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Information Reporting to U.S. Persons — Payments Subject to Backup Withholding

by

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PORTFOLIO DESCRIPTION

Tax Management Portfolio, *Information Reporting to U.S. Persons — Payments Subject to Backup Withholding*, No. 643-2nd, discusses the requirements relative to backup withholding as required under §3406 and the types of payments that may be subject to the imposition of this tax. Backup withholding is imposed on certain reportable payments when a payee or recipient fails to provide a taxpayer identification number or the appropriate documentation. The Portfolio describes the timing as to when withholding is required, the process to remit the tax to the IRS, and the reporting required at year end.

The Portfolio discusses the various types of payments that may be subject to backup withholding, including interest, original issue discount (OID), dividends, broker proceeds, and miscellaneous payments. It addresses special reporting issues such as REMICs, REITs, and WHFITs, and the reporting requirements applicable at year end for payments subject to backup withholding that are reportable on Forms 1099 to payees or recipients and the IRS. The Portfolio also focuses on the penalties that may be imposed due to failures to correctly prepare information returns and report to recipients and the IRS.

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I. Overview

In 1982, Congress passed the 1982 Tax Equity and Fiscal Responsibility Act (TEFRA)[1] that required payors to withhold 20% from certain reportable payments when payees failed to provide the appropriate documentation as required under §3406.[2] TEFRA also included provisions that required 10% withholding on payments of interest and dividends. These provisions were repealed in 1983 before the effective date of the Act, and replaced by a new backup withholding regime.

Backup withholding is a tax that is imposed as a consequence of a payee's failure to provide appropriate documentation as requested by a payor, or the payee's failure to pay taxes owed to the Treasury. Taxes withheld are reported on various Forms 1099 and may be taken as a credit on the payee's tax return. To avoid the imposition of this tax, payees must be diligent in providing valid documentation to payers who will use the information received from payees to file information returns with the IRS.

Since 1982, information reporting has continued to evolve and become more complex. Congress seeks to use information reporting as a source of revenue to offset budget deficits as evidenced by the inclusion of certain new information reporting requirements in tax legislation. Additional new Forms 1099 are created every year as Treasury and the IRS strive to capture an increasing number of transactions in their efforts to improve compliance. Information reporting generally provides a strong incentive to taxpayers to include payments in their personal tax returns and thus avoid noncompliance issues with the IRS. Payments not reportable on Forms 1099 tend to be ignored by taxpayers and thus escape taxation.

Congress continues to encourage information reporting, mandating a supplemental platform for completing, filing, and distributing Forms 1099 through secure electronic means made available through the Treasury.[3] Pursuant to the mandate in the Taxpayer First Act, the IRS launched the Information Returns Intake System (IRIS), allowing taxpayers to electronically file Forms 1099.[4] IRIS provides taxpayers with IRS resources and guidance and allows them to prepare, file, and distribute Forms 1099 and create and maintain tax records.

The information contained in this Portfolio describes the various types of payments subject to reporting and backup withholding, the appropriate procedures for reporting at year-end, as well as the process to facilitate backup withholding.

Payments reportable on Form 1098 and on Form 1099 that are *not* subject to backup withholding under §3406 are discussed in 644 T.M., *Reportable Payments and Transactions Not Subject to Backup Withholding.*

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[1] Pub. L. No. 97-248.

[2] Unless otherwise indicated, all section references herein are to the Internal Revenue Code of 1986, as amended, and to the regulations promulgated thereunder.

[3] *See* Taxpayer First Act, Pub. L. No. 116-25, §2102.

[4] IRS News Release IR-2023-14 (Jan. 25, 2023).

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II. Backup Withholding

A. *In General*

Under §3406 a payor must withhold 24% of a reportable payment if the payee or recipient has failed to provide a taxpayer identification number (TIN), or the payor has been notified by the IRS or a broker that the TIN provided by the payee is incorrect.[5] If the reportable payment is interest or dividends, the payor is also required to withhold if notified by the IRS that the payee has underreported interest or dividends on their tax return, or the payee fails to certify that they are not subject to backup withholding subsequent to the payee receiving notification of underreporting.[6] Withholding is not applicable to certain minimal payments or payments that are exempt from withholding.[7] A payor must withhold at the time payment is made to the payee.[8]

B. *Payments Subject to Backup Withholding*

For purposes of backup withholding, a reportable payment may be interest (§6049(a)), dividends (§6042(a)), patronage dividends (§6044 only to the extent such payment is in money), gross proceeds from brokers (§6045), royalties (§6050N), fishing boat proceeds (§6050A), payments for services (§6041A(a)), or certain miscellaneous payments (§6041).[9] The gross amount of a reportable payment card or third-party network transaction required to be reported under §6050W is also a reportable payment for backup withholding purposes.[10]

The determination of whether any payment is of a kind required to be shown on an information return is to be made without regard to any minimum amount that must be paid before a return is required.[11] Thus, reportable payments that do not meet certain thresholds may not be reported on Forms 1099.[12] A payor may elect to not withhold from payments of interest, dividends, or royalties that are less than $10 and also would be less than $10 on an annualized basis.[13] A broker also may make the same election to not withhold on any payment that is less than $10 without regard for annualization.[14] However, if a payor has withheld from reportable payments aggregating less than the $10 threshold, reporting is always required.[15]

1. *Interest and Original Issue Discount*

Reportable payments under §6049 of interest, including original issue discount (OID), totaling $10 or more are subject to backup withholding. However, solely for purposes of computing the amount subject to withholding under §3406, the payor may elect not to withhold from the portion of any interest payment that is not received by the payee because a penalty has been imposed for premature withdrawal of funds deposited in a time savings account, certificate of deposit, or similar class of deposit.[16]

Backup withholding is not applicable to window transactions unless the payee has failed to provide a valid TIN.[17] A window transaction is an interest payment on U.S. savings bonds, an interest coupon in bearer form that is subject to taxation, or a discount obligation that has a maturity at issue of one year or less, including commercial paper and bankers' acceptances that are in definitive form (i.e., evidenced by a paper document other than a confirmation receipt) but not including short-term government obligations.[18] With respect to payments of tax-exempt interest, when an interest coupon is presented for payment and a payee has provided a signed written statement on the envelope or shell incorrectly claiming that the interest was exempt from taxation under §103(a), the issuer must report the payment as required by Reg. §1.6049-4(d)(8), but backup withholding is not required.[19]

The requirement to implement backup withholding with respect to a window transaction is also not applicable when a payor has received notification from the IRS that the payee's TIN is incorrect (a "B Notice"), or that payee underreporting has occurred.[20]

The amount of OID treated as interest that is subject to withholding under §3406 is the amount subject to reporting under §6049, but is limited to the amount of cash paid. In addition, if an OID obligation subject to reporting under §6045 is sold prior to maturity and the gross proceeds from that transaction are subject to withholding, then withholding applies to the gross proceeds of the sale reportable under §6045, and not to the amount of any OID includible in the gross income of the seller for the calendar year of the sale.[21]

With respect to a short-term obligation whose fixed maturity date is one year or less, withholding under §3406 applies to any payment of OID on the obligation includible in the gross

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[5] §3406(a)(1); Prop. Reg. §31.3406(a)-1(a), REG-112829-25, 91 Fed. Reg. 934 (Jan. 9, 2026); Reg. §31.3406(a)-1(b)(1). Prop. Reg. §31.3406(a)-1 would be effective for calendar years beginning after 2024. Prop. Reg. §31.3406(a)-1(e).

[6] Reg. §31.3406(a)-1(b)(2).

[7] Reg. §31.3406(a)-1(c); Prop. Reg. §31.3406(a)-1(c).

[8] *See* Reg. §31.3406(a)-4(a); *see also* CCA 202252008 (payments administered through a trust fund or set aside for a payee whose whereabouts are unknown, but may receive the payments on demand are subject to backup withholding).

[9] §3406(b); Reg. §31.3406(b)(3)-1(a), §31.3406(b)(3)-2(a), §31.3406(b)(3)-3(a), §31.3406(b)(3)-4(a); *see also* Prop. Reg. §31.3406(b)(3)-1(a), Prop. Reg. §31.3406(b)(3)-1(b)(3), REG-113229-25, 91 Fed. Reg. 20,599 (Apr. 17, 2026) (OBBBA reporting threshold updates).

[10] Reg. §31.3406(b)(3)-5(a); *see also* Prop. Reg. §31.3406(b)(3)-5(b), REG-112829-25, 91 Fed. Reg. 934 (Jan. 9, 2026). The proposed rules would apply to payments made in calendar years beginning after 2024. Prop. Reg. §31.3406(b)(3)-5(e). For a list of frequently-asked questions for payment card transactions, third-party network transactions, and §6050W, see *Form 1099-K Frequently Asked Questions* on the IRS website.

[11] §3406(b)(4).

[12] A payor may choose to report all payments regardless of amount even though reporting is not required.

[13] Reg. §31.3406(b)(4)-1(d). An exception to the requirement to annualize payments is applicable to window transactions. However, backup withholding may be required if multiple payments that occur during a single transaction either equal or exceed the $10 threshold. This exception also applies to payments for original issue discount (OID).

[14] Reg. §31.3406(b)(4)-1(a). In general, most payors choose to disregard this election and implement withholding on all payments to simplify processing and analysis.

[15] Reg. §31.6051-4(c)(2).

[16] Reg. §31.3406(b)(2)-1(b)(2).

[17] Reg. §31.3406(b)(2)-3(a).

[18] Reg. §31.3406(b)(2)-3(b).

[19] Reg. §31.3406(b)(2)-1(a)(2).

[20] Reg. §31.3406(b)(2)-3(a). A payor must solicit a TIN either verbally or in writing, but the payee is not required to certify under penalties of perjury that they are not subject to withholding due to notified payee underreporting.

[21] Reg. §31.3406(b)(2)-2(a).

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income of the holder to the extent of the cash amount of the payment.[22] In the case of an obligation with a fixed maturity date that is more than one year from the date of issue (a long-term obligation) and with no cash payments prior to maturity, withholding under §3406 applies at the maturity of the obligation to the amount of OID includible in the gross income of the holder for the calendar year in which the obligation matures.[23] If payments are made during the life of the obligation, withholding applies at the time cash payments are made to the sum of the amounts of qualified stated interest and OID includible in the gross income of the holder for the calendar year in which the cash payments are made.[24]

With respect to a bearer long-term obligation with payments made prior to maturity, withholding applies only to the payment of qualified stated interest includible in the gross income of the holder for the calendar year. If no payments are made until maturity, withholding applies to the sum of any qualified stated interest and the total amount of OID includible in the gross income of the holder during the calendar year of maturity.[25]

If a short-term obligation matures and the obligation has been transferred, a subsequent holder may establish the price of the obligation. Thus, the price established by the subsequent holder is then treated as the original issue price for purposes of computing the amount of the OID subject to withholding under §3406. However, a payor may elect to disregard the price at which the subsequent holder purchased or otherwise obtained the obligation if the payor's computer or recordkeeping system on which the details of the obligation are stored is not able to accept that price without significant manual intervention.[26] If a subsequent holder fails or is unable to establish the purchase price of the obligation, then the person redeeming the obligation must determine the amount subject to withholding under §3406 as though the obligation had been purchased by the holder on the date of issue. If the person redeeming the obligation is the issuer of the obligation, then the issuer must determine the amount subject to withholding from its records. If a person other than the issuer of the obligation redeems the obligation and the obligation is listed in IRS Publication 1212, *Guide to Original Issue Discount (OID) Instruments*, that person must determine the amount subject to withholding by using the issue price indicated in the publication.[27]

If a short-term obligation is transferred, no part of the purchase price is considered a reportable interest payment under §6049. Withholding under §3406 applies, however, to the gross proceeds of the sale of the obligation if the transfer is subject to reporting under §6045 and a condition exists for imposing withholding.[28]

In the case of an obligation with a fixed maturity date that is more than one year from the date of issue (a long-term obligation) and with no cash payments prior to maturity, withholding under §3406 applies at maturity to the amount of OID includible in the gross income of the holder for the calendar year in which the obligation matures. The amount required to be withheld cannot exceed the amount of the cash payment.[29]

