

agent of the foreign corporation. If the responsible representative or agent does not have a specific power of attorney from the foreign corporation to file a return in its behalf, the return shall be accompanied by a statement to the effect that the representative or agent does not possess specific power of attorney to file a return for such corporation but that the return is being filed in accordance with the provisions of this subdivision.

(ii) *Cases where power of attorney is required.* Whenever a return of income of a foreign corporation is made by an agent acting under a duly authorized power of attorney for that purpose, the return shall be accompanied by the power of attorney in proper form, or a copy thereof specifically authorizing him to represent his principal in making, executing, and filing the income tax return. Form 2848 may be used for this purpose. The agent, as well as the taxpayer, may incur liability for the penalties provided for erroneous, false, or fraudulent returns. For the requirements regarding signing of returns, see § 1.6062-1. The rules of paragraph (e) of § 601.504 of this chapter (Statement of Procedural Rules) shall apply under this subparagraph in determining whether a copy of a power of attorney must be certified.

(iii) *Limitation.* A return of income shall be required under this subparagraph only if the foreign corporation is otherwise required to make a return in accordance with this paragraph.

(4) *Disallowance of deductions and credits.* For provisions disallowing deductions and credits when a return of income has not been filed by or on behalf of a foreign corporation, see section 882(c)(2) and the regulations thereunder, and paragraph (b) (2) and (3) of § 1.535-1.

(5) *Effective date.* This paragraph shall apply for taxable years beginning after December 31, 1966, except that it shall not be applied to require (i) the filing of a return for any taxable year ending before January 1, 1974, which, pursuant to instructions applicable to the return, is not required to be filed or (ii) the amendment of a return for such a taxable year which, pursuant to such instructions, is required to be filed. For corresponding rules applicable to tax-

able years beginning before January 1, 1967, see 26 CFR 1.6012-2(g) (Revised as of January 1, 1967).

(h) *Electing small business corporations.* An electing small business corporation, whether or not subject to the tax imposed by section 1378, shall make a return on Form 1120-S. See also section 6037 and the regulations thereunder.

(i) *Items of tax preference—(1) In general.* Every corporation required to make a return under this section, and having items of tax preference (described in section 57 and the regulation thereunder) in an amount specified by Form 4626, shall file such form as part of its return.

(2) *Organizations with unrelated business income and foreign corporations.* Regardless of the provisions of paragraphs (e) and (g) of this section, any organization described in either such paragraph having items of tax preference (described in section 57 and the regulations thereunder) in any amount entering into the computation or unrelated business income is required to make a return on form 990-T or form 120F, respectively, and to attach the required form as part of such return.

(j) *Other provisions.* For returns by fiduciaries for corporations, see § 1.6012-3. For information returns by corporations regarding payments of dividends, see §§ 1.6042-1 to 1.6042-3, inclusive; regarding corporate dissolutions or liquidations, see § 1.6043-1; regarding distributions in liquidation, see § 1.6043-2; regarding payments of patronage dividends, see §§ 1.6044-1 to 1.6044-4, inclusive; and regarding certain payments of interest, see §§ 1.6049-1 and 1.6049-2. For information returns of officers, directors, and shareholders of foreign personal holding companies, as defined in section 552, see §§ 1.6035-1 and 1.6035-2. For returns as to formation or reorganization of foreign corporations, see §§ 1.6046-1 to 1.6046-3, inclusive.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.6012-2, see the List of CFR Sections Affecting in the Finding Aids section of this volume.

§ 1.6012-3 Returns by fiduciaries.

(a) *For estates and trusts—(1) In general.* Every fiduciary, or at least one of joint fiduciaries, must make a return

of income on form 1041 (or by use of a composite return pursuant to § 1.6012-5) and attach the required form if the estate or trust has items of tax preference (as defined in section 57 and the regulations thereunder) in any amount:

(i) For each estate for which he acts if the gross income of such estate for the taxable year is \$600 or more;

(ii) For each trust for which he acts, except a trust exempt under section 501(a), if such trust has for the taxable year any taxable income, or has for the taxable year gross income of \$600 or more regardless of the amount of taxable income; and

(iii) For each estate and each trust for which he acts, except a trust exempt under section 501(a), regardless of the amount of income for the taxable year, if any beneficiary of such estate or trust is a nonresident alien.

(iv) For each trust electing to be taxed as, or as part of, an estate under section 645 for which a trustee acts, and for each related estate joining in a section 645 election for which an executor acts, if the aggregate gross income of the electing trust(s) and related estate, if any, joining in the election for the taxable year is \$600 or more. (For the respective filing requirements of the trustee of each electing trust and executor of any related estate, see § 1.645-1).

