nominate tribal representatives to serve on the Committee and tribal alternates to serve when the representative is unavailable. Based upon the proportionate share of students, some tribes similar in affiliation or geography are grouped together for one seat. It will be necessary for such nominating tribes either to co-nominate a single tribal representative to represent the multi-tribal jurisdiction or for each tribe in the multi-tribal jurisdiction to nominate a representative with the knowledge that BIE will only be able to appoint one of the nominees who will then be responsible for representing the entire multi-tribal jurisdiction on the Committee. Each nomination is expected to include a nomination for a representative and an alternate who can fulfill the obligations of membership should the representative be unable to attend. The Committee membership should reflect the diversity of tribal interests, and tribes should nominate representatives and alternates who will:

- Have knowledge of school assessments and accountability systems;
- Have relevant experience as past or present superintendents, principals, facility managers, teachers, or school board members, or possess direct experience with adequate yearly progress;
- Be able to coordinate, to the extent possible, with other tribes and schools who may not be represented on the Committee;
- Be able to represent the tribe(s) with the authority to embody tribal views, communicate with tribal constituents, and have a clear means to reach agreement on behalf of the tribe(s);
- Be able to negotiate effectively on behalf of the tribe(s) represented;
- Be able to commit the time and effort required to attend and prepare for meetings; and
- Be able to collaborate among diverse parties in a consensus-seeking process.

VI. Submitting Nominations

The Secretary will only consider nominees nominated through the process identified in this **Federal Register** notice. Nominations received in any other manner will not be considered. Nominations must include the following information about each nominee:

(1) The nominee's name, tribal affiliation, job title, major job duties, employer, business address, business telephone and fax numbers (and business email address, if applicable);

(2) The tribal interest(s) to be represented by the nominee (see section V of this notice of intent) and whether the nominee will represent other interest(s) related to this rulemaking, as the tribe may designate;

(3) A resume reflecting the nominee's qualifications and experience in Indian education (which may include being a parent of a student attending a BIE-funded school); and

(4) A brief description of how they will represent tribal views, communicate with tribal constituents, and have a clear means to reach agreement on behalf of the tribe(s) they are representing.

Additionally, a statement whether the nominee is only representing one tribe's views or whether the expectation is that the nominee represents a specific group of tribes.

To be considered, nominations must be received by the close of business on the date listed in the **DATES** section, at the location indicated in the **ADDRESSES** section.

Certification

For the above reasons, I hereby certify that the Adequate Yearly Progress Negotiated Rulemaking Committee is in the public interest.

Dated: January 22, 2013.

Kevin K. Washburn,

Assistant Secretary, Indian Affairs.

[FR Doc. 2013–01957 Filed 1–30–13; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–140649–11]

RIN 1545–BK65

Failure To File Gain Recognition Agreements and Other Required Filings

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would amend the existing rules governing the consequences to U.S. persons for failing to file gain recognition agreements (GRAs) and related documents, or to satisfy other reporting obligations, associated with certain transfers of property to foreign corporations in nonrecognition exchanges. These regulations affect U.S. persons that transfer property to foreign corporations.

DATES: Written or electronic comments and requests for a public hearing must be received by April 1, 2013.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–140649–11), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–140649–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal Rulemaking Portal at *http://www.regulations.gov* (IRS REG–140649–11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Mary W. Lyons, (202) 622–3860; concerning submission of comments and to request a hearing, Oluwafunmilayo (Funmi) Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in the regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1487.

The collections of information are in §§ 1.367(a)–3(f)(2), 1.367(a)–8(p)(2), 1.367(e)–2(f)(2), 1.6038B–1(c)(4)(ii), and 1.6038B–1(e)(4). The collections of information are mandatory. The likely respondents are domestic corporations.

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.

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

Background

A. Sections 367(a) and 6038B

Section 367(a)(1) provides that if, in connection with any exchange described in section 332, 351, 354, 356, or 361, a United States person (U.S. transferor) transfers property to a foreign corporation (transferee foreign corporation), the transferee foreign corporation shall not, for purposes of determining the extent to which gain shall be recognized on such transfer, be considered to be a corporation. Sections

367(a)(2), (3), and (6) provide exceptions to the general rule of section 367(a)(1) and grant regulatory authority to the Secretary to provide additional exceptions and to limit the statutory exceptions.

Section 1.367(a)–3 provides exceptions to the general rule of section 367(a)(1) for certain transfers by a U.S. transferor of stock or securities to a foreign corporation. In some cases, these exceptions require the U.S. transferor to file a GRA and other related documents under the provisions of § 1.367(a)–8 (section 367(a) GRA regulations) in order to avoid the recognition of gain under section 367(a)(1). See § 1.367(a)–3(b), (c), and (e) (addressing transfers of foreign stock or securities, transfers of domestic stock or securities, and transfers in certain section 361 exchanges, respectively). Under the terms of a GRA, the U.S. transferor agrees to include in income the gain realized but not recognized on the initial transfer of the stock or securities and pay interest on any additional tax due if a gain recognition event, as defined in § 1.367(a)–8(b)(1)(iv), occurs during the term of the GRA (generally 60 months following the close of the taxable year in which the initial transfer occurs). See § 1.367(a)–8(c)(1)(i) and (v).

One of the gain recognition events enumerated is a failure to comply in any material respect with any requirement of the section 367(a) GRA regulations or with the terms of an existing GRA (failure to comply). See § 1.367(a)–8(j)(8). An example of such a failure to comply is the failure to file an annual certification. The section 367(a) GRA regulations provide that if there is a failure to comply, the U.S. transferor must recognize the full amount of gain realized on the initial transfer of stock or securities unless the U.S. transferor demonstrates that the failure was due to reasonable cause and not willful neglect under the procedure that is described in § 1.367(a)–8(p). Similarly, if there is a failure to timely file a GRA in connection with the initial transfer, the U.S. transferor must recognize gain with respect to the transfer unless the reasonable cause exception is satisfied.

In addition to the section 367(a) GRA regulations, other regulations under section 367(a) require certain other statements to be filed in connection with a transfer of stock or securities by a U.S. person to a foreign corporation. A domestic target corporation in certain cases must file statements in connection with the transfer by its shareholders or security holders of stock or securities in the domestic target corporation to a foreign corporation under § 1.367(a)–3(c). See § 1.367(a)–3(c)(6) and (7). Also, a domestic target corporation must file a statement when its assets are transferred to a foreign acquiring corporation in a section 361 exchange and all or a portion of those assets are subsequently transferred to a domestic subsidiary of the foreign acquiring corporation in a transaction treated as an indirect stock transfer under § 1.367(a)–3(d). See § 1.367(a)–3(d)(2)(vi)(B)(*1*)(*ii*).