If a long-term obligation in registered form provides for cash payments prior to maturity, withholding under §3406 is applicable at the time cash payments are made to the sum of the amounts of qualified stated interest payments that are made, not to exceed the amount of the cash payment. If more than one cash payment is made during a calendar year, the tax that is required to be withheld with respect to OID must be allocated among all the expected cash payments in the ratio that each cash payment bears to the total of the expected cash payments.[30] In the case of a long-term obligation that is transferred after its issuance from the original holder, the amount subject to withholding under §3406 with respect to a subsequent holder is the amount of OID includible in the gross income of all holders during the calendar year (without regard to any amount paid by a subsequent holder at the time of transfer). If the person redeeming the obligation at maturity is the issuer of the obligation, the issuer must determine the amount subject to withholding through its records by treating the holder as if he were the original holder. If a person redeeming the obligation at maturity is a person other than the issuer of the obligation, and the obligation is listed in IRS Publication 1212, *Guide to Original Issue Discount (OID) Instruments*, the person must determine the amount subject to withholding by using the issue price indicated in the publication.[31]

2. Dividends

Dividends reportable under §6042 are subject to withholding, including dividends paid pursuant to a dividend reinvestment plan.[32] The total amount of the distribution is subject to withholding unless a determination can be made to identify the portion not subject to the requirements of §3406.[33] Certain types of dividends are not subject to backup withholding, including any amount treated as a taxable dividend relating to redemptions of stock or redemptions through the use of related corporations, dispositions of certain stock, receipt of additional consideration in connection with certain reorganizations, or certain distributions pursuant to an order of the Securities and Exchange Commission (SEC).[34] An exempt-interest dividend paid by a regulated investment company (RIC), or any amount paid or treated as paid during the year by a RIC (provided that the payor reasonably estimates that 95% or more of all dividends paid or treated as paid during the year are exempt-interest dividends) are also exempt from withholding.[35]

[22] Reg. §31.3406(b)(2)-2(b).
[23] Reg. §31.3406(b)(2)-2(d)(1).
[24] Reg. §31.3406(b)(2)-2(d)(2).
[25] Reg. §31.3406(b)(2)-2(e).
[26] Reg. §31.3406(b)(2)-2(c)(1).
[27] Reg. §31.3406(b)(2)-2(c)(2).
[28] Reg. §31.3406(b)(2)-2(c)(3). See Reg. §31.3406(b)(3)-2 for the rules regarding withholding for amounts subject to reporting under §6045.
[29] Reg. §31.3406(b)(2)-2(d)(1).
[30] Reg. §31.3406(b)(2)-2(d)(2).
[31] Reg. §31.3406(b)(2)-2(d)(3).
[32] Reg. §31.3406(b)(2)-4(c)(1).
[33] Reg. §31.3406(b)(2)-4(c)(2). A payor may use previous experience to estimate the portion of a distribution that is not a dividend subject to withholding. An estimate is considered to be reasonable if the estimate does not exceed the proportion of the distributions made by the payor during the most recent calendar year for which a Form 1099 was required to be filed that was not reported by the payor as a dividend, and the payor has no reasonable basis to expect that the proportion of the distribution that is not a dividend will be substantially different for the current year.
[34] Reg. §31.3406(b)(2)-4(b)(1).
[35] Reg. §31.3406(b)(2)-4(b)(2), §31.3406(b)(2)-4(b)(3).

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3. Brokerage Transactions

Payments made by a broker or barter exchange reportable under §6045 are subject to backup withholding.[36] Gross proceeds from broker transactions (not including forward contracts, foreign currency contracts, regulated futures contracts, security short sales, and digital assets) cannot be aggregated, have no threshold, and are always subject to reporting.[37] If a payee is subject to withholding with respect to a forward contract, including a foreign currency contract or a regulated futures contract, a broker is required to withhold on all cash or property withdrawn from the account by the customer during the relevant year, as well as the amount of cash in the account available for withdrawal by the customer at the relevant year end.[38] The amount subject to withholding for a short sale is generally the gross proceeds. However, a broker may opt to withhold from the gain upon the short sale, thus deferring withholding until the closing transaction. This option is available only if the amount of gain realized upon the closing of the short sale can be determined from the broker's records.[39] The sale of a fractional share of stock that results in less than $20 in gross proceeds is not subject to backup withholding.[40]

Generally, gross proceeds from sales of digital assets are reported on a per-transaction basis and the amount subject to backup withholding is the amount subject to reporting under §6045. Special backup withholding rules apply to certain sales effected by processors of digital asset payments or sales of qualifying stablecoins or specific nonfungible tokens.[41] Non-designated sales of qualifying stablecoins (and digital assets that satisfy the definition of such) are not subject to backup withholding.[42] Digital assets are discussed in 190 T.M., *Taxation of Cryptocurrency and Other Digital Assets.*

4. Patronage Dividends

Patronage dividends that are reportable under §6044 are subject to backup withholding, but only to the extent that the payment is made in money, meaning cash or a qualified check. Reportable payments are subject to backup withholding if a payee fails to provide a valid taxpayer identification number (TIN) or the payor is notified that the payee has provided an incorrect TIN.[43] If a payee is identified as an underreporter or the payee has failed to certify that they are not subject to backup withholding due to notified payee underreporting, the payor is required to implement backup withholding if 50% or more of the reportable payment is paid in money.[44]

5. Miscellaneous Payments

Payments under §6041 and §6041A(a) relating to information reporting of rents, commissions, nonemployee compensation, etc., are reportable if the aggregate for the calendar year is $2,000 or more for payments made after 2025, adjusted for inflation for calendar years after 2026 ($600 or more for payments made prior to 2026).[45]

The amount subject to withholding is the entire amount of the payment that causes the total amount paid to the payee to equal or exceed the reporting threshold as well as the amount of any subsequent payments made to the payee during the calendar year.[46] For purposes of backup withholding, a payor must aggregate payments of the same kind made to the same payee. For example, the total amount paid for non-employee compensation would be separate from total rents. However, a payor may, in its discretion, aggregate all reportable payments not of the same kind under §6041 or §6041A(a), or all payments under both §6041 and §6041A(a) in calculating backup withholding applicable to a payee.[47]

6. Royalties

Royalties aggregating $10 or more that are reportable under §6050N are subject to backup withholding.[48] However, if the reportable payment is for an oil or gas interest, the amount subject to withholding is the net amount the payee receives (i.e., the gross proceeds less production-related taxes such as state severance taxes).[49]

7. Fishing Boat Proceeds

Service payments to fishing boat operators are subject to withholding under §3406 on the amount reportable under §6050A, but only to the extent the amount is paid in money and represents a share of the proceeds of the catch.[50]

8. Payment Card and Third-Party Network Transactions

Merchant-acquiring entities and third-party settlement organizations (TPSOs) must file information returns with respect to reportable payments made in settlement of payment card transactions and third-party payment network transactions occurring in a calendar year.[51] In conjunction with the enactment

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[36] Reg. §31.3406(b)(3)-2(a).

[37] Reg. §31.3406(b)(3)-2(b)(1).

[38] Reg. §31.3406(b)(3)-2(b)(2)(i).

[39] Reg. §31.3406(b)(3)-2(b)(4)(i).

[40] Reg. §31.3406(b)(3)-2(b)(5).

[41] *See* Reg. §1.6045-1(d)(2)(i)(B), §31.3406(b)(3)-2(b)(6)(i)(A), §31.3406(b)(3)-2(b)(6)(ii).

[42] Reg. §31.3406(b)(3)-2(b)(6)(i)(B).

[43] Reg. §31.3406(b)(2)-5(b)(1).

[44] Reg. §31.3406(b)(2)-5(b)(2).

[45] §6041(a), amended by the One Big Beautiful Bill Act (OBBBA), Pub. L. No. 119-21, §70433(a), §6041(h), added by the OBBBA, §70433(b), §6041A(a)(2), amended by the OBBBA, §70433(c); former §6041(a), former §6041A(a)(2); Reg. §1.6041-1(a)(1); *see also* Prop. Reg. §1.6041-1(a)(3), REG-113229-25, 91 Fed. Reg. 20,599 (Apr. 17, 2026) (§6041(a) thresholds for payments made after 2025).

[46] Reg. §31.3406(b)(3)-1(b)(3)(i), §31.3406(b)(3)-1(b)(3)(ii); *see also* Prop. Reg. §31.3406(b)(3)-1(b)(3)(i), Prop. Reg. §31.3406(b)(3)-1(b)(3)(ii), REG-113229-25, 91 Fed. Reg. 20,500 (Apr. 17, 2026) (§6041(a) payment threshold increases). The aggregation rule does not apply if the payor was required to make an information return under §6041 or §6041A(a) for the preceding calendar year with respect to payments to the payee, or the payor was required to withhold under §3406 during the preceding calendar year with respect to payments to the payee that were reportable under §6041 or §6041A(a). Reg. §31.3406(b)(3)-1(b)(3)(ii)(A); *see also* Prop. Reg. §31.3406(b)(3)-1(b)(3)(ii)(A). For further discussion of the requirements under §6041, see III.E.1.b., below.

[47] Reg. §31.3406(b)(3)-1(b)(3)(ii)(B); *see also* Prop. Reg. §31.3406(b)(3)-1(b)(3)(ii)(B).

[48] §6050N.

[49] Reg. §31.3406(b)(3)-4.

[50] Reg. §31.3406(b)(3)-3.

[51] §6050W, amended by the One Big Beautiful Bill Act (OBBBA), Pub. L. No. 119-21, §70432, applicable to calendar years beginning after 2024; Reg. §1.6050W-1. For a list of frequently asked questions for payment card transactions, third-party network transactions, and §6050W, see Form 1099-K Fre-

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of §6050W, §3406(b)(3) was amended to provide that reportable payment transactions subject to information reporting under §6050W generally are subject to backup withholding requirements. The amount subject to §3406 backup withholding is the amount, if any, subject to §6050W reporting.[52] Backup witholding, if any, on payments made to settle third-party network transactions is determined by reference to the §6050W(e) exception for de minimis payments by third-party settlement organizations. A payment is a reportable payment only if, during the calendar year, the aggregate number of transactions with respect to the participating payee exceeds 200 (i.e., the number of transactions specified in §6050W(e)(2)) and the aggregate amount of all reportable payment transactions with respect to the participating payee exceeds $20,000 (i.e., the dollar amount specified in §6050W(e)(1)). The amount subject to withholding is either the entire amount of the transaction that causes the total number of transactions to exceed 200, or the entire amount of the transaction that causes the total amount paid to the participating payee to exceed $20,000 at the time of payment, whichever occurs later, and the amount of any subsequent transactions made to the participating payee during the calendar year.[53]

> *Example — Customer Does Not Provide TIN:* Platform A is a third-party settlement organization and Y is a participating payee. A complies with all the requirements to solicit a taxpayer identification number (TIN) from Y, but Y does not provide its TIN to A. During Year 1, A makes 201 payments in settlement of third-party network transactions that total $20,000.01. A must backup withhold under Reg. §31.3406(b)(3)-5(b)(2) on the entire amount of the 201st transaction because that transaction caused Y to exceed the de minimis reporting threshold for Year1 of 200 transactions and $20,000 in gross payments.[54]

> *Example — Backup Withholding Based on Prior-Year Payments:* The Year 1 facts are the same as in the prior example. During Year 2, A makes 199 payments in settlement of third-party network transactions that total $18,000.00. A must backup withhold on each payment made to Y in settlement of a third party network transaction during Year 2 under Reg. §31.3406(b)(3)-5(b)(3) because a payment in settlement of Year 1 third-party network transactions made by A to Y was a reportable payment.[55]

Section 6050W and the change to §3406(b)(3) shifted the reporting and backup withholding responsibilities away from the payment card organizations and the Qualified Payment Card Agent (QPCA) regime[56] to merchant banks and TPSOs that have the contractual obligation to make payments to participating payees in settlement of payment card transactions. Under Reg. §31.3406(b)(3)-5(b), payments made in settlement of third-party network transactions are subject to withholding without regard to the §6050W(e) monetary or transactional thresholds.

For a list of frequently asked questions on information reporting for payment card transactions and third party network transactions, see the IRS FAQs, *Form 1099-K Frequently Asked Questions* on the IRS website. For a detailed discussion of information reporting for payment card transactions and third-party payment network transactions, see III.E.2., below.

