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payee is an exempt recipient or a foreign person.

(ii) For purposes of the provisions described in subdivision (i), a payment or collection of interest or original issue discount outside the United States by a person acting in its capacity as a custodian, nominee or other agent of the payee with respect to such payment or collection is not subject to information reporting under section 6049 by that agent unless the agent is either (A) a United States person, (B) a controlled foreign corporation within the meaning of section 957(a), or (C) a foreign person 50 percent or more of the gross income of which from all sources for the 3-year period ending with the close of its taxable year preceding the collection or payment was effectively connected with its conduct of a trade or business within the United States.

(iii) For purposes of section 6049 and the regulations under §35a.9999–5, an agent (described in subdivision (ii)) of the payee paying or collecting interest or original issue discount outside the United States with respect to an obligation described in §35a.9999–5 may treat the payee as a person who is not a United States citizen or resident if the agent has evidence in its records to such effect (provided it does not have actual knowledge that the evidence is false). Such evidence may include a written indication from the payee (*e.g.*, appearing on an account application form) that the payee is neither a citizen nor a resident of the United States. The mere fact, however, that the payee has provided an address outside the United States is insufficient evidence to establish for this purpose that the payee is neither a citizen nor a resident of the United States. For payments made on or before November 20, 1984, on accounts opened on or before August 22, 1984, an affidavit by an employee of the agent stating that the employee knows, or the payee has represented orally, that the payee is not a U.S. person will be sufficient to establish such foreign status. For all other payments, an affidavit of an employee will be sufficient to establish the foreign status of the payee only if the affidavit states that the employee has a reasonable basis, founded on documentary evidence, for believing that the payee is neither a citizen nor a resident of the United States. (Notwithstanding the foregoing, the issue of the standard of evidence required to prove foreign status for information reporting purposes is still under consideration; any change in such standard would be made in future regulations and would apply on a prospective basis only.)

(iv) Payments described in this Q&A–5 are not subject to information reporting by a custodian, nominee or other agent of the payee under section 6041, if they are exempt from reporting under section 6049. In addition, although payments outside the United States of interest or original issue discount described in this Q&A–5 may be reportable payments as, for example, payments made by foreign offices of U.S. persons to U.S. persons, these payments are not subject currently to backup withholding by the custodian, nominee or other agent of the payee. (However, the issue of whether backup withholding should apply in this case is still under consideration; any change with respect to backup withholding in this regard would be made in future regulations and would apply on a prospective basis only.)

(v) For purposes of Q&A–7 and Q&A–17 of §35a.9999–5, the question of whether a broker is otherwise subject to information reporting under section 6045 shall be determined in accordance with the provisions of Q&A–1 and Q&A–2 of this §35a.9999–4.

[T.D. 7966, 49 FR 33237, Aug. 22, 1984, as amended by T.D. 7972, 49 FR 34340, Aug. 29, 1984]

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53494, Oct. 14, 1997, §35a.9999–4T was removed, effective Jan. 1, 1999. At 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was delayed until Jan. 1, 2001.

§ 35a.9999–5 Questions and answers relating to repeal of 30 percent withholding by section 127 of the Tax Reform Act of 1984 and to the application of information reporting and backup withholding in light of such repeal.

The following questions and answers concern the repeal of 30 percent withholding by section 127 of the Tax Reform Act of 1984 and the application of

information reporting and backup withholding in light of such repeal.

(a) *Rules concerning obligations in bearer form.*

Q–1. When will interest qualify as portfolio interest within the meaning of section 871(h)(2)(A) or section 881(c)(2)(A)?

A–1. Interest is portfolio interest within the meaning of section 871(h)(2)(A) or section 881(c)(2)(A) only if it paid with respect to an obligation issued after July 18, 1984, that is in bearer form and described in section 163(f)(2)(B).

Q–2. Is a payment of portfolio interest described in section 871(h)(2)(A) or section 881(c)(2)(A) from sources within the United States subject to information reporting under section 6041 or 6049 or to backup withholding if the payment is made outside the United States?

A–2. Unless an issuer or its agent has actual knowledge that a payee is a United States person, no information reporting under section 6041 or 6049 is required with respect to a payment of U.S. source portfolio interest by the issuer or agent if the payment is made outside the United States. As a payment of U.S. source portfolio interest made outside the United States by the issuer or agent is not subject to information reporting under section 6041 or 6049, it is not a reportable payment within the meaning of section 3406(b)(1) and is not subject to backup withholding by the issuer or its agent. Whether a payment of this interest is considered to be made outside the United States shall be determined for this purpose under the rules of A–37 of §35a.9999–3 of the regulations. However, notwithstanding the rules of A–37, for purposes of this A–2, payment shall not be considered to be made outside the United States if the interest is paid to a United States address, whether by mail or by electronic transfer. The payment or collection outside the United States of U.S. source portfolio interest on a bearer obligation by a person acting as a custodian, nominee or other agent of the payee with respect to the obligation is subject to information reporting under section 6049 if that person is otherwise required to report amounts paid to or collected on behalf of the payee. For example, a foreign branch of a U.S. bank holding the bearer obligation on behalf of a customer is required to report or backup withhold with respect to the portfolio interest collected for the customer unless the customer is an exempt recipient described in §1.6049–4(c)(1)(ii) or unless the branch has documentary evidence in its files that the customer is not a citizen or resident of the United States. See, *e.g.*, revised Q–34 of §35.9999–3.

Q–3. Is a payment of interest from sources outside the United States on an obligation of a issuer that is a United States person or a controlled foreign corporation subject to information reporting under section 6041 or 6049 or to backup withholding if the obligation was issued in accordance with procedures described in §1.163–5(c)(2)(i) (A) or (B)?

