

nishing such information under such section is after the date of the enactment of this Act [Nov. 5, 1990].

“(2) any requirement under such section 6038A(a) to maintain records which were in existence on or after March 20, 1990,

“(3) any requirement to authorize a corporation to act as a limited agent under section 6038A(e)(1) of such Code (as so amended) if the time for authorizing such action is after the date of the enactment of this Act, and

“(4) any summons issued after such date of enactment,

without regard to when the taxable year (to which the information, records, authorization, or summons relates) began. Such amendments shall also apply in any case to which they would apply without regard to this section.

“(b) CONTINUATION OF OLD FAILURES.—In the case of any failure with respect to a taxable year beginning on or before July 10, 1989, which first occurs on or before the date of the enactment of this Act [Nov. 5, 1990] but which continues after such date of enactment, section 6038A(d)(2) of the Internal Revenue Code of 1986 (as amended by subsection (c) of such section 7403) shall apply for purposes of determining the amount of the penalty imposed for 30-day periods referred to in such section 6038A(d)(2) which begin after the date of the enactment of this Act.”

### **§ 6038B. Notice of certain transfers to foreign persons**

#### **(a) In general**

Each United States person who—

(1) transfers property to—

(A) a foreign corporation in an exchange described in section 332, 351, 354, 355, 356, or 361, or

(B) a foreign partnership in a contribution described in section 721 or in any other contribution described in regulations prescribed by the Secretary, or

(2) makes a distribution described in section 336 to a person who is not a United States person,

shall furnish to the Secretary, at such time and in such manner as the Secretary shall by regulations prescribe, such information with respect to such exchange or distribution as the Secretary may require in such regulations.

#### **(b) Exceptions for certain transfers to foreign partnerships; special rule**

##### **(1) Exceptions**

Subsection (a)(1)(B) shall apply to a transfer by a United States person to a foreign partnership only if—

(A) the United States person holds (immediately after the transfer) directly or indirectly at least a 10-percent interest (as defined in section 6046A(d)) in the partnership, or

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

For purposes of the preceding sentence, the value of any transferred property is its fair market value at the time of its transfer.

##### **(2) Special rule**

If by reason of an adjustment under section 482 or otherwise, a contribution described in

subsection (a)(1) is deemed to have been made, such contribution shall be treated for purposes of this section as having been made not earlier than the date specified by the Secretary.

#### **(c) Penalty for failure to furnish information**

##### **(1) In general**

If any United States person fails to furnish the information described in subsection (a) at the time and in the manner required by regulations, such person shall pay a penalty equal to 10 percent of the fair market value of the property at the time of the exchange (and, in the case of a contribution described in subsection (a)(1)(B), such person shall recognize gain as if the contributed property had been sold for such value at the time of such contribution).

##### **(2) Reasonable cause exception**

Paragraph (1) shall not apply to any failure if the United States person shows such failure is due to reasonable cause and not to willful neglect.

##### **(3) Limit on penalty**

The penalty under paragraph (1) with respect to any exchange shall not exceed \$100,000 unless the failure with respect to such exchange was due to intentional disregard.

(Added Pub. L. 98-369, div. A, title I, §131(d)(1), July 18, 1984, 98 Stat. 664; amended Pub. L. 105-34, title XI, §1144(a)-(c), Aug. 5, 1997, 111 Stat. 984, 985; Pub. L. 105-206, title VI, §6011(g), July 22, 1998, 112 Stat. 818; Pub. L. 109-135, title IV, §409(c), Dec. 21, 2005, 119 Stat. 2636.)

#### **Editorial Notes**

##### **AMENDMENTS**

2005—Subsec. (a)(1)(B). Pub. L. 109-135 inserted “or” at end.

1998—Subsec. (c). Pub. L. 105-206, §6011(g), made technical amendment to directory language of Pub. L. 105-206, §1144(c). See 1997 Amendment note below.

1997—Subsec. (a)(1). Pub. L. 105-34, §1144(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “transfers property to a foreign corporation in an exchange described in section 332, 351, 354, 355, 356, or 361, or”.

Subsec. (b). Pub. L. 105-34, §1144(b), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 105-34, §1144(c), as amended by Pub. L. 105-206, §6011(g), substituted “equal to 10 percent of the fair market value of the property at the time of the exchange (and, in the case of a contribution described in subsection (a)(1)(B), such person shall recognize gain as if the contributed property had been sold for such value at the time of such contribution)” for “equal to 25 percent of the amount of the gain realized on the exchange” in par. (1) and added par. (3).