C. When to Withhold

If a payor is required to backup withhold on a reportable payment, withholding must occur at the time that the conditions requiring backup withhholding first exist, which is not necessarily dependent on the payor receiving a CP2100 or CP2100A notice from the IRS. In the case of backup withholding liability under §3406(a)(1)(A), backup withholding is required during the period which the TIN has not been provided to the payor as required. In the case of backup withholding under §3406(a)(1)(B), backup withholding is required during the period (1) beginning after the close of the 30th day after the day on which the payor receives notice from the IRS (CP2100 or CP2100A); and (2) ending before provides another TIN in the manner required.[57]

Practice Tip: While the IRS notice is relevant to beginning backup withholding under §3406(a)(1)(B), the notice is irrelevant to beginning backup withholding under §3406(a)(1)(A). Thus, in the case of a payor who has made a reportable payment and receives a CP2100/2100A notice, the mere fact that the payor follows the instructions in the notice does not mean that the payor does not have backup withholding liability under §3406(a)(1)(A) with respect to a reportable payment made *before* compliance with the notice. The payor must backup withhold during the period which the TIN has not been provided in the manner required, regardless of whether the payor receives and complies with a CP2100 or CP2100A notice. Accordingly, a payor should institute backup withholding when the payor first becomes aware that a TIN has not been provided in the manner required.[58]

The general requirements discussed above apply to reportable payments unless there are special rules or exceptions for particular transaction types.

If the reportable payment is a dividend and the record date is earlier than the payment date, the dividends are considered paid on the payment date. With respect to a dividend paid as part of a corporate reorganization, if a payee is required to exchange stock held in the former corporation for stock in the new corporation before the dividends have been paid relative to the stock in the new corporation, the dividend is considered paid

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quently Asked Questions on the IRS website. *See also* Form 1099-K, *Payment Card and Third Party Network Transactions.*

[52] Reg. §31.3406(b)(3)-5(b); Prop. Reg. §31.3406(b)(3)-5(b)(1), REG-112829-25, 91 Fed. Reg. 934 (Jan. 9, 2026). Prop. Reg. §31.3406(b)(3)-5 would apply to payments made in calendar years after 2024. Reg. §31.3406(b)(3)-5(e).

[53] Prop. Reg. §31.3406(b)(3)-5(b)(2).

[54] Prop. Reg. §31.3406(b)(3)-5(b)(4)(i) *Ex.* 1.

[55] Prop. Reg. §31.3406(b)(3)-5(b)(4)(ii) *Ex.* 2.

[56] Enactment of the §6050W payment card and third-party network reporting requirements by the 2008 Housing Assistance Tax Act, Pub. L. No. 110-289, Div. C, §3091(a), made the QPCA program obsolete and the regulations relating to information reporting and backup withholding for the QPCA program were removed, effective October 27, 2014.

[57] *See* §3406(e)(1), §3406(e)(2); Reg. §31.3406(e)-1(b), Reg. §31.3406(e)-1(c).

[58] *See* PMTA 2023-03.

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on the date the payee actually exchanges the stock and receives the dividend.[59]

Broker transactions include a variety of investment vehicles that are subject to backup withholding. However, the appropriate time to implement withholding is dependent upon the specific product. In the case of reportable payments that are gross proceeds (excluding forward contracts, foreign currency contracts, regulated futures contracts, and security short sales), withholding is required on the date the sale is entered on the books of the broker or the date the exchange occurs. However, a broker is not required to satisfy its withholding liability until payment is made.[60]

With respect to forward contracts, foreign currency contracts, and regulated futures contracts, the determination of whether the payee is subject to backup withholding is made at the time of the withdrawal of cash or property or the relevant year-end, whichever is applicable.[61] In the case of a short sale, making the determination to withhold must be made on the date of the initiation or closing, or the date the initiation or closing is entered on the books or records of the broker.[62]

D. Exempt Payments

Certain payments of interest and dividends are exempt from backup withholding. Interest payments not subject to backup withholding include payments on obligations issued by individuals, payments on tax-free covenant bonds under §1451, interest payments made to a nonresident alien,[63] certain payments paid and received outside the United States with respect to an offshore obligation or on gross proceeds from a sale effected outside the United States,[64] and mortgage or student loan interest paid to the payor. Dividend payments to partnerships who are not engaged in a trade or business in the United States and that have at least one nonresident alien partner, payments of patronage dividends not paid in money, payments made by certain foreign organizations, and §404(k) distributions made by an employee stock option plan (ESOP) are also exempt from backup withholding. In addition, payments of interest and dividends to nonresident aliens who would be subject to withholding under §1441 are exempt.

Other types of payments are not subject to backup withholding when the payments are subject to withholding under a different section of the Code such as wages, a distribution from a pension, annuity, profit-sharing or stock bonus plan, any individual retirement account (IRA) where the payor is also the trustee or custodian, an owner-employee plan, or other deferred compensation plan, and distributions from qualified tuition programs or Coverdell Education Savings Accounts (ESAs).[65] Gambling winnings are generally subject to withholding under §3402(q).[66]

Other reportable payments that are specifically exempt from backup withholding include certain real estate transactions reportable on Form 1099-S, *Proceeds from Real Estate Transactions*,[67] and any portion of the original issue discount (OID) on an instrument or security that is subject to backup withholding as reportable gross proceeds of such instrument or security under §6045.[68]

E. Payor Defined

A payor is defined to be a person who is required to make an information return under §6041, §6041A(a), §6042, §6044, §6045, §6049, §6050A, §6050N, or §6050W with respect to any reportable payment.[69] A payor includes a grantor trust established after December 31, 1995, that is owned by two or more grantors; a grantor trust with 10 or more grantors established on or after January 1, 1984, but before January 1, 1996; a common trust fund; and a partnership or an S corporation that makes a reportable payment.[70] For purposes of backup withholding, a payor does not include a trust that files a Form 1041 that contains information required to be reported on an information return, or a partnership that makes a payment of a distributive share or an S corporation making a similar distribution.[71]

F. Payees Exempt from Backup Withholding

In general, reportable payments made to nonexempt persons or entities are subject to backup withholding. However, a payee who is typically exempt may be subject to backup withholding depending on the type of reportable payment that he receives. Payees that receive payments of interest or dividends are exempt if they are a corporation, a middleman recognized as a nominee or custodian, a financial institution, the United States, a state, the District of Columbia, a possession of the United States, a foreign government, an international organization, or any political subdivisions or instrumentalities of the foregoing. Other payees that may also be exempt include an organization exempt from tax under §501(a), an IRA, a custodial account under §403(b)(7) that meets the requirements of §401(f)(2), a foreign central bank of issue, a registered dealer in securities or commodities, a real estate investment trust (REIT), an entity registered under the Investment Company Act of 1940, a common trust fund operated by a bank, and a trust exempt from tax under §664 or described in §4947.[72]

In the case of payments from broker transactions, exempt payees are the same as those receiving interest and dividend

[59] Reg. §31.3406(a)-4(a)(2).

[60] Reg. §31.3406(a)-4(b)(1).

[61] Reg. §31.3406(b)(3)-2(b)(2)(iii).

[62] Reg. §31.3406(b)(3)-2(b)(4)(ii).

[63] Reg. §31.3406(g)-1(d). If the payee fails to certify their foreign status, the payor must treat the nonresident alien as a U.S. person; thus all interest payments would become subject to information reporting on Forms 1099 as well as backup withholding.

[64] Reg. §31.3406(g)-1(e) (specifically excluding gross proceeds from sales of digital assets).

[65] Reg. §31.3406(g)-2.

[66] Reg. §31.3406(g)-2(d). In the event that withholding is not required under this section and the payee fails to provide a TIN, then the winnings would become subject to backup withholding. Under §3402(q)(5), slot machine winnings are exempt from the withholding requirement, and in CCA 201246028 and CCA 201248022, the Chief Counsel's Office advised that, where the name and TIN do not match on Form W-2G, the gaming establishment is not subject to the backup withholding requirements. The Chief Counsel's Office stated that only if the payee provided the gaming establishment with a TIN that does not contain the proper number of digits would the gaming establishment be subject to the backup withholding requirements.

[67] Reg. §31.3406(g)-2(e).

[68] Reg. §31.3406(g)-2(g).

[69] Reg. §31.3406(a)-2(a).

[70] Reg. §31.3406(a)-2(b).

[71] Reg. §31.3406(a)-2(c).

[72] §6049(b); Reg. §31.3406(g)-1(b).

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payments. In addition, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker, as well as a futures commission merchant registered with the Commodity Futures Trading Commission is also deemed to be exempt.[73] Exempt payees also generally include U.S. digital asset brokers.[74]

The definition of an exempt payee is not as broad with regard to barter exchange payments or patronage dividends. The only payees that are exempt are the United States, a state, the District of Columbia, a possession of the United States, a foreign government, an international organization, or any political subdivisions or instrumentalities of any of the preceding, an organization exempt from tax under §501(a), an IRA, or a custodial account under §403(b)(7) that meets the requirements of §401(f)(2).[75]

Exempt payees that receive other reportable payments under §6041 and §6041A generally include the United States, a state, the District of Columbia, a U.S. possession, a foreign government, an international organization, or any political subdivisions or instrumentalities of any of the preceding, an organization exempt from tax under §501(a), an IRA, a custodial account under §403(b)(7) that meets the requirements of §401(f)(2), a corporation, or a foreign central bank of issue.[76]

Payments exceeding the §6041(a) reporting threshold are typically not reportable on Form 1099-MISC, *Miscellaneous Information*, if the payee is a corporation.[77] However, payments made to a corporation for medical or health care services,[78] fish purchases for cash, attorney fees or gross proceeds,[79] substitute payments in lieu of dividends or tax-exempt interest,[80] and payments made by a federal executive agency for services[81] are all reportable and subject to backup withholding.

G. Incorrect Name/TIN Combination — "B Notice" Program

At the time that an account is opened, the payor is required to solicit a taxpayer identification number (TIN) from an account owner. A TIN is a unique sequence of nine numbers assigned to an individual or entity by the Social Security Administration or the IRS. All tax information filed with the IRS must contain a TIN.

There are four types of TINs. A social security number (SSN) is assigned to a U.S. citizen or a U.S. resident alien by the Social Security Administration. An employer identification number (EIN) is assigned by the IRS to non-individuals, such as corporations, partnerships, and trusts. In the case of an individual who is not a U.S. person but is required to file a U.S. tax return, IRS will issue an individual taxpayer identification number (ITIN) for tax reporting purposes only. This number is not intended to be used to claim any government benefits such as social security.[82] The fourth type of TIN is an adoption identification number (ATIN) that is used by a taxpayer who is in the process of adopting a child. If the taxpayer is required to file a tax return before a social security number can be obtained for the child, the IRS will issue an ATIN for the child that the taxpayer can use in his tax return. An ATIN is temporary in nature and expires in two years.[83]

Once a payor or filer submits information returns to the IRS Enterprise Computing Center for processing, the IRS compares the name/TIN combination on each information return to tax returns filed by the payee. If the name/TIN information does not match, IRS creates a listing of all mismatches that is sent to the payor who must, in turn, solicit a new TIN for each account prior to filing information returns for the next tax year.[84]

With regard to readily tradable instruments, a broker may be the recipient of such notification from IRS. If this is the case, the broker (acting in its capacity as a payor) must notify the payor of an instrument if (1) it has received a notice from IRS that contains an incorrect payee name/TIN combination that requires the payor to identify such account, (2) the payee acquires a readily tradable instrument through the same account with the broker who is not the payor, and (3) the acquisition of such an instrument occurs after the close of 30 business days after the date that the broker receives the notification from the IRS. In notifying the payor, the broker must advise the payor of the receipt of the notice from IRS, the incorrect name/TIN combination, and the fact that the named payee is subject to backup withholding under §3406(a)(1)(B). The broker is required to provide this information to the payor of the instrument along with the transfer instructions for the acquisition.[85]

Although no official response to the IRS is required as a result of this notification, specific procedures must be followed by the payor with respect to how the information contained in

[73] Reg. §1.6045-1(c)(3)(i)(B).

[74] Reg. §1.6045-1(c)(3)(i)(B)(12).

[75] Reg. §1.6044-2(a)(2). *See also* Form W-9, *Request for Taxpayer Identification Number and Certification, General Instructions*.

[76] Reg. §1.6041-3(p).