A–3. Unless an issuer or its agent has actual knowledge that a payee is a United States person, no information reporting under section 6041 or 6049 is required with respect to the payment of interest described in Q–3 by the issuer or agent if the payment is made outside the United States. As a payment of interest described in this A–3 is not subject to information reporting under section 6041 or 6049, it is not a reportable payment within the meaning of section 3406(b)(1) and is not subject to backup withholding by the issuer or its agent. Whether a payment of this interest is considered to be made outside the United States shall be determined for this purpose under the rules of A–37 of §35a.9999–3 of the regulations. However, payment will not be considered to be made outside the United States for purposes of this A–3 if the interest is paid to a United States address by mail or by electronic transfer. In the case of obligations issued prior to September 21, 1984, the foregoing sentence shall apply only with respect to interest paid more than 90 days after August 22, 1984. Notwithstanding any provision to the contrary in §1.6049–5(b)(1) (vii) or (ix), the payment or collection outside the United States of interest described in this A–3 by a person acting as a custodian, nominee, or other agent of the payee with respect to the obligation is subject to information reporting under section 6049 if that person is otherwise required to report amounts paid to or collected on

behalf of the payee. For example, a foreign branch of a U.S. bank holding the bearer obligation on behalf of a customer is required to report or backup withhold with respect to interest described in this A–3 unless the customer is an exempt recipient described in §1.6049–4(c)(1)(ii) or unless the branch has documentary evidence that the customer is not a citizen or resident of the United States. See, *e.g.*, revised Q–34 of §35a.9999–3. The provisions of this Q–3 do not apply with respect to interest on obligations described in A–4 or A–5.

Q–4. Is information reporting under section 6041 or 6049 required with respect to interest described in section 861(c) that is paid outside the United States on an obligation that would be a registration-required obligation within the meaning of section 163(f)(2)(A) but for the fact that the obligation is described in section 163(f)(2)(B)?

A–4. Unless the issuer or its agent has actual knowledge that the payee is a United States person, interest described in section 861(c) is not subject to information reporting under section 6041 or 6049 when paid by the issuer or agent outside the United States if the following conditions are met: (i) The obligation with respect to which the interest is paid is in bearer form; (ii) the obligation would be a registration-required obligation within the meaning of section 163(f)(2)(A) but for the fact that it is described in section 163(f)(2)(B); and (iii) the obligation is part of a larger single public offering of obligations. As a payment of interest by the issuer or its agent that meets these requirements is not subject to information reporting under section 6041 or 6049, it is not a reportable payment within the meaning of section 3406(b)(1) and is not subject to backup withholding by the issuer or agent. Whether a payment of this interest is considered to be made outside the United States shall be determined for this purpose under the rules of A–37 of §35a.9999–3 of the regulations. However, notwithstanding the rules of A–37, for purposes of this A–4, payment shall not be considered to be made outside the United States if the interest is paid to a United States address, whether by mail or by electronic transfer. The payment or collection outside the United States of interest on an obligation described in the foregoing paragraph by a person acting as a custodian, nominee or other agent of the payee with respect to the obligation is subject to information reporting under section 6049 if that person is otherwise required to report amounts paid to or collected on behalf of the payee. For example, a foreign branch of a U.S. bank holding the obligation on behalf of a customer is required to report or backup withhold with respect to this interest collected for the customer unless the customer is an exempt recipient described in §1.6049–4(c)(1)(ii) or unless the branch has documentary evidence that the customer is not a citizen or resident of the United States. See, *e.q.*, revised Q–34 of §35a.9999–3.

Q–5. Is information reporting under section 6041 or 6049 required with respect to interest described in section 861(c) that is paid outside the United States on an obligation that would be a registration-required obligation but for the fact that it has a maturity (at issue) of not more than one year?

A–5. Unless the issuer or its agent has actual knowledge that a payee is a United States person, no information reporting by the issuer or agent is required with respect to a payment of interest on such an obligation, whether in registered or bearer form, if the following conditions are satisfied: (i) the payment is made outside the United States; (ii) the face amount of the obligation is not less than $500,000 (determined by reference to the spot rate on the date of issuance, in the case of an obligation not denominated in United States dollars); (iii) the obligation satisfies the requirements of section 163(f)(2)(B)(i) and (ii)(I) and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) (However, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of §1.163–5(c)(2)(i)(D)(3).); (iv) the obligation, if in registered form, is registered in the name of an exempt recipient described in §1.6049–4(c)(1)(ii); and (v) the obligation contains the following

statement (or a similar statement having the same effect): ''By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder).'' As a payment by the issuer or its agent of interest meeting these requirements is not subject to information reporting under section 6041 or section 6049, it is not a reportable payment within the meaning of section 3406(b)(1) and is not subject to backup withholding by the issuer or agent. Whether a payment of interest is made outside the United States shall be determined for this purpose under the rules of A–37 of §35a.9999–3 of the regulations. However, notwithstanding the rules of A–37, payment shall not be considered to be made outside the United States for purposes of this A–5 if the interest is paid to a United States address, whether by mail or electronic transfer. The payment or collection outside the United States of interest on an obligation described in the foregoing paragraph by a person acting as a custodian, nominee or other agent of the payee with respect to the obligation is subject to information reporting under section 6049 if that person is otherwise required to report amounts paid to or collected on behalf of the payee. For example, a foreign branch of a U.S. bank holding the obligation on behalf of a customer is required to report or backup withhold with respect to the interest collected for the customer unless the customer is an exempt recipient described in §1.6049–4(c)(1)(ii) or unless the branch has documentary evidence that the customer is not a citizen or resident of the United States.

Q–6. Is a payment of original issue discount from sources within the United States on an obligation that is payable six months or less from the date of its original issue subject to information reporting under section 6041 or 6049 or backup withholding if it is paid outside the United States?

A–6. Whether original issue discount described in Q–6 is subject to information reporting or backup withholding shall be determined under the same rules as those set forth in A–5 with respect to interest described in section 861(c).

