

(c) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6044(e), see §301.6722-1 of this chapter (Procedure and Administration Regulations). See §301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(d) *Effective date.* This section is effective for payee statements due after December 31, 1995, without regard to extensions. For the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996, see Rev. Proc. 84-70 (1984-2 C.B. 716) (or successor revenue procedures). See §601.601(d)(2) of this chapter.

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#### § 1.6045-1 Returns of information of brokers and barter exchanges.

(a) *Definitions.* The following definitions apply for purposes of this section and §1.6045-2:

(1) The term *broker* means any person (other than a person who is required to report a transaction under section 6043), U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. A broker includes an obligor that regularly issues and retires its own debt obligations or a corporation that regularly redeems its own stock. However, with respect to a sale (including a redemption or retirement) effected at an office outside the United States, a broker includes only a person described as a U.S. payor or U.S. middleman in §1.6049-5(c)(5). In addition, a broker does not include an international organization described in §1.6049-4(c)(1)(ii)(G) that redeems or retires an obligation of which it is the issuer.

(2) The term *customer* means, with respect to a sale effected by a broker, the person (other than such broker) that makes the sale, if the broker acts as:

- (i) An agent for such person in the sale;
- (ii) A principal in the sale; or

(iii) The participant in the sale responsible for paying to such person or crediting to such person's account the gross proceeds on the sale.

(3) The term *security* means:

- (i) A share of stock in a corporation (foreign or domestic);
- (ii) An interest in a trust;
- (iii) An interest in a partnership;
- (iv) A debt obligation;
- (v) An interest in or right to purchase any of the foregoing in connection with the issuance thereof from the issuer or an agent of the issuer or from an underwriter that purchases any of the foregoing from the issuer, or
- (vi) An interest in a security described in paragraph (a)(3) (i) or (iv) (but not including options or executory contracts that require delivery of such type of security).

(4) The term *barter exchange* means any person with members or clients that contract either with each other or with such person to trade or barter property or services either directly or through such person. The term does not include arrangements that provide solely for the informal exchange of similar services on a noncommercial basis.

(5) The term *commodity* means:

(i) Any type of personal property or an interest therein (other than securities as defined in paragraph (a)(3)) the trading of regulated futures contracts in which has been approved by the Commodity Futures Trading Commission;

(ii) Lead, palm oil, rapeseed, tea, tin, or an interest in any of the foregoing; or

(iii) Any other personal property or an interest therein that is of a type the Secretary determines is to be treated as a "commodity" under this section, from and after the date specified in a notice of such determination published in the FEDERAL REGISTER.

(6) The term *regulated futures contract* means a regulated futures contract within the meaning of section 1256(b).

(7) The term *forward contract* means:

- (i) An executory contract that requires delivery of a commodity in exchange for cash and which contract is not a regulated futures contract; or
- (ii) An executory contract that requires delivery of personal property or

an interest therein in exchange for cash, or a cash settlement contract, if such executory contract or cash settlement contract is of a type the Secretary determines is to be treated as a "forward contract" under this section, from and after the date specified in a notice of such determination published in the FEDERAL REGISTER.

(8) The term *closing transaction* means any termination of an obligation under a forward contract or a regulated futures contract.

(9) The term *sale* means any disposition of securities, commodities, regulated futures contracts, or forward contracts for cash, and includes redemptions of stock, retirements of indebtedness, and enterings into short sales. In the case of a regulated futures contract or a forward contract, the term "sale" means any closing transaction. When a closing transaction in a regulated futures contract involves making or taking delivery, the profit or loss on the contract is a sale, and, if delivery is made, such delivery is a separate sale. When a closing transaction in a forward contract involves making or taking delivery, the delivery is a sale without separation of the profit or loss on the contract from the profit or loss on the delivery, except that taking delivery for United States dollars is not a sale. The term "sale" does not include grants or purchases of options, exercises of call options, or enterings into contracts that require delivery of personal property or an interest therein.

(10) The term *effect* means, with respect to a sale, to act as:

(i) An agent for a party in the sale wherein the nature of the agency is such that the agent ordinarily would know the gross proceeds from the sale; or

(ii) A principal in such sale.

Acting as an agent or principal with respect to grants or purchases of options, exercises of call options, or enterings into contracts that require delivery of personal property or an interest therein is not of itself effecting a sale. A broker that has on its books a forward contract under which delivery is made effects such delivery.

(11) The term *foreign currency* means currency of a foreign country.

(12) The term *cash* means United States dollars or any convertible foreign currency.

(13) The term *person* includes any governmental unit and any agency or instrumentality thereof.

(b) *Examples.* The following examples illustrate the definitions in paragraph (a):

*Example 1.* The following persons generally are brokers within the meaning of paragraph (a)(1):

(i) A mutual fund, an underwriter of the mutual fund, or an agent for the mutual fund, any of which stands ready to redeem or repurchase shares in such mutual fund.

(ii) A professional custodian (such as a bank) that regularly arranges sales for custodial accounts pursuant to instructions from the owner of the property.

(iii) A depository trust or other person who regularly acts as an escrow agent in corporate acquisitions, if the nature of the activities of the agent is such that the agent ordinarily would know the gross proceeds from sales.

(iv) A stock transfer agent for a corporation, which agent records transfers of stock in such corporation, if the nature of the activities of the agent is such that the agent ordinarily would know the gross proceeds from sales.

(v) A dividend reinvestment agent for a corporation that stands ready to purchase or redeem shares.

*Example 2.* The following persons are not brokers within the meaning of paragraph (1)(a) in the absence of additional facts that indicate the person is a broker:

(i) A stock transfer agent for a corporation, which agent daily records transfers of stock in such corporation, if the nature of the activities of the agent is such that the agent ordinarily would not know the gross proceeds from sales.

(ii) A person (such as a stock exchange) that merely provides facilities in which others effect sales.

(iii) An escrow agent or nominee if such agency is not in the ordinary course of a trade or business.

(iv) An escrow agent, otherwise a broker, which agent effects no sales other than such transactions as are incidental to the purpose of the escrow (such as sales to collect on collateral).

(v) A floor broker on a commodities exchange, which broker maintains no records with respect to the terms of sales.

(vi) A corporation that issues and retires long-term debt on an irregular basis.

(vii) A clearing organization.

*Example 3.* A, B, and C belong to a carpool in which they commute to and from work. Every third day, each member of the carpool

provides transportation for the other two members. Because the carpool arrangement provides solely for the informal exchange of similar services on a noncommercial basis, the carpool is not a barter exchange within the meaning of paragraph (a)(4).