[77] Reg. §1.6041-3(p)(1). Payments to LLCs are exempt from §6041 reporting requirements only if the LLC has elected to be classified for federal tax purposes as a corporation by filing Form 8832. CCA 201447025.

[78] Incorporated veterinarians are not exempted from the reporting requirement because veterinarians are engaged in providing medical and healthcare services. CCA 201349013.

[79] Reg. §1.6041-3(p)(1).

[80] Reg. §1.6045-2(b)(2)(i). A corporation is not listed as an exempt recipient.

[81] Rev. Rul. 2003-66.

[82] Reg. §31.3406(h)-1(b)(1). PMTA 2015-005 was issued in response to questions specific to IRS revoking ITINS for CI refund scheme cases. The Chief Counsel's Office concluded that it has the right under current law to revoke ITINs that (1) a criminal investigation determines were fraudulently obtained, or (2) where an alien individual filed fraudulent refund returns but only if those individuals were not entitled to the ITIN. However, should these same persons apply for future ITINS, the IRS should issue the ITINS if the applicants meet the qualifications for an ITIN.

[83] Reg. §301.6109-3.

[84] Reg. §31.3406(d)-5(c). The IRS currently employs an online TIN Matching application that is part of a suite of internet-based pre-filing e-services that allow "authorized payers" the opportunity to match Form 1099 payee information against IRS records prior to filing information returns. *See* IRS Publication 2108-A, *On-Line Taxpayer Identification Number (TIN) Matching Program*. In PMTA 2012-07, the Chief Counsel's Office stated that allowing states access to the IRS TIN Matching application for the purposes of the administration of state tax laws where the states propose to use the system for backup withholding and for verifying TINs on state tax returns in order to stop the issuance of fraudulent state tax refunds is a permissible use. The Chief Counsel's Office stated that whether to implement such access for the states is ultimately a business decision and that the IRS proposes to establish an arrangement with the states similar to the electronic Transcript Delivery Service (TDS).

[85] Reg. §31.3406(d)-5(c)(2).

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the listing is reviewed and the actions that must be taken.[86] Upon receipt of this notification, the payor has 30 business days to complete a review of the listing and perform certain mailings to account owners if required. The date on the notice from the IRS is considered to be the date of receipt by the payor. However, if the payor demonstrates to the satisfaction of the IRS that the date of actual receipt of the notice is later than the date on the notice, the actual date of receipt is controlling.[87]

In performing a review, the payor must determine which name/TIN combinations contained in the listing match the payor's current records. Once these matching accounts have been identified, the payor is required to perform a mailing to solicit a new name/TIN combination (first "B Notice"), or to request that IRS or Social Security Administration confirm the name/TIN combination of the payee (second "B Notice"). If the payee fails to respond within 30 days, the payor must implement backup withholding on the 31st day.[88]

Certain accounts that may appear in the listing received from the IRS may be excluded from the review process. These accounts include payments that were made to a fiduciary or nominee account,[89] or payments that were not reportable payments, such as those made to an exempt recipient.[90] A payor may also exclude an account from the review process if the error occurred because the name or TIN on the account is not the name or TIN that the account owner provided. For example, a payor transposes numbers in the TIN of the recipient when incorporating the information into their business records.[91]

Backup withholding must continue until the appropriate documentation has been received from the account owner or payee. A recipient of a first B Notice must provide a new Form W-9 to certify their TIN.[92] If an individual payee has received a second B Notice, he/she must provide the payor with a copy of a Social Security card with his/her correct name and SSN. If the TIN is an EIN, the payee must contact the IRS to get his or her employer identification number validated on the IRS Letter 147C.[93] Any amounts withheld prior to receipt of sufficient verification cannot be refunded.[94]

H. *Notified Underreporting — "C Notice" Program*

1. *Backup Withholding on Interest and Dividends*

In the case of a taxpayer who fails to correctly report interest or dividend income on their tax return or fails to file a return, the IRS may impose backup withholding on payments of such income (currently 24% of the payment).[95] Under the so-called "C Notice" program, the IRS issues a series of notices to the taxpayer explaining what must be done to prevent backup withholding. By the time a payor is notified, the IRS already has issued several notices to the taxpayer and a deficiency attributable to the underreporting has been assessed.[96]

Comment: There appears to be no dollar threshold of underreporting that must be met (other than minimal IRS tolerance amounts) before the IRS may impose backup withholding, and the mere fact that a taxpayer entered into an installment agreement to satisfy the balance due does not affect C Notice consideration.[97]

A payor that is notified by the IRS that it must begin backup withholding must search its records to identify all accounts with reportable payments owned by the payee and begin backup withholding after 30 days.[98] A payor may choose to begin withholding at any time within the 30-day period. Moreover, any new accounts opened by the taxpayer after the payor has received a notice also are subject to backup withholding unless the taxpayer certifies that they are not subject to withholding due to underreporting.[99]

The payor must notify the payee by first-class mail within 15 days after the date that the first payment is made that is subject to backup withholding. The payor must continue to withhold until the IRS contacts the payor to cease withholding, or the payee presents the appropriate certification from the IRS to stop withholding.

Additional requirements apply to payors who also are brokers. Generally, a broker must notify a payor of a readily tradable instrument that the payee is subject to backup withholding if: (1) the broker, acting in his capacity as the payor, receives notification from the IRS that a payee is subject to backup withholding and the broker must identify a payee account; (2) the payee subsequently acquires the instrument from the broker through the same account; and (3) the acquisition of the instrument occurs after the close of the 30th business day af-

[86] *See* IRS Publication 1281, *Backup Withholding for Missing and Incorrect Name/TIN(s)*, for a complete overview of the procedures that a payor must follow to comply with the requirements for dealing with this type of IRS notice. *See* CCA 201115024 (where several financial institutions have "come clean" by voluntarily disclosing to the IRS that they failed to backup withhold from these payments, such institutions are entering into closing agreements under which they agree to pay the correct amount of backup withholding under §3406, plus interest; the institutions are precluded by §275 from deducting the backup withholding payments, however the interest paid is deductible under §163 when accrued under §446 and §461).

[87] Reg. §31.3406(d)-5(c)(5).

[88] Reg. §31.3406(d)-5(d).

[89] Reg. §31.3406(d)-5(b)(4)(ii). A fiduciary or nominee account is defined as an account with respect to which at least one person named in the registration is identified as acting in the capacity as nominee or as administrator, conservator, custodian, receiver, tutor, curator, committee, executor, guardian, trustee, or other fiduciary capacity recognized under governing law.

[90] Reg. §31.3406(d)-5(b)(4)(i).

[91] Reg. §31.3406(d)-5(c)(3)(iii).

[92] Reg. §31.3406(d)-5(f).

[93] *See* IRS Publication 1281, *Backup Withholding for Missing and Incorrect Name/TIN(s).*

[94] Reg. §31.3406(d)-5(g)(5). *See* Rev. Proc. 2014-43, 2014-32 I.R.B. 273, effective for validations on or after August 1, 2014. Payors may rely on a Social Security card only if the name/SSN appearing on the card differs from the name/SSN appearing on the second B Notice, or if there is a date appearing on the Social Security card that is no earlier than six months before the date of the second B Notice. If a payee does not have a Social Security card, the payee must obtain a new or replacement card from the SSA. If the payee's name/SSN combination listed on the second B Notice is not current or correct, the payee should update his or her records with the SSA and provide a copy of the updated Social Security card to the payor. A payee may obtain a Social Security card for free by filing Form SS-5, *Application for a Social Security Card*, with the SSA. The application form and information regarding required supporting documentation are available on the SSA website.

Previously, validation requests were made by contacting SSA and requesting an SSN printout. *See* Announcement 2010-41, 2010-25 I.R.B. 767, *obsoleted by* Rev. Proc. 2014-43, 2014-32 I.R.B. 273.

[95] Reg. §31.3406(c)-1(c); IRM 5.19.3.2 (07-12-23).

[96] Reg. §31.3406(c)-1(f). The C Notice program includes Forms 1099-DIV, 1099-INT, 1099-OID, and 1099-PATR information returns.

[97] *See* IRM 5.19.3.5.2.6 (07-12-23).

[98] Reg. §31.3406(d)-5(c)(3)(i).

[99] Reg. §31.3406(c)-1(c)(3)(ii).

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ter the date that the broker receives notice from the IRS. Once the transfer of ownership of the instrument has occurred, the obligation of a broker to provide notice to a payor terminates simultaneously with the termination of the broker's obligation to withhold (in its capacity as payor) with respect to the account. If a payor receives a notice from a broker, the payor does not have to identify any account other than the account identified in the notice.[100]

When there are joint owners on an account, the withholding requirements apply to both payees (i.e., the husband and wife). As a result, both payees are subject to withholding on accounts in their individual names as well as accounts in their joint names.[101]

2. Requesting Removal of Backup Withholding

Once "C Notice" backup withholding is imposed, it generally remains in effect until January 1 of the following year if not resolved by October 15th of the current year. (The IRS Martinsburg Computer Center analyzes BWH for satisfied modules after October 15 each year.) If the matter is not resolved by such date, the backup withholding continues for the following year.[102] A taxpayer may request that backup withholding not be started or that it be discontinued if one or more of the following conditions exist:

- No underreporting existed.
- The underreporting was corrected, including full payment of all tax, penalty and interest due.
- There is a dispute as to whether any underreporting has occurred.
- BWH will, or is, causing "hardship" (as defined in IRM 13.1.7), and it appears unlikely that the underreporting will occur again.[103]

I. Remitting and Reporting Withholding

A payor must remit to the U.S. Treasury all monies withheld from reportable payments based on an annual calculation that determines if the payor is either a monthly or semi-weekly depositor. In making this determination, a payor must look to amounts reported on Form 945, *Annual Return of Withheld Federal Income Tax*, for the second calendar year preceding the current calendar year. For example, for tax year 2019, the payor would look to tax year 2017. If the total tax reported for 2017 was $50,000 or less, the payor is only required to make monthly deposits. If the total tax reported for 2017 was greater than $50,000, then the payor must make deposits on a semi-weekly basis. However, if a payor who is making monthly deposits accumulates a $100,000 liability or more on any one day during the calendar month, the payor must begin making semi-weekly deposits on the next day for the remainder of the current year as well as the following year. A payor must determine his deposit frequency each year based on this look-back analysis, or he may elect to make deposits on a semi-weekly or daily basis irrespective of the amounts that are deposited.[104]

If a payor determines that monies were erroneously withheld, the tax may be refunded to the payee at any time within the same calendar year.[105] The amount of the refund is netted against current monies that have been withheld but not remitted to the Treasury.[106] The amount withheld can only be refunded before the end of the calendar year and the issuance of Form 1099.[107]

Payors who have withheld and remitted backup withholding during the tax year must report their tax liabilities as well as deposit activity to the IRS on Form 945, *Annual Return of Withheld Federal Income Tax*, by January 31st of the subsequent year.[108] Form 945 also is used to report taxes withheld from other non-payroll payments including pensions, annuities, and IRA distributions, military retirement, gambling winnings, Indian gaming profits, and voluntary withholding on certain government payments.[109] Payors who are semi-weekly or daily depositors also must complete and attach Form 945-A, *Annual Record of Federal Tax Liability*, to report their daily tax liabilities for the year.

Note: Form 945 filers must use the same EIN when filing related information returns.[110]

Incomplete information returns will be reviewed by the IRS using Campus Backup Withholding (CBWH) return compliance program procedures.[111] The IRS will not examine books and records during a compliance check, but instead request any missing return information. If the payor fails to file Form 945, a CBWH employee will prepare a return under §6020(a) and solicit the payor's signature. If the payor does not voluntarily sign and return the Form 945 prepared by CBWH, the IRS may prepare substitute returns under §6020(b).[112]

Depositors who have filed Forms 945 and must make corrections for administrative errors must use Form 945-X, *Adjusted Annual Return of Withheld Federal Income Tax or Claim for Refund*.[113] An administrative error occurs when the payor incorrectly reports federal taxes on Form 945 that are not the same as the taxes that were withheld.

[100] Reg. §31.3406(c)-1(c)(3)(i)(B).

[101] Reg. §31.3406(c)-1(h).

[102] IRM 5.19.3.5.2.9 (09-23-20).

[103] IRM 5.19.3.5.2.10 (09-23-20). See the Worksheets below for a sample request by a taxpayer to remove C Notice backup withholding.

