holds and transfers obligations among members of the organization as a service to its members.

(6) *Other terms*. For purposes of this section, the terms sale, specified security, covered security, noncovered security, and customer have the same meaning as in § 1.6045-1(a)(9), (a)(14), (a)(15), (a)(16), and (h)(1).

(7) *Examples*. The following examples illustrate the rules of this paragraph (a). Unless otherwise stated, in each example the customer is not treated as an exempt recipient under § 1.6045-1(c)(3)(i) or an exempt foreign person under § 1.6045-1(g)(1)(i). The examples are as follows:

Example 1. V, an entity treated as an exempt recipient under § 1.6045-1(c)(3)(i), owns a security in an account with E, a broker. On February 1, 2012, V instructs E to transfer custody of the security to an account V maintains with F, another broker. Because E may treat V as an exempt recipient under § 1.6045-1(c)(3)(i), under paragraph (a)(1)(iii) of this section, E is not required to furnish a transfer statement.

Example 2. W maintains an account with G, a custodial broker. On August 1, 2012, W instructs G to purchase a security. G places an order to purchase the security with H, a broker with which G has a clearing agreement. W does not maintain a direct account with H. H executes the purchase and has the security delivered to G. Under paragraph (a)(1)(ii)(B) of this section, H is not required to furnish a transfer statement because G received custody of the security and H purchased the security solely at the instruction of G.

Example 3. Assume the same facts as in *Example 2* except that W later instructs G to sell the security. G places an order with H to sell the security. H executes the sale. G delivers the security to settle the sale. G is required to report the sale of the security under § 1.6045-1. Therefore, under paragraph (a)(1)(ii)(A) of this section, G is not required to furnish a transfer statement.

Example 4. (i) X maintains an account with J, an introducing broker. J contracts with K, a clearing broker, to allow K to execute trades on J's behalf under a clearing agreement. K uses L, a custodian of securities in the ordinary course of a trade or business, to hold custody of the securities of K's customers. K maintains a separate disclosed account for X as a clearing broker with custody at L. On May 1, 2012, X instructs J to purchase a security for X as the beneficial owner. J instructs K to purchase the security. K effects the purchase and has the security delivered to L.

(ii) K is a broker and therefore is an applicable person that is a transferor within the meaning of paragraph (a)(4) of this section. L acts as a custodian of securities in the ordinary course of a trade or business and therefore is a broker within the meaning of paragraph (a)(5) of this section. Because K effects the purchase of the security but does not receive custody of the security, under paragraphs (a)(1)(i) and (a)(1)(ii)(B) of this section, K must furnish a transfer statement to L.

Example 5. (i) Assume the same facts as in *Example 4* except that X later instructs J to sell the security. J instructs K to sell the security. K sells the security. L transfers custody of the security to settle X's sale in accordance with its custody arrangement with K by delivering the security to the purchasing broker. K deposits the sale proceeds in X's account with K. K is required to report the sale of the security under § 1.6045-1.

(ii) L acts as a custodian of securities in the ordinary course of a trade or business and therefore is an applicable person that is a transferor within the meaning of paragraph (a)(4) of this section. Because L transfers custody of the security to the purchaser's broker solely to effect the sale, under paragraphs (a)(1)(i) and (a)(1)(ii)(A) of this section, L must furnish a transfer statement to K.

(iii) If the terms of their custody arrangement so provide, K may furnish the transfer statement as L's agent and satisfy L's duty to furnish the transfer statement under paragraphs (a)(1)(i) and (a)(1)(ii)(A) of this section. Under paragraph (a)(2) of this section, K may satisfy this duty by maintaining the information required on the transfer statement, including all required adjustments, in its records for X's account.

Example 6. (i) Y, an investment advisor, wants to purchase shares of stock in C, a corporation, for several of Y's customers. Y establishes a delivery-on-payment account with M, a broker, and provides M a standing instruction to deliver stock purchased in the account to Y's account at N, a custodian of securities in the ordinary course of a trade or business. On November 1, 2012, Y enters into a cash-on-delivery transaction by instructing M to purchase shares of C stock. M executes the purchase and effects delivery of the C stock to N.

(ii) M is a broker and therefore is an applicable person that is a transferor within the meaning of paragraph (a)(4) of this section. N acts as a custodian of securities in the ordinary course of a trade or business and therefore is a broker within the meaning of

paragraph (a)(5) of this section. Because M effects the purchase of the stock and N receives custody of the stock, under paragraphs (a)(1)(i) and (a)(1)(ii)(B) of this section, M must furnish a transfer statement to N.

Example 7. (i) Z owns shares of stock in C, a corporation, in an account with O, a broker. On February 1, 2013, Z instructs O to transfer the C stock to C so that ownership is held on the books of the issuer. C has an arrangement with D, a transfer agent, to keep records of ownership of the company's stock, how that stock is held, and how many shares each investor owns. O transfers the stock to D.

(ii) O is a broker and therefore is an applicable person that is a transferor within the meaning of paragraph (a)(4) of this section. D is an agent of C, the issuer of the stock, and therefore is a broker within the meaning of paragraph (a)(5) of this section. Because O transfers custody of the stock to D, under paragraph (a)(1)(i) of this section, O must furnish a transfer statement to D.

