

(i) The failure to report at the proper time and in the proper manner any material information required to be reported under the rules of this section; or

(ii) The provision of false or inaccurate information in purported compliance with the requirements of this section. Thus, a transferor that timely files Form 926 with the attachments required under the rules of this section shall, nevertheless, have failed to comply if, for example, the transferor reports therein that property will be used in the active conduct of a trade or business outside of the United States, but in fact the property continues to be used in a trade or business within the United States.

(3) *Reasonable cause exception.* The provisions of paragraph (f)(1) of this section shall not apply if the transferor shows that a failure to comply was due to reasonable cause and not willful neglect. The transferor may do so by providing a written statement to the district director having jurisdiction of the taxpayer's return for the year of the transfer, setting forth the reasons for the failure to comply. Whether a failure to comply was due to reasonable cause shall be determined by the district director under all the facts and circumstances.

(4) *Definition of intentional disregard.* If the transferor fails to qualify for the exception under paragraph (f)(3) of this section and if the taxpayer knew of the rule or regulation that was disregarded, the failure will be considered an intentional disregard of section 6038B, and the monetary penalty under paragraph (f)(1)(ii) of this section will not be limited to \$100,000. See §1.6662-3(b)(2).

(g) This section applies to transfers occurring on or after July 20, 1998, except for transfers of cash made in tax years beginning on or before February 5, 1999, which are not required to be reported under section 6038B, and except for paragraph (e) of this section, which applies to transfers that are subject to §§1.367(e)-1(f) and 1.367(e)-2(e). See §1.6038B-1T for transfers occurring prior to July 20, 1998. See also §1.6038B-1T(e) in effect prior to August 9, 1999 (as contained in 26 CFR part 1 revised April 1, 1999), for transfers described in

section 367(e) that are not subject to §§1.367(e)-1(f) and 1.367(e)-2(e).

[T.D. 8770, 63 FR 33568, June 19, 1998, as amended by T.D. 8817, 64 FR 5715, Feb. 5, 1999; 64 FR 15686, 15687, Apr. 1, 1999; T.D. 8834, 64 FR 43082, Aug. 9, 1999; T.D. 8850, 64 FR 72553, Dec. 28, 1999; T.D. 9100, 68 FR 70708, Dec. 19, 2003]

§ 1.6038B-1T Reporting of certain transactions to foreign corporations (temporary).

(a) [Reserved]. For further guidance, see §1.6038B-1(a).

(b) *Time and manner of reporting—(1) In general—(i) Reporting procedure.* Except for stock or securities qualifying under the special reporting rule of §1.6038B-1(b)(2), and certain exchanges described in section 354 (listed below), any U.S. person that makes a transfer described in section 6038B(a)(1)(A), 367(d) or (e), is required to report pursuant to section 6038B and the rules of §1.6038B-1 and this section and must attach the required information to Form 926, "Return by a U.S. Transferor of Property to a Foreign Corporation." For special rules regarding cash transfers made in tax years beginning after February 5, 1999, see §1.6038B-1(b)(3) and (g). For purposes of determining a U.S. transferor that is subject to section 6038B, the rules of §1.367(a)-1T(c) and §1.367(a)-3(d) shall apply with respect to a transfer described in section 367(a), and the rules of §1.367(a)-1T(c) shall apply with respect to a transfer described in section 367(d). Additionally, if in an exchange described in section 354, a U.S. person exchanges stock of a foreign corporation in a reorganization described in section 368(a)(1)(E), or a U.S. person exchanges stock of a domestic or foreign corporation for stock of a foreign corporation pursuant to an asset reorganization described in section 368(a)(1)(C), (D), or (F), that is not treated as an indirect stock transfer under section 367(a), then the U.S. person exchanging stock is not required to report under section 6038B. Notwithstanding any statement to the contrary on Form 926, the form and attachments must be attached to, and filed by the due date (including extensions) of the transferor's income tax

return for the taxable year that includes the date of the transfer (as defined in § 1.6038B-1T(b)(4)). For taxable years beginning before January 1, 2003, any attachment to Form 926 required under the rules of this section is filed subject to the transferor's declaration under penalties of perjury on Form 926 that the information submitted is true, correct and complete to the best of the transferor's knowledge and belief. For taxable years beginning after December 31, 2002, Form 926 and any attachments shall be verified by signing the income tax return with which the form and attachments are filed.