Q–7. Is information reporting under section 6045 required by an issuer or its agent with respect to the redemption or retirement of an obligation described in A–2, –3, –4 or –5?

A–7. An issuer or its agent is not subject to the information reporting requirements of section 6045 with respect to the redemption or retirement of an obligation described in A–2, –3, –4 or –5, provided (i) that the issuer or agent does not have actual knowledge that the payee is a United States person, (ii) that the obligation is presented for retirement or redemption, or payment is otherwise made, at the office of the issuer or its agent outside the United States, and (iii) that if the obligation is in registered form, it is registered in the name of an exempt recipient described in §1.6049–4(c)(1)(ii). The determination of whether a payment is made at the office of the issuer or its agent outside the United States shall be made for this purpose under rules similar to those contained in A–37 of §35a.9999–3 of the regulations. However, notwithstanding the rules of A–37, the provisions of this A–7 shall not apply if payment with respect to the retirement or redemption is made to an address within the United States by mail or electronic transfer. (In the case of obligations described in A–3 and issued prior to September 21, 1984, the foregoing sentence shall apply only with respect to amounts paid more than 90 days after August 22, 1984). As a retirement or redemption by an issuer or its agent that meets the requirements of this A–7 is not subject to reporting under section 6045, it is not a reportable payment within the meaning of section 3406(b)(1) and is not subject to backup withholding by the issuer or its agent. Notwithstanding any provision to the contrary in §35a.9999–3A, a person acting as a custodian, nominee or other agent for a customer with respect to an obligation described in A–2,

–3, –4 or –5 that presents such obligation to the issuer or its agent for redemption or retirement, or that otherwise acts as a broker with respect to the obligation, is subject to information reporting under section 6045 if that person is otherwise required to report transactions effected on behalf of the customer. For example, a foreign office of a United States broker presenting an obligation outside the United States for retirement or redemption on behalf of a customer who is an individual is required to report or backup withhold unless the broker has documentary evidence in its files that the customer is a foreign person. See, *e.g.*, revised Q–34 of section 35a.9999–3.

(b) *Rules concerning obligations in registered form.*

Q–8. When will interest qualify as portfolio interest within the meaning of section 871(h)(2)(B) or 881(c)?

A–8. To qualify as portfolio interest described in section 871(h)(2)(B) or 881 (c)(2)(B), the interest must be paid with respect to an obligation (i) that is in registered form (within the meaning of section 163 (f)), issued after July 18, 1984, and (ii) with respect to which the United States person (including a foreign paying agent of an issuer who is a United States person) who would otherwise be required to deduct and withhold tax from the interest under section 1441 (a) or 1442 (a) receives the statement described in A–9 (or described in A–14, in the circumstances described in A–12) from the beneficial owner or a financial institution described in section 871(b)(4)(B).

Q–9. In order for interest on a registered obligation to qualify as portfolio interest within the meaning of section 871(h)(2)(B) or section 881(c)(2)(B), what form of statement must be provided to a United States person (including a foreign paying agent of an issuer who is a United States person) who would otherwise be required to withhold tax on that interest under section 1441(a) or 1442(a)?

A–9. Interest on a registered obligation may be treated as portfolio interest by a United States person otherwise required to deduct and withhold tax under section 1441(a) or 1442(a) if that person receives a statement that (i) is signed by the beneficial owner under penalties of perjury, (ii) certifies that such owner is not a United States person, or in the case of an individual, that he is neither a citizen nor a resident of the United States, and (iii) provides the name and address of the beneficial owner. The statement may be made, at the option of the person otherwise required to withhold, on a Form W–8 or on a substitute form that is substantially similar to Form W–8. The statement must be prepared, renewed and retained in accordance with the procedures prescribed in §1.6049–5(b)(2)(iv). If the information provided on the statement changes, the beneficial owner must so inform the person otherwise required to withhold within 30 days of such change. Interest paid on a registered obligation also may be treated as portfolio interest if an appropriate statement is provided to the United States person otherwise required to withhold by a securities clearing organization, a bank, or another financial institution that holds customers' securities in the ordinary course of its trade or business. In such case the statement must be signed under penalties of perjury by an authorized representative of the financial institution and must state (i) that the institution has received from the beneficial owner a Form W–8 or substitute form in accordance with the provisions of §1.6049–5(b)(2) (iv) or (ii) that it has received from another financial institution a similar statement that it, or another financial institution acting on behalf of the beneficial owner, has received the Form W–8 or substitute form from the beneficial owner. In the case of multiple financial institutions between the beneficial owner and the person otherwise required to withhold, this certificate must be given by each financial institution to the one above it in the chain. No particular form is required for the certificate provided by the financial institutions. However, the certificate must provide the name and address of the beneficial owner, and a copy of the Form W–8 provided by the beneficial owner must be attached. The certificate must be prepared, renewed and retained in accordance with procedures similar to those prescribed in §1.6049–5(b)(2)(iv). If the information on the Form W–8 changes, the beneficial

owner must so notify the financial institution acting on its behalf within 30 days of such changes, and the financial institution must promptly so inform the United States person otherwise required to withhold. This notice also must be given if the financial institution has actual knowledge that the information has changed but has not been so informed by the beneficial owner. In the case of multiple financial institutions between the beneficial owner and the person otherwise required to withhold, this notice must be given by each financial institution to the institution above it in the chain. A United States person otherwise required to deduct and withhold tax under section 1441(a) or section 1442(a) who receives the certificate described in A–9 must make an information return on Form 1042S of the payment with respect to which the certificate described in A–9 is required for the calendar year in which the payment is made. A payment described in the preceding sentence shall be treated as a payment for which there is a requirement to file a Form 1042S within the meaning of §1.1461–2(c)(1), and thus all the provisions of §1.1461–2(c) relating to the time and manner of filing the Form 1042S relate to the payment. The certificate described in A–9 received with respect to the payment shall be attached to the Form 1042S required to be filed with respect to the payment. Section 1.1461–2(c) will be amended to conform with the provisions of this paragraph.