Example 8. Assume the same facts as in *Example 7* except that Z later instructs D to transfer the stock to an account Z maintains with P, another broker. D transfers the stock to P. D is an agent of C, the issuer of the stock, and therefore is an applicable person that is a transferor within the meaning of paragraph (a)(4) of this section. Because P is a broker and D transfers custody of the stock to P, under paragraph (a)(1)(i) of this section, D must furnish a transfer statement to P.

(b) *Information required—(1) In general.* Each transfer statement must include the information described in this paragraph (b)(1).

(i) *Statement date.* The date the statement is furnished.

(ii) *Applicable person effecting transfer.* The name, address, and telephone number of the applicable person furnishing the statement.

(iii) *Broker receiving custody.* The name, address, and telephone number of the broker receiving custody of the security.

(iv) *Customers.* The name and account number of the customer or customers for the account from which the security is transferred and, if different, the name and account number of the customer or customers for the account to which the security is transferred.

(v) *Security identifiers.* The Committee on Uniform Security Identification Procedures (CUSIP) number of the security transferred (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), quantity of shares or units, and classification of the security (such as stock).

(vi) *Transfer dates.* The date the transfer was initiated and the settlement

date of the transfer (if known when furnishing the statement).

(vii) *Adjusted basis and acquisition date.* The total adjusted basis of the security, the original acquisition date of the security, and, if applicable, the holding period adjustment required by section 1091. The transferor must determine this information as provided under § 1.6045-1(d) including reporting the adjusted basis of the security in U.S. dollars. If the basis of the transferred security is determined using an average basis method (as described in § 1.1012-1(e)), the transferor may report any securities acquired more than five years before the transfer on a single statement on which the original acquisition date is reported as "VARIOUS" if the other information reported on the statement applies to all of the securities.

(viii) *Examples.* The following examples illustrate the rules of this paragraph (b)(1):

Example 1. (i) In a single account with P, a broker, Q purchases three lots of 100 shares of stock each in C, a corporation, at different prices on April 2, 2012, July 2, 2012, and October 2, 2012. Q instructs P to enroll the shares of the C stock in P's dividend reinvestment plan and to average the basis of the shares of the C stock. All of the C stock purchased by P has the same CUSIP number. On September 13, 2013, less than five years after the acquisition dates for all three lots, Q transfers all 300 shares of the C stock to an account with another broker.

(ii) Under paragraph (a)(1)(i) of this section, P must furnish three transfer statements. Under paragraph (b)(1) of this section, one statement must report the transfer of 100 shares with an original acquisition date of April 2, 2012, one statement must report the transfer of 100 shares with an original acquisition date of July 2, 2012, and one statement must report the transfer of 100 shares with an original acquisition date of October 2, 2012.

Example 2. Assume the same facts as in *Example 1* except that Q transfers the shares to the account with the other broker on September 13, 2017. For the 100 shares purchased on April 2, 2012, and the 100 shares purchased on July 2, 2012, under paragraph (b)(1)(vii) of this section, P may furnish a single transfer statement reporting the transfer of 200 shares with the original acquisition date as "VARIOUS" instead of furnishing two separate transfer statements.

Example 3. (i) Assume the same facts as in *Example 1* except that, on June 15, 2012, Q sells the 100 shares purchased on April 2, 2012, at a loss.

(ii) Under paragraph (a)(1)(i) of this section, P must furnish two transfer statements. Under paragraph (b)(1)(vii) of this section and § 1.6045-1(d)(6)(iii) and (d)(7)(ii), P must determine the average basis for the 200 transferred shares and the date for computing whether any gain or loss with respect to the stock purchased on July 2, 2012, is long-term or short-term by applying the rules for broker reporting of wash sales

to the stock purchased on July 2, 2012. Therefore, on both transfer statements, P must increase the average basis of the stock by the amount of loss disallowed under section 1091 on the sale of the 100 shares purchased on April 2, 2012. On the transfer statement reporting the transfer of the 100 shares purchased on July 2, 2012, P must adjust the holding period of the July 2, 2012, shares in accordance with section 1091.

Example 4. (i) R, an employee of C, a corporation, participates in C's employee stock purchase program that satisfies the requirements of section 423. D administers the plan. R purchases stock in the plan at a 15 percent discount to the fair market value of the stock determined on the date of purchase. R purchases stock through the plan during 2012 until R terminates employment on October 15, 2012. R later instructs D to transfer the plan shares to S, a broker.

(ii) D is the agent of C, the issuer of the securities, and therefore is an applicable person within the meaning of paragraph (a)(4) of this section. Because S is a broker and D transfers custody of the stock to S, under paragraph (a)(1)(i) of this section, D must furnish a transfer statement to S.

(iii) Under paragraph (b)(1)(vii) of this section and § 1.6045-1(d)(6)(ii)(A), D must report adjusted basis on the transfer statement based on the amount paid by R. Under paragraph (b)(1)(vii) of this section and § 1.6045-1(d)(6)(ii)(A), D is permitted, but is not required, to increase the adjusted basis for the amount (if any) includible as wage income by R for R's purchases of the stock.