(ii) *Reporting by corporate transferor.* For transfers by corporations in taxable years beginning before January 1, 2003, Form 926 must be signed by an authorized officer of the corporation if the transferor is not a member of an affiliated group under section 1504(a)(1) that files a consolidated Federal income tax return and by an authorized officer of the common parent corporation if the transferor is a member of such an affiliated group. For transfers by corporations in taxable years beginning after December 31, 2002, Form 926 shall be verified by signing the income tax return to which the form is attached.

(b)(2) through (b)(3) [Reserved]. For further guidance, see § 1.6038B-1(b)(2) through (b)(3).

(4) *Date of transfer—(i) In general.* For purposes of this section, the date of a transfer described in section 367 is the first date on which title to, possession of, or rights to the use of stock, securities, or other property passes pursuant to the plan for purposes of subtitle A of the Internal Revenue Code. A transfer will not be considered to begin with a decision of a board of directors or similar action unless the transaction otherwise takes effect for purposes of subtitle A of the Internal Revenue Code on that date.

(ii) *Termination of section 1504(d) election.* A transfer deemed to occur as a result of the termination of an election under section 1504(d) will be considered to occur on the date the contiguous country corporation first fails to continue to qualify for the election under section 1504(d). The rule of this para-

graph (b)(3)(ii) is illustrated by the following example.

Example. Domestic corporation W previously made a valid election under section 1504(d) to have its Mexican subsidiary S treated as a domestic corporation. On August 1, 1986, W disposes of its right, title, and interest in 10 percent of the stock of S by selling such stock to an unrelated United States person who is not a director of S. S first fails to continue to qualify for the election under section 1504(d) on August 1, 1986, since on such date it ceases to be directly or indirectly wholly owned or controlled by W. The constructive transfer of assets from "domestic" corporation S to Mexican corporation S is considered to occur on that date.

(iii) *Change in classification.* A transfer deemed to occur as a result of a change in classification of an entity caused by a change in the governing documents, articles, or agreements of the entity (as described in § 1.367(a)-1T(c)(6)) will be considered to occur on the date that such changes take effect for purposes of subtitle A of the Internal Revenue Code.

(iv) *U.S. resident under section 6013 (g) or (h).* A transfer made by an alien individual who is considered to be a U.S. resident by reason of a timely election under section 6013 (g) or (h) will be considered to occur, for purposes of this section (but not for purposes of section 367), on the later of—

(A) The date on which the election under section 6013 (g) or (h) is made; or

(B) The date on which the transfer would otherwise be considered to occur under the rules of this paragraph (b)(3).

The rule of this paragraph (b)(3)(iv) is illustrated by the following example.

Example. D is a nonresident alien individual who is married to a United States citizen. On March 1, 1986, D transfers property to a foreign corporation in an exchange described in section 351. On April 15, 1987, D and the spouse timely file with their tax return for the taxable year ended December 31, 1986, an election under section 6013(g) for D to be treated as a United States resident. The election is effective on January 1, 1986. For purposes of section 6038 B, the transfer described in section 367(a) made by D in connection with the section 351 exchange is considered to occur on April 15, 1987, the date on which the timely election was made under section 6013(g).

(c) Introductory text [Reserved]. For further guidance, see § 1.6038B-1(c).

(1) *Transferor.* Provide the name, U.S. taxpayer identification number, and address of the U.S. person making the transfer.

(2) *Transfer.* Provide the following information concerning the transfer:

(i) Name, U.S. taxpayer identification number (if any), address, and country of incorporation of transferee foreign corporation;

(ii) A general description of the transfer, and any wider transaction of which it forms a part, including a chronology of the transfers involved and an identification of the other parties to the transaction to the extent known.

(3) *Consideration received.* Provide a description of the consideration received by the U.S. person making the transfer, including its estimated fair market value and, in the case of stock or securities, the class or type, amount, and characteristics of the interest received.

(4) *Property transferred.* Provide a description of the property transferred. The description must be divided into the following categories, and must include the estimated fair market value and adjusted basis of the property, as well as any additional information specified below.