*Example 4.* X is an organization whose members include retail merchants, wholesale merchants, and persons in the trade or business of performing services. X's members exchange property and services among themselves using credits on the books of X as a medium of exchange. Each exchange through X is reflected on the books of X by crediting the account of the member providing property or services and debiting the account of the member receiving such property or services. X also provides information to its members concerning property and services available for exchange through X. X charges its members a commission on each transaction in which credits on its books are used as a medium of exchange. X is a barter exchange within the meaning of paragraph (a)(4) of this section.

*Example 5.* A warehouse receipt is an interest in personal property for purposes of paragraph (a). Consequently, a warehouse receipt for a quantity of lead is a commodity under paragraph (a)(5)(ii). Similarly an executory contract that requires delivery of a warehouse receipt for a quantity of lead is a forward contract under paragraph (a)(7)(ii).

*Example 6.* The only customers of a depository trust acting as an escrow agent in corporate acquisitions which trust is a broker, are shareholders to whom the trust makes payments or shareholders for whom the trust is acting as an agent.

*Example 7.* The only customers of a stock transfer agent, which agent is a broker are shareholders to whom the agent makes payments or shareholders for whom the agent is acting as an agent.

*Example 8.* D, an individual not otherwise exempt from reporting, is the holder of an obligation issued by P, a corporation. R, a broker, acting as an agent for P, retires such obligation held by D. Such obligor payments from R represent obligor payments by P. (See paragraph (c)(3)(v)). D, the person to whom the gross proceeds are paid or credited by R, is the customer of R.

(c) *Reporting by brokers*—(1) *Requirement of reporting.* Any broker shall, except as otherwise provided, report in the manner prescribed in this section.

(2) *Sales required to be reported.* Except as provided in paragraphs (c)(3), (c)(5), (g), and (p)(1), a broker shall make a return of information with respect to each sale by a customer of the broker effected by the broker in the ordinary course of a trade or business in which

the broker stands ready to effect sales to be made by others.

(3) *Exceptions*—(i) *Sales effected for exempt recipients*—

(A) *In general.* No return of information is required with respect to a sale effected for a customer that is an exempt recipient under paragraph (c)(3)(i)(B) of this section.

(B) *Exempt recipient defined.* The term *exempt recipient* means—

(1) A corporation as defined in section 7701(a)(3), whether domestic or foreign;

(2) An organization exempt from taxation under section 501(a) or an individual retirement plan;

(3) The United States or a State, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, a wholly owned agency or instrumentality of any one or more of the foregoing, or a pool or partnership composed exclusively of any of the foregoing;

(4) A foreign government, a political subdivision thereof, an international organization, or any wholly owned agency or instrumentality of the foregoing;

(5) A foreign central bank of issue as defined in §1.895-1(b)(1) (i.e., a bank that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency);

(6) A dealer in securities or commodities registered as such under the laws of the United States or a State;

(7) A futures commission merchant registered as such with the Commodity Futures Trading Commission;

(8) A real estate investment trust (as defined in section 856);

(9) An entity registered at all times during the taxable year under the Investment Company Act of 1940 (15 U.S.C. 80a-1, *et seq.*);

(10) A common trust fund (as defined in section 584(a)); or

(11) A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization.

(C) *Exemption certificate.* A broker may treat a person described in paragraph (c)(3)(i)(B) of this section as an exempt recipient based on a properly completed exemption certificate (as provided in § 31.3406(h)-3) of this chapter, on the broker's actual knowledge that the payee is a person described in paragraph (c)(3)(i)(B), or on the applicable indicators described in § 1.6049-4(c)(1)(ii)(A) through (M). A broker may require an exempt recipient to file a properly completed exemption certificate and may treat an exempt recipient that fails to do so as a recipient that is not exempt.

(ii) *Excepted sales.* No return of information is required with respect to a sale effected by a broker for a customer if the sale is an excepted sale. For this purpose, a sale is an excepted sale if it is so designated by the Internal Revenue Service in a revenue ruling or revenue procedure (see § 601.601(d)(2) of this chapter).

(iii) *Multiple brokers.* If a broker is instructed to initiate a sale by a person that is an exempt recipient described in paragraph (c)(3)(i)(B)(6), (7), or (11) of this section, no return of information is required with respect to the sale by that broker. In a redemption of stock or retirement of securities, only the broker responsible for paying the holder redeemed or retired, or crediting the gross proceeds on the sale to that holder's account, is required to report the sale.

(iv) *Cash on delivery transactions.* In the case of a sale of securities through a cash on delivery account, a delivery versus payment account, or other similar account or transaction, only the broker that receives the gross proceeds from the sale against delivery of the securities sold is required to report the sale. If, however, the broker's customer is another broker (second-party broker) that is an exempt recipient, then only the second-party broker is required to report the sale.

(v) *Fiduciaries and partnerships.* No return of information is required with respect to a sale effected by a custodian or trustee in its capacity as such or a redemption of a partnership interest by a partnership, provided the sale is otherwise reported by the custodian or trustee on a properly filed Form 1041,

or the redemption is otherwise reported by the partnership on a properly filed Form 1065, and all Schedule K-1 reporting requirements are satisfied.

(vi) *Sales at issue price.* No return of information is required with respect to a sale of an interest in a regulated investment company that can hold itself out as a money market fund under Rule 2a-7 under the Investment Company Act of 1940 that computes its current price per share for purposes of distributions, redemptions, and purchases so as to stabilize the price per share at a constant amount that approximates its issue price or the price at which it was originally sold to the public.

(vii) *Obligor payments on certain obligations.* No return of information is required with respect to payments representing obligor payments on—

(A) Nontransferable obligations (including savings bonds, savings accounts, checking accounts, and NOW accounts);

(B) Obligations as to which the entire gross proceeds are reported by the broker on Form 1099 under provisions of the Internal Revenue Code other than section 6045 (including stripped coupons issued prior to July 1, 1982); or

(C) Retirement of short-term obligations (i.e., obligations with a fixed maturity date not exceeding 1 year from the date of issue) that have original issue discount, as defined in section 1273(a)(1), with or without application of the de minimis rule.

(D) Demand obligations that also are callable by the obligor and that have no premium or discount.

(viii) *Foreign currency.* No return of information is required with respect to a sale of foreign currency other than a sale pursuant to a forward contract or regulated futures contract that requires delivery of foreign currency.

(ix) *Fractional share.* No return of information is required with respect to a sale of a fractional share of stock if the gross proceeds on the sale of the fractional share are less than \$20.

(x) *Certain retirements.* No return of information is required from an issuer or its agent with respect to the retirement of book entry or registered form obligations as to which the relevant books and records indicate that no interim transfers have occurred.

(xi) *Cross reference.* For an exception for certain sales of agricultural commodities and certificates issued by the Commodity Credit Corporation after January 1, 1993, see paragraph (c)(7) of this section.