[104] Many payors choose to implement procedures to make deposits semi-weekly or even on a daily basis to minimize the risk of late deposit penalties.

[105] Reg. §31.6413(a)-3(a)(1).

[106] Reg. §31.6413(a)-3(b)(2).

[107] Reg. §31.6413(a)-3(b)(1).

[108] If a payor has made all deposits timely for the total taxes due, Form 945 may be filed on or before February 10th rather than the end of January.

[109] Reg. §31.6302-4(b).

[110] See PMTA 2019-10 (May 24, 2019), in which the IRS addressed the situation in which payors sometimes report and remit backup withholding on Form 945 using one EIN, but subsequently file information returns under a different EIN such as a parent or related entity's EIN. The IRS Chief Counsel concluded that the IRS has the authority under §6011 and §6109 to require taxpayers to use the same EIN on Form 945 and related information returns.

[111] *See* IRM 4.19.26 (10-24-22) (liability determination).

[112] IRM 4.19.26.4 (10-24-22).

[113] *See* T.D. 9405, 73 Fed. Reg. 37,371 (July 1, 2008). Requests for refunds or abatements of penalties and interest must be filed on Form 843, *Claim for Refund and Request for Abatement.* See the Instructions for Form 945-A for correcting federal tax liabilities reported on the Monthly Summary of Federal Tax Liability on Form 945 or on Form 945-A.

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Note: Corrections on Form 945-X also include interest-free adjustments under §6205 and §6413 and claims for refund and abatement under §6402, §6414, and §6404.[114]

J. Certificates

Form W-9, *Request for Taxpayer Identification Number and Certification*, is the appropriate form that a U.S. person must complete to certify that the taxpayer identification number (TIN) furnished to the payor is correct, the payee is not subject to withholding due to notified payee underreporting, the payee is an exempt recipient, or the payee is awaiting receipt of a TIN. The Certification section in Part II of Form W-9 includes the certification that a payee is exempt from FATCA reporting.[115] The Form W-9 may be solicited for each account owned by the payee, or a single Form W-9 may be applicable to more than one account assuming all accounts are maintained on a single system.[116]

Form W-9 is also used to solicit the correct name and TIN information from an individual classified as a U.S. resident alien for tax purposes who is not eligible to receive a Social Security Number (SSN).[117] A resident alien may be required to file a U.S. tax return which requires a TIN. A resident alien may apply for, and receive, an individual taxpayer identification number (ITIN) from the IRS that may be used to satisfy these tax return filing requirements. An ITIN is to be used exclusively for tax administration purposes.

Although the official Form W-9 is most typically used, a substitute form may be created if all pertinent language is included in the document.[118] Form W-9 may also be incorporated into other account opening documentation, such as signature cards, if the certification is clearly set apart and can be easily distinguished from other language or signing requirements in the documentation.[119]

A Form W-9 may also be submitted electronically (including a facsimile or portable document format (pdf) file) if the system ensures that the information received is the information that was sent, and the electronic version provides the same information that is contained in the paper version. Controls must also be in place to ensure that the person accessing the system and sending the information is the person named in the Form W-9, an investment advisor, or an introducing broker. The final entry in the submission must be an electronic signature that authenticates and verifies the submission of the payee.[120] The electronic signature must also be made under penalties of perjury using the same perjury statement contained in the paper Form W-9. A payor who uses an electronic system must be able to print a hard copy of the Form W-9 should the IRS make such a request.[121]

A payor may reasonably rely upon a Form W-9 and will not be liable for taxes imposed under the backup withholding requirements unless the form does not contain the name and TIN of the payee; the form has not been signed or dated by the payee; the form does not contain the statement, when required, that the payee is not subject to withholding due to notified payee underreporting; or the payee has deleted the jurat or other similar provisions by which the payee certifies or affirms the correctness of the statements contained on the form. In addition, a payor cannot rely on the Form W-9 if the payee is already subject to backup withholding due to underreporting.[122]

With respect to payments of interest and dividends, or certain payments from readily tradable instruments, a payee who is applying for a TIN may complete Part I of Form W-9 with the phrase "Applied For" in the place of a TIN. A payee has 60 calendar days from the date of the certificate to provide a TIN before backup withholding would commence. A payee who qualifies for that 60-day waiting period exemption must furnish a written statement to the payor, signed under penalties of perjury, that the payee has not been issued a TIN, that he has applied for a TIN or intends to apply for a number in the near future, and that he understands that if he does not provide a number to the payor within 60 days, the payor is required to commence backup withholding until the payor receives a TIN.

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[114] *See* Rev. Rul. 2009-39.

[115] *See* IRS Instructions for the Requester of Form W-9. The Hiring Incentives to Restore Employment Act (Pub. L. No. 111-147) included the Foreign Account Tax Compliance Act (FATCA), also known as Chapter 4. FATCA requires a participating foreign financial institution (FFI) to report all U.S. account holders that are specified U.S. persons. A specified U.S. person is a U.S. citizen (including dual citizen) or U.S. resident alien for tax purposes, privately owned domestic corporation, domestic partnership, or a domestic trust or estate. Certain payees are exempt from FATCA reporting.

Reporting under Chapter 4 (FATCA) with respect to U.S. persons generally applies only to foreign financial institutions (including a branch of a U.S. financial institution that is treated as an FFI under an applicable intergovernmental agreement (IGA)). Thus, for example, a U.S. financial institution maintaining an account in the United States does not need to collect an exemption code for FATCA reporting. If a payor is providing a Form W-9, they may prepopulate the FATCA exemption code with "Not Applicable," "N/A," or a similar indication that an exemption from FATCA reporting does not apply. Any payee that provides such a form, however, cannot be treated as exempt from FATCA reporting.

If a payor who receives a Form W-9 with a FATCA exemption code knows or has reason to know the person is a specified U.S. person, they may not rely on the Form W-9 to treat the person as exempt from FATCA reporting. However, they may still rely on an otherwise completed Form W-9 to treat a person as a specified U.S. person. An exemption from FATCA reporting (or lack thereof) does not affect backup withholding.

[116] Reg. §31.3406(h)-3(a).

[117] IRS Publication 519, *U.S. Tax Guide for Aliens*. A nonresident alien is considered to be a resident alien for tax purposes if they either meet the substantial presence test or the "green card" test. An individual is a lawful permanent resident of the United States at any time if they have been given the privilege, according to the immigration laws, to permanently reside in the United States as an immigrant. U.S. Citizenship and Immigration Services (USCIS) issues an alien registration card, also known as a "green card," to the immigrant that authenticates their status. A nonresident alien may also be deemed to be a U.S. person if they meet the substantial presence test. An individual satisfies the requirements of this test if they have been in the United States at least 31 days during the current year, and 183 days during the three-year period that includes the current year, and a specified number of days during the prior two years.

[118] See, e.g., IRS Pub. 1167, *General Rules and Specifications for Substitute Tax Forms and Schedules*, for guidelines and general requirements for the development, printing, and approval of substitute tax forms.

[119] Reg. §31.3406(h)-3(c)(1).

[120] An electronic signature has the same effect as a handwritten signature, as long as the person making the electronic signature intends it as a signature. *See* 1 U.S.C. §1; CCA 201213025. If the Form W-9 does not have to be signed, the electronic version does not need to provide for an electronic signature or perjury statement.

[121] *See* Announcement 2001-91. *See also* Instructions for the Requester of Form W-9.

[122] Reg. §31.3406(h)-3(e).

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A Form W-9 may be used for this purpose, or the payor may use a substitute form containing the required language.[123]

Form W-9 is valid indefinitely unless the payor has reason to believe that the information contained in the form is no longer correct, or the payor has received notice from the IRS that the name/TIN combination on the form is not valid. A payor is required to retain Form W-9 (post-1983) forms for at least three years (in paper or electronic format).[124]

A payee who is not a U.S. person must certify their foreign status by completing a Form W-8 rather than Form W-9. A Form W-8 is actually a series of five different forms that are applicable to different types of foreign payees.[125] In addition, a valid Form W-8 certification allows the payee to claim an exception from domestic information reporting and backup withholding for income that is not subject to withholding under §1441, including certain trade or business income, remuneration for services and certain sales, dividends, patronage dividends, broker proceeds, foreign source interest, royalties, cancellation of debt income, and payment card and third party network transactions.[126] In the absence of this certification, the payor must presume that the payee is a U.S. person subject to domestic reporting and withholding.

Disputes may arise regarding Form 1099 and Form W-9 where an individual or entity has asserted that a payment is not taxable to them as they have assigned it to a third-party in advance of receiving it, and, thus are not required to provide the payor with a Form W-9. Courts generally have found, however, that the person or entity making the payments has no discretion and should not evaluate a taxpayer's tax obligation, i.e., the payor's only duty is to solicit Form W-9 and file Form 1099, and leave it to the government and the taxpayer(s) to sort out the taxability of any income.[127]

K. IRS TIN Matching Program

The IRS maintains the Interactive and Bulk TIN (Taxpayer Identification Number) Matching Programs. The IRS expanded the authority of the IRS that had been provided under Rev. Proc. 97-31[128] to allow the on-line matching of taxpayer identifying information as provided by payors of income reported on Forms 1099-B, 1099-DIV, 1099-INT, 1099-MISC, 1099-OID, and 1099-PATR.[129] Persons required to report on Forms 1099-K under §6050W are permitted to use the TIN matching program.[130] Brokers required to report on Form 1099-DA can use the TIN matching program.[131] This program is designed to allow payors who file forms subject to backup withholding to verify the name/TIN combinations provided by payees prior to filing information returns with the IRS. This process minimizes the number of incorrect name/TIN combinations before they are reported to the IRS, and ultimately reduces potential penalties for payors or filers.

The TIN Matching Program is a free service supported and maintained by IRS *e-Services.* The Program is simplistic in nature in that it will only return results that confirm whether a name/TIN combination is valid or invalid, or if the payor has entered the information incorrectly. The program is not intended to be used as a database for a payor to obtain a missing TIN.[132]

The TIN Matching Program is accessible via the *eServices* Registration home page. A payor may enter up to 25 records interactively, or records may be entered in bulk format which may contain up to 100,000 records. Payors who utilize the TIN Matching Program may use the results from their inquiries as part of their reasonable cause defense against penalties assessed under §6721 and §6722 for incorrect name/TIN combinations reported on Forms 1099.[133]

Comment: The penalties for filing incorrect returns with the IRS have more than doubled from $100 per return to $250 per return.[134] Moreover, these same penalty increases are also applicable to recipient statements. A payor could be penalized a total of $500 per record that is filed with the IRS and sent to a recipient that contains an incorrect name/TIN combination.[135] The impact of this change is also compounded by the significant increase in the number of new information returns that are required to be filed under the Patient Protection and Affordable Care Act provisions.[136] The IRS should expand the TIN Matching Program to allow payors/filers to submit name/TIN com-

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[123] Reg. §31.3406(g)-3(d), §31.3406(g)-3(e). For guidelines and general requirements for the development, printing, and approval of substitute tax forms, see IRS Pub. 1167, *General Rules and Specifications for Substitute Tax Forms and Schedules.*

[124] Reg. §31.3406(h)-3(g). Most payors retain certifications for the life of an account. Guidelines applicable to the certification of an account established prior to Jan. 1, 1984 (pre-1984) only required that the payee provide a TIN either orally or in writing to avoid backup withholding. Reg. §31.3406(d)-1(b)(1). However, if a pre-1984 account was subsequently included in a notice received by the payor from the IRS indicating that the name/TIN combination was invalid, the account owner was required to complete Form W-9 and certify to the information contained within.

[125] There are five Forms W-8: Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding*; Form W-8BEN-E, *Certificate of Entities Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)*; Form W-8ECI, *Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States*; Form W-8EXP, *Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding*; and Form W-8IMY, *Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting.* Form 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*, may also be used by a nonresident alien individual to certify their foreign status when performing services in the United States.