(2) *Wills and trust instruments.* At the request of the Internal Revenue Service, a copy of the will or trust instrument (including any amendments), accompanied by a written declaration of the fiduciary under the penalties of perjury that it is a true and complete copy, shall be filed together with a statement by the fiduciary indicating the provisions of the will or trust instrument (including any amendments) which, in the fiduciary's opinion, determine the extent to which the income of the estate or trust is taxable to the estate or trust, the beneficiaries, or the grantor, respectively.

(3) *Domiciliary and ancillary representatives.* In the case of an estate required to file a return under subparagraph (1) of this paragraph, having both domiciliary and ancillary representatives, the domiciliary and ancillary representatives must each file a return on Form 1041. The domiciliary representa-

tive is required to include in the return rendered by him as such domiciliary representative the entire income of the estate. The return of the ancillary representative shall be filed with the district director for his internal revenue district and shall show the name and address of the domiciliary representative, the amount of gross income received by the ancillary representative, and the deductions to be claimed against such income, including any amount of income properly paid or credited by the ancillary representative to any legatee, heir, or other beneficiary. If the ancillary representative for the estate of a nonresident alien is a citizen or resident of the United States, and the domiciliary representative is a nonresident alien, such ancillary representative is required to render the return otherwise required of the domiciliary representative.

(4) *Two or more trusts.* A trustee of two or more trusts must make a separate return for each trust, even though such trusts were created by the same grantor for the same beneficiary or beneficiaries.

(5) *Trusts with unrelated business income.* Every fiduciary for a trust described in section 511(b)(2) which is subject to the tax imposed on its unrelated business taxable income by section 511(b)(1) shall make a return on Form 990-T for each taxable year if the trust has gross income, included in computing unrelated business taxable income for such taxable year, of \$1,000 or more. The filing of a return of unrelated business income does not relieve the fiduciary of such trust from the duty of filing other required returns.

(6) *Charitable remainder trusts.* Every fiduciary for a charitable remainder annuity trust (as defined in § 1.664-2) or a charitable remainder unitrust (as defined in § 1.664-3) shall make a return on Form 1041-B for each taxable year of the trust even though it is nonexempt because it has unrelated business taxable income. The return on Form 1041-B shall be made in accordance with the instructions for the form and shall be filed with the designated Internal Revenue office on or before the 15th day of the fourth month following the close of the taxable year of the trust. A copy of

the instrument governing the trust, accompanied by a written declaration of the fiduciary under the penalties of perjury that it is a true and complete copy, shall be attached to the return for the first taxable year of the trust.

(7) *Certain trusts described in section 4947(a)(1)*. For taxable years beginning after December 31, 1980, in the case of a trust described in section 4947(a)(1) which has no taxable income for a taxable year, the filing requirements of section 6012 and this section shall be satisfied by the filing, pursuant to § 53.6011-1 of this chapter (Foundation Excise Tax Regulations) and § 1.6033-2(a), by the fiduciary of such trust of—

(i) Form 990-PF if such trust is treated as a private foundation, or

(ii) Form 990 if such trust is not treated as a private foundation.

When the provisions of this paragraph (a)(7) are met, the fiduciary shall not be required to file Form 1041.

(8) *Estate and trusts liable for qualified tax*. In the case of an estate or trust which is liable for one or more qualified State individual income taxes, as defined in section 6362, for a taxable year, see paragraph (b) of § 301.6361-1 of this chapter (Regulations on Procedure and Administration) for rules relating to returns required to be made.

(9) *A trust any portion of which is treated as owned by the grantor or another person pursuant to sections 671 through 678*. In the case of a trust any portion of which is treated as owned by the grantor or another person under the provisions of subpart E (section 671 and following) part I, subchapter J, chapter 1 of the Internal Revenue Code see § 1.671-4.

(b) *For other persons—(1) Decedents*. The executor or administrator of the estate of a decedent, or other person charged with the property of a decedent, shall make the return of income required in respect of such decedent. For the decedent's taxable year which ends with the date of his death, the return shall cover the period during which he was alive. For the filing of returns of income for citizens and alien residents of the United States, and alien residents of Puerto Rico, see paragraph (a) of § 1.6012-1. For the filing of a joint return after death of spouse, see paragraph (d) of § 1.6013-1.

(2) *Nonresident alien individuals—(i) In general*. A resident or domestic fiduciary or other person charged with the care of the person or property of a nonresident alien individual shall make a return for that individual and pay the tax unless:

(a) The nonresident alien individual makes a return of, and pays the tax on, his income for the taxable year,

(b) A responsible representative or agent in the United States of the nonresident alien individual makes a return of, and pays the tax on, the income of such alien individual for the taxable year, or

(c) The nonresident alien individual has appointed a person in the United States to act as his agent for the purpose of making a return of income and, if such fiduciary is required to file a Form 1041 for an estate or trust of which such alien individual is a beneficiary, such fiduciary attaches a copy of the agency appointment to his return on Form 1041.