(xii) *Effective date.* The provisions of this paragraph (c)(3) apply for sales effected after December 31, 2002.

(4) *Examples.* The following examples illustrate the application of the rules in paragraph (c)(3) of this section:

*Example 1.* P, an individual who is not an exempt recipient, places an order with B, a person generally known in the investment community to be a federally registered broker/dealer, to effect a sale of P's stock in a publicly traded corporation. B, in turn, places an order to sell the stock with C, a second broker, who will execute the sale. B discloses to C the identity of the customer placing the order. C is not required to make a return of information with respect to the sale because C was instructed by B, an exempt recipient as defined in paragraph (c)(3)(i)(B)(6) of this section, to initiate the sale. B is required to make a return of information with respect to the sale because P is B's customer and is not an exempt recipient.

*Example 2.* Assume the same facts as in *Example 1* except that B has an omnibus account with C so that B does not disclose to C whether the transaction is for a customer of B or for B's own account. C is not required to make a return of information with respect to the sale because C was instructed by B, an exempt recipient as defined in paragraph (c)(3)(i)(B)(6) of this section, to initiate the sale. B is required to make a return of information with respect to the sale because P is B's customer and is not an exempt recipient.

*Example 3.* D, an individual who is not an exempt recipient, enters into a cash on delivery stock transaction by instructing K, a federally registered broker/dealer, to sell stock owned by D, and to deliver the proceeds to L, a custodian bank. Concurrently with the above instructions, D instructs L to deliver D's stock to K (or K's designee) against delivery of the proceeds from K. The records of both K and L with respect to this transaction show an account in the name of D. Pursuant to paragraph (h)(1) of this section, D is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because D is L's customer and is not an exempt recipient.

*Example 4.* Assume the same facts as in *Example 3* except that E, a federally registered investment advisor, instructs K to sell stock

owned by D and to deliver the proceeds to L. Concurrently with the above instructions, E instructs L to deliver D's stock to K (or K's designee) against delivery of the proceeds from K. The records of both K and L with respect to the transaction show an account in the name of D. Pursuant to paragraph (h)(1) of this section, D is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because D is L's customer and is not an exempt recipient.

*Example 5.* Assume the same facts as in *Example 4* except that the records of both K and L with respect to the transaction show an account in the name of E. Pursuant to paragraph (h)(1) of this section, E is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because E is L's customer and is not an exempt recipient. E is required to make a return of information with respect to the sale because D is E's customer and is not an exempt recipient.

*Example 6.* F, an individual who is not an exempt recipient, owns bonds that are held by G, a federally registered broker/dealer, in an account for F with G designated as nominee for F. Upon the retirement of the bonds, the gross proceeds are automatically credited to the account of F. G is required to make a return of information with respect to the retirement because G is the broker responsible for making payments of the gross proceeds to F.

(5) *Form of reporting for regulated futures contracts—(i) In general.* A broker effecting closing transactions in regulated futures contracts shall report information with respect to regulated futures contracts solely in the manner prescribed in this paragraph (c)(5). In the case of a sale that involves making delivery pursuant to a regulated futures contract, only the profit or loss on the contract is reported as a transaction with respect to regulated futures contracts under this paragraph (c)(5); such sales are, however, subject to reporting under paragraph (d)(2). The information required under this paragraph (c)(5) must be reported on a calendar year basis, unless the broker is advised in writing by an account's owner that the owner's taxable year is other than a calendar year and the

broker elects to report with respect to regulated futures contracts in such account on the basis of the owner's taxable year. The following information must be reported as required by Form 1099 with respect to regulated futures contracts held in a customer's account:

(A) The name, address, and taxpayer identification number of the customer.

(B) The net realized profit or loss from all regulated futures contracts closed during the calendar year.

(C) The net unrealized profit or loss in all open regulated futures contracts at the end of the preceding calendar year.

(D) The net unrealized profit or loss in all open regulated futures contracts at the end of the calendar year.

(E) The aggregate profit or loss from regulated futures contracts  $((b)+(d)-(c))$ .

(F) Any other information required by Form 1099. See 17 CFR 1.33. For this purpose, the end of a year is the close of business of the last business day of such year. In reporting under this paragraph (c)(5), the broker shall make such adjustments for commissions that have actually been paid and for option premiums as are consistent with the books of the broker. No additional returns of information with respect to regulated futures contracts so reported are required.

(ii) *Determination of profit or loss from foreign currency contracts.* A broker effecting a closing transaction in foreign currency contracts (as defined in section 1256(g)) shall report information with respect to such contracts in the manner prescribed in paragraph (c)(5)(i) of this section. If a foreign currency contract is closed by making or taking delivery, the net realized profit or loss for purposes of paragraph (c)(5)(i)(B) of this section is determined by comparing the contract price to the spot price for the contract currency at the time and place specified in the contract. If a foreign currency contract is closed by entry into an offsetting contract, the net realized profit or loss for purposes of paragraph (c)(5)(i)(B) of this section is determined by comparing the contract price to the price of the offsetting contract. The net unrealized profit or loss in a foreign currency contract for purposes of para-

graphs (c)(5)(i) (C) and (D) of this section is determined by comparing the contract price to the broker's price for similar contracts at the close of business of the relevant year.

(iii) *Examples.* The following examples illustrate the application of the rules in this paragraph (c)(5):

*Example 1.* On October 30, 1984, A, an individual who is a calendar year taxpayer not otherwise exempt from reporting, buys one March 1985 put on Treasury Bond futures (i.e. A purchases an option to enter into a short regulated futures contract of \$100,000 face value U.S. Treasury bonds). A pays \$500 for the option. On December 19, 1984, A, through B, exercises the option and enters into the futures contract. On February 15, 1985, A, through B, enters into a closing transaction with respect to the futures contract. These are A's only transactions in the account. Since B's books list A's regulated futures contract on December 31, 1984, B must report for A, for 1984, the unrealized profit or loss in the contract as of December 31, 1984. For 1985, B will report the same amount for A as the unrealized profit or loss at the beginning of 1985. The return of information for 1985 will also include the gain or loss from the contract in the net realized profit or loss from all regulated futures contracts sales during 1985.

*Example 2.* The facts are the same as in Example (1) except that A does not enter into the closing transaction, but instead, on March 20, 1985, B informs A that A will make delivery under the contract. On March 22, 1985, A does so; consequently, A becomes entitled to the gross proceeds. B enters the closing transaction on its books on March 20, 1985. In addition to the returns of information required by paragraph (c)(5), as described in Example (1), B must report the March 22, 1985 delivery as a separate transaction. B may use as the sale date for the delivery either March 20, 1985, the date the transaction is entered on the books of B, or March 22, 1985, the date A becomes entitled to the gross proceeds. B may not deduct the \$500 premium from the gross proceeds with respect to the March 22, 1985 delivery.