[126] Reg. §1.1441-1(b)(5), as amended by T.D. 9808, 82 Fed. Reg. 2046, effective January 6, 2017. *See also* Instructions for Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding.*

[127] *See, e.g., Gierbolini Rosa v. Banco Poplar de Puerto Rico*, 930 F. Supp. 712 (D.P.R. 1996), *aff'd*, 121 F.3d 695 (1st Cir. 1997); *Coppola v. Wells Fargo Bank, N.A. (In re Coppola)*, No. 17-14944 VFP, 2020 BL 376356 (Bankr. D.N.J. Sept. 30, 2020) (bank cannot avoid statutory duty to obtain Forms W-9 from debtor, spouse and her counsel and issuing required Form 1099 information returns reporting settlement payments; determination of taxability of settlement proceeds to debtor and her spouse must await further proceedings between debtor and IRS).

[128] Rev. Proc. 2003-9.

[129] Rev. Proc. 97-31 established a TIN matching program specific to federal agencies.

[130] Announcement 2009-6.

[131] *See* Reg. §1.6045-1(d)(2)(i)(B). Form 1099-DA is discussed further in 190 T.M., *Taxation of Cryptocurrency and Other Digital Assets.*

[132] IRS Publication 2108-A, *On-Line Taxpayer Identification Number (TIN) Matching Program*, contains guidelines and instructions for using the program.

[133] §6724(a). *See also* IRS Publication 2108-A.

[134] *See* §6721–§6722.

[135] §6721, §6722.

[136] Pub. L. No. 111-148.

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binations for all form types to increase compliance and reduce potential penalties that some businesses will not be able to afford.

For further discussion of the penalties, see VI., below.

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III. Reportable Payments — Forms 1099

Legislation was enacted[137] which included revenue raising provisions known as the Foreign Account Tax Compliance Act (FATCA)[138] that were enacted for the purpose of detecting the non-U.S. financial accounts held by foreign financial institutions (FFIs)[139] that belong to U.S. taxpayers. These requirements added Chapter 4 to Subtitle A of the Code.[140] Given that U.S. persons are taxed on their worldwide income, these disclosures are critical in the Treasury's attempt to increase tax compliance among U.S. taxpayers.

This Portfolio does not address the reporting requirements under the FATCA regime, as these provisions are outside the Chapter 61 guidance. However, the FATCA legislation does include requirements that alternatively allow a participating FFI[141] to satisfy his filing requirements under Chapter 4 by filing Forms 1099 rather than IRS Form 8966, *FATCA Report*, with U.S. persons and the IRS that is required under §1471.

Certain forms in the 1099 series contain a check box, that if checked, indicates that an FFI is using Form(s) 1099 to report payments to a U.S. account pursuant to their reporting election under §1471.[142] A U.S. payor may also report on Form(s) 1099 to satisfy their Chapter 4 reporting requirements with respect to a U.S. account.

A participating FFI may elect to report under §6041, §6042, §6045, and §6049 on Forms 1099 with respect to any account required to be reported under §1471. Reporting must be done as if the participating FFI were a U.S. payor and that each account holder who is a specified U.S. person,[143] U.S. owned foreign entity,[144] or owner-documented FFI[145] were a payee who is an individual and citizen of the United States. Under this election, a participating FFI is required to report the name, address, and TIN of the account holder; the account number; and, if applicable, the jurisdiction of the branch that maintains the account being reported by adding the branch's jurisdiction after the payor's name. A participating FFI must report account holders even if they are exempt from reporting under §6041, §6042, §6045, or §6049. Reporting is also required under this election regardless of whether a reportable payment was made to the U.S. account during the calendar year.[146]

This election does not apply to cash value insurance contracts or annuity contracts that are financial accounts. However, a participating FFI may elect to report cash value insurance contracts or annuity contracts that are U.S. accounts held by specified U.S. persons in a manner similar to §6047(d). The appropriate form to file would be Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.* The amount to be reported is the sum of the account balance or value (as of the calendar year end or the most recent contract anniversary date) and any amount paid under the contract during such reporting period as if the participating FFI were a U.S. payor. Each holder of a U.S. account that is a specified U.S. person is treated for purposes of reporting as a contract holder or payee who is an individual and citizen of the United States.[147]

Participating FFIs that are U.S. payors (other than U.S. branches) will be treated as having satisfied the FATCA reporting requirements with respect to accounts that the participating FFI is required to treat as U.S. accounts, or accounts held by owner-documented FFIs, if the participating FFI reports with respect to each such account either the information required by Chapter 61 or the information described in Reg. §1.1471-4(d)(2)(iii)(A).

If an account is either a U.S. account held by a passive nonfinancial foreign entity (NFFE)[148] that is a U.S. owned foreign entity or an account held by an owner-documented FFI, the person responsible for reporting under Chapter 4 should file Form 8966 rather than Form 1099 with respect to such an account.

IRS Pub. 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and W-2G, provides guidance for FFIs electing to file Forms 1099.

A. *Interest Income*

1. *Interest Subject to Reporting*

a. *In General*

Under §6049, interest is defined to be interest on a registered obligation offered to the public; interest paid on deposits with persons carrying on the banking business; amounts paid or credited by mutual savings banks, savings and loan associations, building and loan associations, cooperative banks, homestead associations, credit unions, or similar organizations; interest on amounts held by insurance companies; interest on de-

[137] The Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147 (Mar. 18, 2010).

[138] Title V, Subtitle A, §501–§541.

[139] §1471(d). A foreign financial institution is defined to be a foreign entity that accepts deposits in the ordinary course of a banking or similar business, holds financial assets for the account of others, or is engaged primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest in such securities, partnership interests, or commodities.

[140] Chapter 4 includes Code §1471–§1474.

[141] The term "participating FFI" means an FFI that has agreed to comply with the requirements of an FFI agreement with the IRS. Reg. §1.1471-1(b)(91). The FFI agreement is set forth in Rev. Proc. 2017-16.

[142] Forms 1099-B, 1099-DIV, 1099-INT, 1099-MISC, and 1099-OID began to include the FATCA checkbox for tax year 2015.

[143] Reg. §1.1473-1(c). A specified U.S. person is a U.S. citizen (including dual citizen) or a U.S. resident alien for tax purposes, a privately owned domestic corporation, domestic partnership, or a domestic trust or estate.

[144] The term U.S. owned foreign entity means any foreign entity that has one or more substantial U.S. owners. Reg. §1.1471-5(c). A U.S. person who holds more than 10% interest by vote or value in a foreign corporation, partnership or trust is a substantial U.S. owner. Reg. §1.1473-1(b). For foreign investment vehicles, any percentage of ownership is reportable. Reg. §1.1473-1(b)(5).

[145] Reg. §1.1471-5(f)(3). An owner-documented FFI is a smaller passive investment vehicle that is technically still considered an FFI. This type of entity is typically a small investment entity or trust where signing an FFI agreement would be burdensome given the size of the entity. This type of entity provides the withholding agent, and ultimately the IRS, with U.S. owner information to satisfy the FATCA requirements while mitigating the compliance burden to the FFI.

[146] Reg. §1.1471-4(d)(5)(i)(A).

[147] Reg. §1.1471-4(d)(5)(i)(B).

[148] Reg. §1.1471-1(b)(80). The term *NFFE* or nonfinancial foreign entity means a foreign entity that is not a financial institution (including a territory NFFE). The term also means a foreign entity treated as an NFFE pursuant to a Model 1 IGA or Model 2 IGA.

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posits held by brokers; and interest paid on amounts held by investment companies.[149]

The definition of interest for purposes of reportable payments includes amounts includible in gross income from real estate mortgage investment conduits (REMICs), financial asset securitization investment trusts (FASITs), and collateralized debt obligations (CDOs).[150] For further discussion of reporting for these entities, see IV.B., below.

Interest also includes amounts paid on certain tax credit bonds (TCBs). These payments are actually tax credits that are treated as interest income for reporting purposes. Amounts are deemed to be paid on the credit allowance date.[151]

b. Special Reporting Issues

(1) Transactional Reporting

Financial institutions, brokers, or other middlemen who are required to file Forms 1099-INT, may in certain circumstances, elect to complete the forms on a transaction-by-transaction basis, as opposed to compiling all reportable interest paid to the same recipient on one Form 1099-INT.[152] Interest payments on U.S. savings bonds,[153] interest coupons in general,[154] discount obligations with maturities of one year or less (including commercial paper and short-term government obligations),[155] and on any other obligations of a similar nature, including banker's acceptances,[156] (collectively called "window transactions") may be reported on a transaction-by-transaction basis by completing a separate Form 1099-INT for each separate transaction.[157] Federal agencies making payments on U.S. savings bonds are also allowed to report the payments as window transactions.[158]

By definition, window transactions do not include payments on Treasury bills, or other payments on interest coupons, commercial paper or banker's acceptances if the instruments are not in definitive form (i.e., evidenced by a paper document other than a confirmation receipt).[159]

A transactional event is defined to be a payment at one time on one or more obligations.[160] The event is subject to separate reporting if the sum of the payments exceeds the $10 threshold for the total transaction. For example, if an individual presents at one time five Series EE U.S. savings bonds, each of which has $3 of accrued interest, the reportable amount is the transactional amount of $15 (5 × $3). On the other hand, if only three of the savings bonds are presented and the total interest paid is only $9 (3 × $3), no Form 1099-INT is required because the total transactional amount is less than $10. This result occurs even if the remaining two bonds are redeemed the next day.[161]

For window transactions, payors may furnish the recipient with copies of Forms 1099-INT or valid substitutes at the time the instruments are presented for payment. Returns may be filed with the appropriate IRS Service Center at any time, but no later than February 28th (March 31st if filed electronically) of the year following the calendar year in which the interest was paid.[162] Payments made on a transactional basis are not to be aggregated with other nontransactional interest payments for reporting purposes. Therefore, separate Forms 1099-INT are to be issued to report interest paid on a transactional basis.[163]

(2) Property in Lieu of Cash Interest

A common practice among financial institutions is to give prospective customers cash or merchandise to entice them to open a new deposit account or add to an existing account. If cash or merchandise is given to entice a payee to establish an account or add funds to an existing bank account, the cash or fair market value of the property received by the depositor is deemed to be interest within the meaning of §6049 subject to reporting on Form 1099-INT.[164] If interest also is paid to this account based on the terms of the deposit contract, the fair market value of the property is aggregated with the interest paid to determine whether the total amount meets or exceeds the reporting thresholds.

Noncash bank deposit premiums that are considered to be "de minimis premiums" are exempt from information reporting. A de minimis premium is a noncash premium that costs the financial institution less than $10 for a deposit of less than $5,000, and less than $20 for a deposit of $5,000 or more.[165] However, the aggregation requirements still would apply, meaning that the sum of the cost of the premium plus any interest paid still may exceed the thresholds for reporting.

If cash or property is received to entice another person to make a deposit, the cash or property is not considered interest under §6049 but may be considered a payment made in the course of a trade or business subject to §6041 reporting requirements, if aggregated payments are $2,000 or more for calendar years after 2025 (adjusted for inflation in calendar years after 2026) and $600 or more for tax years before 2026.[166] Moreover, cash or property paid to a party to establish a nondeposit account or take advantage of other banking services would also fall under the reporting requirements of §6041. This could include a promotion to give a person cash or property such as a small appliance to establish a new line of credit or utilize new online services.

[149] Reg. §1.6049-5(a).

[150] §6049(d)(7). *See* Instructions for Forms 1099-INT and 1099-OID.

[151] §6049(d)(8)(A), §6049(d)(9)(A).

[152] §6049(d)(4)(A), §6049(d)(5)(A)(i); Reg. §1.6049-4(e)(3).

[153] Reg. §1.6049-4(e)(2)(i).

[154] Reg. §1.6049-4(e)(2)(ii). No return is required for interest coupons exempt from taxation, e.g., tax-free municipal bond coupons. *See* Reg. §1.6049-5(b).

[155] Reg. §1.6049-4(e)(2)(iii).

[156] Reg. §1.6049-4(e)(2)(iv).

[157] Reg. §1.6049-4(e)(2)(iv).

[158] §6049(d)(5)(A)(ii); Reg. §1.6049-4(e)(3)(ii).

[159] Reg. §31.3406(b)(2)-3(b).

[160] Reg. §1.6049-4(e)(4).

[161] Reg. §1.6049-4(e)(4).

[162] Reg. §1.6049-4(g)(2).

[163] §6049(d)(5)(B), §6049(d)(5)(C); Instructions for Forms 1099-INT and 1099-OID.

[164] Reg. §1.6049-5(a)(2).

[165] Rev. Proc. 2000-30.