(ii) *Income to be returned*. A return of income shall be required under this subparagraph only if the nonresident alien individual is otherwise required to make a return in accordance with paragraph (b) of § 1.6012-1. The provisions of that paragraph shall apply in determining the form of return to be used and the income to be returned.

(iii) *Disallowance of deductions and credits*. For provisions disallowing deductions and credits when a return of income has not been filed by or on behalf of a nonresident alien individual, see section 874 and the regulations thereunder.

(iv) *Alien resident of Puerto Rico*. This subparagraph shall not apply to the return of a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year. See § 1.876-1.

(v) *Cross reference*. For requirements of withholding tax at source on nonresident alien individuals and of returns with respect to such withheld taxes, see §§ 1.1441-1 to 1.1465-1, inclusive.

(3) *Persons under a disability*. A fiduciary acting as the guardian of a minor, or as the guardian or committee of an insane person, must make the return of income required in respect of

such person unless, in the case of a minor, the minor himself makes the return or causes it to be made.

(4) *Corporations.* A receiver, trustee in dissolution, trustee in bankruptcy, or assignee, who, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns. Such return shall be filed whether or not the receiver, trustee, or assignee is operating the property or business of the corporation. A receiver in charge of only a small part of the property of a corporation, such as a receiver in mortgage foreclosure proceedings involving merely a small portion of its property, need not make the return of income. See also §1.6041-1, relating to returns regarding information at source; §§1.6042-1 to 1.6042-3, inclusive, relating to returns regarding payments of dividends; §§1.6044-1 to 1.6044-4, inclusive, relating to returns regarding payments of patronage dividends; and §§1.6049-1 and 1.6049-2, relating to returns regarding certain payments of interest.

(5) *Individuals in receivership.* A receiver who stands in the place of an individual must make the return of income required in respect of such individual. A receiver of only part of the property of an individual need not file a return, and the individual must make his own return.

(c) *Joint fiduciaries.* In the case of joint fiduciaries, a return is required to be made by only one of such fiduciaries. A return made by one of joint fiduciaries shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(d) *Other provisions.* For the definition of the term "fiduciary", see section 7701(a)(6) and the regulations thereunder. For information returns required to be made by fiduciaries under section 6041, see §1.6041-1. As to further duties and liabilities of fiduciaries, see section 6903 and §301.6903-1

of this chapter (Regulations on Procedure and Administration).

[T.D. 6500, 25 FR 12108, Nov. 26, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1.6012-3, see the List of CFR Sections Affecting in the Finding Aids section of this volume.

§ 1.6012-4 Miscellaneous returns.

For returns by regulated investment companies of tax on undistributed capital gain designated for special treatment under section 852(b)(3)(D), see §1.852-9. For returns with respect to tax withheld on nonresident aliens and foreign corporations and on tax-free covenant bonds, see §§1.1461-1 to 1.1465-1, inclusive. For returns of tax on transfers to avoid income tax, see §1.1494-1. For the requirement of an annual report by persons completing a Government contract, see 26 CFR (1939) 17.16 (Treasury Decision 4906, approved June 23, 1939), and 26 CFR (1939) 16.15 (Treasury Decision 4909, approved June 28, 1939), as made applicable to section 1471 of the 1954 Code by Treasury Decision 6091, approved August 16, 1954 (19 FR 5167, C.B. 1954-2, 47). See also §1.1471-1.

[T.D. 7332, 39 FR 44231, Dec. 23, 1974]

EDITORIAL NOTE: For the convenience of the user §§16.15 and 17.16 of 26 CFR (1939) are set forth below:

§16.15 *Annual reports for income taxable years—(a) General requirements.* Every contracting party completing a contract or subcontract within the contracting party's income-taxable year ending after April 3, 1939 shall file with the district director of internal revenue for the internal revenue district in which the contracting party's Federal income tax returns are required to be filed an annual report on the prescribed form of the profit and excess profit on all contracts and subcontracts coming within the scope of the act and the regulations in this part and completed within the particular income-taxable year. There shall be included as a part of such a report a statement, preferably in columnar form, showing separately for each such contract or subcontract completed by the contracting party within the income-taxable year the total contract price, the cost of performing the contract or subcontract and the resulting profit or loss on each contract or subcontract together with a summary statement showing in detail the computation of the net profit or net loss upon all contracts and subcontracts completed within the income-taxable year and the amount of