*Example 3.* The facts are the same as in Example (2) except that A buys a call on Treasury bond futures and takes delivery. B will supply the returns of information required by paragraph (c)(5), as described in Example (1). B is not required to make a return of information with respect to A's taking delivery.

*Example 4.* C, an individual who is a calendar year taxpayer not otherwise exempt from reporting, has an account with D, a broker. C trades both regulated futures contracts and forward contracts through C's account with D. D must report C's regulated

futures contracts on an annual basis as required by paragraph (c)(5). With respect to C's forward contracts, D may elect to use the calendar month, quarter, or year as D's reporting period as provided in paragraph (c)(6).

(6) *Reporting periods and filing groups*—(i) *Reporting period*—(A) *In general*. A broker may elect to use the calendar month, quarter, or year as the broker's reporting period. A broker may separately elect a reporting period for each filing group.

(B) *Election*. For each calendar year, a broker shall elect a reporting period by filing Forms 1096 and 1099 in the manner elected. A different reporting period may be subsequently elected by filing in the manner subsequently elected, provided no duplication of reported transactions results.

(ii) *Filing group*—(A) *In general*. A broker may elect to group customers or customer accounts by office, branch, department or other method of operational classification and separately file Forms 1096 and 1099 for each filing group.

(B) *Election*. For each calendar year, a broker shall elect filing groups by filing Forms 1096 and 1099 in the manner elected. Different filing groups may be subsequently elected by filing in the manner subsequently elected, provided no duplication of reported transactions results.

(iii) *Example*. The following example illustrates the rules of this paragraph (c)(6):

*Example*. The A department of C, a broker, files a separate report for each month of 1984, whereas the B department of C files one report for all of 1984. C makes no other reports or returns of information under section 6045 for 1984. C had thereby elected two filing groups for 1984, the A department and the B department. The A department has the calendar month as its 1984 reporting period, whereas the B department has the calendar year as its 1984 reporting period. The same result would occur if A and B were offices or branches of C.

(7) *Exception for certain sales of agricultural commodities and commodity certificates*—(i) *Agricultural commodities*. No return of information is required under section 6045 for a spot or forward sale of an agricultural commodity. This paragraph (c)(7)(i) does not except from reporting sales of agricultural com-

modities pursuant to regulated futures contracts, sales of derivative interests in agricultural commodities, or sales described in paragraph (c)(7)(iii) of this section.

(ii) *Commodity Credit Corporation certificates*. Except as otherwise provided in a revenue ruling or revenue procedure, no return of information is required under section 6045 with respect to a sale of a commodity certificate issued by the Commodity Credit Corporation under 7 CFR 1470.4 (1990).

(iii) *Sales involving designated warehouses*. Paragraph (c)(7)(i) of this section does not apply to any sale involving a warehouse receipt for an agricultural commodity issued by a designated warehouse for an agricultural commodity of the type for which the warehouse is a designated warehouse.

(iv) *Definitions*. For purposes of this paragraph (c)(7):

(A) *Agricultural commodity*. An "agricultural commodity" includes, but is not limited to, a commodity within the meaning of paragraph (a)(5) of this section that is a grain, feed, livestock, meat, oil seed, timber, or fiber.

(B) *Spot sale*. A spot sale is a sale that results in the substantially contemporaneous delivery of a commodity.

(C) *Forward sale*. A forward sale is a sale pursuant to a forward contract within the meaning of paragraph (a)(7) of this section.

(D) *Designated warehouse*. A designated warehouse is a warehouse, depository, or other similar entity, designated by a commodity exchange under 7 CFR 1.43 (1992), in which or out of which a particular type of agricultural commodity is deliverable in satisfaction of a regulated futures contract.

(v) *Effective dates*. Paragraph (c)(7) of this section applies to sales effected on or after January 1, 1993. For sales effected before January 1, 1993, the following transactions are excepted from the information reporting requirements of section 6045:

(A) Spot or forward sales of agricultural products or commodities (but not sales of interests in agricultural products or commodities, such as sales of regulated futures contracts or forward contracts), effected by any person regardless of whether that person takes

title to the agricultural products or commodities; and

(B) Sales of negotiable commodity certificates issued by the Commodity Credit Corporation.

(d) *Information required*—(1) *In general.* A broker that is required to make a return of information under paragraph (c) during a reporting period shall report on a separate Form 1096 for each filing group, showing such information as may be required by Form 1096, in the form, manner, and number of copies required by Form 1096.

(2) *Transactional reporting.* As to each sale with respect to which a broker is required to make a return of information under this section, the broker, except as provided in paragraphs (c)(5) and (p)(1), shall show on Form 1099 the name, address, and taxpayer identification number of the customer, the property sold, Committee on Uniform Security Identification Procedures (CUSIP) number of the security sold (if known), the gross proceeds, sale date, and such other information as may be required by Form 1099, in the form, manner, and number of copies required by Form 1099.

(3) *Bond sales between interest payment dates.* As to each sale of a debt obligation prior to maturity with respect to which a broker is required to make a return of information under this section, a broker shall show separately on Form 1099 the amount of accrued and unpaid interest as of the sale date that must be reported by the customer as interest income under § 1.61-7(d) (but not the amount of any original issue or market discount). Such interest information shall be shown in the manner and at the time required by Form 1099 and section 6049.

(4) *Sale date.* With respect to sales of property that are reportable under this section, a broker must report a sale as occurring on the date the sale is entered on the books of the broker.

(5) *Gross proceeds.* The gross proceeds on a sale are the total amount paid to the customer or credited to the customer's account as a result of such sale reduced by the amount of any interest reported under paragraph (d)(3) and increased by any amount not so paid or credited by reason of repayment of margin loans. In the case of a closing

transaction which results in a loss, gross proceeds are the amount debited from the customer's account. The broker may, but is not required to, take commissions and option premiums into account in determining gross proceeds, provided the treatment chosen is consistent with the books of the broker.

(6) *Conversion into United States dollars of proceeds paid in foreign currency*—

(i) *Conversion rules.* When a payment is made in a foreign currency, the U.S. dollar amount shall be determined by converting such foreign currency into U.S. dollars on the date of payment at the spot rate (as defined in § 1.988-1(d)(1)) or pursuant to a reasonable spot rate convention. For example, a withholding agent may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner or his or her delegate.