[166] §6041(a), amended by the One Big Beautiful Bill Act (OBBBA), Pub. L. No. 119-21, §70433(a), §6041(h), added by the OBBBA, §70433(b); former §6041(a); Reg. §1.6041-1(a). *See also* Prop. Reg. §1.6041-1(a)(1)(i)(B), Prop. Reg. §1.6041-1(a)(1)(iii), REG-113229-25, 91 Fed. Reg. 20,599 (Apr. 17, 2026), proposing amendments to Reg. §1.6041-1(a)(1)(i)(B) to reflect changes made by OBBBA §70433 that apply to payments made after 2025.

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(3) Accrued Interest on Debt Obligations Sold Between Coupon Payment Dates

Accrued and unpaid interest on debt obligations sold between payment dates should be reported on Form 1099-INT, even though it is actually paid as part of the debt obligation gross proceeds. Thus, the portion of the sales price representing interest accrued to the date of sale should be subtracted from the proceeds reported on Form 1099-B and included as interest to the recipient on Form 1099-INT.[167]

(4) Bank Deposit Interest Paid to Certain Nonresident Alien Individuals

In general, bank deposit interest paid to a nonresident alien is not subject to Form 1099-INT information reporting or §3406 backup withholding, if the payor may treat the payee as a foreign person based on appropriate certification or documentation.[168] However, §871(i)(2)(A) requires certain deposit interest, including bank deposit interest, to be reported on Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, if the interest is at least $10 paid on a deposit maintained at a U.S. office and is paid to nonresident alien who is a resident of a country identified in the applicable revenue procedure as of December 31 of the calendar year preceding the calendar year the interest was paid.[169] The IRS publishes a country list corresponding to the reporting requirement, as well as a list of countries with an income tax treaty, or other convention or bilateral agreement for the exchange of information within the meaning of §6103(k)(4) with the U.S.[170]

To determine which payments are subject to reporting under these requirements, the payor or middleman may rely upon the permanent residence address as shown on a valid Form W-8BEN, *Beneficial Owners Certificate of Foreign Status for U.S. Tax Withholding*, to determine the country in which a nonresident alien individual is resident.[171] Although these payments are reportable, they are exempt from withholding under §1441.[172]

However, if the payor or middleman does not have either a valid Form W-8BEN, or valid Form W-9, *Request for Taxpayer Identification Number and Certification*, the payor or middleman must report the payment on Form 1099-INT as made to a nonexempt U.S. recipient if it must treat the payee as a nonexempt U.S. recipient under the presumption rules of Reg. §1.6049-5(d)(2) and Reg. §1.1441-1(b)(3)(iii), and the payor must also backup withhold.[173]

2. Who Must Report

a. In General

Every person, including any governmental unit, international organization, and any agency or instrumentality thereof, who makes payments of interest aggregating $10 or more to any other person during a calendar year is required to issue an information return to the payee that reflects these payments.[174] A nominee, or middleman, who receives interest payments and in turn, makes payments aggregating $10 or more to another person, is also required to issue the appropriate return.[175]

b. Middlemen Defined

The person required to report interest under §6049 is generally the actual payor of the interest (usually the issuer of the debt). However, under §6049(d)(4), if an intermediary collects interest on behalf of another person, or otherwise acts as a "middleman" between the payor and the payee, the intermediary may be required to perform the required reporting under §6049.

"Middlemen" include financial institutions, brokers, or any persons who make payments of interest for, or collect interest on behalf of, other persons, or who otherwise act in a capacity as intermediary between a payor and a payee.[176] For example, a person other than the issuer, who makes payment on an interest coupon to another party is a "middleman." This middleman must comply with the reporting requirements regardless of whether he purchased the coupon for his own account, accepted it as an agent for the payee, or otherwise dealt with the coupon.[177]

For purposes of §6049(d)(4), "financial institutions" include mutual savings banks, savings and loan associations, building and loan associations, cooperative banks, homestead associations, credit unions, industrial loan associations, and other similar organizations. A broker, as defined in §6045(c), includes a dealer, a barter exchange, any other person who regularly acts as a middleman with respect to property or services,[178] and effective for returns required to be filed, and statements required to be furnished, after December 31, 2023, any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.[179]

Other examples of entities acting as middlemen as defined in §6049 include mortgage service companies that collect interest on behalf of others,[180] attorneys who maintain litigation settlement funds with banks in their name for the benefit of their

[167] Reg. §1.6045-1(d)(3), §1.6045-1(d)(5)(i).

[168] Reg. §1.6049-5(b)(12), §31.3406(g)-1(d). *See also* §871(i)(2)(A).

[169] Reg. §1.6049-4(b)(5), §1.6049-6(e)(4), §1.6049-6(e)(5), §1.6049-8(a). Payors may furnish recipient copies of Form 1042-S electronically to a nonresident alien receiving interest reportable under Reg. §1.6049-4(b)(5).

[170] Reg. §1.6049-8(a). Rev. Proc. 2024-42, *superseding* Rev. Proc. 2023-36, provides the most recent country list.

[171] Reg. §1.6049-8(a).

[172] Reg. §1.1441-1(b)(4)(ii), §1.1441-2(a)(2).

[173] Reg. §1.6049-8(a).

[174] §6049(a)(1); Reg. §1.6049-4(f)(1).

[175] §6049(a)(2).

[176] Reg. §1.6049-4(f)(4)(i).

[177] Reg. §1.6049-4(f)(4)(i).

[178] Reg. §1.6045-2(a)(4)(ii). Note that the nature and degree of involvement in the transaction distinguishes whether or not an entity plays the role of a "middleman"; Reg. §1.6045-1(b) *Ex.* 2(vii); PLR 201514001 (clearinghouse exception). For further discussion of the broker definition under §6045(c)(1), see III.D., below.

[179] §6045(c)(1)(D), added by the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, §80603(b). For further discussion of the broker information reporting requirements for digital asset transactions, see 190 T.M., *Taxation of Cryptocurrency and Other Digital Assets.*

[180] PLR 8713026.

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clients,[181] and trustees who in the course of a corporate liquidation make interest payments to trust beneficiaries on debentures pursuant to tender offers.[182]

Middlemen also include corporate trustees where the trusts are the payees. Under Reg. §1.6049-4(c)(2), banking institutions and trust companies (or their nominees) exercising trust powers and fiduciaries may file Form 1041, *U.S. Income Tax Return for Estates and Trusts*, rather than filing Forms 1099.[183] Form 1041 must include the interest payments and disclose the names, addresses, and tax identification numbers of the actual recipients. The fiduciary must also furnish Form 1099, or Schedule K-1 to each beneficial recipient, which contains all information required and discloses any amounts of backup withholding made against the recipient.[184]

Trustees and middlemen are required to report the gross amounts of interest and OID attributable to a trust interest holder (TIH) of a widely held fixed investment trust (WHFIT) on Forms 1099-INT and 1099-OID, respectively.[185]

For further discussion of this reporting requirement, see IV.C., below.

A person who receives an interest payment and whose name is shown on the Form 1099-INT, along with the name of the person who actually owns the interest payment, would be considered a middleman and, therefore, would be required to file an information return.[186] However, one spouse is not required to file a nominee/middleman return to show payments attributed to the other spouse.[187] Moreover, a person in the United States who forwards an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States is also deemed to be a middleman.[188] Thus, generally, anyone receiving a Form 1099-INT for amounts belonging to another person should file a new Form 1099-INT showing the actual recipient as the payee and himself or herself as the payor.[189]

3. When and to Whom Interest Is Considered Paid

Interest is considered paid when credited or set apart for the payee without substantial limitation or restriction on the time or manner of payment or the conditions upon which payment must be made. The payment must be available to the payee so that it may be drawn on at any time, and its receipt is within the payee's control and disposition.[190] In general, interest would be deemed to have been paid at the time the interest is credited to a payee's account.[191] In the case of instruments paid on presentment or demand (i.e., "window transactions"), interest is deemed to be paid at the time the obligation is presented for payment. For example, interest from a coupon that is detached from a bond is considered paid when the coupon is presented for payment.

The person whose taxpayer identification number (TIN) is required to be included on an information return is considered the person to whom interest or original issue discount (OID) is paid.[192] Interest on a debt obligation paid by the issuer or its paying agent to other than the record owner is nonetheless considered paid to the record owner for reporting purposes, since it is the record owner who must provide the issuer or its paying agent with his or her TIN. Similarly, if a brokerage firm collects interest on a bond held in the firm's name for a client, i.e., held in "street name," the interest is considered collected by the brokerage firm as a middleman or nominee for its client. The information return must be in the name of the client, who must provide his or her Social Security number to the brokerage firm. In the context of a joint account held by multiple parties, the interest is considered collected by the brokerage firm for the benefit of the first-named party on the joint account.[193]

4. Payments Exempt from Reporting

Payments made to exempt payees or recipients are not reportable unless backup withholding has occurred. An exempt recipient is generally exempt from information reporting without having to provide certification claiming exempt status.[194] However, a payor may still require the exempt recipient or payee to provide the appropriate certification to confirm their exempt status. A payor may treat the payee as an exempt entity based on actual knowledge of the payee's status along with other indicators noted below.[195]

The most commonly recognized exempt entity is a corporation. A payor may treat a corporation as an exempt entity if:

- the name contains an unambiguous expression of corporate status (such as Incorporated, Inc., Corporation, Corp., P.C. (but not Company or Co.)), or contains the term insurance company, indemnity company, reinsurance company, or assurance company, or its name indicates that it is an entity listed as a per se corporation under Reg. §301.7701-2(b)(8)(i);[196]
- the payor has on file a corporate resolution or similar document that clearly substantiates the entity's corporate status (documentation may include Form 8832, *Entity Classification Election*, that is used to elect classification as an association taxable as a corporation);[197]

[181] PLR 8838027. See also PLR 8920028, in which the IRS found that trustees who earn interest on investing court settlement funds for the trust beneficiaries, are middlemen. But note, the trustees avoided filing Form 1099 by filing Form 1041 with Schedules K-1, including the interest.

[182] PLR 8828012.

[183] A widely held fixed investment trust (WHFIT) may not file Form 1041. All Forms 1041 for tax year 2006 should have been marked as final returns. A WHFIT must now follow the reporting requirements of Reg. §1.671-5 to issue Forms 1099 as well as tax information statements to trust interest holders.

[184] Reg. §1.641(b)-2, §31.3406(a)-2(b), §31.3406(a)-4(c)(2). *See also* Instructions for Form 1041.

[185] Reg. §1.671-5(f)(2) or §1.671-5(g)(2).

[186] Reg. §1.6049-4(f)(4)(i).

[187] Reg. §1.6049-4(f)(4)(i).

[188] Reg. §1.6049-4(f)(4)(i).

[189] Reg. §1.6049-4(f)(4)(i). *See also* General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[190] Reg. §1.6049-4(d)(6)(i). *See* CCA 201221018 (regarding whether to report interest paid on unclaimed funds using name and TIN of decedent or decedent's estate; if interest is or would be includible on decedent's final income tax return, then Form 1099-INT should report decedent's name and SSN (and if includible on estate return, then Form 1099-INT should report estate's TIN), and thus would operate as if funds were held in bank account).

[191] *See* IRS Pub. 17, *Your Federal Income Tax for Individuals.*

[192] Reg. §1.6049-4(d)(4).

[193] Reg. §1.6049-4(d)(4).

[194] Reg. §1.6049-4(c)(1)(ii).

[195] Reg. §1.6049-4(c)(1)(ii)(A).

[196] Reg. §1.6049-4(c)(1)(ii)(A)(1).

[197] Reg. §1.6049-4(c)(1)(ii)(A)(2).