(2) *Format of identification.* An applicable person furnishing a transfer statement and a broker receiving the transfer statement may agree to combine the information required in paragraph (b)(1) of this section in any format or to use a code in place of one or more required items. For example, a transferor and a receiving broker may agree to use a single code to represent the broker instead of the broker's name, address, and telephone number, or may use a security symbol or other identification number or scheme instead of the security identifier required by paragraph (b)(1) of this section.

(3) *Transfers of noncovered securities.* The information described in paragraphs (b)(1)(vii), (b)(5), and (b)(6) of this section is not required for a transfer of a noncovered security if the transfer statement identifies the security as a noncovered security. A transferor that chooses to report nonrequired information is not subject to penalties under section 6722 for failure to report this information correctly if the transfer statement identifies the security as a noncovered security. A single transfer statement may report the transfer of multiple noncovered securities if the transfer statement clearly conveys, either specifically or generally, the information described in paragraph

(b)(1)(v) of this section to identify each security. For purposes of this paragraph (b)(3), a transferor must treat a security for which a broker makes a single-account election described in § 1.1012-1(e)(11)(i) as a covered security.

(4) *Transfers of borrowed securities.* The transfer statement must indicate that a transferred security is borrowed if the transferor knows that the security is transferred pursuant to a lending or borrowing arrangement. The transfer statement must not report an adjusted basis. If the transferor knows that the transferred security is lent or borrowed pursuant to a short sale, the receiving broker may be subject to special transfer reporting rules upon receipt of a borrowed security if the security is used to satisfy an existing short sale obligation. See § 1.6045-1(c)(3)(xi)(C).

(5) *Transfers pursuant to an inheritance—(i) In general.* A transfer statement for a transfer of a security from a decedent or decedent's estate must indicate that the security is inherited. The transfer statement must report the date of death as the original acquisition date and must report adjusted basis according to the instructions or valuations furnished by an authorized representative of the estate, including any required adjustments to basis for property acquired from a decedent. If a transferor has not received instructions or valuations from an authorized representative, the transferor must report basis as the fair market value of the security on the date of death.

However, if the transferor neither knows nor can readily ascertain the fair market value of the security on the date of death at the time the transfer statement is prepared, the transfer statement must indicate that the transfer consists of an inherited security but may otherwise report the security as if it were a noncovered security. If the transferor cannot identify which securities in a joint account have been transferred from the decedent, the transferor must treat each security in the account as if it were a noncovered security but must not indicate that any security is an inherited security.

(ii) *Transfers of shares to satisfy a cash legacy.* If a security is transferred from a decedent or a decedent's estate to satisfy a cash legacy, paragraph (b)(1) of this section applies and paragraph (b)(5)(i) of this section does not apply.

(iii) *Subsequent transfers of inherited securities.* A transfer statement must indicate that the transfer consists of an inherited security if a prior transfer statement reported the security as inherited.

(6) *Gift or deemed gift transfers—(i) In general.* A transfer statement for a security transferred to a different owner (other than a transfer that the transferor knows is pursuant to a lending or borrowing arrangement or is from a decedent or decedent's estate) must indicate that the security is a gift and must report the date of the gift (if known when furnishing the statement) and the fair market value of the gift on that date (if known or readily ascertainable at the time the transfer statement is prepared). The transfer statement must report the adjusted basis and original acquisition date of the security in the hands of the donor. However, if the transfer is between persons for whom gift-related basis adjustments are inapplicable or between accounts that share at least one common customer, the transferor must apply paragraph (b)(1) of this section as if the security were not a gift or deemed gift.

(ii) *Subsequent transfers of gifts by the same customer.* If a transferor transfers to a different account of the same customer a security that a prior transfer statement reported as a gifted security, the transferor must include on the transfer statement the information described in paragraph (b)(6)(i) of this section for the date of the gift to the customer. If the prior transfer statement did not report a date for the gift, the transferor must treat the settlement date for the prior transfer as the date of the gift.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (b)(6):

Example 1. X instructs S, a broker, to give to Y stock in a publicly traded company that X holds in an account with S. The stock is a covered security. On X's instruction, S transfers custody of the stock to T, Y's broker. The transfer settles on August 15, 2013. Under paragraph (b)(6)(i) of this section, S must provide a transfer statement to T that identifies the securities as gifted securities and indicates X's adjusted basis and original acquisition date. If S knows the settlement date, the transfer statement must also indicate that the date of the gift was August 15, 2013, and, because S can readily ascertain the fair market value of the stock on August 15, 2013, the fair market value of the stock on that date.

Example 2. Assume the same facts as in *Example 1* except that, one year later, Y transfers the stock to an account in his name with U, another broker. Under paragraph (b)(6)(ii) of this section, T must provide a transfer statement to U that identifies the securities as gifted securities and indicates X's adjusted basis and original acquisition date of the stock. The transfer statement must also indicate the date of the gift, August 15, 2013, and the fair market value of the stock on that date either by reporting the value that S reported to T or, because T can readily

ascertain the fair market value of the stock on August 15, 2013, by determining the fair market value of the stock on that date.