(ii) *Effect of identification under § 1.988-5(a), (b), or (c) where the taxpayer effects a sale and a hedge through the same broker*—(A) *In general.* In lieu of the amount reportable under paragraph (d)(6)(i) of this section, the amount subject to reporting shall be the integrated amount computed under § 1.988-5(a), (b) or (c) if—

(1) A taxpayer effects through a broker a sale or exchange of nonfunctional currency (as defined in § 1.988-1(c)) and hedges all or a part of such sale as provided in § 1.988-5(a), (b) or (c) with the same broker; and

(2) The taxpayer complies with the requirements of § 1.988-5(a), (b) or (c) and so notifies the broker prior to the end of the calendar year in which the sale occurs.

(B) *Effective date.* The provisions of this paragraph (d)(6)(ii) apply to transactions entered into after December 31, 2000.

(7) *Coordination with reporting rules for widely held fixed investment trusts under § 1.671-5 of this chapter.* See § 1.671-5 for the reporting rules for widely held fixed investment trusts (as defined under that section).

(e) *Reporting of barter exchanges*—(1) *Requirement of reporting.* A barter exchange shall, except as otherwise provided, report in the manner prescribed in this section.

(2) *Exchanges required to be reported*—(i) *In general.* Except as provided in paragraphs (e)(2)(ii), (g), and (p)(2), a barter exchange shall make a return of information with respect to exchanges of personal property or services through the barter exchange during the calendar year among its members or clients or between such persons and the barter exchange. For this purpose, property or services are exchanged through a barter exchange if payment for property or services is made by means of a credit on the books of the barter exchange or scrip issued by the barter exchange or if the barter exchange arranges a direct exchange of property or services among its members or clients or exchanges property or services with a member or client.

(ii) *Exemption.* A barter exchange through which there are fewer than 100 exchanges during the calendar year is not required to report for, or make a return of information with respect to exchanges during, such calendar year. The Commissioner may require multiple barter exchanges to be combined for purposes of the proceeding sentence upon a determination that a material purpose for the formation or continuation of one or more of the barter exchanges to be combined was to receive one or more exemptions pursuant to this subparagraph.

(f) *Information required*—(1) *In general.* A person that is a barter exchange during a calendar year shall report on Form 1096 showing the information required thereon for such year.

(2) *Transactional reporting*—(i) *In general.* As to each exchange with respect to which a barter exchange is required to make a return of information under this section, the barter exchange, except as provided in paragraph (p)(2), shall show on Form 1099 the name, address, and taxpayer identification number of each member or client providing property or services in the exchange, the property or services provided, the amount received by the member or client for such property or services, the date on which the exchange occurred,

and such other information as may be required by Form 1099, in the form, manner, and number of copies required by Form 1099.

(ii) *Exception for corporate member or client.* As to each corporate member or client providing property or services in an exchange for which a return of information is required under this section, the barter exchange may report the name, address, and taxpayer identification number of the corporate member or client, the aggregate amount received by the corporate member or client during the reporting period for property or services provided by such corporate member or client in exchange for which a return of information is required, and such other information as may be required by Form 1099, in the form, manner, and number of copies required by Form 1099.

(iii) *Definition.* For purposes of paragraph (f)(2)(ii) of this section, the term “corporate member or client” means a member or client of a barter exchange which is a corporation as defined in section 7701(a)(3) (including an insurance company). The term corporation includes a pool, syndicate, partnership, or unincorporated association composed exclusively of corporations. A barter exchange may treat a member or client as a corporation (and therefore as a corporate member or client) if such member or client provides an exemption certificate as described in §1.3406(h)-3(a) of this chapter or provided that—

(A) The name of the member or client contains the term “insurance company,” “indemnity company,” “reinsurance company,” or “assurance company”;

(B) The name of the member or client contains one of the following unambiguous expressions of corporate status: Incorporated, Inc., Corporation, Corp., or P.C., but not Company or Co.; or

(C) The member or client is known to the barter exchange to be a corporation through a corporate resolution or similar document on file with the barter exchange clearly indicating corporate status.

(3) *Exchange date.* For purposes of this section an exchange is considered to occur with respect to a member or client of a barter exchange on the date

cash, property, a credit, or scrip is actually or constructively received by the member or client as a result of the exchange. (See §1.451-2 for rules pertaining to constructive receipt.)

(4) *Amount received.* The amount received by a member or client in an exchange includes cash received, the fair market value of any property or services received, and the fair market value of any credits to the account of the member or client on the books of the barter exchange or scrip issued to the member or client by the barter exchange, but does not include any amount received by the member or client in a subsequent exchange of credits or scrip. For purposes of this section, the fair market value of a credit or scrip is the value assigned to such credit or scrip by the issuing barter exchange for the purpose of exchanges unless the Commissioner requires the use of a different value that the Commissioner determines more accurately reflects fair market value.

(5) *Meaning of terms.* For purposes of this paragraph (f)—(i) A credit is an amount on the books of the barter exchange that is transferable from one member or client of the barter exchange to another such member or client, or to the barter exchange in payment for property or services;

(ii) Scrip is a token issued by the barter exchange that is transferable from one member or client, of the barter exchange to another such member or client, or to the barter exchange, in payment for property or services; and

(iii) Property does not include a credit or scrip.

(6) *Reporting period.* A barter exchange shall use the calendar year as the reporting period.

(g) *Exempt foreign persons—(1) Brokers.* No return of information is required to be made by a broker with respect to a customer who is considered to be an exempt foreign person under this paragraph (g)(1). A broker may treat a customer as an exempt foreign person under the circumstances described in paragraphs (g)(1)(i) through (iii) of this section.

(i) With respect to a sale effected at an office of a broker either inside or outside the United States, the broker may treat the customer as an exempt

foreign person if the broker can, prior to the payment, associate the payment with documentation upon which it can rely in order to treat the customer as a foreign beneficial owner in accordance with §1.1441-1(e)(1)(ii), or as made to a foreign payee in accordance with §1.6049-5(d)(1) or presumed to be made to a foreign payee under §1.6049-5(d)(2) or (3). For purposes of this paragraph (g)(1)(i), the provisions in §1.6049-5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman) shall apply. The provisions of §1.1441-1 shall apply by substituting the terms *broker* and *customer* for the terms *withholding agent* and *payee* and without regard for the fact that the provisions apply to amounts subject to withholding under chapter 3 of the Internal Revenue Code (Code). The provisions of §1.6049-5(d) shall apply by substituting the terms *broker* and *customer* for the terms *payor* and *payee*. For purposes of this paragraph (g)(1)(i), a broker that is required to obtain, or chooses to obtain, a beneficial owner withholding certificate described in §1.1441-1(e)(2)(i) from an individual may rely on the withholding certificate only to the extent the certificate includes a certification that the beneficial owner has not been, and at the time the certificate is furnished, reasonably expects not to be present in the United States for a period aggregating 183 days or more during each calendar year to which the certificate pertains. The certification is not required if a broker receives documentary evidence under §1.6049-5(c)(1) or (4).

