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particular form is prescribed for the written notification. The Internal Revenue Service will transmit one copy of the written notification to the Department of Health, Education, and Welfare.

[T.D. 6145, 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7012, 34 FR 7694, May 15, 1969]

§ 36.3121(l)(4)–1 Termination of agreement by Commissioner.

(a) *Notice of termination.* The period for which an agreement entered into with a domestic corporation as provided in § 36.3121(l)(1)–1 is in effect may be terminated by the Commissioner, with the prior concurrence of the Secretary of Health, Education, and Welfare, upon a finding by the Commissioner that the domestic corporation has failed to comply substantially with the terms of the agreement. The Commissioner shall give the corporation not less than 60 days' advance notice in writing that the period for which the agreement is in effect will terminate at the end of the calendar quarter specified in the notice of termination.

(b) *Revocation of notice of termination.* A notice of termination given to a domestic corporation by the Commissioner may be revoked by the Commissioner, with the prior concurrence of the Secretary of Health, Education and Welfare by giving written notice of revocation to the corporation prior to the close of the calendar quarter specified in the notice of termination.

§ 36.3121(l)(5)–1 Effect of termination.

(a) *Termination of entire agreement.* (1) If the effective period of an agreement entered into by a domestic corporation as provided in § 36.3121(l)(1)–1 is terminated by the domestic corporation, pursuant to § 36.3121(l)(3)–1(a), with respect to all foreign subsidiaries named in the agreement, including any amendment thereof, an agreement may not again be entered into by the domestic corporation under the provisions of section 3121(l)(1).

(2) If the effective period of an agreement entered into by a domestic corporation as provided in § 36.3121(l)(1)–1 is terminated by the Commissioner, pursuant to § 36.3121(l)(4)–1 (a), an agreement may not again be entered into by the domestic corporation under the provisions of section 3121(l)(1).

(3) If the effective period of an agreement entered into by a domestic corporation as provided in § 36.3121(l)(1)–1 is terminated automatically by reason of a change in stock ownership (see § 36.3121(l)(3)–1(b)) with respect to all foreign corporations named in the agreement, including any amendment thereof, a new agreement may be entered into by the domestic corporation, as provided in § 36.3121(l)(1)–1, with respect to any foreign corporation which is a foreign subsidiary of the domestic corporation.

(b) *Partial termination of agreement.* (1) If the effective period of an agreement entered into by a domestic corporation as provided in § 36.3121(l)(1)–1 is terminated by the domestic corporation, pursuant to § 36.3121(l)(3)–1(a), with respect to one or more foreign subsidiaries named in the agreement, including any amendment thereof, the period for which the agreement is in effect will continue with respect to any other foreign subsidiary or subsidiaries named in the agreement (or amendment). However, the agreement may not thereafter be amended to include any foreign subsidiary with respect to which the effective period of the agreement has been terminated.

(2) If the effective period of an agreement entered into by a domestic corporation as provided in § 36.3121(l)(1)–1 is terminated automatically by reason of a change in stock ownership (see § 36.3121(l)(3)–1(b)) with respect to a foreign corporation which has ceased to be a foreign subsidiary of the domestic corporation, but the period for which the agreement is in effect continues with respect to one or more other foreign subsidiaries, the agreement may not thereafter be amended to include such foreign corporation even though the foreign corporation may again become a foreign subsidiary of the domestic corporation.

§ 36.3121(l)(7)–1 Overpayments and underpayments.

(a) *Adjustments*—(1) *In general.* Errors in the payment of amounts for which liability equivalent to the employee and employer taxes with respect to any payment of remuneration is incurred

by a domestic corporation pursuant to its agreement are adjustable by the domestic corporation in certain cases without interest. However, not all corrections made under this section constitute adjustments within the meaning of the regulations in this part. The various situations in which such corrections constitute adjustments are set forth in paragraphs (a)(2) and (3) of this section. All corrections in respect of underpayments and all adjustments or credits in respect of overpayments made under this section must be reported on a return filed by the domestic corporation under the regulations in this part and not on a return filed with respect to the employee and employer taxes imposed by sections 3101 and 3111, respectively. Every return on which such a correction (by adjustment, credit, or otherwise) is reported pursuant to this section must have securely attached as a part thereof a statement explaining the error in respect of which the correction is made, designating the calendar quarter in which the error was ascertained, and setting forth such other information as would be required if the correction were in respect of an overpayment or underpayment of taxes under the Federal Insurance Contributions Act. An error is ascertained when the domestic corporation has sufficient knowledge of the error to be able to correct it. An underpayment may not be corrected under this section after receipt from the district director or director of the service center of written notification of the amount due and demand for payment thereof, but the amount shall be paid in accordance with such notification.

(2) *Underpayments.* If a domestic corporation fails to report, on a return filed under the regulations in this part, all or any part of the amount for which liability equivalent to the employee and employer taxes is incurred under its agreement with respect to any payment of remuneration, the domestic corporation shall adjust the underpayment by reporting the additional amount due as an adjustment on a return or supplemental return filed on or before the last day on which the return for the return period in which the error is ascertained is required to be filed. The amount of each underpayment adjusted in accordance with this subparagraph shall be paid, without interest, at the time fixed for reporting the adjustment. If an adjustment is reported pursuant to this subparagraph but the amount thereof is not paid when due, interest thereafter accrues.