(i) *Active business property.* Describe any transferred property (other than stock or securities) to be used in the active conduct of a trade or business outside of the United States. Provide here a general description of the business conducted (or to be conducted) by the transferee, including the location of the business, the number of its employees, the nature of the business, and copies of the most recently prepared balance sheet and profit and loss statement. Property listed within this category may be identified by general type. For example, upon the transfer of the assets of a manufacturing operation, a reasonable description of the property to be used in the business might include the categories of office equipment and supplies, computers and related equipment, motor vehicles, and several major categories of manufacturing equipment. However, any property that is includible both in this subdivision (i) and in subdivision (iii) of this paragraph (c)(4) (property subject to depreciation recapture under

§ 1.367(a)-4T (b)) must be identified in the manner required in subdivision (iii). If property is considered to be transferred for use in the active conduct of a trade or business under a special rule in § 1.367(a)-4T, specify the applicable rule and provide information supporting the application of the rule. If property is subject to section 367(a)(1) regardless of its use in a trade or business under the rules of § 1.367(a)-4T or § 1.367(a)-5T, list the property only in response to subdivision (vii) of this paragraph (c)(4).

(ii) *Stock or securities.* Describe any transferred stock or securities, including the class or type, amount, and characteristics of the transferred stock or securities, as well as the name, address, place of incorporation, and general description of the corporation issuing the stock. In addition, provide the following information if applicable:

(A) *Active trade or business stock.* If the stock or securities are considered to be transferred for use in the active conduct of a trade or business outside of the United States under the rules of § 1.367(a)-3T(d)(2), provide information supporting the application of the rule.

(B) *Application of special rules.* If any provision of § 1.367(a)-3T applies to except the transfer of stock or securities from the rule of section 367(a)(1), provide information supporting the claimed application of such provision (including information supporting the nonapplicability of either anti-abuse rule under § 1.367(a)-3T(h)). If the transferor is entering into an agreement to recognize gain upon a later disposition of the transferred stock by the transferee foreign corporation under § 1.367(a)-3T(g), attach the agreement and waiver as required by the rules of that paragraph.

(iii) *Depreciated property.* Describe any property that is subject to depreciation recapture under the rules of § 1.367(a)-4T(b). Property within this category must be separately identified to the same extent as was required for purposes of the previously claimed depreciation deduction. Specify with respect to each such asset the relevant recapture provision, the number of months in which such property was in use within the United States, the total number of months the property was in

use, the fair market value of the property, a schedule of the depreciation deduction taken with respect to the property, and a calculation of the amount of depreciation required to be recaptured.

(iv) *Property to be leased.* Describe any property to be leased to other persons by the transferee foreign corporation (unless such property is considered to be transferred for use in the active conduct of a trade or business and was thus listed under subdivision (i) of this paragraph (c)(4)). If the rules of § 1.367(a)-4T(c)(2) apply to except the transfer from the rule of section 367(a)(1), provide information supporting the claimed application of such provision.

(v) *Property to be sold.* Describe any transferred property that is to be sold or otherwise disposed of by the transferee foreign corporation, as described in § 1.367(a)-4T(d).

(vi) *Transfers to FSCs.* Describe any property that is subject to the special rule of § 1.367(a)-4T(g) for transfers to FSCs. Provide information supporting the claimed application of that rule.

(vii) *Tainted property.* Describe any property that is subject to § 1.367(a)-5T (concerning property that is subject to the rule of section 367(a)(1) regardless of whether it is transferred for use in the active conduct of a trade or business outside of the United States). Such description must be divided into the relevant categories, as follows:

(A) *Inventory, etc.* Property described in § 1.367(a)-5T(b);

(B) *Installment obligations, etc.* Property described in § 1.367(a)-5T(c);

(C) *Foreign currency, etc.* Property described in § 1.367(a)-5T(d);

(D) *Intangible property.* Property described in § 1.367(a)-5T(e); and

(E) *Leased property.* Property described in § 1.367(a)-4T(f).

If any exception provided in § 1.367(a)-5T applies to the transferred property (making section 367(a)(1) not applicable to the transfer), provide information supporting the claimed application of such exception.

(viii) *Foreign loss branch.* Provide the information specified in paragraph (c)(5) of this section.

(ix) *Other intangibles.* Describe an intangible property sold or licensed by

the transferor to the transferee foreign corporation, and set forth the general terms of each sale or license.