(7) *Specific identification of securities.* Except as provided in § 1.1012-1(e)(7)(ii), a transfer statement must report a transfer of less than the entire position in an account of a security that was acquired on different dates or at different prices consistently with a customer's adequate and timely identification of the security to be transferred. See § 1.1012-1(c). If the customer does not provide an adequate and timely identification for the transfer, a transferor must first report the transfer of any shares or units in the account for which the transferor does not know the acquisition or purchase date followed by the earliest shares or units purchased or acquired, whether covered securities or noncovered securities.

(8) *Information from other parties and other accounts—(i) Transfer and issuer statements and transfers pursuant to an inheritance.* When reporting a transfer of a covered security, a transferor must take into account all information, other than the classification of the security (such as stock), furnished on a transfer statement, all information furnished or deemed furnished on an issuer statement (as described in § 1.6045B-1), and all instructions and valuations furnished by an authorized representative of the estate of a decedent, unless the statement or instructions are incomplete or the broker has actual knowledge that they are incorrect. A transferor may treat a customer as a minority shareholder when taking the information on an issuer statement into account unless the transferor knows that the customer is a majority shareholder and the issuer statement reports the action's effect on the basis of majority shareholders. Any failure to report correct information that arises solely from reliance on information furnished on a transfer statement or issuer statement or by an authorized representative of the estate is deemed to be due to reasonable cause for purposes of penalties under section 6722. See § 301.6724-1(a)(1) of this chapter.

(ii) *Other information.* A transferor is permitted, but not required, to take into account information about a covered security other than what is furnished on a transfer statement or issuer statement or by an authorized representative of the estate of a decedent, including any information the transferor has about securities held by the same customer in other accounts with the transferor. For purposes of penalties under section 6722, a transferor that takes into account

information received from a customer or third party other than information furnished on a transfer statement or issuer statement or by an authorized representative of the estate of a decedent is deemed to have relied upon this information in good faith if the transferor neither knows nor has reason to know that the information is incorrect. See § 301.6724-1(c)(6) of this chapter.

(9) *Failure to receive a complete transfer statement.* A receiving broker that has not received a complete transfer statement as required under paragraph (a)(3) of this section for the transfer must request a complete statement from the transferor unless, under paragraph (a) of this section, the transferor has no duty to furnish a transfer statement for the transfer. The receiving broker is only required to make this request once. If the receiving broker does not receive a complete transfer statement after requesting it, the receiving broker may treat the security as a noncovered security upon its subsequent sale or transfer. A transfer statement for a covered security is complete if, in the view of the receiving broker, it provides sufficient information to comply with § 1.6045-1 when reporting the sale of the security. A transfer statement for a noncovered security is complete if it indicates that the security is a noncovered security.

(c) *Reporting by other parties after a transfer—(1) In general.* A transferor that has furnished a transfer statement must furnish a corrected statement for a covered security within fifteen days of receiving a transfer statement, an issuer statement (as described in § 1.6045B-1), or instructions or valuations from an authorized representative of an estate, that provides information under paragraph (b) of this section that was not reported on the initial transfer statement.

(2) *Exception.* A transferor is not required to furnish a corrected transfer statement for a covered security under this paragraph (c) if the transferor receives the transfer statement or issuer statement or receives the instructions or valuations from an authorized representative of an estate more than eighteen months after the transferor furnished the transfer statement.

(d) *Effective/applicability dates.* This section applies to transfers on or after January 1, 2011, of specified securities other than stock in a regulated investment company within the meaning of § 1.1012-1(e)(5) and to transfers on or after January 1, 2012, of stock in a regulated investment company.

■ **Par. 13.** Section 1.6045B-1 is added to read as follows:

§ 1.6045B-1 Returns relating to actions affecting basis of securities.

(a) *In general—(1) Information required.* An issuer of a specified security (within the meaning of § 1.6045-1(a)(14)) that takes an organizational action that affects the basis of the security must file an issuer return setting forth the following information and any other information specified in the return form and instructions:

(i) *Reporting issuer.* The name and taxpayer identification number of the reporting issuer.

(ii) *Security identifiers.* The identifiers of each security involved in the organizational action including, as applicable, the Committee on Uniform Security Identification Procedures (CUSIP) number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), classification of the security (such as stock), account number, serial number, and ticker symbol, as well as any descriptions about the class of security affected.

(iii) *Contact at reporting issuer.* The name, address, e-mail address, and telephone number of a contact person at the issuer.

(iv) *Information about action.* The type or nature of the organizational action including, as applicable, the date of the action or the date against which shareholders' ownership is measured for the action.

(v) *Effect of the action.* The quantitative effect of the organizational action on the basis of the security in the hands of a U.S. taxpayer as an adjustment per share or as a percentage of old basis, including a description of the calculation, the applicable Internal Revenue Code section and subsection upon which the tax treatment is based, the data supporting the calculation such as the market values of securities and valuation dates, any other information necessary to implement the adjustment including the reportable taxable year, and whether any resulting loss may be recognized.

(2) *Time for filing the return—(i) In general.* An issuer must file an issuer return with the IRS pursuant to the prescribed form and instructions on or before the 45th day following the organizational action, or, if earlier, January 15 of the year following the calendar year of the organizational action. For purposes of this paragraph (a)(2), a redemption occurs on the last

day a holder may redeem a security. The issuer may file the return before the organizational action if the quantitative effect on basis is determinable beforehand.