(ii) With respect to a redemption or retirement of stock or an obligation (the interest or original issue discount on, which is described in §1.6049-5(b)(6), (7), (10), or (11) or the dividends on, which are described in §1.6042-3(b)(1)(iv)) that is effected at an office of a broker outside the United States by the issuer (or its paying or transfer agent), the broker may treat the customer as an exempt foreign person if the broker is not also acting in its capacity as a custodian, nominee, or other agent of the payee.

(iii) With respect to a sale effected by a broker at an office of the broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person for the period that those proceeds are assets blocked, as described in §1.1441-2(e)(3). For purposes of this paragraph (g)(1)(iii) and section 3406, a sale is deemed to occur in accordance with paragraph (d)(4) of this section. The exemption in this paragraph (g)(1)(iii) shall terminate when payment of the proceeds is deemed to occur in accordance with the provisions of §1.1441-2(e)(3).

(2) *Barter exchange.* No return of information is required by a barter exchange with respect to a client or a member that the barter exchange may treat as a foreign person pursuant to the procedures described in paragraph (g)(1) of this section.

(3) *Applicable rules—(i) Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (g)(1)(i) or (2) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the broker or barter exchange cannot reliably associate the payment either with a Form W-9 furnished by one of the joint owners in the manner required in §§31.3406(d)-1 through 31.3406(d)-5 of this chapter, or with documentation described in paragraph (g)(1)(i) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (g)(3)(i), the grace period described in §1.6049-5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(ii) *Special rules for determining who the customer is.* For purposes of this paragraph (g), the determination of who the customer is shall be made on the basis of the provisions in §1.6049-5(d) by substituting in that section the terms *payor* and *payee* with the terms *broker* and *customer*.

(iii) *Place of effecting sale—(A) Sale outside the United States.* For purposes of this paragraph (g), a sale is considered to be effected by a broker at an of-

fice outside the United States if, in accordance with instructions directly transmitted to such office from outside the United States by the broker's customer, the office completes the acts necessary to effect the sale outside the United States. The acts necessary to effect the sale may be considered to have been completed outside the United States without regard to whether—

(1) Pursuant to instructions from an office of the broker outside the United States, an office of the same broker within the United States undertakes one or more steps of the sale in the United States; or

(2) The gross proceeds of the sale are paid by a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account.

(B) *Sale inside the United States.* For purposes of this paragraph (g), a sale that is considered to be effected by a broker at an office outside the United States under paragraph (g)(3)(iii)(A) of this section shall nevertheless be considered to be effected by a broker at an office inside the United States if either—

(1) The customer has opened an account with a United States office of that broker;

(2) The customer has transmitted instructions concerning this and other sales to the foreign office of the broker from within the United States by mail, telephone, electronic transmission or otherwise (unless the transmissions from the United States have taken place in isolated and infrequent circumstances);

(3) The gross proceeds of the sale are paid to the customer by a transfer of funds into an account (other than an international account as defined in §1.6049-5(e)(4)) maintained by the customer in the United States or mailed to the customer at an address in the United States;

(4) The confirmation of the sale is mailed to a customer at an address in the United States; or

(5) An office of the same broker within the United States negotiates the sale with the customer or receives instructions with respect to the sale from the customer.

(iv) *Special rules where the customer is a foreign intermediary or certain U.S. branches.* A foreign intermediary, as defined in § 1.1441-1(c)(13), is an exempt foreign person, except when the broker has actual knowledge (within the meaning of § 1.6049-5(c)(3)) that the person for whom the intermediary acts is a U.S. person that is not exempt from reporting under paragraph (c)(3) of this section or the broker is required to presume under § 1.6049-5(d)(3) that the payee is a U.S. person that is not an exempt recipient. If an intermediary, as defined in § 1.1441-1(c)(13), or a U.S. branch described in § 1.1441-1(b)(2)(iv) (other than a U.S. branch that is treated as a U.S. person) receives a payment from a payor or middleman, which payment the payor or middleman can associate with a valid withholding certificate described in § 1.1441-1(e)(3)(ii), (iii), or (v) furnished by such intermediary or U.S. branch, then the intermediary or U.S. branch is not required to report such payment when it, in turn, pays the amount to the person whose name is on the certificate furnished by the intermediary or U.S. branch to the payor or middleman, unless, and to the extent, the intermediary or U.S. branch knows that the payment is required to be reported under this section and was not so reported. For example, if a foreign intermediary or U.S. branch fails to provide information regarding U.S. persons that are not exempt from reporting under paragraph (c)(3) of this section to the person from whom the intermediary or U.S. branch receives the payment, the foreign intermediary or U.S. branch must report the payment on an information return. The exception of this paragraph (g)(3)(iv) shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Internal Revenue Code.

(4) *Examples.* The application of the provisions of this paragraph (g) may be illustrated by the following examples:

*Example 1.* FC is a foreign corporation that is not a U.S. payor or U.S. middleman described in § 1.6049-5(c)(5) that regularly issues and retires its own debt obligations. A is an individual whose residence address is inside the United States, who holds a bond issued by FC that is in registered form (within the meaning of section 163(f) and the regulations under that section). The bond is retired by

FP, a foreign corporation that is a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of FC. FP mails the proceeds to A at A's U.S. address. The sale would be considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section except that the proceeds of the sale are mailed to a U.S. address. For that reason, the sale is considered to be effected at an office of the broker inside the United States under paragraph (g)(3)(iii)(B) of this section. Therefore, FC is a broker under paragraph (a)(1) of this section with respect to this transaction because, although it is not a U.S. payor or U.S. middleman, as described in § 1.6049-5(c)(5), it is deemed to effect the sale in the United States. FP is a broker for the same reasons. However, under the multiple broker exception under paragraph (c)(3)(iii) of this section, FP, rather than FC, is required to report the payment because FP is responsible for paying the holder the proceeds from the retired obligations. Under paragraph (g)(1)(i) of this section, FP may not treat A as an exempt foreign person and must make an information return under section 6045 with respect to the retirement of the FC bond, unless FP obtains the certificate or documentation described in paragraph (g)(1)(i) of this section.

*Example 2.* The facts are the same as in *Example 1* except that FP mails the proceeds to A at an address outside the United States. Under paragraph (g)(3)(iii)(A) of this section, the sale is considered to be effected at an office of the broker outside the United States. Therefore, under paragraph (a)(1) of this section, neither FC nor FP is a broker with respect to the retirement of the FC bond. Accordingly, neither is required to make an information return under section 6045.

*Example 3.* The facts are the same as in *Example 2* except that FP is also the agent of A. The result is the same as in *Example 2*. Neither FP nor FC are brokers under paragraph (a)(1) of this section with respect to the sale since the sale is effected outside the United States and neither of them are U.S. payors (within the meaning of § 1.6049-5(c)(5)).