In addition, a U.S. person who transfers certain property to a foreign corporation in certain nonrecognition transactions is subject to the reporting requirements of section 6038B and the regulations. See §§ 1.6038B–1 and –1T. In general, the U.S. transferor must file IRS Form 926 ''Return by a U.S. Transferor of Property to a Foreign Corporation,'' identifying the transferee foreign corporation and describing the property transferred. The penalty for failure to satisfy the section 6038B reporting requirement is equal to ten percent of the fair market value of the property at the time of the exchange, but not to exceed $100,000 unless the failure was due to intentional disregard of the reporting obligation. If, however, the U.S. transferor demonstrates that the failure was due to reasonable cause and not willful neglect, no penalty is imposed.

Section 1.6038B–1T(c)(4)(ii) provides that if stock or securities are transferred, the U.S. transferor must provide information about the stock or securities on Form 926. Section 1.6038B–1(f)(2)(i) provides that a failure to comply with the reporting requirements of the regulations includes the failure to provide material information about the property transferred. Thus, the failure to provide the required information about the stock or securities transferred could result in a section 6038B penalty. The current section 6038B regulations have a rule coordinating the obligations to file a GRA and complete Form 926. Specifically, § 1.6038B–1(b)(2) relieves a U.S. transferor of the obligation to report a transfer of stock or securities on Form 926 and from the section 6038B penalty if the U.S transferor has properly filed a GRA.

On the other hand, a U.S. transferor who transfers stock or securities for which a GRA must be properly filed to avoid recognizing gain under section 367(a)(1) and who neither properly files a GRA nor a Form 926 with respect to the transfer is potentially subject both to the penalty under section 6038B and full gain recognition under section 367(a)(1). Both of these provisions have a reasonable cause exception for a failure to file, and a U.S. transferor who cannot establish reasonable cause is subject to both provisions.

The Deficit Reduction Act of 1984 (1984 Act) (Public Law 98–369, 98 Stat 494 (1984)) amended section 367(a) and enacted section 6038B. The legislative history to the 1984 Act indicates that Congress intended sections 367 and 6038B to operate in tandem, with section 6038B serving as a notification requirement for transfers under section 367(a). H.R. Rep. No. 432, Pt. 2, 98th Cong., 2d Sess., March 5, 1984 at 1325; S. Rep. No. 169, Vol. 1, 98th Cong., 2d Sess., Apr. 2, 1984 at 370.

Temporary regulations were published on May 16, 1986 (TD 8087, 1986–1 CB 175, 51 FR 17936), addressing GRAs and reporting under section 6038B (1986 temporary regulations). The 1986 temporary regulations imposed both full gain recognition under section 367(a)(1) for failure to comply with the regulations under section 367(a) as well as the penalty under section 6038B for failure to comply with the section 6038B reporting requirements. Both rules have been retained in later-issued guidance under sections 367(a) and 6038B.

In addition, the current final regulations under § 1.367(a)–8(p)(1) allow a U.S. transferor to obtain relief from gain recognition caused by a failure to file a GRA or a failure to comply in any material respect with the regulations by requesting relief and establishing that a failure to file or comply was due to reasonable cause and not willful neglect. When a U.S. transferor requests relief from full gain recognition under this section, the regulations provide that the appropriate IRS examination official (Director) shall notify the U.S. transferor in writing if it is determined that the U.S. transferor's failure was not due to reasonable cause, or if additional time will be needed to make a determination. This notification is to be made within the 120-day period that begins on the date that the IRS notifies the U.S. transferor in writing that its request for relief has been received and assigned for review. If the U.S. transferor is not so notified before the close of this 120-day period, the U.S. transferor is deemed to have established that the failure to file or failure to comply was due to reasonable cause and not willful neglect.

B. Section 367(e)(2)

Section 367(e)(2) provides generally that in a liquidation to which section 332 applies, except as provided in regulations, subsections (a) and (b)(1) of section 337 shall not apply when the 80-percent distributee (as defined in section 337(c)) is a foreign corporation.

As a result, if a domestic liquidating corporation liquidates into a foreign parent corporation (an outbound liquidation), or if a foreign liquidating corporation liquidates into a foreign parent corporation (a foreign-to-foreign liquidation), the liquidating corporation generally must recognize gain or loss on the distribution as if such property were sold to the distributee at its fair market value. Section 1.367(e)–2(b)(1) provides that a domestic liquidating corporation must recognize gain or loss on an outbound liquidation, subject to an overall loss limitation, except to the extent it satisfies one of the exceptions provided under § 1.367(e)–2(b)(2). These exceptions are for distributions of: (i) Property used in the conduct of a trade or business in the United States (a U.S. trade or business); (ii) a U.S. real property interest; or (iii) stock of a domestic subsidiary corporation that is at least 80-percent owned by the domestic liquidating corporation.

The regulations also address foreign-to-foreign liquidations and provide that a foreign liquidating corporation generally is not required to recognize gain or loss on the distribution, except in the case of certain distributions of property used in a U.S. trade or business or formerly used in a U.S. trade or business. See § 1.367(e)–2(c).

Other than the exception for a distribution of a U.S. real property interest, the exceptions provided under § 1.367(e)–2 require the filing of certain statements or schedules by the liquidating corporation and the distributee corporation. In addition, a domestic liquidating corporation that distributes property to a foreign corporation in a transaction subject to section 367(e)(2) must file a Form 926 with respect to the distribution. See § 1.6038B–1(e).

Explanation of Provisions

A. Proposed Amendments to the Section 367(a) GRA Regulations

Under current law, if a U.S. transferor fails to timely file an initial GRA, or fails to comply in any material respect with the section 367(a) GRA regulations with respect to an existing GRA (for example, because it fails to timely file an annual certification), the U.S. transferor is subject to full gain recognition under section 367(a)(1) unless the U.S. transferor later discovers the failure, promptly files the GRA or other required information with the IRS, and demonstrates that its failure was due to reasonable cause and not willful neglect. The existing reasonable cause standard, given its interpretation under the case law, may not be satisfied by U.S. transferors in many common situations even though the failure was not intentional and not due to willful neglect. Based on the current operation of the section 367(a) GRA regulations, the Internal Revenue Service (IRS) and the Department of the Treasury (Treasury Department) believe that full gain recognition under section 367(a)(1) should apply only if a failure to timely file an initial GRA or a failure to comply with the section 367(a) GRA regulations with respect to an existing GRA is willful. The IRS and the Treasury Department believe that the penalty imposed by section 6038B generally should be sufficient to encourage proper reporting and compliance.

Accordingly, the proposed regulations would revise the section 367(a) GRA regulations to provide that a U.S. transferor seeking either to (i) avoid recognizing gain under section 367(a)(1) on the initial transfer as a result of a failure to timely file an initial GRA, or (ii) avoid triggering gain as a result of a failure to comply in all material respects with the section 367(a) GRA regulations or the terms of an existing GRA, must demonstrate that the failure was not a willful failure. For this purpose, willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties (for example, section 6672), which would include a failure due to gross negligence, reckless disregard, or willful neglect.