(ii) *Reasonable assumptions.* To report the quantitative effect on basis by the due date in paragraph (a)(2)(i) of this section, an issuer may make reasonable assumptions about facts that cannot be determined before the due date. An issuer must file a corrected return within forty-five days of determining facts that result in a different quantitative effect on basis from what the issuer previously reported. However, for purposes of this paragraph (a)(2)(ii), an issuer must treat a payment that may be a dividend consistently with its treatment of the payment under section 6042(b)(3) and § 1.6042-3(c).

(3) *Exception for public reporting.* An issuer is not required to file a return with the IRS under this paragraph (a) if, by the due date described in paragraph (a)(2)(i) of this section, the issuer posts the return with the required information in a readily accessible format in an area of its primary public Web site dedicated to this purpose and keeps the return accessible for ten years to the public on its primary public Web site or the primary public Web site of any successor organization.

(4) *Exception when holders are exempt recipients.* No reporting is required under this paragraph (a) if the issuer reasonably determines that all of the holders of the security are exempt recipients under paragraph (b)(5) of this section.

(5) *Exception for certain money market funds.* No reporting is required under this paragraph (a) by a regulated investment company described in § 1.6045-1(c)(3)(vi).

(b) *Statements to nominees and certificate holders—(1) In general.* An issuer required to file an information return under this section must furnish a written statement with the same information to each holder of record of the security or to the holder's nominee. This issuer statement must indicate that the information is being reported to the IRS. An issuer may satisfy this requirement by furnishing a copy of the information return.

(2) *Time for furnishing statements.* An issuer must furnish each issuer statement on or before January 15 of the year following the calendar year of the organizational action. For purposes of this paragraph (b)(2), a redemption occurs on the last day a holder may redeem a security. An issuer may furnish the statement before the organizational action if the quantitative effect on basis is determinable

beforehand. An issuer must furnish a statement that corresponds to a corrected return described in paragraph (a)(2)(ii) of this section by the later of the due date described in this paragraph (b)(2) or forty-five days after determining the facts that result in a different quantitative effect on basis from what the issuer previously reported on the return.

(3) *Recipients of statements.* An issuer must furnish a separate statement to each holder of record of the security as of the date of the organizational action and all subsequent holders of record up to the date the issuer furnishes the statement required under this section. If the issuer records the security on its books in the name of a nominee, the issuer must furnish the statement to the nominee in lieu of the holder. However, if the nominee is the issuer, an agent of the issuer, or a plan operated by the issuer, the issuer must furnish the statement to the holder.

(4) *Exception for public reporting.* An issuer is deemed to furnish an issuer statement under this paragraph (b) to all holders and nominees if the issuer satisfies the public reporting requirements of paragraph (a)(3) of this section.

(5) *Exempt recipients—(i) In general.* An issuer is not required to furnish an issuer statement to a holder or its nominee if the holder is an exempt recipient under § 1.6045-1(c)(3)(i)(B), provided the issuer has actual knowledge that the holder is described in that section or has a properly completed exemption certificate from the holder asserting that the holder is an exempt recipient (as provided in § 31.3406(h)-3 of this chapter). An issuer may treat a holder as an exempt recipient based on the applicable indicators described in § 1.6049-4(c)(1)(ii)(A) through (M).

(ii) *Limitation for corporate holders.* For an organizational action occurring on or after January 1, 2012, an issuer may treat a holder as an exempt recipient based on the indicator described in § 1.6049-4(c)(1)(ii)(A) only if one of the following applies:

(A) The name of the holder contains the term “insurance company,” “indemnity company,” “reinsurance company,” or “assurance company.”

(B) The name of the holder indicates that it is an entity listed as a per se corporation under § 301.7701-2(b)(8)(i) of this chapter.

(C) The issuer receives a properly completed exemption certificate (as provided in § 31.3406(h)-3 of this chapter) that asserts that the holder is not an S corporation as defined in section 1361(a).

(D) The issuer receives a withholding certificate described in § 1.1441-1(e)(2)(i) that includes a certification that the person whose name is on the certificate is a foreign corporation.

(iii) *Foreign holders.* An issuer may treat a holder as an exempt recipient if the issuer, prior to the transaction, associates the holder with documentation upon which the issuer may rely in order to treat payments to the holder as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049-5(d)(1) or presumed to be made to a foreign payee under § 1.6049-5(d)(2) or (3). For purposes of this paragraph (b)(5)(iii), the provisions in § 1.6049-5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) apply. Rules similar to the rules of § 1.1441-1 apply by substituting the terms “issuer” and “holder” in place of the terms “withholding agent” and “payee” and without regard to the limitation to amounts subject to withholding under chapter 3 of the Internal Revenue Code. Rules similar to the rules of § 1.6049-5(d) apply by substituting the terms “issuer” and “holder” in place of the terms “payor” and “payee.”

(c) *Special rule for S corporations.* An S corporation (as defined in section 1361(a)) is deemed to satisfy the requirements of paragraphs (a) and (b) of this section for any organizational action affecting the basis of its stock if the corporation reports the effect of the organizational action on a timely filed Schedule K-1 (Form 1120S), “Shareholder’s Share of Income, Deductions, Credits, etc.,” for each shareholder and timely furnishes copies of these schedules to all proper parties.