(5) *Transfer of foreign branch with previously deducted losses.* If the property transferred is property of a foreign branch with previously deducted losses subject to the rules of § 1.367(a)-6T, provide the following information:

(i) *Branch operation.* Describe the foreign branch the property of which is transferred, in accordance with the definition of § 1.367(a)-6T(g).

(ii) *Branch property.* Describe the property of the foreign branch, including its adjusted basis and fair market value. For this purpose property must be identified with reasonable particularity, but may be identified by category rather than listing every asset separately. Substantially similar property may be listed together for this purpose, and property of minor value may be grouped into functional categories. For example, a reasonable description of the property of a business office might include the following categories: Word processing or data processing equipment, other office equipment and furniture, and office supplies.

(iii) *Previously deducted losses.* Set forth a detailed calculation of the sum of the losses incurred by the foreign branch before the transfer, and a detailed calculation of any reduction of such losses, in accordance with § 1.367(a)-6T (d) and (e).

(iv) *Character of gain.* Set forth a statement of the character of the gain required to be recognized, in accordance with § 1.367(a)-6T(c)(1).

(6) [Reserved]. For further guidance, see § 1.6038B-1(c)(6).

(d) *Transfers subject to section 367(d)—*

(1) *Initial transfer.* A U.S. person that transfers intangible property to a foreign corporation in an exchange described in section 351 or 361 must provide the following information in paragraphs labelled to correspond with the number or letter set forth below. If a particular item is not applicable to the subject transfer, list its heading and state that it is not applicable. The information required by subdivisions (i) through (iii) need only be provided if such information was not otherwise provided under paragraph (c) of this section. (Note that the U.S. transferor

may subsequently be required to file another return under paragraph (d)(2) of this section.)

(i) *Transferor*. Provide the name, U.S. taxpayer identification number, and address of the U.S. person making the transfer.

(ii) *Transfer*. Provide information concerning the transfer, including:

(A) Name, U.S. taxpayer identification number (if any), address, and country of incorporation of the transferee foreign corporation;

(B) A general description of the transfer, and any wider transaction of which it forms a part, including a chronology of the transfers involved and an identification of the other parties to the transaction to the extent known.

(iii) *Consideration received*. Provide a description of the consideration received by the U.S. person making the transfer, including its estimated fair market value and, in the case of stock or securities, the class or type, amount, and characteristics of the interest received.

(iv) *Intangible property transferred*. Provide a description of the intangible property transferred, including its adjusted basis. Generally, each intangible asset must be separately identified. Operating intangibles and foreign goodwill or going concern value, as defined in § 1.367(a)-1T(d)(5) (i) and (iii), should be so identified and classified.

(v) *Annual payment*. Provide and explain the calculation of the annual deemed payment for the use of the intangible property required to be recognized by the transferor under the rules of section 367(d).

(vi) *Election to treat as sale*. List any intangible with respect to which an election is being made under § 1.367(d)-1T(g)(2) to treat the transfer as a sale. Include the fair market value of the intangible on the date of the transfer and a calculation of the gain required to be recognized in the year of the transfer by reason of the election.

(vii) *Coordination with loss rules*. List any intangible property subject to section 367(d) the transfer of which also gives rise to the recognition of gain under section 904(f)(3) or § 1.367(a)-6T. Provide a calculation of the gain required to be recognized with respect to

such property, in accordance with the provisions of § 1.367(d)-1T(g)(4).

(viii) *Other intangibles*. Describe any intangible property sold or licensed by the transferor to the transferee foreign corporation, and set forth the general terms of each sale or license.

(2) *Subsequent transfers*. If a U.S. person transfers intangible property to a foreign corporation in an exchange described in section 351 or 361, and at any time thereafter (within the useful life of the intangible property) either that U.S. person disposes of the stock of the transferee foreign corporation or the transferee foreign corporation disposes of the transferred intangible, then the U.S. person must provide the following information in paragraphs labelled to correspond with the number or letter set forth below. The information required by subdivisions (i) and (ii) need only be provided if such information was not otherwise provided in the same return, pursuant to paragraph (c) or (d)(1) of this section. For purposes of determining the date on which a return under this subparagraph (2) is required to be filed, the date of transfer is the date of the subsequent transfer of stock or intangible property.

(i) *Transferor*. Provide the name, U.S. taxpayer identification number, and address of the U.S. person making the transfer.