Q–10. In the absence of the receipt of a certificate described in A–9 (or a certificate described in A–14 in the circumstances described in A–12) or a Form W–9 (or a substitute form that is substantially similar and completed under penalties of perjury), what United States persons are required to deduct and withhold tax under section 1441(a) or 1442(a) from interest otherwise qualifying as portfolio interest within the meaning of section 871(h)(2)(B) or 881(c)(2)(B)?

A–10. In general, any United States person who is otherwise a withholding agent for purposes of section 1441(a) or 1442(a) is required to deduct and withhold unless the certificate described in A–9 (or a certificate described in A–14 in the circumstances described in A–12) or a Form W–9 (or a substitute form that is substantially similar and completed under penalties of perjury) is received. However, a United States person is not required to withhold under section 1441(a) and 1442(a) regardless of whether the certificate is received under the following circumstances:

(i) The interest is paid to or collected on behalf of an exempt recipient at an address within the United States (other than an exempt recipient who is not a United States person); or

(ii) The interest is paid to a person at an address within the United States, and backup withholding is required with respect to that interest in accordance with the provisions of section 3406 (e.g., because neither a Form W–8 nor a Form W–9 has been received). For purposes of this A–10, an exempt recipient is a person described in §1.6049–4(c)(1)(ii).

Q–11. Does information reporting under section 6041 or 6049 or backup withholding apply with respect to portfolio interest paid on a registered obligation to a payee who has provided the payor with a Form W–8 or substitute form?

A–11. No. Provided the payor does not have actual knowledge that the payee is a United States person, neither information reporting under section 6041 or 6049 nor backup withholding is required in such case.

Q–12. Is a United States person (including a foreign paying agent of an issuer who is a United States person) who is otherwise required to deduct and withhold tax in accordance with A–10 required to obtain the certificate described in A–9 with respect to interest on a registered obligation that has been targeted to foreign markets?

A–12. The certificate described in A–9 is not required with respect to interest paid on a registered obligation that is targeted to foreign markets (in accordance with the provisions of A–13) if the interest is paid by a United States person to a registered owner at an address outside the United States, provided that the registered owner is a financial institution described in section 871(h)(4)(B). In that case, the United States person otherwise required to deduct and withhold tax may treat the interest as portfolio interest if it does not have actual knowledge that the

beneficial owner is a United States person and if it receives the certificate described in A–14 from a financial institution or member of a clearing organization, which member is the beneficial owner of the obligation, or the documentary evidence or statement described in A–14 from the beneficial owner, in accordance with the procedures described in A–15.

Q–13. When is a registered obligation considered to be targeted to foreign markets for purposes of A–12?

A–13. An obligation is considered to be targeted to foreign markets for purposes of A–12 if it is sold (or resold in connection with its original issuance) only to foreign persons (or to foreign branches of United States financial institutions described in section 871(h)(4)(B) in accordance with procedures similar to those prescribed in § 1.163–5(c)(2)(i)(A), (B), or (D). However, the provisions of that section that require an obligation to be offered for sale or resale in connection with its original issuance only outside the United States do not apply with respect to registered obligations offered for sale through a public auction. Similarly, the provisions of that section that require delivery to be made outside the United States do not apply to registered obligations offered for sale through a public auction if the obligations are considered to be in registered form by virtue of the fact that they may be transferred only through a book entry system. The obligation, if evidenced by a physical document other than a confirmation receipt, must contain on its face a legend indicating that it has been sold (or resold in connection with its original issuance) in accordance with those procedures.

Q–14. What is the certificate or documentary evidence that may be provided in lieu of the Form W–8 (or substitute form) in the circumstances described in A–12?

A–14. No particular form is required for the certificate or documentary evidence in lieu thereof described in this A–14, but it must be described in either subdivision (i) or subdivision (ii). The certificate described in subdivision (i) is required if the United States person otherwise required to deduct and withhold tax (the ''withholding agent'') pays interest to a financial institution described in section 871(h)(4)(B) or to a member of a clearing organization, which member is the beneficial owner of the obligation. The documentary evidence or statement described in subdivision (ii) is required if a withholding agent pays interest to a beneficial owner that is neither a financial institution described in section 871(h)(4)(B) nor a member of a clearing organization.

(i)(A) If the withholding agent pays interest to a financial institution described in section 871(h)(4)(B) or to a member of a clearing organization, which member is the beneficial owner of the obligation, the withholding agent must receive a certificate which states that, beginning at the time the last preceding certificate under this subdivision (i) was provided and while the financial institution or clearing organization member has held the obligation, with respect to each registered obligation that is targeted to foreign markets (in accordance with the provisions of A–13) which has been held by the person providing the certificate at any time since the provision of such last preceding certificate, either—

(*1*) The beneficial owner of the obligation has not been a United States person on each interest payment date; or

(*2*) If the person providing the certificate is a financial institution which is holding or has held an obligation on behalf of the beneficial owner, the beneficial owner of the obligation has been a United States person on one or more interest payment dates (identifying such date or dates), and the person making the certification has forwarded or will forward the appropriate United States beneficial ownership notification to the withholding agent in accordance with the provisions of A–15.

The person providing the certificate need not state the foregoing where no previous certificate has been required to be provided by the payee to the withholding agent under this subdivision (i).