(d) *Special rule for certain regulated investment companies and real estate investment trusts.* A regulated investment company (RIC) that reports undistributed capital gains to shareholders under section 852(b)(3)(D) or a real estate investment trust (REIT) that reports undistributed capital gains to shareholders under section 857(b)(3)(D) is deemed to have satisfied the requirements of paragraphs (a) and (b) of this section for undistributed capital gains affecting the basis of its stock if the RIC or REIT timely files and furnishes the information returns required under section 852(b)(3)(D) or section 857(b)(3)(D) to all proper parties for the organizational action.

(e) *Acquiring and successor entities.* An acquiring or successor entity of an issuer that fails to satisfy the reporting obligations of paragraphs (a) or (b) of

this section must satisfy these reporting obligations. If neither the issuer nor the acquiring or successor entity satisfies these reporting obligations, both parties are jointly and severally liable for any applicable penalties.

(f) *Penalties.* An issuer may use an agent to satisfy the requirements of this section for the issuer. Nonetheless, the issuer remains liable for penalty for any failure to comply unless it is shown that the failure is due to reasonable cause and not willful neglect. See sections 6721 through 6724.

(g) *Examples.* The following examples illustrate the rules of this section:

Example 1. (i) C, a corporation, distributes stock to shareholders on March 31, 2013.

(ii) Under paragraph (a)(2)(i) of this section, C must file an issuer return with the IRS on or before May 15, 2013 (45 days after the distribution date), reporting the quantitative effect of this distribution on the basis of C’s stock. Under paragraph (b)(2) of this section, C must furnish issuer statements to its nominees and certificate holders on or before January 15, 2014.

(iii) Alternatively, under paragraphs (a)(3) and (b)(4) of this section, C may post by May 15, 2013, and maintain for ten years, the return with the required information in a readily accessible format in an area of its primary public Web site dedicated to this purpose.

Example 2. (i) D, a corporation, makes a cash distribution to shareholders on December 10, 2013.

(ii) Under paragraphs (a)(2)(i) and (b)(2) of this section, D is required to file an issuer return with the IRS and furnish issuer statements to its nominees and certificate holders on or before January 15, 2014.

(iii) On January 15, 2014, D is unsure whether the distribution will exceed its earnings and profits for the fiscal year. For purposes of section 6042(b)(3) and § 1.6042-3(c), D must treat the distribution as a dividend. Therefore, under paragraph (a)(2)(ii) of this section, D is not required to file an issuer return. If D later determines that dividend treatment was incorrect, D must file an issuer return reporting the correct quantitative effect on basis.

Example 3. E, a corporation, undertakes a stock split as of April 1, 2014. E furnishes issuer statements under paragraph (b) of this section on April 1, 2014, at which time the books and records of E show that 90 percent of its outstanding stock is owned by shareholders through a clearing organization as their nominee, 7 percent is owned by 5,000 individuals, and the remaining 3 percent is owned by a dividend reinvestment plan operated by E that has 1,000 members. Under paragraph (b)(3) of this section, E must furnish statements to the clearing organization, the 5,000 individuals, and the 1,000 members of the dividend reinvestment plan.

(h) *Effective/applicability dates.* This section applies to organizational actions occurring on or after January 1, 2011, that affect the basis of specified

securities within the meaning of § 1.6045-1(a)(14) other than stock in a regulated investment company within the meaning of § 1.1012-1(e)(5) and to organizational actions occurring on or after January 1, 2012, that affect stock in a regulated investment company.

■ **Par. 14.** Section 1.6049-6 is amended by adding two new sentences to the end of paragraphs (c) and (e)(2) to read as follows:

§ 1.6049-6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

* * * * *
(c) * * * However, for a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. See §§ 1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

* * * * *
(e) * * *
(2) * * * However, for a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. See §§ 1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii).

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

■ **Par. 15.** The authority citation for part 31 continues to read in part as follows:

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

■ **Par. 16.** Section 31.6051-4 is amended by revising paragraph (c)(2) and adding two new sentences at the end of paragraph (d) to read as follows:

§ 31.6051-4 Statement required in case of backup withholding.

* * * * *
(c) * * *
(2) Except as provided in the prescribed form or instructions, the amount subject to reporting under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, 6050N, or 6050W whether or not the amount of the reportable payment is less than the amount for which an information return is required or, if tax is withheld under section 3406, the amount of the payment withheld upon;

* * * * *
(d) * * * However, for a statement required to be furnished after December

31, 2008, the February 15 due date under section 6045 applies to the statement if the statement reports tax withheld from a payment reportable under section 6045 or is furnished in a consolidated reporting statement under section 6045. See §§ 1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii) of this chapter.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 17.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 18.** Section 301.6721-1 is amended by revising paragraphs (g)(2) and (g)(3) to read as follows:

§ 301.6721-1 Failure to file correct information returns.