Whether a failure is willful will be determined based on all the relevant facts and circumstances. The proposed regulations illustrate the application of this standard through a series of examples. For example, the section 367(a) GRA regulations require a GRA to include information about the adjusted basis and fair market value of the property transferred. Filing a GRA and intentionally not providing such information, including noting on the GRA that this information is ''available upon request,'' would be a willful failure.

In addition, the proposed regulations modify the process through which requests for relief from a failure to file or a failure to comply are evaluated by eliminating the requirement for the IRS to respond to such relief requests within 120 days. While the IRS is committed to processing requests promptly, the IRS and the Treasury Department do not believe that the IRS's processing time with respect to a relief request should be determinative of whether a U.S. transferor has satisfied its obligations under the section 367(a) GRA regulations.

The proposed regulations also provide guidance clarifying when an initial GRA is considered timely filed, and what gives rise to a failure to comply in any material respect with the requirements of the section 367(a) GRA regulations or the terms of an existing GRA. In general, an initial GRA is timely filed only if each document that is required to be filed as part of an initial GRA is timely filed and completed in all material respects. Similarly, in general, there is a failure to comply in a material respect with the section 367(a) GRA regulations or the terms of an existing GRA if a document (such as an annual certification) that is required to be filed is not timely filed, or is not completed in all material respects. The examples provided in the proposed regulations also illustrate the application of the ''completed in all material respects'' requirement of the current final regulations.

The proposed regulations also clarify that the section 6038B penalty will apply to a failure to comply in any material respect with the section 367(a) GRA regulations or the terms of an existing GRA, such as a failure to properly file a gain recognition agreement document (including an annual certification or new GRA). Under the proposed regulations, a failure to comply has the same meaning for purposes of the section 367(a) GRA regulations and the section 6038B regulations; however, the current reasonable cause standard continues to apply to U.S. transferors seeking relief from the section 6038B penalty.

In addition, the section 6038B penalty continues to apply, as provided under the current section 6038B regulations, if both a Form 926 is not filed with respect to the initial transfer and there is a failure to file an initial GRA. In this case, the current reasonable cause standard continues to apply to U.S. transferors seeking relief from the section 6038B penalty.

The proposed regulations modify the information that must be reported with respect to a transfer of stock or securities on Form 926. Specifically, the U.S. transferor must include on Form 926 the basis and fair market value of the property transferred. Finally, the proposed regulations require that a Form 926 be filed in all cases in which a GRA is filed, but provide that only Part I and Part II of the Form 926 must be completed if the only asset transferred is stock or securities.

B. Proposed Amendments to the Section 367(e)(2) Regulations

The section 367(e)(2) regulations governing liquidating distributions to foreign parent corporations contain several rules that condition

nonrecognition treatment upon the timely filing of statements or other documents, or complying with the requirements of those regulations. These documents are functionally similar to GRAs in certain respects. The current section 367(e)(2) regulations provide no explicit guidance regarding the treatment of taxpayers who fail to file these documents or report the required information, and also provide no mechanism to obtain relief for such failures. As discussed in this preamble, the section 6038B regulations also require that a Form 926 be filed with respect to liquidating distributions by a domestic corporation to a foreign parent corporation.

The IRS and the Treasury Department believe that the changes made by the proposed regulations in the case of section 367(a) transfers are also appropriate for failures to file or failures to comply for purposes of the section 367(e)(2) regulations and the related section 6038B regulations. Accordingly, the proposed regulations provide rules similar to the rules under the section 367(a) GRA regulations and related section 6038B regulations for failures to file the required documents or statements and failures to comply under the section 367(e)(2) regulations and related section 6038B regulations. Finally, the proposed regulations modify the information that must be reported with respect to one or more liquidating distributions of property, including the addition of the requirement to report the basis and fair market value of the property distributed.

C. Other Reporting Under Section 1.367(a)–3

The section 367(a) regulations currently do not address a taxpayer's failure to file certain other statements required under § 1.367(a)–3 in connection with certain transfers of stock or securities. These include the statements required to be filed by a domestic target corporation in connection with a transfer of stock or securities of such corporation to a foreign corporation as described in §§ 1.367(a)–3(c)(6) and (7), and the statement required to be filed by a domestic target corporation in connection with the transfer of its assets to a foreign corporation in an exchange described in section 361 and the subsequent transfer of those assets to a domestic subsidiary in a transaction described in § 1.367(a)–3(d)(2)(vi)(B)(*1*)(*ii*). The IRS and the Treasury Department believe that failures to timely file these statements or failures to comply in all material respects with these regulations should be treated similarly to failures to file or failures to comply with the section 367(a) GRA regulations. Accordingly, these proposed regulations incorporate similar rules with respect to these other filing obligations.

Proposed Effective/Applicability Date

These regulations are proposed to apply with respect to documents or statements required under the section 367(a) GRA regulations, § 1.367(a)–3(c) or (d) of the regulations, or the section 367(e) regulations that are required to be filed with a timely filed return on or after the date that final regulations are published in the **Federal Register**, as well as with respect to any requests for relief for failures to file documents and statements required under these regulations, or failures to comply, if such requests are submitted on or after the date that final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant impact on a substantial number of small entities. This certification is based on the fact that these regulations merely provide for a change in the standard, or clarify or provide the standard, that will be used to determine whether a taxpayer that has failed to file, or comply with the terms of, a gain recognition agreement or other related document, a § 1.367(a)–3 statement, or a document or statement required under § 1.367(e)–2 will be entitled to avoid full gain recognition under section 367(a)(1) or 367(e)(2), as applicable. Accordingly a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

■ **Par. 2.** Section 1.367(a)–3 is amended:

■ 1. By revising paragraph (c)(6)(ii).

■ 2. In paragraph (d)(2)(vi)(B)(*1*)(*ii*) by removing the language "its U.S. income tax return" and adding the language "its timely filed U.S. income tax return" in its place.

■ 3. By adding paragraph (f).

■ 4. By adding paragraph (g)(1)(ix).

The additions and revisions read as follows:

§ 1.367(a)–3. Treatment of transfers of stock or securities to foreign corporations.

* * * * *

(c) * * *

(6) * * *

(ii) Except as provided in paragraph (f) of this section, for purposes of this paragraph (c)(6), an income tax return will be considered timely filed if such return is filed, together with the statement required by this paragraph (c)(6), on or before the last date for filing a Federal income tax return (taking into account any extensions of time therefor) for the taxable year in which the transfer occurs.

* * * * *

(f) *Failure to file statements*—(1) *Consequences of a failure to file.* Except as provided in paragraph (f)(2) of this section, if there is a failure to file a statement described in paragraph (c)(6), (c)(7), or (d)(2)(vi)(C) of this section, then the exceptions to the application of section 367(a)(1) provided in paragraphs (c) and (d)(2)(vi)(B)(*1*)(*ii*) of this section will not apply. For this purpose, there is a failure to file the statement if the statement is not filed with a timely filed return or is not completed in all material respects.