(B) Whether or not a previous certificate has been required to be provided under this subdivision (i), each certificate under this subdivision (i) must further state that, with respect to each

registered obligation that is targeted to foreign markets (in accordance with the provisions of A–13) held and every other such obligation to be acquired and held by the person providing the certificate during the period beginning on the date of the certificate and ending on the date the next certificate is required to be provided, the beneficial owner of the obligation will not be a United States person on each interest payment date while the financial institution or clearing organization member holds the obligation and that, if the person providing the certificate is a financial institution which is holding or will be holding the obligation on behalf of a beneficial owner, such person will provide a United States beneficial ownership notification to the withholding agent (and a clearing organization that is not a withholding agent where a member organization is required by this A–14 to furnish the clearing organization with a statement) in accordance with A–15 of this section in the event such certificate (or statement in the case of a statement provided by a member organization to a clearing organization that is not a withholding agent) is or becomes untrue with respect to any obligation. A clearing organization is an entity which is in the business of holding obligations for member organizations and transferring obligations among such members by credit or debit to the account of a member without the necessity of physical delivery of the obligation.

(C) The certificate described in subdivision (i) (A) and (B) must identify the obligation or obligations with respect to which it is given, except where the certification is given with respect to an obligation that has not been acquired at the time the certification is made. An obligation is identified if it or the larger issuance of which it is a part is described on a list (*e.g.,* $5 million principal amount of 12% debentures of ABC Savings and Loan Association due February 25, 1995, $3 million principal amount of 10% U.S. Treasury notes due May 28, 1990) of all registered obligations targeted to foreign markets held by or on behalf of the person providing the certificate and the list is attached to, and incorporated by reference into, the certificate. The certificate must identify and provide the address of the person furnishing the certificate.

(D) If the withholding agent pays interest to a depository of a clearing obligation, then the clearing organization must provide the certificate to the withholding agent.

(E) Any certificate that is provided by a clearing organization must state that the clearing organization has received a statement from each member which complies with this subdivision (i) of A–14 and with A–15 (as if the clearing organization were the withholding agent and regardless of whether the member is a financial institution described in section 871(h)(4)(B)).

(F) Subject to the requirements set out in A–15, a certificate or statement in the form described in this subdivision (i) of A–14, in conjunction with the next annual certificate or statement, will serve as the certificate that may be provided in lieu of a Form W–8 with respect to interest on all foreign-targeted registered obligations held by the person making the certification or statement and which is paid to such person within the period beginning on the date of the certificate and ending on the date the next certificate is required to be provided.

(G) The certificate described in this subdivision may be provided electronically under the terms and conditions of § 1.163–5(c)(2)(i)(D)(*3*)(*ii*).

(ii) If the withholding agent pays interest to the beneficial owner of an obligation that is neither a financial institution described in section 871(h)(4)(B) nor a member of a clearing organization, then such owner must provide the withholding agent a Form W–8 (or substantially similar form completed under penalties of perjury) as set forth in A–9 of this section. However, a withholding agent that is a foreign branch of a financial institution described in section 871(h)(4)(B) and a United States person need not receive any statement or certificate from such beneficial owner, provided that the beneficial owner furnishes the withholding agent with documentary evidence as described in subdivision (iii) of Q–5 of § 35a.9999–4T that the beneficial owner is not a United States person.

Q–15. What procedures apply with respect to the certificate described in A–14?

A–15. (i)(A) Where no previous certificate with respect to registered obligations that are targeted to foreign markets (in accordance with the provisions of A–13) has been provided to the withholding agent by the person providing the certificate under subdivision (i) of A–14, such certificate must be provided within the period beginning 90 days prior to the first interest payment date on which the person holds a foreign-targeted registered obligation. (The withholding agent may, in its descretion, withhold the tax under section 1441(a) or 1442(a) if the certificate is not received by the date 30 days prior to the interest payment.) Thereafter the certificate must be filed within the period beginning on January 15 and ending January 31 of each year. If a certificate provided pursuant to the first sentence of this subdivision (i)(A) is provided during the period beginning on January 15 and ending on January 31 of any year, then no other certificate need be provided during such period in such year.

(B) If on any interest payment date after the obligation was acquired by the person making the certification the beneficial owner of the obligation is a United States person, then the person to whom the withholding agent pays interest must furnish the withholding agent with a United States beneficial ownership notification within 30 days after such interest payment date. A United States beneficial ownership notification must include a statement that the beneficial owner of the obligation has been a United States person on an interest payment date (identifying such date), that such owner has provided to the person providing the notification a Form W–9 (or a substitute form that is substantially similar to Form W–9 and completed under penalties of perjury), and that the person providing the notification has been and will be complying with the information reporting requirements of section 6049, if applicable.

(C) Where the person providing the notification described in subdivision (i)(B) of this A–15 is neither (*1*) a controlled foreign corporation within the meaning of section 957(a), nor (*2*) a foreign corporation 50 percent or more of the gross income of which from all sources for the three-year period ending with the close of the taxable year preceding the date of the statement was effectively connected with the conduct of trade or business in the United States, such person must attach to the notification a copy of the Form W–9 (or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury) provided by the beneficial owner. When a person that provides the United States beneficial ownership notification does not attach to it a copy of such Form W–9 (or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury), such person must state that it is either a controlled foreign corporation within the meaning of section 957(a), or a foreign corporation 50 percent or more of the gross income of which from all sources for the three-year period ending with the close of its taxable year preceding the date of the statement was effectively connected with the conduct of a trade or business in the United States. A withholding agent that receives a Form W–9 (or a substitute form that is substantially similar to Form W–9 and completed under penalties of perjury) must send a copy of such form to the Internal Revenue Service Center, Cincinnati, OH. 45999, within 30 days after receiving it and must attach a statement that the Form W–9 or substitute was provided pursuant to this A–15 with respect to a United States person that has owned a foreign-targeted registered obligation on one or more interest payment dates.