* * * * *
(g) * * *
(2) *Statements.* The statements subject to this section are the statements required by—

(i) Section 6041(a) or (b) (relating to certain information at source, generally reported on Form 1099-MISC, “Miscellaneous Income”; Form W-2, “Wage and Tax Statement”; Form W-2G, “Certain Gambling Winnings”; and Form 1099-INT, “Interest Income”);

(ii) Section 6042(a)(1) (relating to payments of dividends, generally reported on Form 1099-DIV, “Dividends and Distributions”);

(iii) Section 6044(a)(1) (relating to payments of patronage dividends, generally reported on Form 1099-PATR, “Taxable Distributions Received From Cooperatives”);

(iv) Section 6049(a) (relating to payments of interest, generally reported on Form 1099-INT or Form 1099-OID, “Original Issue Discount”);

(v) Section 6050A(a) (relating to reporting requirements of certain fishing boat operators, generally reported on Form 1099-MISC);

(vi) Section 6050N(a) (relating to payments of royalties, generally reported on Form 1099-MISC);

(vii) Section 6051(d) (relating to information returns with respect to income tax withheld, generally reported on Form W-2);

(viii) Section 6050R (relating to returns relating to certain purchases of fish, generally reported on Form 1099-MISC);

(ix) Section 110(d) (relating to qualified lessee construction allowances for short-term leases, generally reported by attaching a statement to an income tax return);

(x) Section 408(i) (relating to reports with respect to individual retirement accounts or annuities on Form 1099-R, “Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.”); or

(xi) Section 6047(d) (relating to reports by employers, plan administrators, etc., on Form 1099-R).

(3) *Returns.* The returns subject to this section are the returns required by—

(i) Section 6041A(a) or (b) (relating to returns of direct sellers, generally reported on Form 1099-MISC);

(ii) Section 6043A(a) (relating to returns relating to taxable mergers and acquisitions);

(iii) Section 6045(a) or (d) (relating to returns of brokers, generally reported on Form 1099-B, “Proceeds From Broker and Barter Exchange Transactions,” for broker transactions; Form 1099-S, “Proceeds From Real Estate Transactions,” for gross proceeds from the sale or exchange of real estate; and Form 1099-MISC for certain substitute payments and payments to attorneys);

(iv) Section 6045B(a) (relating to returns relating to actions affecting basis of specified securities);

(v) Section 6050H(a) or (h)(1) (relating to mortgage interest received in trade or business from individuals, generally reported on Form 1098, “Mortgage Interest Statement”);

(vi) Section 6050I(a) or (g)(1) (relating to cash received in trade or business, etc., generally reported on Form 8300, “Report of Cash Payments Over \$10,000 Received In a Trade or Business”);

(vii) Section 6050J(a) (relating to foreclosures and abandonments of security, generally reported on Form 1099-A, “Acquisition or Abandonment of Secured Property”);

(viii) Section 6050K(a) (relating to exchanges of certain partnership interests, generally reported on Form 8308, “Report of a Sale or Exchange of Certain Partnership Interests”);

(ix) Section 6050L(a) (relating to returns relating to certain dispositions of donated property, generally reported on Form 8282, “Donee Information Return”);

(x) Section 6050P (relating to returns relating to the cancellation of indebtedness by certain financial entities, generally reported on Form 1099-C, “Cancellation of Debt”);

(xi) Section 6050Q (relating to certain long-term care benefits, generally reported on Form 1099-LTC, “Long-Term Care and Accelerated Death Benefits”);

(xii) Section 6050S (relating to returns relating to payments for qualified tuition and related expenses, generally

reported on Form 1098-E, "Student Loan Interest Statement," or Form 1098-T, "Tuition Statement";

(xiii) Section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals, generally reported on Form 1099-H, "Health Coverage Tax Credit (HCTC) Advance Payments");

(xiv) Section 6052(a) (relating to reporting payment of wages in the form of group-life insurance, generally reported on Form W-2);

(xv) Section 6050V (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests, generally reported on Form 8921, "Applicable Insurance Contract Information Return");

(xvi) Section 6053(c)(1) (relating to reporting with respect to certain tips, generally reported on Form 8027, "Employer's Annual Information Return of Tip Income and Allocated Tips");

(xvii) Section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions, generally reported on Form 8594, "Asset Acquisition Statement"), or section 1060(e) (relating to information required in the case of certain transfers of interests in entities (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition));

(xviii) Section 4101(d) (relating to information reporting with respect to fuel oils (effective for information returns required to be filed after November 30, 1990));

(xix) Section 338(h)(10)(C) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition));

(xx) Section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts);

(xxi) Section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements, generally reported on Form 1099-R);

(xxii) Section 6039(a) (relating to returns required with respect to certain options); or

(xxiii) Section 6050W (relating to information returns with respect to payments made in settlement of payment card and third party network transactions).

■ **Par. 19.** Section 301.6722-1 is amended by revising paragraph (d)(2) to read as follows:

§ 301.6722-1 Failure to furnish correct payee statements.