Pub. L. 105-34, §1144(b), redesignated subsec. (b) as (c).

#### **Statutory Notes and Related Subsidiaries**

##### **EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109-135 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 409(d) of Pub. L. 109-135, set out as a note under section 961 of this title.

##### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of

the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Pub. L. 105-34, title XI, §1144(d)(1), Aug. 5, 1997, 111 Stat. 985, provided that: “The amendments made by this section [amending this section] shall apply to transfers made after the date of the enactment of this Act [Aug. 5, 1997].”

**EFFECTIVE DATE**

Section applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 367 of this title.

**ELECTION OF RETROACTIVE EFFECT**

Pub. L. 105-34, title XI, §1144(d)(2), Aug. 5, 1997, 111 Stat. 985, provided that: “Section 1494(c) of the Internal Revenue Code of 1986 shall not apply to any transfer after August 20, 1996, if all applicable reporting requirements under section 6038B of such Code (as amended by this section) are satisfied. The Secretary of the Treasury or his delegate may prescribe simplified reporting requirements under the preceding sentence.”

**§ 6038C. Information with respect to foreign corporations engaged in U.S. business**

**(a) Requirement**

If a foreign corporation (hereinafter in this section referred to as the “reporting corporation”) is engaged in a trade or business within the United States at any time during a taxable year—

(1) such corporation shall furnish (at such time and in such manner as the Secretary shall by regulations prescribe) the information described in subsection (b), and

(2) such corporation shall maintain (at the location, in the manner, and to the extent prescribed in regulations) such records as may be appropriate to determine the liability of such corporation for tax under this title as the Secretary shall by regulations prescribe (or shall cause another person to so maintain such records).

**(b) Required information**

For purposes of subsection (a), the information described in this subsection is—

(1) the information described in section 6038A(b), and

(2) such other information as the Secretary may prescribe by regulations relating to any item not directly connected with a transaction for which information is required under paragraph (1).

**(c) Penalty for failure to furnish information or maintain records**

The provisions of subsection (d) of section 6038A shall apply to—

(1) any failure to furnish (within the time prescribed by regulations) any information described in subsection (b), and

(2) any failure to maintain (or cause another to maintain) records as required by subsection (a),

in the same manner as if such failure were a failure to comply with the provisions of section 6038A.

**(d) Enforcement of requests for certain records**

**(1) Agreement to treat corporation as agent**

The rules of paragraph (3) shall apply to any transaction between the reporting corporation and any related party who is a foreign person unless such related party agrees (in such manner and at such time as the Secretary shall prescribe) to authorize the reporting corporation to act as such related party’s limited agent solely for purposes of applying sections 7602, 7603, and 7604 with respect to any request by the Secretary to examine records or produce testimony related to any such transaction or with respect to any summons by the Secretary for such records or testimony. The appearance of persons or production of records by reason of the reporting corporation being such an agent shall not subject such persons or records to legal process for any purpose other than determining the correct treatment under this title of any transaction between the reporting corporation and such related party.

**(2) Rules where information not furnished**

If—

(A) for purposes of determining the amount of the reporting corporation’s liability for tax under this title, the Secretary issues a summons to such corporation to produce (either directly or as an agent for a related party who is a foreign person) any records or testimony,

(B) such summons is not quashed in a proceeding begun under paragraph (4) of section 6038A(e) (as made applicable by paragraph (4) of this subsection) and is not determined to be invalid in a proceeding begun under section 7604(b) to enforce such summons, and

(C) the reporting corporation does not substantially comply in a timely manner with such summons and the Secretary has sent by certified or registered mail a notice to such reporting corporation that such reporting corporation has not so substantially complied,

the Secretary may apply the rules of paragraph (3) with respect to any transaction or item to which such summons relates (whether or not the Secretary begins a proceeding to enforce such summons). If the reporting corporation fails to maintain (or cause another to maintain) records as required by subsection (a), and by reason of that failure, the summons is quashed in a proceeding described in subparagraph (B) or the reporting corporation is not able to provide the records requested in the summons, the Secretary may apply the rules of paragraph (3) with respect to any transaction or item to which the records relate.

**(3) Applicable rules**

If the rules of this paragraph apply to any transaction or item, the treatment of such transaction (or the amount and treatment of any such item) shall be determined by the Secretary in the Secretary’s sole discretion from the Secretary’s own knowledge or from such information as the Secretary may obtain through testimony or otherwise.