(D) If either a Form W–9 (or a substitute form that is substantially similar to a Form W–9 and completed under penalties of perjury) or the statement described in subdivision (C) of this A–15 is not attached to the United States beneficial ownership notification provided pursuant to subdivision (i)(B) of this A–15, the withholding agent is required to withhold tax under section 871 or 881 on a payment of interest made after the withholding agent has received the notification unless such form or statement (or a statement that the beneficial owner of the obligation is no longer a United States person) is

received before the interest payment date from the person who provided the notification (or transferee). If, during the period beginning on the next January 15 and ending on the next January 31, such person certifies as set out in subdivision (i) (A) and (B) of A–14 (except that such person does not certify under subdivision (i)(A)(2) that it has forwarded all United States beneficial ownership notifications to the withholding agent in accordance with the provisions of A–15), then the withholding agent is not required to withhold tax during the year following such certification (unless such person again provides a United States beneficial ownership notification without attaching a Form W–9 or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury or the statement described in subdivision (C) of this A–15).

(E) Within the period beginning 10 days before the end of the calendar quarter and ending on the last day of each calendar quarter, any clearing organization (including a clearing organization that is a withholding agent) relying on annual certificates or statements from its member organizations, as set forth in A–14 of this section, must send each member organization having submitted such certificate or statement a reminder that the member organization must give the clearing organization a United States beneficial ownership notification in the circumstances described in subdivision (i)(B) of this A–15.

(F) The certificate described in subdivision (i) of A–14 must be retained in the records of the withholding agent for four years from the end of the calendar year in which it was received. The statement described in subdivision (i) of A–14 that is received by a clearing organization from a member organization must be retained in the records of the clearing organization for four years from the end of the calendar year in which it was received. The withholding agent who receives the certificate described in subdivision (i) of A–14 is not required to file Form 1042S to report payments of interest that are made with respect to foreign-targeted registered obligations held by the person providing the certificate and are made within the period beginning with the certificate date and ending on the last date for filing the next certificate.

(ii)(A) The documentary evidence (or Form W–8 or substantially similar form completed under penalties of perjury) described in subdivision (ii) of A–14 must be provided to the withholding agent within the period beginning 90 days prior to and ending on the first interest payment date on which the withholding agent pays interest to the beneficial owner. The withholding agent may, in its discretion, withhold the tax under section 1441(a) or 1442(a) if the documentary evidence (or Form W–8 or substantially similar form completed under penalties of perjury) is not received by the date 30 days prior to the interest payment. The beneficial owner must confirm to the withholding agent the continuing validity of the documentary evidence within the period beginning 90 days prior to the first day of the third calendar year following the provision of such evidence and during the same period every three years thereafter while the owner still owns the obligation. The withholding agent who receives the documentary evidence described in subdivision (ii) of A–14 is not required to file Form 1042S for payments of interest that are made with respect to foreign-targeted registered obligations held by the person who provides the documentary evidence and are made within the period beginning with the date on which the documentary evidence is provided and ending on the last date for confirming the validity of the documentary evidence. Where a Form W–8 (or substantially similar form completed under penalties of perjury) has been provided, it must be prepared, renewed, and retained in accordance with the procedures prescribed in §1.6049–5(b)(2)(iv) and must be attached to the Form 1042S required to be filed with respect to the payment.

(B) If, on any interest payment date after the obligation was acquired by the person providing the documentary evidence (or Form W–8 or substantially similar form completed under penalties of perjury) described in subdivision (ii) of A–14, the beneficial owner of the obligation is a United States person, then the beneficial owner must so inform the withholding agent within 30 days

after such interest payment date and must provide a Form W–9 (or substitute form that is substantially similar completed under penalties of perjury) to the withholding agent. However, the beneficial owner is not required to provide another Form W–9 (or substitute form that is substantially similar and completed under penalties of perjury) if such person has already provided it to the withholding agent within the same calendar year.

(iii) In accordance with the provisions of section 871(h)(4), the Secretary may make a determination in appropriate cases that a certificate or statement by any person, or class of persons, does not satisfy the requirements of that section. Should that determination be made, all payments of interest that otherwise qualify as portfolio interest to that person would become subject to the 30 percent withholding tax.

(iv) Notwithstanding the foregoing requirements of A–14 and A–15 of this section,

(A) Any certificate that is required to be filed with the withholding agent during the period beginning on January 15 and ending on January 31, 1986 is not required to state that the beneficial owner of an obligation, prior to the date of the certificate, either was not a United States person or was a United States person if the obligation was acquired by the person providing the certificate on or before September 19, 1985; and

(B) All of the requirements of A–14 and A–15 of § 35a.9999–5, as in effect prior to the effective date of these amendments, shall remain effective with respect to each interest payment prior to the filing of the certificate described in subdivision (A), except that (*1*) the provisions of A–14 relating to which persons are required to receive certificates or statements and (*2*) subdivisions (ii) of A–14 and (ii) of A–15 shall become effective with respect to each interest payment after September 19, 1985.

Q–16. Is information reporting under section 6041 or 6049 or backup withholding required with respect to portfolio interest paid on a foreign-targeted registered obligation in the circumstances described in A–12?

A–16. No. Absent actual knowledge that the beneficial owner is a United States person, neither information reporting nor backup withholding is required in such circumstances if the certificate described in A–14 is provided to the payor in accordance with the provisions of A–15. Notwithstanding the foregoing, the collection outside the United States of portfolio interest on a registered obligation by a person acting as a custodian, nominee or other agent of the payee with respect to the obligation is subject to information reporting under section 6049 if that person is otherwise required to report amounts paid to, or collected on behalf of, the payee. For example, a foreign branch of a U.S. bank holding the obligation on behalf of a customer is required to report or backup withhold with respect to portfolio interest collected for the customer unless the customer is an exempt recipient described in § 1.6049–4(c)(1)(ii) or unless the branch has documentary evidence in its files that the customer is not a citizen or resident of the United States.

Q–17. Do the information reporting provisions of section 6045 apply with respect to the retirement or redemption of a registered obligation that has been targeted to foreign markets in accordance with A–13?