* * * * *

(d) * * *

(2) *Payee statement.* The term *payee statement* means any statement required to be furnished under—

(i) Section 6031(b) or (c), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities, generally a Schedule K-1 (Form 1065), "Partner's Share of Income, Deductions, Credits, etc.," for section 6031(b) or (c), a copy of the Schedule K-1 (Form 1041), "Beneficiary's Share of Income, Deductions, Credits, etc.," for section 6034A, and a copy of Schedule K-1 (Form 1120S), "Shareholder's Share of Income, Deductions, Credits, etc.," for section 6037(b));

(ii) Section 6039(b) (relating to information required in connection with certain options);

(iii) Section 6041(d) (relating to information at source, generally the recipient copy of Form 1099-MISC, "Miscellaneous Income"; Form W-2, "Wage and Tax Statement"; Form 1099-INT, "Interest Income"; and the winner's copies of Form W-2G, "Certain Gambling Winnings");

(iv) Section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales, generally the recipient copy of Form 1099-MISC);

(v) Section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits, generally the recipient copy of Form 1099-DIV, "Dividends and Distributions");

(vi) Section 6043A(b) or (d) (relating to returns relating to taxable mergers and acquisitions);

(vii) Section 6044(e) (relating to returns regarding payments of patronage dividends, generally the recipient copy of Form 1099-PATR, "Taxable Distributions Received From Cooperatives");

(viii) Section 6045(b) or (d) (relating to returns of brokers, generally the recipient copy of Form 1099-B, "Proceeds From Broker and Barter Exchange Transactions," for broker transactions; the transferor copy of Form 1099-S, "Proceeds From Real Estate Transactions," for reporting proceeds from real estate transactions; and the recipient copy of Form 1099-MISC for certain substitute payments and payments to attorneys);

(ix) Section 6045A (relating to information required in connection with

transfers of covered securities to brokers);

(x) Section 6045B(c) or (e) (relating to returns relating to actions affecting basis of specified securities);

(xi) Section 6049(c) (relating to returns regarding payments of interest, generally the recipient copy of Form 1099-INT or Form 1099-OID, "Original Issue Discount");

(xii) Section 6050A(b) (relating to reporting requirements of certain fishing boat operators, generally the recipient copy of Form 1099-MISC);

(xiii) Section 6050H(d) or (h)(2) (relating to returns relating to mortgage interest received in trade or business from individuals, generally the payor copy of Form 1098, "Mortgage Interest Statement");

(xiv) Section 6050I(e), (g)(4), or (g)(5) (relating to returns relating to cash received in trade or business, etc., generally a copy of Form 8300, "Report of Cash Payments Over \$10,000 Received in a Trade or Business");

(xv) Section 6050J(e) (relating to returns relating to foreclosures and abandonments of security, generally the borrower copy of Form 1099-A, "Acquisition or Abandonment of Secured Property");

(xvi) Section 6050K(b) (relating to returns relating to exchanges of certain partnership interests, generally a copy of Form 8308, "Report of a Sale or Exchange of Certain Partnership Interests");

(xvii) Section 6050L(c) (relating to returns relating to certain dispositions of donated property, generally a copy of Form 8282, "Donee Information Return");

(xviii) Section 6050N(b) (relating to returns regarding payments of royalties, generally the recipient copy of Form 1099-MISC);

(xix) Section 6050P(d) (relating to returns relating to the cancellation of indebtedness by certain financial entities, generally the recipient copy of Form 1099-C, "Cancellation of Debt");

(xx) Section 6050Q(b) (relating to certain long-term care benefits, generally the policyholder and insured copies of Form 1099-LTC, "Long-Term Care and Accelerated Death Benefits");

(xxi) Section 6050R(c) (relating to returns relating to certain purchases of fish, generally the recipient copy of Form 1099-MISC);

(xxii) Section 6051 (relating to receipts for employees, generally the employee copy of Form W-2);

(xxiii) Section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance, generally the employee copy of Form W-2);

* * * * *

(xxiv) Section 6053(b) or (c) (relating to reports of tips, generally the employee copy of Form W-2);

(xxv) Section 6048(b)(1)(B) (relating to foreign trust reporting requirements, generally copies of the owner and beneficiary statements of Form 3520-A, "Annual Information Return of Foreign Trust With a U.S. Owner");

(xxvi) Section 408(i) (relating to reports with respect to individual retirement plans on the recipient copies of Form 1099-R, "Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.");

(xxvii) Section 6047(d) (relating to reports by plan administrators on the recipient copies of Form 1099-R);

(xxviii) Section 6050S(d) (relating to returns relating to qualified tuition and related expenses, generally the borrower copy of Form 1098-E, "Student Loan Interest Statement," or the student copy of Form 1098-T, "Tuition Statement");

(xxix) Section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts);

(xxx) Section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals, generally the recipient copy of Form 1099-H, "Health Coverage Tax Credit (HCTC) Advance Payments");

(xxxi) Section 6050U (relating to charges or payments for qualified long-term care insurance contracts under

combined arrangements, generally the recipient copy of Form 1099-R); or

(xxxii) Section 6050W (relating to information returns with respect to payments made in settlement of payment card and third party network transactions).

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 20.** The authority citation for part 602 continues to read in part as follows:

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

■ **Par. 21.** In § 602.101, paragraph (b) is amended by adding the following entries to the table in numerical order to read in part as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
1.6045-1(c)(3)(xi)(C)	1545-2186
1.6045A-1	1545-2186
* * * * *	* * * * *

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved: October 1, 2010.

Michael Mundaca,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2010-25504 Filed 10-12-10; 4:15 pm]

BILLING CODE 4830-01-P