(2) *Relief for certain failures to file that are not willful*—(i) *In general.* A failure to file described in paragraph (f)(1) of this section will be deemed not to have occurred for purposes of satisfying the requirements of the applicable regulation if the taxpayer is able to demonstrate that the failure was not willful using the procedure set forth in this paragraph (f)(2). For this purpose, willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties, which would include a failure due to gross negligence, reckless disregard, or willful neglect. Whether a failure to file was a willful failure will be determined by the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such position, as appropriate) (Director) based on all the facts and circumstances.

The taxpayer shall submit a request for relief and an explanation as provided in paragraph (f)(2)(ii) of this section. Although a taxpayer whose failure to file is determined not to be willful will avoid gain recognition under this section, the taxpayer will be subject to a penalty under section 6038B if the taxpayer fails to satisfy the reporting requirements, if any, under that section and does not demonstrate that the failure was due to reasonable cause and not willful neglect. See § 1.6038B–1(f). The determination of whether the failure to file was willful under this section has no effect on any request for relief made under § 1.6038B–1(f).

(ii) *Time of submission.* A taxpayer's statement that the failure to file was not willful will be considered only if, promptly after the taxpayer becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the required statement and a written statement explaining the reasons for the failure. The amended return must be filed with the applicable Internal Revenue Service Center with which the taxpayer filed its original return for such taxable year. The taxpayer may also submit a request for relief from the penalty of section 6038B as part of the same submission.

(iii) *Notice requirement.* In addition to the requirements of paragraph (f)(2)(ii) of this section, the taxpayer must comply with the notice requirements of this paragraph (f)(2)(iii). If any taxable year of the taxpayer is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the taxpayer is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(3) For illustrations of the application of the willfulness standard, see the examples in § 1.367(a)–8(p)(3).

(g) * * *

(1) * * *

(ix) Paragraphs (c)(6)(ii), (d)(2)(vi)(B)(*1*)(*ii*) and (f) of this section will apply to statements that are required to be filed with a timely filed U.S. income tax return on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, as well as to any requests for relief for failures to file statements, if such requests are submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

■ **Par. 3.** Section 1.367(a)–8 is amended:

■ 1. By revising the eleventh sentence of paragraph (a).

■ 2. In paragraph (b)(1) by

■ a. Redesignating definitions (xii) through (xv) as (xiv) through (xvii).

■ b. Redesignating definition (xi) as (xiii).

■ c. Redesignating definitions (v) through (x) as (vii) through (xii).

■ d. Redesignating definition (iv) as (v).

■ e. Adding new definitions (iv) and (vi).

■ f. Revising redesignated definitions (xiii), (xiv), and (xv).

■ 3. By revising paragraph (d)(1).

■ 4. By revising paragraph (j)(8).

■ 5. By revising paragraph (p).

■ 6. By adding a sentence at the end of paragraph (r)(1)(i).

The revisions and addition read as follows:

§ 1.367(a)-8 Gain recognition agreement requirements—(a) Scope. * * * Paragraph (p) of this section provides relief for certain failures to file an initial gain recognition agreement or to comply with the requirements of this section with respect to an existing gain recognition agreement. * * *

(b) * * *

(1) * * *

(iv) A *gain recognition agreement document* means any agreement, statement, schedule, or form required to be filed under this section, including an initial gain recognition agreement, a new gain recognition agreement described in paragraph (c)(5) of this section, a Form 8838 extending the period of limitations on assessment of tax described in paragraph (f) of this section, and an annual certification described in paragraph (g) of this section.

* * * * *

(vi) An *initial gain recognition agreement* means the gain recognition agreement entered into under paragraph (c) of this section with respect to the initial transfer.

* * * * *

(xiii) A *timely filed return* is a Federal income tax return filed by the due date set forth in section 6072(a) or (b), plus any extension of time to file such return granted under section 6081.

(xiv) *Transferee foreign corporation.* Except as provided in this paragraph (b)(1)(xiv), the *transferee foreign corporation* is the foreign corporation to which the transferred stock or securities are transferred in an initial transfer. In the case of an indirect stock transfer, the transferee foreign corporation has the meaning set forth in § 1.367(a)-3(d)(2)(i). The transferee foreign corporation also includes a corporation designated as the transferee foreign corporation in the case of a new gain recognition agreement entered into under this section.

(xv) *Transferred corporation.* Except as provided in this paragraph (b)(1)(xv), the *transferred corporation* is the corporation the stock or securities of which are transferred in the initial transfer. In the case of an indirect stock transfer, the transferred corporation has the meaning set forth in § 1.367(a)-3(d)(2)(ii). The transferred corporation also includes a corporation designated as the transferred corporation in the case of a new gain recognition agreement entered into under this section.

* * * * *

(d) *Filing requirements*—(1) *General rule.* An initial gain recognition agreement must be timely filed in order for the U.S. transferor to avoid

recognizing gain under section 367(a)(1) with respect to the transferred stock or securities by reason of the applicable exceptions provided under § 1.367(a)-3. Except as provided in paragraph (p) of this section, an initial gain recognition agreement is timely filed only if—

(i) The initial gain recognition agreement and any other gain recognition agreement document required to be filed with the initial gain recognition agreement are included with a timely filed return of the U.S. transferor for the taxable year during which the initial transfer occurs; and

(ii) Each gain recognition agreement document identified in paragraph (d)(1)(i) of this section is completed in all material respects.

* * * * *

(j) * * *

(8) *Failure to comply.* A U.S. transferor fails to comply in any material respect with any requirement of this section, or the terms of the gain recognition agreement as described in paragraph (c)(1) of this section. A failure to comply under this paragraph (j)(8) will extend the period of limitations on assessment of tax until the close of the third full taxable year ending after the date on which the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such person) (Director) receives actual notice of the failure to comply from the U.S. transferor. Except as provided in paragraph (p) of this section, for purposes of this paragraph (j)(8), a failure to comply includes—

(i) If there is a gain recognition event in a taxable year, a failure to report gain or pay any additional tax or interest due under the terms of the gain recognition agreement; and

(ii) A failure to file a gain recognition agreement document, other than an initial gain recognition agreement or a document required to be filed with the initial gain recognition agreement. For this purpose, there is a failure to file a gain recognition agreement document if—

(A) The gain recognition agreement document is not timely filed as required under this section, or

(B) The gain recognition agreement document is not completed in all material respects.

* * * * *

(p) *Relief for certain failures to file or failures to comply that are not willful*—(1) *In general.* This paragraph (p) provides relief if there is a failure to file an initial gain recognition agreement as required under paragraph (d)(1) of this section (failure to file), or a failure to comply that is a triggering event under paragraph (j)(8) of this section (failure to comply). A failure to file or failure to comply will be deemed not to have occurred for purposes of paragraph (d)(1) of this section or paragraph (j)(8) of this section if the U.S. transferor is able to demonstrate that the failure was not willful using the procedure set forth in this paragraph (p). For this purpose, willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties, which would include a failure due to gross negligence, reckless disregard, or willful neglect. Whether a failure to file or failure to comply was willful will be determined by the Director based on all the facts and circumstances.

