



[4830-01-P]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

TD [9667]

RIN 1545-BK00

Requirements for Taxpayers Filing Form 5472

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

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

Contemporaneously, new proposed regulations are being issued that would remove a current provision for timely filing of Form 5472 separately from an income tax return that is untimely filed. As a result, the proposed regulations would require Form 5472 to be filed in all cases only with the filer’s income tax return for the taxable year by the due date (including extensions) of that return.

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

Applicability Date: For dates of applicability, see §§1.6038A-1(n) and 1.6038A-2(h).

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

SUPPLEMENTARY INFORMATION

Background

On June 10, 2011, the IRS and the Treasury Department published temporary regulations and a notice of proposed rulemaking by cross-reference to the temporary regulations in the **Federal Register** (76 FR 33997, TD 9529, 2011-30 IRB 57; REG-101352-11, 76 FR 34019) (2011 regulations) under sections 6038A and 6038C of the Internal Revenue Code (Code). The 2011 regulations amended final regulations under §1.6038A-2 to provide that duplicate filing of Form 5472 generally would no longer be required regardless of whether the filer files a paper or an electronic income tax return. As a result, the regulations' only remaining provision for filing a Form 5472 separately from the filer's income tax return applies to cases in which the filer's income tax return is not timely filed.

No comments were received on the 2011 regulations, and no public hearing was requested or held. Accordingly, this Treasury decision adopts the 2011 regulations without substantive change as final regulations and removes the corresponding temporary regulations.

However, contemporaneous with these final regulations, the IRS and the Treasury Department are proposing the removal of §1.6038A-2(e), which provides for a filer to timely file a Form 5472 separately from the filer's income tax return if the income tax return is untimely filed. As a result, the proposed regulations would require that Form 5472 be filed in all cases only with the filer's income tax return for the taxable year

by the due date (including extensions) of that return. For further information, see the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

Special Analyses

It has been determined that this final regulation is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

Part 1--INCOME TAXES

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

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

Par. 2. Section 1.6038A-1 is amended by revising paragraph (n)(2) to read as follows:

§1.6038A-1 General requirements and definitions.

* * * * *

(n) * * *

(2) Section 1.6038A-2. Section 1.6038A-2 (relating to the requirement to file Form 5472) generally applies for taxable years beginning after July 10, 1989. However, §1.6038A-2 as it applies to reporting corporations whose sole trade or business in the United States is a banking, financing, or similar business as defined in §1.864-4(c)(5)(i) applies for taxable years beginning after December 10, 1990. Section 1.6038A-2(d) and (e) apply for taxable years ending on or after June 10, 2011. For taxable years ending before June 10, 2011, see §1.6038A-2(d) and (e) as contained in 26 CFR part 1 revised as of April 1, 2011.

* * * * *

§1.6038A-1T [Removed]

Par. 3. Section 1.6038A-1T is removed.

Par. 4. Section 1.6038A-2 is amended by revising paragraphs (d) and (e) to read as follows:

§1.6038A-2 Requirement of return.

* * * * *

(d) Time for filing returns. A Form 5472 required under this section must be filed with the reporting corporation's income tax return for the taxable year by the due date (including extensions) of that return.

(e) Untimely filed return. If the reporting corporation's income tax return is untimely filed, Form 5472 nonetheless must be timely filed. When the reporting corporation's income tax return is ultimately filed, a copy of Form 5472 must be attached.

* * * * *

§1.6038A-2T [Removed]

Par. 5. Section 1.6038A-2T is removed.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: May 21, 2014.

Mark J. Mazur,

Assistant Secretary for the Treasury (Tax Policy).

[FR Doc. 2014-13255 Filed 06/05/2014 at 8:45 am; Publication Date: 06/06/2014]