*Example 4.* The facts are the same as in *Example 1* except that the registered bond held by A was issued by DC, a domestic corporation that regularly issues and retires its own debt obligations. Also, FP mails the proceeds to A at an address outside the United States. Interest on the bond is not described in paragraph (g)(1)(ii) of this section. The sale is considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section. DC is a broker under paragraph (a)(1)(i)(B) of this section. DC is not required to report the payment under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S.

payor described in § 1.6049-5(c)(5) and the sale is effected outside the United States. Accordingly, FP is not a broker under paragraph (a)(1) of this section.

*Example 5.* The facts are the same as in *Example 4* except that FP is also the agent of A. DC is a broker under paragraph (a)(1) of this section. DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in § 1.6049-5(c)(5) and the sale is effected outside the United States and therefore FP is not a broker under paragraph (a)(1) of this section.

*Example 6.* The facts are the same as in *Example 4* except that the bond is retired by DP, a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of DC. DP is a U.S. payor under § 1.6049-5(c)(5). DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. DP is required to make an information return under section 6045 because it is the person responsible for paying the proceeds from the retired obligations unless DP obtains the certificate or documentary evidence described in paragraph (g)(1)(i) of this section.

*Example 7.* Customer A, an individual, owns U.S. corporate bonds issued in registered form after July 18, 1984 and carrying a stated rate of interest. The bonds are held through an account with foreign bank, X, and are held in street name. X is a wholly-owned subsidiary of a U.S. company and is not a qualified intermediary within the meaning of § 1.1441-1(e)(5)(ii). X has no documentation regarding A. A instructs X to sell the bonds. In order to effect the sale, X acts through its agent in the United States, Y. Y sells the bonds and remits the sales proceeds to X. X credits A's account in the foreign country. X does not provide documentation to Y.

(i) *Y's obligations to withhold and report.* Y treats X as the customer, and not A, because Y cannot treat X as an intermediary because it has received no documentation from X. Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is an exempt recipient. Further, Y is not required to report the amount of accrued interest paid to X on Form 1042-S under § 1.1461-1(c)(2)(ii) because accrued interest is not an amount subject to reporting unless the withholding agent knows that the obligation is being sold with a primary purpose of avoiding tax.

(ii) *X's obligations to withhold and report.* Although X has effected, within the meaning of paragraph (a)(1) of this section, the sale of a security at an office outside the United States under paragraph (g)(3)(iii) of this section, X is treated as a broker, under para-

graph (a)(1) of this section, because as a wholly-owned subsidiary of a U.S. corporation, X is a U.S. payor. See § 1.6049-5(c)(5). Under the presumptions described in § 1.6049-5(d)(2), X must presume that, with respect to the sales proceeds, A is a U.S. person who is not an exempt recipient. Therefore the payment of sales proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no obligation to backup withhold on the payment based on the exemption under § 1.3406(g)-1(e) of this chapter, unless X has actual knowledge that A is a U.S. person that is not an exempt recipient. X is also required to separately report the accrued interest (see paragraph (d)(3) of this section) on Form 1099 under section 6049 because A is also presumed to be a U.S. person who is not an exempt recipient under the presumption rule in § 1.6049-5(d)(2) and § 1.1441-1(b)(3)(iii) since accrued interest is not an amount subject to reporting and therefore the presumption of foreign status for offshore accounts under § 1.1441-1(b)(3)(iii)(D) does not apply.

*Example 8.* The facts are the same as in *Example 7*, except that instead of U.S. corporate bonds that carry stated interest, A owns original issue discount instruments described in section 871(g)(1)(B)(i) (i.e., obligations payable 183 days or less from the date of original issue). In addition, the sale is in a transaction other than a redemption.

(i) *Y's obligations to withhold and report.* Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is an exempt recipient.

(ii) *X's obligations to withhold and report.* Although X has effected, within the meaning of paragraph (a)(1) of this section, the sale of a security at an office outside the United States under paragraph (g)(3)(iii) of this section, X is treated as a broker, under paragraph (a)(1) of this section, because as a wholly-owned subsidiary of a U.S. corporation, X is a U.S. payor. See § 1.6049-5(c)(5). Under the presumptions described in § 1.6049-5(d)(2), X must presume that, with respect to the sales proceeds, A is a U.S. person who is not an exempt recipient. Therefore the payment of sales proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no obligation to backup withhold on the payment based on the exemption under § 1.3406(g)-1(e) of this chapter, unless X has actual knowledge that A is a U.S. person that is not an exempt recipient. X is not required to separately report the amount of accrued original issue discount. See paragraph (d)(3) of this section.

*Example 9.* The facts are the same as in *Example 8*, except that X is a foreign corporation that is not a U.S. payor under § 1.6049-5(c).

(i) *Y's obligations to withhold and report.* Y is not required to report the sales proceeds

under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is the person responsible for paying the proceeds from the sale to A.

(ii) *X's obligations to withhold and report.* Although A is presumed to be a U.S. payee under the presumptions of §1.6049-5(d)(2), X is not considered to be a broker under paragraph (a)(1) of this section because it is a not a U.S. payor under §1.6049-5(c)(5). Therefore X is not required to report the sale under paragraph (c)(2) of this section.

(5) *Effective date—(i) General rule.* The provisions of this paragraph (g) apply to payments made after December 31, 2000.

(ii) *Transition rules.* The validity of a withholding certificate (namely, Form W-8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such a withholding certificate remain valid after December 31, 2000. The rule in this paragraph (g)(5)(ii), however, does not apply to extend the validity period of a form that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(5)(ii), a payor may choose not to take advantage of the transition rule in this paragraph (g)(5)(ii) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new with-

holding certificate remains valid for the period specified in §1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

(h) *Identity of customer—(1) In general.* For purposes of this section, a broker or barter exchange shall treat the person who appears on the books and records of the broker or barter exchange with respect to property or services as the principals with respect thereto.

(2) *Examples.* The following examples illustrate the rule of this paragraph (h):

*Example 1.* The records of A, a broker, show an account in the name of "B". B is a nominee for C. All reporting with respect to such account shall treat B as the customer.

*Example 2.* J, an individual, places an order with H, a broker, to sell J's stock that is held by P, a broker/dealer, in an account for J with P designated as nominee for J, and to credit the gross proceeds from the sale to J's account with P. The account is in the name of P, so that H's customer is P.