The taxpayer shall submit a request for relief and an explanation as provided in paragraph (p)(2)(i) of this section. Although a U.S. transferor whose failure to file or failure to comply, as applicable, is determined not to be willful will avoid gain recognition under paragraph (b), (c), or (e) of § 1.367(a)–3, or paragraph (c)(1) of this section, as applicable, the U.S. transferor will be subject to a penalty under section 6038B if the U.S. transferor fails to satisfy the reporting requirements under that section and does not demonstrate that the failure was due to reasonable cause and not willful neglect. See § 1.6038B–1(b)(2) and (f). The determination of whether the failure to file or failure to comply was willful under this section has no effect on any request for relief made under § 1.6038B–1(f).

(2) *Procedures for establishing that a failure to file or failure to comply was not willful*—(i) *Time of submission.* A U.S. transferor's statement that a failure to file or failure to comply was not willful will be considered only if, promptly after the U.S. transferor becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to file or failure to comply. The U.S. transferor must file, with the amended return, a Form 8838 extending the period of limitations on assessment of tax with respect to the gain realized but not recognized on the initial transfer to the later of (1) the close of the eighth full taxable year following the taxable year during which the initial transfer occurred, or (2) three years from the date the required information is provided to the IRS. The amended return and Form 8838 must be filed with the applicable Internal Revenue Service Center with which the U.S. transferor filed its original return for such taxable year. The U.S. transferor may submit a request for relief from the penalty under section 6038B as part of the same submission. See § 1.6038B–1(f).

(ii) *Notice requirement.* In addition to the requirements of paragraph (p)(2)(i) of this section, the U.S. transferor must comply with the notice requirements of this paragraph (p)(2)(ii). If any taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(3) *Examples.* The following examples illustrate the application of this paragraph (p). All of the examples are based solely on the following facts and any additional facts stated in the particular example. DC, a domestic corporation, wholly owns FS and FA, each a foreign corporation. In Year 1, pursuant to a transaction qualifying both as a reorganization under section 368(a)(1)(B) and an exchange under section 351, DC transferred all the FS stock to FA solely in exchange for voting stock of FA (FS Transfer). The fair market value of the FS stock exceeded DC's tax basis in the stock. Absent the application of section 367 to the transaction, DC's exchange of the FS stock for the stock of FA qualified as a tax-free exchange under section 354. Immediately after the transaction, both FA and FS were controlled foreign corporations (as defined in section 957). Furthermore, DC was a section 1248 shareholder (as defined in § 1.367(b)–2(b)) with respect to FA and FS, and a 5-percent shareholder with respect to FA for purposes of § 1.367(a)–3(b)(ii). Thus, DC was required to recognize gain under section 367(a)(1) by reason of the FS Transfer unless DC timely filed an initial gain recognition agreement (GRA) as required by paragraph (d)(1) of this section and complied in all material respects with the requirements of this section throughout the term of the GRA. The application of section 6038B is not addressed in these examples. DC may be subject to a penalty under section 6038B even if DC demonstrates under this section that a failure to file or failure to

comply was not willful. See §§ 1.6038B–1(b) and (f) for the application of section 6038B.

Example 1. Taxpayer failed to file a GRA due to accidental oversight. (i) *Additional facts.* DC filed its tax return for the year of the FS Transfer, reporting no gain with respect to the exchange of the FS stock. DC, through its tax department, was aware of the requirement to file a GRA in order for DC to avoid recognizing gain with respect to the FS Transfer under section 367(a)(1), and had the experience and competency to properly prepare the GRA. DC had filed many GRAs over the years and had never failed to timely file a GRA. However, although DC prepared the GRA with respect to the FS Transfer, it was not filed with DC's tax return for the year of the FS Transfer due to an accidental oversight. During the preparation of the following year's tax return, DC discovered that the GRA was not filed. DC filed an amended return to file the GRA and complied with the procedures set forth under paragraph (p)(2) of this section promptly after it became aware of the failure.

(ii) *Result.* Because DC failed to file a GRA with its timely filed tax return for the year of the FS Transfer, there is a failure to timely file the GRA as required by paragraph (d)(1) of this section. However, based on the facts of this *Example 1,* including that the failure to timely file the GRA was an isolated oversight, the failure to timely file is not a willful failure to file. Accordingly, the timely filed requirement of paragraph (d)(1) of this section is considered to be satisfied, and DC is not required to recognize the gain realized on the FS Transfer under section 367(a)(1).

Example 2. Taxpayer's course of conduct is taken into account in determination. (i) *Additional facts.* DC filed its tax return for the year of the FS Transfer, reporting no gain with respect to the exchange of the FS stock, but failed to file a GRA. DC, through its tax department, was aware of the requirement to file a GRA in order for DC to avoid recognizing gain with respect to the FS Transfer under section 367(a)(1). DC had not consistently and in a timely manner filed GRAs in the past, and also had an established history of failing to timely file other tax and information returns for which it was subject to penalties. In a year subsequent to Year 1, DC transferred stock of another foreign subsidiary with respect to which DC had a built-in gain (FS2) to FA in a transaction that qualified as both a reorganization under section 368(a)(1)(B) and an exchange described under section 351 (FS2 Transfer). DC was required to recognize gain on the FS2 Transfer under section 367(a)(1) unless DC timely filed a GRA as required by paragraph (d)(1) of this section and complied with the requirements of this section during the term of the GRA. DC reported no gain on the FS2 Transfer on its tax return, but failed to file a GRA. At the time of the FS2 Transfer, DC was already aware of its failure to file the GRA required for the prior FS Transfer, but had not implemented any safeguards to ensure that it would timely file GRAs for future transactions. DC filed an amended return to file the GRA for the FS2 Transfer and complied with the procedures set forth under paragraph (p)(2) of this section promptly after it became aware of the failure. DC asserts that its failure to timely file a GRA with respect to the FS2 Transfer was due to an isolated oversight similar to the one that occurred with respect to the FS Transfer. At issue is DC's failure to timely file a GRA for the FS2 Transfer.

(ii) *Result.* Because DC failed to file a GRA with its timely filed tax return for the year of the FS2 Transfer, there is a failure to timely file the GRA as required by paragraph (d)(1) of this section. DC's course of conduct is taken into account in determining whether its failure to timely file a GRA for the FS2 Transfer was willful. Based on the facts of this *Example 2,* including DC's history of failing to file required tax and information returns in general and GRAs in particular, and its failure to implement safeguards to ensure that it would timely file GRAs, the failure to timely file a GRA with respect to the FS2 Transfer rises to the level of a willful failure to timely file. Accordingly, the timely filed requirement of paragraph (d)(1) of this section is not satisfied, and DC must recognize the full amount of the gain realized on the FS2 Transfer.