(3) *Overpayments.* If a domestic corporation pays more than the amount for which liability equivalent to the employee and employer taxes is incurred under its agreement with respect to any payment of remuneration, the domestic corporation may correct the error, subject to the requirements and under the conditions stated in this paragraph, by deducting the amount of the overpayment from the amount of liability reported on a return filed by the domestic corporation, except that—

(i) A correction may not be made in respect of any part of an overpayment which was collected from an individual by reason of the agreement unless the domestic corporation (a) has repaid the amount so collected to the individual, has secured the written receipt of the individual showing the date and amount of the repayment, and retains such receipt as a part of its records, or (b) has reimbursed the individual by reducing the amounts which otherwise should have been deducted from his remuneration by reason of the agreement; and

(ii) A correction may not be made in one calendar year in respect of any part of an overpayment which was collected from an individual in a prior calendar year unless the domestic corporation has secured the written statement of the individual showing that he has not claimed and will not claim refund or credit of the amount so collected, and retains such receipt as a part of its records. See §31.6413(c)–1 of this chapter, relating to claims for special credit or refund.

The correction constitutes an adjustment under this subparagraph only if it is reported on the return for the period in which the error is ascertained or on the return for the next following period, and then only if the correction is reported within the statutory period of limitation upon refund or credit of overpayments of amounts due under

the agreement. See paragraph (b)(2)(iii) of this section relating to such statutory period. A claim for credit or refund may be filed in accordance with the provisions of paragraph (b)(2) of this section for any overpayment of an amount due under the agreement which is not adjusted under this subparagraph.

(b) *Errors not adjustable*—(1) *Underpayments.* If a domestic corporation fails to report all or any part of the amount for which liability equivalent to the employee and employer taxes is incurred under its agreement with respect to any payment of remuneration, and such underpayment is not reported as an adjustment within the time prescribed by paragraph (a)(2) of this section, the amount of such underpayment shall be reported on the domestic corporation's next return, or shall be reported immediately on a supplemental return for the return period in which such payment of remuneration was made. The reporting of an underpayment under this subparagraph does not constitute an adjustment without interest.

(2) *Overpayments.* (i) If more than the correct amount due from a domestic corporation pursuant to its agreement (including the amount of any interest or addition) is paid and the amount of the overpayment is not adjusted under paragraph (a) (3) of this section, the domestic corporation may file a claim for refund or credit. Except as otherwise provided in this subparagraph, such claim shall be made in the same manner and subject to the same conditions as to allowance of the claim as would be the case if the claim were in respect of an overpayment of taxes under the Federal Insurance Contributions Act. Refund or credit of an amount erroneously paid by a domestic corporation under its agreement may be allowed only to the domestic corporation.

(ii) Any claim filed under this subparagraph shall be plainly marked ''Claim under section 3121(1).''

(iii) No refund or credit of an overpayment of the amount due from a domestic corporation under its agreement will be allowed after the expiration of 2 years after the date of payment of such overpayment, except upon one or more of the grounds set forth in a claim filed prior to the expiration of such 2-year period.

(c) *Deductions from employees' remuneration.* If a domestic corporation deducts, or causes to be deducted, from the remuneration of an individual for services covered by the agreement amounts which are more or less than the employee tax which would be deductible therefrom if such remuneration constituted wages, any repayment to the individual (except to the extent otherwise provided in this section), or further collection from the individual, in respect of such deduction is a matter for settlement between the individual and the domestic corporation or such other person as may be concerned.

[T.D. 6145, 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7012, 34 FR 7694, May 15, 1969]

§ 36.3121(l)(8)–1 Definition of foreign subsidiary.

(a) *Prior to August 1, 1956.* (1) For the period January 1, 1955 to July 31, 1956, inclusive, a foreign corporation is a foreign subsidiary of a domestic corporation, within the meaning of the regulations in this part, if—

(i) More than 50 percent of the voting stock of the foreign corporation is owned by the domestic corporation; or

(ii) More than 50 percent of the voting stock of the foreign corporation is owned by a second foreign corporation and more than 50 percent of the voting stock of the second foreign corporation is owned by the domestic corporation.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example 1. P, a domestic corporation, owns 51 percent of the voting stock of S–1, a foreign corporation. S–1 owns 51 percent of the voting stock of S–2, a foreign corporation. S–2 owns 51 percent of the voting stock of S–3, a foreign corporation. S–1 and S–2 are foreign subsidiaries of P for purposes of the regulations in this part. Since neither P nor S–1 owns more than 50 percent of the voting stock of S–3, S–3 is not a foreign subsidiary of P within the meaning of the regulations in this part.

Example 2. Assume the same facts as those stated in example *1* except that 25 percent of the voting stock of S–2 is transferred by S–1 to P. P owns no other voting stock of S–2.