(i) [Reserved]

(j) *Time and place for filing; cross-reference to penalty.* Forms 1096 and 1099 required under this section shall be filed after the last calendar day of the reporting period elected by the broker or barter exchange and on or before February 28 of the following calendar year with the appropriate Internal Revenue Service Center, the address of which is listed in the instructions for Form 1096. See paragraph (l) of this section for the requirement to file certain returns on magnetic media. For provisions relating to the penalty provided for the failure to file timely a correct information return under section 6045(a), see §301.6721-1 of this chapter. See §301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(k) *Requirement and time for furnishing statement; cross-reference to penalty—(1) General requirements.* A broker or barter exchange making a return of information under this section with respect to a transaction shall furnish to the person whose identifying number is (or is required to be) shown on such return a written statement showing the information required by paragraph (c)(5),

(d), (f), or (p) of this section and containing a legend stating that such information is being reported to the Internal Revenue Service. If the return of information is not made on magnetic media, this requirement may be satisfied by furnishing to such person a copy of all Forms 1099 with respect to such person filed with the Internal Revenue Service Center. A statement shall be considered to be furnished to a person to whom a statement is required to be made under this paragraph (k) if it is mailed to such person at the last address of such person known to the broker or barter exchange.

(2) *Time for furnishing statements.* A broker or barter exchange may furnish the statements required by this paragraph (k) yearly, quarterly, monthly, or on any other basis, without regard to the reporting period elected by the broker or barter exchange, provided that all statements required to be furnished under this paragraph (k) for a calendar year shall be furnished on or before January 31 of the following calendar year.

(3) *Cross-reference to penalty.* For provisions for failure to furnish timely a correct payee statement, see §301.6724-1 of this chapter (Procedure and Administration Regulations). See §301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(1) *Use of magnetic media.* For information returns filed after December 31, 1996, see §301.6011-2 of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 on magnetic media, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (j) of this section.

(m) *Reporting on options transactions.* [Reserved]

(n) *Reporting on bond discounts.* [Reserved]

(o) *Additional reporting by stock transfer agents.* [Reserved]

(p) *Transitional rules—(1) Information required from brokers.* In the case of reporting periods ending before January 1, 1984, a broker may show the informa-

tion required by this paragraph (p)(1) on Form 1099 in lieu of the information required under paragraph (d)(2). As to each customer account for which a return of information is required under this section with respect to sales, the broker must report the name, address, and taxpayer identification number of the customer, the aggregate gross proceeds of all sales of the account during the reporting period for which a return of information is required under this section, and such other information as may be required by Form 1099, in the form, manner, and number of copies required by Form 1099.

(2) *Information required from barter exchanges.* In the case of reporting periods ending before January 1, 1984, a barter exchange may show the information required by this paragraph (p)(2) on Form 1099 in lieu of the information required under paragraph (f)(2). As to each member or client providing property or services in an exchange for which a return of information is required under this section, the barter exchange must report the name, address, and taxpayer identification number of the member or client, the aggregate amount received by the member or client during the reporting period for property or services provided by such member or client in exchanges for which a return of information is required, and such other information as may be required by Form 1099, in the form, manner, and number of copies required by Form 1099.

(q) *Effective date.* This section applies to calendar year 1983 and all succeeding calendar years, and, as to 1983, only to transactions occurring on or after July 1, 1983. With regard to paragraph (l) of this section, see section 6011(e) of the Internal Revenue Code for information returns required to be filed after December 31, 1989, and before January 1, 1997; and see paragraph (l) of this section for information returns required to be filed after December 31, 1996.

(r) *Electronic filing.* Notwithstanding the time prescribed for filing in paragraph (j) of this section, Forms 1096 and 1099 required under this section for reporting periods ending during a calendar year shall, if filed electronically, be filed after the last calendar day of the reporting period elected by the

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broker or barter exchange and on or before March 31 of the following calendar year.

[T.D. 7873, 48 FR 10304, Mar. 11, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.6045-1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 1.6045-1T Returns of information of brokers and barter exchanges (temporary).

(a)-(k) [Reserved]

For further guidance, see § 1.6045-1 (a) through (k).

(1) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011-2T of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. For information returns filed prior to January 1, 1997, see § 1.6045-1(l)

[T.D. 8683, 61 FR 53060, Oct. 10, 1996]

### § 1.6045-2 Furnishing statement required with respect to certain substitute payments.

(a) *Requirement of furnishing statements*—(1) *In general.* Any broker (as defined in paragraph (a)(4)(ii) of this section) that transfers securities (as defined in § 1.6045-1(a)(3)) of a customer (as defined in paragraph (a)(4)(iii) of this section) for use in a short sale and receives on behalf of the customer a substitute payment (as defined in paragraph (a)(4)(i)) shall, except as otherwise provided, furnish a statement to the customer identifying such payment as being a substitute payment.

(2) *Special rule for transfers for broker's own use.* Any broker that borrows securities of a customer for use in a short sale entered into for the broker's own account shall be deemed to have transferred the stock to itself and received on behalf of the customer any substitute payment made with respect to the transferred securities, and shall be required to furnish a statement with respect to such payments in accordance with paragraph (a)(1) of this section.

(3) *Special rule for furnishing statements to individual customers with respect to payments in lieu of dividends*—(i) *In general.* Except as otherwise provided

in paragraph (a)(3)(ii) of this section, for taxable years beginning before January 1, 2003, a broker that receives a substitute payment in lieu of a dividend on behalf of a customer who is an individual (“individual customer”) need not furnish a statement to the customer.

(ii) *Reporting for certain dividends.* Any broker that receives on behalf of an individual customer a substitute payment in lieu of—

(A) An exempt-interest dividend (as defined in paragraph (a)(4)(vii) of this section);

(B) A capital gain dividend (as defined in paragraph (a)(4)(vi) of this section);

(C) A distribution treated as a return of capital under section 301(c)(2) or (c)(3); or

(D) An FTC dividend (as defined in paragraph (a)(4)(viii) of this section) shall furnish a statement to the individual customer identifying the payment as being a substitute payment as prescribed by this section, provided that the broker has reason to know not later than the record date of the dividend payment that the payment is a substitute payment in lieu of an exempt-interest dividend, a capital gain dividend, a distribution treated as a return of capital, or an FTC dividend.

(4) *Meaning of terms.* The following definitions apply for purposes of this section.

(i) The term *substitute payment* means a payment in lieu of—

(A) Tax-exempt interest, to the extent that interest has accrued on the obligation for the period during which the short sale is open;

(B) A dividend, the ex-dividend date for which occurs during the period after the transfer of stock for use in a short sale, and prior to the closing of the short sale; or

(C) Any other item specified in a rule-related notice published in the FEDERAL REGISTER (provided that such items shall be subject to the rules of this section only subsequent to the time of such publication).

For purposes of this section original issue discount accruing on an obligation (the interest upon which is exempt from tax under section 103) for the period during which the short sale is open