Example 3. GRA not completed in all material respects. (i) *Additional facts.* DC timely filed its tax return for the year of the FS Transfer, reporting no gain with respect to the exchange of the FS stock. DC was aware of the requirement to file a GRA to avoid recognizing gain under section 367(a)(1), including the requirement to provide the basis and fair market value of the transferred stock. However, DC filed a purported GRA that did not contain the fair market value of the FS stock. Instead, the GRA was filed with the statement that the fair market value information was ''available upon request.'' Other than the omission of the fair market value of the FS stock, the GRA contained all other information required by this section.

(ii) *Result.* Because DC omitted the fair market value of the FS stock from the GRA, the GRA was not completed in all material respects. Accordingly, there is a failure to timely file the GRA. Furthermore, because DC knowingly omitted such information, DC's omission is a willful failure to timely file a GRA. Accordingly, the GRA is not considered timely filed for purposes of paragraph (d)(1) of this section, and DC must recognize the full amount of the gain realized on the FS Transfer. A similar result would arise if DC had included the fair market value of the FS stock, but omitted its tax basis from the GRA.

Example 4. GRA filed as a result of hindsight. (i) *Additional facts.* At the time that DC filed its tax return for the tax year of the FS Transfer, DC anticipated selling Business A in the following tax year, which was expected to produce a capital loss that could be carried back to fully offset the gain recognized on the FS Transfer. DC chose not to file a GRA but to recognize the gain from the FS Transfer under section 367(a)(1), which it reported on its timely filed tax return. However, a large class action lawsuit was filed against Business A at the end of the following year, and DC was unable to sell the business. As a result, DC did not realize the expected capital loss, and was not able to offset the gain from the FS Transfer. DC now seeks to file a GRA for the FS Transfer.

(ii) *Result.* Because DC failed to file a GRA with its timely filed tax return for the year of the FS Transfer, there is a failure to timely file the GRA as required by paragraph (d)(1) of this section. Furthermore, because DC knowingly chose not to file a GRA for the FS Transfer, its actions constitute a willful failure to timely file a GRA. Accordingly, the GRA is not considered timely filed for purposes of paragraph (d)(1) of this section, and DC must recognize the full amount of the gain realized on the FS Transfer.

* * * * *

(r) *Effective/applicability date*—(1) *General rule*—(i) *Transfers occurring on or after March 13, 2009.* * * * The eleventh sentence of paragraph (a) and paragraphs (b)(1)(iv), (b)(1)(vi), (b)(1)(xiii), (d)(1), (j)(8), and (p) of this section will apply to gain recognition agreement documents that are required to be filed with a timely filed return on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, as well as to any requests for relief for failures to file gain recognition agreement documents, or failures to comply, if such requests are submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

■ **Par. 4.** Section 1.367(e)-2 is amended:

■ 1. By revising the ninth sentence and adding two new sentences before the last sentence of paragraph (a).

■ 2. By revising paragraph (b)(1)(i).

■ 3. In paragraph (b)(2)(i)(A)(*2*) by removing the language ''its U.S. income tax returns'' and adding the language ''its timely filed U.S. income tax returns'' in its place.

■ 4. In paragraph (b)(2)(i)(A)(*3*) by removing the language ''its U.S. income tax return'' and adding the language ''its timely filed U.S. income tax return'' in its place.

■ 5. In the first sentence of paragraph (b)(2)(i)(E)(*3*) by removing the language ''its U.S. income tax return'' and adding the language ''its timely filed U.S. income tax return'' in its place.

■ 6. In paragraph (b)(2)(i)(E)(*4*)(*ii*) by removing the language ''its U.S. income tax return'' and adding the language ''its timely filed U.S. income tax return'' in its place.

■ 7. In paragraph (b)(2)(i)(E)(*5*)(*ii*) by removing the language ''its U.S. income tax return'' and adding the language ''its timely filed U.S. income tax return'' in its place.

■ 8. In the first sentence of paragraph (b)(2)(iii)(A) by removing the language ''its U.S. income tax return'' and adding

the language ''its timely filed U.S. income tax return'' in its place.

■ 9. In paragraph (c)(2)(i)(B)(*3*) by removing the language ''their U.S. income tax returns'' and adding the language ''their timely filed U.S. income tax returns'' in its place.

■ 10. By revising paragraph (e).

■ 11. By adding paragraphs (f) and (g).

The revisions and additions read as follows:

§ 1.367(e)–2. Distributions described in section 367(e)(2)—(a) *Purpose and scope*—(1) *In general.* * * * Paragraph (e) of this section provides rules regarding failures to file statements or other documents required under this section or failures to comply with the requirements of this section. Paragraph (f) of this section provides relief for certain failures to file or comply. Finally, paragraph (g) of this section specifies the effective/applicability date for the rules of this section. * * *

* * * * *

(b) *Distribution by a domestic corporation*—(1) *General rule*—(i) *Recognition of gain and loss.* If a domestic corporation (domestic liquidating corporation) makes a distribution of property in complete liquidation under section 332 to a foreign corporation (foreign distributee corporation) that meets the stock ownership requirements of section 332(b) with respect to stock in the domestic liquidating corporation, then—

(A) Pursuant to section 367(e)(2), section 337(a) and (b)(1) shall not apply; and

(B) The domestic liquidating corporation shall recognize gain or loss on the distribution of property to the foreign distributee corporation, except as provided in paragraph (b)(2) of this section.

* * * * *

(e) *Failures to file or failures to comply*—(1) *Scope.* This paragraph (e) provides rules regarding a failure to file an initial liquidation document with respect to one or more liquidating distributions by a domestic liquidating corporation that, absent such failure, would qualify for nonrecognition treatment under paragraph (b)(2)(i) or (iii) of this section, or with respect to one or more liquidating distributions by a foreign liquidating corporation that, absent such failure, would qualify for nonrecognition treatment under paragraph (c)(2)(i)(B) of this section (failure to file). This paragraph (e) also provides rules regarding failures to comply in all material respects with the terms of this section with respect to one or more liquidating distributions for which nonrecognition treatment was initially claimed under paragraph (b)(2)(i), (b)(2)(iii), or (c)(2)(i)(B) of this section, as applicable (failure to comply).

(2) *Definitions.* The following definitions apply for purposes of this section.

(i) An *initial liquidation document* means any statement, schedule, or form required to be filed under this section in order for the domestic liquidating corporation or foreign liquidating corporation, as applicable, to initially qualify to claim nonrecognition treatment with respect to one or more liquidating distributions described in this section, including—

(A) The statement and attachments described in paragraph (b)(2)(i)(C) of this section;

(B) The statement described in paragraph (b)(2)(iii)(D) of this section; and

(C) The statement and attachments described in paragraph (c)(2)(i)(C) of this section.