A–17. The general rules of section 6045 apply. For instance, a financial institution acting as a custodian, nominee or other agent for a customer with respect to a foreign-targeted registered obligation that presents such obligation to the issuer or its agent for redemption or retirement, or that otherwise acts as a broker with respect to the obligation, is subject to information reporting under section 6045 if that person is otherwise required to report transactions effected on behalf of the customer. For example, a foreign office of a United States broker presenting an obligation to an agent of the issuer outside the United States for retirement or redemption on behalf of a customer who is an individual is required to report or backup withhold unless the broker has documentary evidence in its files that the customer is a foreign person.

(c) *Convertibility of obligations.*

Q–18. May a bearer obligation be converted into a registered obligation that is subject to the certification requirements of A–9 or A–14 with respect to any interest payment?

A–18. A bearer obligation can be converted into a registered obligation that is subject to the certification requirements of A–9 or, if the requirements of A–12 are met with respect to an interest payment and the obligation has been targeted to foreign markets under A–13, to the certification requirements of A–14. That a certificate under A–9 was required to be provided with respect to a previous interest payment on the obligation is irrelevant to whether such a certificate (rather than a certificate under A–14) must be provided with respect to the present interest payment. Unless the certification requirements of A–14 apply, the general information reporting and backup withholding requirements of sections 6045, 6049, and 3406 apply to a registered obligation. An obligation issued after July 18, 1984, and on or before September 21, 1984, that would otherwise be in registered form but for the fact that it is convertible into bearer form, shall be considered to be in bearer form for purposes of A–1 if it satisfies the applicable requirements of the relevant temporary or proposed regulations under section 163(f)(2)(B), as described in §1.163–5(c)(2)(vi). An obligation issued after September 21, 1984, that would otherwise be in registered form but for the fact that it is convertible into bearer form shall be considered to be in bearer form. See A–1 of §35a.9999–5 (a) concerning the conditions that must be satisfied for interest with respect to a bearer obligation to qualify as portfolio interest.

Q–19. Under what circumstances is a certificate described in A–9 required with respect to a registered obligation that is considered to be targeted to foreign markets under A–12?

A–19. The certificate described in A–9 is required with respect to interest paid on a registered obligation that has been targeted to foreign markets under A–13 only if the requirements of A–12 are not satisfied. Provided that the requirements of A–12 are met with respect to an obligation at the time of an interest payment, that a certificate under A–9 was required to be provided with respect to a previous interest payment on the obligation is irrelevant to whether such a certificate must be provided with respect to the present interest payment. Also the general information reporting and backup withholding provisions of section 6045, 6049, and 3406 apply unless the certification requirements of A–14 apply.

(d) *Form 1042S requirements.*

Q–20. Is the owner of an obligation the interest on which qualifies as portfolio interest (within the meaning of section 871(h)(2) or section 881(c)(2)) required to file an ownership certificate described in §1.1461–1(b) (Form 1001) with respect to the obligation or is the withholding agent required to file an information return on Form 1042S?

A–20. (i) The owner of an obligation the interest on which qualifies as portfolio interest is not required to file the certificate described in §1.1461–1(b) (Form 1001). Pursuant to A–8, the statement described in A–9 (or described in A–14, in the circumstances described in A–12) is required to be provided to the withholding agent with respect to portfolio interest on a registered obligation.

(ii) If a statement is required pursuant to A–9 with respect to portfolio interest on a registered obligation, an information return on Form 1042S, accompanied by the statement (which may be a Form W–8) described in A–9, is required to be filed with the Internal Revenue Service for the calendar year in which the payment is made. See A–9 of this section. However, if a statement is required pursuant to A–14 with respect to portfolio interest on a registered obligation, an information return on Form 1042S is not required unless a Form W–8 (or substantially similar form completed under penalties of perjury) is provided. See A–15(ii)(A) of this section. With respect to a payment of portfolio interest on a bearer obligation, an information return on Form 1042S is not required to be filed.

(e) *Application of repeal of 30 percent withholding to pass-through certificates.*

Q–21. Will interest paid to a holder of a pass-through certificate as described in §1.163–5T(d)(1) qualify as portfolio interest for purposes of the exemption

from 30 percent withholding under section 871(h)(2) or section 881(c)(2)?

A–21. (i) Interest paid to a holder of a pass-through certificate will qualify as portfolio interest under section 871(h)(2) or section 881(c)(2) for purposes of the exemption from 30 percent withholding if the interest satisfies the conditions described in A–1 or A–8 of this section. For purposes of A–1 or A–8 of this section and sections 871(h) and 881(c), interest is considered to be paid on or with respect to the pass-through certificate and not on or with respect to any obligations held by the fund or trust to which the pass-through certificate relates. The rule of this A–21 applies only to payments made to the holder of the pass-through certificate from the trustee of the pass-thorough trust and does not apply to payments made to the trustee of the pass-through trust. Thus, except as set forth in the last sentence of this answer, interest paid to the holder of a pass-through certificate is portfolio interest if the pass-through certificate is described in A–1 or A–8 of this section, without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in A–1 or A–8 of this section. For example, a mortgage pass-through certificate in bearer form must meet the requirements set forth in A–1 of this section, but the obligations held by the fund or trust to which the mortgage pass-through certificate relates need not meet the requirements set forth in A–1 and A–8 of this section. However, for purposes of A–1 and A–8 of this section and section 127 of the Tax Reform Act of 1984, a pass-through certificate will be considered as issued after July 18, 1984 only to the extent that the obligations held by the fund or trust to which the pass-through certificate relates are issued after July 18, 1984.