(ii) *Initial transfer*. Provide the following information concerning the initial transfer:

(A) The date of the transfer;

(B) The name, U.S. taxpayer identification number (if any), address, and country of incorporation of the transferee foreign corporation; and

(C) A general description of the transfer and any wider transaction of which it formed a part.

(iii) *Subsequent transfer*. Provide the following information concerning the subsequent transfer:

(A) A general description of the subsequent transfer and any wider transaction of which it forms a part;

(B) A calculation of any gain required to be recognized by the U.S. person under the rules of § 1.367(d)-1T (d) through (f); and

(C) The name, address, and identifying number of each person that under the rules of § 1.367(d)-1T (e) or (f) will be

considered to receive contingent annual payments for the use of the intangible property.

(e) [Reserved]. For further guidance, see § 1.6038B-1(e).

(f) [Reserved]. For further guidance, see § 1.6038B-1(f).

(g) *Effective date.* This section applies to transfers occurring after December 31, 1984. See § 1.6038B-1T(a) through (b)(2), (c) introductory text, and (f) (26 CFR part 1, revised April 1, 1998) for transfers occurring prior to July 20, 1998. See § 1.6038B-1 for transfers occurring on or after July 20, 1998.

[T.D. 8087, 51 FR 17957, May 16, 1986, as amended by T.D. 8682, 61 FR 42177, Aug. 14, 1996; T.D. 8770, 63 FR 33570, June 19, 1998; T.D. 8834, 64 FR 43083, Aug. 9, 1999; T.D. 9100, 68 FR 70708, Dec. 19, 2003; 69 FR 5017, Feb. 3, 2004]

§ 1.6038B-2 Reporting of certain transfers to foreign partnerships.

(a) *Reporting requirements—(1) Requirement to report transfers.* A United States person that transfers property to a foreign partnership in a contribution described in section 721 (including section 721(b)) must report that transfer on Form 8865 "Information Return of U.S. Persons With Respect to Certain Foreign Partnerships" pursuant to section 6038B and the rules of this section, if—

(i) Immediately after the transfer, the United States person owns, directly, indirectly, or by attribution, at least a 10-percent interest in the partnership, as defined in section 6038(e)(3)(C) and the regulations thereunder; or

(ii) The value of the property transferred, when added to the value of any other property transferred in a section 721 contribution by such person (or any related person) to such partnership during the 12-month period ending on the date of the transfer, exceeds \$100,000.

(2) *Indirect transfer through a domestic partnership—*For purposes of this section, if a domestic partnership transfers property to a foreign partnership in a section 721 transaction, the domestic partnership's partners shall be considered to have transferred a proportionate share of the property to the foreign partnership. However, if the domestic partnership properly reports all

of the information required under this section with respect to the contribution, no partner of the transferor partnership, whether direct or indirect (through tiers of partnerships), is also required to report under this section. For illustrations of this rule, see *Examples 4 and 5* of paragraph (a)(7) of this section.

(3) *Indirect transfer through a foreign partnership.* [Reserved]

(4) *Requirement to report dispositions—*
(i) *In general.* If a United States person was required to report a transfer to a foreign partnership of appreciated property under paragraph (a)(1) or (2) of this section, and the foreign partnership disposes of the property while such United States person remains a direct or indirect partner, that United States person must report the disposition by filing Form 8865. The form must be attached to, and filed by the due date (including extensions) of, the United States person's income tax return for the year in which the disposition occurred.

(ii) *Disposition of contributed property in nonrecognition transaction.* If a foreign partnership disposes of contributed appreciated property in a nonrecognition transaction and substituted basis property is received in exchange, and the substituted basis property has built-in gain under § 1.704-3(a)(8), the original transferor is not required to report the disposition. However, the transferor must report the disposition of the substituted basis property in the same manner as provided for the contributed property.

(5) *Time for filing Form 8865.* The Form 8865 on which a transfer is reported must be attached to the transferor's timely filed (including extensions) income tax return for the tax year that includes the date of the transfer. If the person required to report under this section is not required to file an income tax return for its tax year during which the transfer occurred, but is required to file an information return for that year (for example, Form 1065, "U.S. Partnership Return of Income," or Form 990, "Return of Organization Exempt from Income Tax"), the person should attach the Form 8865 to its information return.