(ii) A *subsequent liquidation document* means any statement, schedule, or form (other than an initial liquidation document) required to be filed under this section in order for the domestic liquidating corporation or foreign liquidating corporation, as applicable, to continue to qualify for nonrecognition treatment with respect to one or more liquidating distributions described in this section, including—

(A) The schedule described in paragraph (b)(2)(i)(E)(*3*) of this section;

(B) The schedule described in paragraph (b)(2)(i)(E)(*4*)(*ii*) of this section; and

(C) The statement and attachments described in paragraph (b)(2)(i)(E)(*5*) of this section.

(iii) A *timely filed U.S. income tax return* means a Federal income tax return filed by the due date set forth in section 6072, plus any extension of time to file such return granted under section 6081.

(3) *Failure to file*—(i) *General rule.* For purposes of this section and except as provided in paragraph (e)(5) or (f) of this section, there is a failure to file an initial liquidation document if—

(A) An initial liquidation document is not filed with the timely filed U.S. income tax return specified under this section, or

(B) An initial liquidation document is not completed in all material respects.

(ii) *Consequences of a failure to file.* If there is a failure to file an initial liquidation document, then nonrecognition treatment under paragraph (b)(2)(i), (b)(2)(iii), or (c)(2)(i)(B) of this section (as appropriate) will not apply.

(4) *Failure to comply*—(i) *General rule.* For purpose of this section and except as provided in paragraph (e)(5) or (f) of this section, a failure to comply includes—

(A) A failure to report gain, or pay any additional tax or interest due, in accordance with the requirements under this section; and

(B) A failure to file a subsequent liquidation document, as determined applying paragraph (e)(3)(i) of this section, but replacing the term ''initial liquidation document'' with the term ''subsequent liquidation document.''

(ii) *Consequences of a failure to comply.* If there is a failure to comply in any material respect with the terms of paragraph (b)(2)(i), (b)(2)(iii), or (c)(2)(i) of this section, as applicable, then—

(A) Any gain (but not loss) that was not previously recognized by the domestic liquidating corporation or foreign liquidating corporation, as applicable, under paragraph (b)(2)(i), (b)(2)(iii), or (c)(2)(i)(B) of this section must be recognized; and

(B) The period of limitations on assessment of tax is extended until the close of the third full taxable year ending after the date on which the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such position, as appropriate) (Director) is provided written notification that specifically references the failure to comply, or a tax return is filed reporting the gain that was not recognized by the domestic liquidating corporation or the foreign liquidating corporation, as applicable, by reason of paragraph (b)(2)(i), (b)(2)(iii), or (c)(2)(i)(B) of this section.

(f) *Relief for certain failures to file or failures to comply that are not willful*—(1) *In general.* This paragraph (f) provides relief if there is a failure to file an initial liquidation document as described in paragraph (e)(3)(i) of this section (failure to file), or a failure to comply in any material respect with the terms of this section as described in paragraph (e)(4)(i) of this section (failure to comply), respectively. The failure to file or a failure to comply, as applicable, is deemed not to have occurred for purposes of paragraph (e)(3)(ii) or (e)(4)(ii) of this section if the taxpayer is able to demonstrate that the failure was not willful using the procedure set forth in this paragraph (f). For this purpose, willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties, which

would include a failure due to gross negligence, reckless disregard, or willful neglect. Whether a failure to file or failure to comply, as applicable, was willful will be determined by the Director based on all the facts and circumstances.

The taxpayer shall submit a request for relief and an explanation as provided in paragraph (f)(2)(i) of this section. Although a taxpayer whose failure to file or failure to comply, as applicable, is determined not to be willful will avoid gain or loss recognition under this section, the taxpayer will be subject to a penalty under section 6038B if the taxpayer fails to satisfy the reporting requirements under that section and does not demonstrate that the failure was due to reasonable cause and not willful neglect. See § 1.6038B–1(e)(4) and (f). The determination of whether the failure to file or failure to comply was willful under this section has no effect on any request for relief made under § 1.6038B–1(f).

(2) *Procedures for establishing that a failure to file or comply was not willful*—(i) *Time of submission.* A taxpayer's statement that the failure to file or failure to comply, as applicable, was not willful will be considered only if, promptly after the taxpayer becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure. In the case of a liquidating distribution described in paragraph (b)(2)(i) or (c)(2)(i)(B) of this section, the taxpayer must file, with the amended return, a Form 8838 extending the period of limitations on the assessment of tax with respect to the gain realized but not recognized with respect to the liquidating distribution to the later of the date provided in paragraph (b)(2)(i)(C)(*5*), taking into account paragraph (c)(2)(i)(C) and (D), as applicable, or three years from the date the required information is provided to, or the required gain or loss is reported to, as applicable, the IRS. In the case of a liquidating distribution described in paragraph (b)(2)(iii) of this section, the taxpayer must file, with the amended return, a Form 8838 extending the period of limitations on assessment of tax with respect to the gain realized but not recognized with respect to the liquidating distribution to three years from the date the required information is provided to the IRS, or the required gain or loss is reported to the IRS. The amended return and Form 8838 must be filed with the applicable Internal Revenue Service Center with which the taxpayer filed its original return for such taxable year. The taxpayer may also submit a request for relief from the penalty of section 6038B as part of the same submission.

(ii) *Notice requirement.* In addition to the requirements of paragraph (f)(2)(i) of this section, the taxpayer must comply with the notice requirements of this paragraph (f)(2)(ii). If any taxable year of the taxpayer is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the taxpayer is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(3) For an illustration of the application of the willfulness standard, see the examples in § 1.367(a)–8(p)(3).

(g) *Effective/applicability dates.* The ninth, tenth, and eleventh sentences of paragraph (a) of this section, and paragraphs (b)(1)(i), (b)(2)(i)(A)(*2*), (b)(2)(i)(A)(*3*), (b)(2)(i)(E)(*3*), (b)(2)(i)(E)(*4*)(*ii*), (b)(2)(i)(E)(*5*)(*ii*), (b)(2)(iii)(A), (c)(2)(i)(B)(*3*), (e), and (f) of this section will apply to liquidation documents that are required to be filed with a timely filed U.S. income tax return on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, as well as to any requests for relief for failures to file liquidation documents, or failures to comply, if such requests are submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 5.** Section 1.6038B–1 is amended by:

■ 1. Adding a sentence after the first sentence in paragraph (b)(1)(i).
■ 2. Revising paragraph (b)(2)(i)(B)(*1*).
■ 3. Adding paragraph (b)(2)(iii).
■ 4. Adding paragraph (b)(2)(iv).
■ 5. Revising paragraph (c).
■ 6. Revising paragraph (e)(4).
■ 7. Adding paragraph (f)(2)(iii).
■ 8. Adding paragraph (f)(2)(iv).
■ 9. Adding paragraph (g)(5).