(ii) Interest paid to a holder of a regular or residual interest in a REMIC will qualify as portfolio interest under section 871(h)(2) or section 881(c)(2) for purposes of the exemption from 30 percent withholding if the interest paid to the holder satisfies the conditions described in A–1 or A–8 of this section. For purposes of A–1 or A–8 of this section and sections 871(h) and 881(c), interest paid to the holder of a regular interest in a REMIC is considered to be paid on or with respect to the regular interest in the REMIC and not on or with respect to any mortgage obligations held by the REMIC. The foregoing rule, however, applies only to payments made to the holder of the regular interest from the REMIC and does not apply to payments made to the REMIC. For purposes of A–1 or A–8 of this section and sections 871(h) and 881(c), interest paid to the holder of a residual interest in a REMIC is considered to be paid on or with respect to the obligations held by the REMIC, and not on or with respect to the residual interest. For purposes of A–1 and A–8 of this section and section 127 of the Tax Reform Act of 1984, a residual interest in a REMIC will be considered as issued after July 18, 1984, only to the extent that the obligations held by the REMIC are issued after July 18, 1984, but a regular interest in a REMIC will be considered as issued after July 18, 1984, if the regular interest was issued after July 18, 1984, without regard to the date on which the mortgage obligations held by the REMIC were issued.

Q–22. In the case of a mortgage pass-through certificate, under what circumstances will the mortgage obligations held by the fund or trust to which the mortgage pass-through certificate relates be considered to have been issued after July 18, 1984?

A–22. In general, a mortgage pass-through certificate will be considered to have been issued after July 18, 1984, if all of the mortgages held by the fund or trust were issued after July 18, 1984. If some of the mortgages held by the fund or trust were issued before July 19, 1984, then the portion of any interest payment which represents interest on those mortgages shall not be considered to be portfolio interest. The preceding sentence shall not apply, however, if all of the following conditions are satisfied:

(i) The mortgage pass-through certificate is issued after December 31, 1986;

(ii) Payment of the mortgage pass-through certificate is guaranteed by, and a guarantee commitment has been

issued by, an entity that is independent from the issuer of the underlying obligation;

(iii) The guarantee commitment with respect to the mortgage pass-through certificate cannot have been issued more than 14 months prior to the date on which the mortgage pass-through certificate is issued.

(iv) The fund or trust to which the mortgage pass-through certificate relates cannot contain mortgage obligations on which the first scheduled monthly payment of principal and interest was made more than twelve months before the date on which the guarantee commitment was made.

[T.D. 7967, 49 FR 33240, Aug. 22, 1984; 49 FR 36645, Sept. 19, 1984, as amended by T.D. 8046, 50 FR 33526, Aug. 20, 1985; 51 FR 11447, Apr. 3, 1986; T.D. 8111, 51 FR 45464, Dec. 19, 1986; 53 FR 17928, May 19, 1988; T.D. 8300, 55 FR 19627, May 10, 1990]

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53494, Oct. 14, 1997, §35a.9999–5 was removed, effective Jan. 1, 1999. At 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was delayed until Jan. 1, 2001.

PART 36—CONTRACT COVERAGE OF EMPLOYEES OF FOREIGN SUBSIDIARIES

Sec.

36.3121 (l)–0 Introduction.
36.3121 (l)(1)–1 Agreements entered into by domestic corporations with respect to foreign subsidiaries.
36.3121 (l)(1)–2 Amendment of agreement.
36.3121 (l)(1)–3 Effect of agreement.
36.3121 (l)(2)–1 Effective period of agreement.
36.3121 (l)(3)–1 Termination of agreement by domestic corporation or by reason of change in stock ownership.
36.3121 (l)(4)–1 Termination of agreement by Commissioner.
36.3121 (l)(5)–1 Effect of termination.
36.3121 (l)(7)–1 Overpayments and underpayments.
36.3121 (l)(8)–1 Definition of foreign subsidiary.
36.3121 (l)(9)–1 Domestic corporation as separate entity.
36.3121 (l)(10)–1 Requirements in respect of liability under agreement.
36.3121 (l)(10)–2 Identification.
36.3121 (l)(10)–3 Returns.
36.3121 (l)(10)–4 Payment of amounts equivalent to tax.

AUTHORITY: Secs. 3121, 7805, 68A Stat. 417, as amended, 917; 26 U.S.C. 3121, 7805.

SOURCE: T.D. 6145, 20 FR 6577, Sept. 8, 1955; 25 FR 14021, Dec. 31, 1960, unless otherwise noted.

§36.3121(l)–0 Introduction.

(a) The regulations in this part deal with the circumstances under which a domestic corporation may enter into an agreement with the Internal Revenue Service for the purpose of extending the insurance system established by title II of the Social Security Act to certain services performed outside the United States by citizens of the United States as employees of a foreign subsidiary of the domestic corporation, and with the obligations of a domestic corporation which enters into such an agreement. The provisions of the Internal Revenue Code of 1954, as amended, to which the regulations in this part pertain are contained in section 3121(1). The liabilities assumed under an agreement entered into pursuant to such section are based on the remuneration for services covered by the agreement. Such agreement may not be effective prior to January 1, 1955.

(b) Although the obligations incurred under an agreement entered into pursuant to section 3121(1) of the Internal Revenue Code of 1954, as amended, must be distinguished from the obligations imposed on employers with respect to the taxes under the Federal Insurance Contributions Act, the two are similar in many respects. Accordingly, the regulations in this part are prescribed as a supplement to the regulations (26 CFR (1954), Part 31, Subpart B) relating to the employee tax and the employer tax imposed by the Federal Insurance Contributions Act. The terms used in the regulations in this part have the same meaning, unless otherwise provided, as when used in the regulations relating to the taxes imposed by such act.

(c) The regulations in this part constitute Part 36 of Title 26 of the Code of Federal Regulations. As used in the regulations in this part, the word ''Code'' means the Internal Revenue Code of 1954, as amended, and the term ''Federal Insurance Contributions Act''