The revisions and additions read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(b) *Time and manner of reporting*—(1) *In general*—(i) *Reporting procedure.* * * * In addition, if the U.S. person files a statement under § 1.367(a)–3(d)(2)(vi)(C), a gain recognition agreement under § 1.367(a)–8, or a liquidation document under § 1.367(e)–2(b), such person must comply in all material respects with the requirements of such section pursuant to the terms of the statement, gain recognition agreement, or liquidation document, as applicable, in order to satisfy a reporting obligation under section 6038B. * * *

* * * * *

(2) * * *

(i) * * *

(B) * * *

(*1*) Except as provided in paragraph (b)(2)(iii) of this section, the U.S. transferor (or one or more successors) filed an initial gain recognition agreement under § 1.367(a)–8, and filed Form 926 in accordance with paragraph (b)(2)(iv) of this section; or

* * * * *

(ii) * * *

(iii) *Timely filed initial gain recognition agreement.* Paragraph (b)(2)(i)(B)(*1*) of this section will not apply unless the initial gain recognition agreement is timely filed as determined under § 1.367(a)–8(d)(1), but for purposes of this section, determined without regard to § 1.367(a)–8(p). However, see paragraph (f)(3) of this section for certain relief that may be available.

(iv) *Satisfaction of section 6038B reporting if a gain recognition agreement is filed.* If the U.S. transferor is described in paragraph (b)(2)(i)(B)(*1*) of this section and is not otherwise required to file a Form 926 with respect to a transfer of assets other than the stock or securities to the transferee foreign corporation, the requirements of this section are satisfied with respect to the transfer of the stock or securities by completing Part I and Part II of Form 926, noting in Part III that the information required by Form 926 with respect to the transfer of stock or securities is contained in a gain recognition agreement filed pursuant to § 1.367(a)–8, and attaching a signed copy of the Form 926 to its U.S. income tax return for the year of the transfer. If the U.S. transferor is required to file Form 926 with respect to a transfer of assets in addition to the stock or securities, the requirements of this section are satisfied with respect to the transfer of the stock or securities by noting in Part III that the information required by Form 926 with respect to the transfer of stock or securities is contained in a gain recognition

agreement filed pursuant to § 1.367(a)–8.

* * * * *

(c) * * *

(1) through (4)(i) [Reserved]. For further guidance, see § 1.6038B–1T(c)(1) through (4)(i).

(ii) *Stock or securities.* Describe any stock or securities that are transferred, including the adjusted tax basis and fair market value of the stock or securities, the class or type, amount, and characteristics of the stock or securities, and the name, address, place of incorporation, and general description of the corporation issuing the stock or securities. In addition, if any provision of § 1.367(a)–3 applies to except the transfer of the stock or securities from section 367(a)(1), provide information supporting the claimed application of such provision. However, see paragraph (b)(2) of this section for certain exceptions and special rules for reporting transfers of stock or securities under section 367(a).

(5) [Reserved]. For further guidance, see § 1.6038B–1T(c)(5).

* * * * *

(e) * * *

(4) *Reporting rules for section 367(e)(2) distributions by domestic liquidating corporations*—(i) *General rule.* Except as provided in paragraph (e)(4)(ii) of this section, if the distributing corporation makes a distribution of property in complete liquidation under section 332 to a foreign distributee corporation that meets the stock ownership requirements of section 332(b) with respect to the stock of the distributing corporation, then the distributing corporation shall complete a Form 926 and attach a signed copy of such form to its timely filed U.S. income tax return for the taxable years that include one or more liquidating distributions. The property description contained in Part III of the Form 926 shall contain a description, including the adjusted tax basis and fair market value, of all property distributed by the distributing corporation (regardless of whether the distribution of the property qualifies for nonrecognition treatment). The description shall also identify the items of property for which nonrecognition treatment is claimed under § 1.367(e)–2(b)(2)(ii) or (iii), as applicable.

(ii) *Special rule.* Except as provided in paragraph (e)(4)(iii) of this section, if the distributing corporation distributes items of property that will be used by the foreign distributee corporation in the conduct of a trade or business in the United States and the distributing corporation does not recognize gain or loss on such distribution under § 1.367(e)–2(b)(2)(i) with respect to such property, then the distributing corporation may satisfy the requirements of this section by completing Part I and Part II of Form 926, noting in Part III that the information required by Form 926 is contained in a statement required by § 1.367(e)–2(b)(2)(i)(C)(*2*), and attaching a signed copy of Form 926 to its timely filed U.S. income tax return for the taxable years that include one or more distributions in liquidation. In addition, if the distributing corporation distributes stock of a domestic subsidiary corporation and does not recognize gain or loss on such distribution under § 1.367(e)–2(b)(2)(iii) with respect to such stock, then the distributing corporation may satisfy the requirements of this section by completing Part I and Part II of Form 926, noting in Part III that the information required by Form 926 is contained in a statement required by § 1.367(e)–2(b)(2)(iii)(D), and attaching a signed copy of Form 926 to its timely filed U.S. income tax return for the taxable years that include one or more distributions of domestic subsidiary stock.

(iii) *Properly filed statement.* Paragraph (e)(4)(ii) will not apply if there is a failure to file an initial liquidation document as determined under § 1.367(e)–2(e)(3)(i), but for purposes of this section, determined without regard to § 1.367(e)–2(f). However, see paragraph (f)(3) of this section for certain relief that may be available.

(f) * * *

(2) * * *

(iii) With respect to an initial gain recognition agreement filed under § 1.367(a)–8, a failure to comply as determined under § 1.367(a)–8(j)(8), but for purposes of this section, determined without regard to the application of § 1.367(a)–8(p).

(iv) With respect to an initial liquidation document filed under § 1.367(e)–2(b)(1), a failure to comply as determined under § 1.367(e)–2(e)(4)(i), but for purposes of this section, determined without regard to the application of § 1.367(e)–2(f).

* * * * *

(g) * * *

(5) The second sentence of paragraph (b)(1)(i) and paragraphs (b)(2)(i)(B)(*1*), (b)(2)(iii), (b)(2)(iv), (c), (e)(4), (f)(2)(iii), and (f)(2)(iv) of this section will apply to documents required to be filed with a timely filed return on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, as well as to any requests for relief for failures to file documents, or failures to comply, if such requests are submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–130507–11]

RIN 1545–BK44

Net Investment Income Tax; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing (REG–130507–11) that was published in the **Federal Register** on Wednesday, December 5, 2012 (77 FR 72612). The proposed regulations provide guidance under section 1411 of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: David H. Kirk, or Adrienne Mikolashek at (202) 622–3060 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing (REG–130507–11) that is the subject of these corrections is under Section 1411 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing (REG–130507–11) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking and notice of public hearing (REG–130507–11), that was the subject of FR Doc. 2012–29238, is corrected as follows:

■ 1. On page 72612, in the preamble, column 1, under the caption **FOR**