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• the payor receives a Form W-9, *Request for Taxpayer Identification Number and Certification*, that includes an employer identification number (EIN) and a statement that the entity is a corporation;[198] or

• the payor receives a certification (from the Form W-8 series) that the payee is a foreign corporation.[199]

Other exempt entities include a tax-exempt organization,[200] an individual retirement account (IRA),[201] the U.S. government and any wholly owned agency or instrumentality thereof,[202] state,[203] a foreign government,[204] an international organization as described in §7701(a)(18),[205] a foreign central bank of issue,[206] a securities or commodities dealer,[207] a real estate investment trust (REIT),[208] an entity registered under the Investment Company Act of 1940,[209] a common trust fund,[210] a financial institution,[211] a trust,[212] a nominee or custodian,[213] a broker,[214] and a swap dealer.[215]

An exception to this exemption from reporting applies to certain payees who are holders of tax credit bonds. Payments made by an issuer of a tax credit bond to a corporation, a securities or commodities dealer, a REIT, an entity registered under the Investment Company Act of 1940, a common trust fund, or any trust exempt from tax under §664(c) are reportable as interest income on Form 1099-INT.[216]

A person who ceases to be an exempt recipient is required to notify the payor in writing no later than 10 days from the date the change occurred. This notification is required unless it is reasonable to assume that no payments will be made to the recipient subsequent to the change in status. A recipient who has provided the payor with a certification as an exempt recipient should revoke this certificate and provide the payor with a new certification unless no payments will be made to the recipient after the change in status from exempt to nonexempt.[217]

5. *Interest Excluded from Reporting Requirements*

The following amounts or payments are not reportable as interest under §6049:

(1) Interest on any obligation issued by a natural person. The definition of a natural person does not include a partnership, trust, or estate;[218] however, a sole proprietor is defined to be a natural person. Thus, interest payments made in the course of a trade or business are not reportable on Form 1099-INT but may be subject to reporting requirements for Form 1099-MISC.[219]

(2) Interest on any obligation that is exempt from taxation under §103(a) relating to certain governmental obligations or interest that is exempt from taxation under any other provision of law without regard to the identity of the holder.[220]

(3) Interest on amounts held in escrow to guarantee performance on a contract or to provide security unless the payments are held by a financial institution, savings and loan association, or similar organization.[221]

(4) Interest paid by a governmental unit with respect to tax refunds.[222]

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[198] Reg. §1.6049-4(c)(1)(ii)(A)(3).

[199] Reg. §1.6049-4(c)(1)(ii)(A)(4).

[200] Reg. §1.6049-4(c)(1)(ii)(B)(1). This includes any organization exempt under §501(c). Custodial accounts under §403(b)(7) are also exempt entities. Certification is not required if the organization is listed on the compilation by the Commissioner of organizations for which a charitable deduction is allowed. The name of an organization may also clearly indicate the exempt status of the entity, such as a recognized college or university.

[201] Reg. §1.6049-4(c)(1)(ii)(C). An individual retirement plan as defined in §7701(a)(37).

[202] Reg. §1.6049-4(c)(1)(ii)(D).

[203] A "state" refers to state, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, wholly owned agency or instrumentality of any one or more of the foregoing, and a pool or partnership composed exclusively of any of the foregoing. Reg. §1.6049-4(c)(1)(ii)(E). For example, an account held in the name of "Town of S" or "County of T" may be treated as held by an exempt recipient.

[204] Reg. §1.6049-4(c)(1)(ii)(F). No certification is required provided that its name reasonably indicates that it is a foreign government or provided that it is known to the payor to be a foreign government or a political subdivision thereof (for example, an account held in the name of the "Government of V" may be treated as held by a foreign government).

[205] Reg. §1.6049-4(c)(1)(ii)(G).

[206] Reg. §1.6049-4(c)(1)(ii)(H). A foreign central bank of issue is a bank that is by law or government sanction the principal authority, other than the government itself, to issue instruments intended to circulate as currency. *See* Reg. §1.895-1(b)(1).

[207] Reg. §1.6049-4(c)(1)(ii)(I).

[208] Reg. §1.6049-4(c)(1)(ii)(J). A real estate investment trust (REIT) is as defined in §856 and Reg. §1.856-1.

[209] Reg. §1.6049-4(c)(1)(ii)(K).

[210] Reg. §1.6049-4(c)(1)(ii)(L). A common trust fund is as defined in §584(a).

[211] Reg. §1.6049-4(c)(1)(ii)(M). A financial institution includes 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. A payor may treat an entity as an exempt recipient without requiring a certificate if the entity's name (including a foreign name, such as "Banco" or "Banque") reasonably indicates the payee is a financial institution. In the case of a foreign entity, a payor may also treat an entity as exempt if the entity's name appears on a list published or approved by the IRS (such as in the Thomson Bank Directory or a list approved by the Federal Reserve Board).

[212] A trust exempt under §664(c) such as a charitable remainder annuity trust or a charitable remainder unitrust is an exempt recipient. Reg. §1.6049-4(c)(1)(ii)(N).

[213] Reg. §1.6049-4(c)(1)(ii)(O).

[214] Reg. §1.6049-4(c)(1)(ii)(P). A broker is as defined in §6045(c) and Reg. §1.6045-1(a)(1).

[215] Reg. §1.6049-4(c)(1)(ii)(Q). A dealer in notional principal contracts is as defined in Reg. §1.446-3(c)(4)(iii). See Prop. Reg. §1.446-3(c), REG-111283-11, 76 Fed. Reg. 57,684 (Sept. 16, 2011), for proposed regulations that would revise the definition of "notional principal contract," including: (1) providing that a notional principal contract requires one party to make two or more payments to a counterparty (and for this purpose, the fixing of an amount is treated as a payment, even if such payment is to be made at a later date); (2) expanding the definition of "specified index" under Reg. §1.446-3(c)(2)(ii) to include nonfinancial indices that are comprised of any objectively determinable information that is not under the control of either party, is not unique to any party's circumstances, and cannot be reasonably expected to front-load or back-load payments accruing under the contract; (3) specifying that a credit default swap is a notional principal contract; and (4) stipulating that an option on any contract that is a notional principal contract is not included as a §1256 contract.

[216] §6049(d)(9)(B).

[217] Reg. §1.6049-4(c)(1)(iii).

[218] Reg. §1.6049-5(b)(1).

[219] §6041(a).

[220] Reg. §1.6049-5(b)(2).

[221] Reg. §1.6049-5(b)(3).

[222] Reg. §1.6049-5(b)(4).

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(5) Interest on deposits for security, such as deposits posted with a public utility company.[223]

(6) Amounts from sources outside the United States paid outside the United States by a non-U.S. payor or a non-U.S. middleman.[224]

(7) Portfolio interest paid on obligations issued in bearer form that are foreign-targeted for which the documentation requirements have been satisfied other than by a U.S. middleman.[225] A bearer obligation is foreign-targeted if there are arrangements to ensure that the obligation will be sold or resold only to a non-U.S. person, the interest on the obligation is payable only outside the U.S. and its possessions, and the face of the obligation contains a statement that any U.S. person who holds the obligation will be subject to limits under the U.S. income tax laws.[226]

(8) Portfolio interest paid on obligations in registered form[227] for which the documentation requirements have been satisfied. If the registered obligation is not targeted to foreign markets, documentation must be received to support a claim of foreign status by the beneficial owner of the interest. A registered obligation is targeted to foreign markets if there are arrangements reasonably designed to ensure that it is sold or resold only to foreign persons or to foreign branches of U.S. financial institutions.[228] However, the requirement that the obligation to be offered for sale (or resale) only outside the United States does not apply if the registered obligation is offered for sale through a public auction. Moreover, the requirement that the obligation is to be delivered outside the United States does not apply if the obligation is considered registered because it may be transferred only through a book entry system and the obligation is offered for sale through a public auction.[229] The documentation required depends on whether the interest is paid to a financial institution, a member of a clearing organization, or some other foreign person.[230]

(9) Any amount paid by an international organization on an obligation issued by the international organization.[231]

(10) Amounts paid and received outside the United States (other than by a U.S. middleman) on an obligation that has a face amount or principal amount of not less than $500,000, has a maturity of 183 days or less, and satisfies the requirements that arrangements have been designed to ensure that the obligation is only sold or resold to non-U.S. persons.[232]

(11) Amounts paid outside the United States to an account or deposit with a U.S. or foreign branch of a foreign or domestic corporation or partnership engaged in the commercial banking business on certain obligations either in bearer or registered form. For an obligation not in registered form, there must be arrangements reasonably designed to ensure that the obligation will only be sold to a person who is not a U.S. person. In addition, a statement must appear on the face of the obligation to the effect that any U.S. person who holds such obligation will be subject to limitations under the U.S. income tax laws.[233]

(12) Payments that a payor can, before payment, reliably associate with documentation upon which it may rely to treat the payment as made to a foreign beneficial owner.[234] Documentation includes Forms W-8 (W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, W-8IMY), Form 8233, and other information that would support the foreign person's claim of foreign status.

(13) Amounts paid during a period that the debt obligation is considered to be a blocked asset.[235]

(14) Payments made to a foreign intermediary or flow-through entity as described in Reg. §1.1441-1(e)(3)(i) who has provided the appropriate withholding certification to the payor. Also included are U.S. branches of a foreign bank or foreign insurance company that have provided the required withholding certification to the payor.[236]

(15) Payments from a payor, if the payor can reliably associate the payment with a valid withholding certificate furnished by a foreign intermediary, or a U.S. branch that is not treated as a U.S. person, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported, and was not so reported.[237]

223 Reg. §1.6049-5(b)(5). Interest deposits posted for security with a person carrying on the banking business or amounts paid or credited by mutual savings banks, savings and loan associations, or other similar organizations is interest subject to reporting under §6049.

224 Reg. §1.6049-5(b)(6).

225 Reg. §1.6049-5(b)(7) (addressing portfolio interest, as defined in Reg. §1.871-14(b)(1), paid with respect to obligations in bearer form described in §871(h)(2)(A), as in effect before amendment by §502 of the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act)), Pub. L. No. 111-147, or §881(c)(2)(A), as in effect before amendment by §502 of the HIRE Act, that were issued before March 19, 2012, or with respect to a foreign-targeted registered obligation described in Reg. §1.871-14(e)(2) that is issued before January 1, 2016, and for which the documentation requirements described in Reg. §1.871-14(e)(3) and §1.871-14(e)(4) have been satisfied (other than by a U.S. middleman that, as a custodian or nominee of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor).

226 Reg. §1.163-5(c)(2)(i); former §163(f)(2)(B), repealed by §502 of the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act), Pub. L. No. 111-147.

227 For further guidance on the definition of registered form, see 536 T.M., *Interest Expense Deductions*, and 741 T.M., *REMICs, Mortgage REITs, Mortgage Trusts and Other Real Estate Mortgage Securitization Vehicles.*

228 Reg. §1.6049-5(b)(8) (addressing portfolio interest described in Reg. §1.871-14(c)(1)(ii), paid with respect to obligations in registered form described in §871(h)(2) or §881(c)(2) that is not described in Reg. §1.6049-5(b)(7)). *See also* Reg. §1.163-5(c)(2)(i).

229 Reg. §1.871-14(e)(2).

230 Reg. §1.871-14(e)(3). *See also* IRS Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities.*

231 Reg. §1.6049-5(b)(9).

232 Reg. §1.6049-5(b)(10); *see also* former §163(f)(2)(B)(i) and §163(f)(2)(B)(ii)(I).

233 Reg. §1.6049-5(b)(11).

234 Reg. §1.6049-5(b)(12).

235 Reg. §1.6049-5(b)(13).

236 Reg. §1.6049-5(b)(14).

237 Reg. §1.6049-5(b)(15).

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(16) Interest paid on a notional principal contract that is a significant nonperiodic payment. This interest is reportable under §6041 on Form 1099-MISC.[238]

(17) Bank fee credits given to customers offsetting bank service fees not reportable interest except where, (1) nonexempt customer contracts with third-party vendor paid by bank and bank does not directly or indirectly provide contracted service, or (2) stated interest on unused fee credit balances when paid to nonexempt recipient.[239]

6. *Rules Applicable to Payments to Offshore Accounts and Payee Status*

a. *Documentary Evidence for Offshore Accounts*

Reportable payments made to U.S. persons or U.S. entities are generally reported on Forms 1099 irrespective of where the U.S. person resides. A U.S. person does not have to be resident in the United States to be subject to domestic reporting and backup withholding. However, different reporting requirements arise when payments are deemed to be paid outside the United States to a non-U.S. person. If a payor has solicited appropriate documentation to support and confirm that a payment is made outside the United States, then these payments are not subject to reporting on Forms 1099 or backup withholding under §3406.

If a payment is made outside the United States to an offshore account or to an account in a U.S. possession, or if the payment represents broker proceeds from a sale effected outside the United States, a payor may be able to rely on certain documentary evidence in lieu of a beneficial owner withholding certificate (i.e., Form W-8). An offshore account is an account maintained at an office or branch of a U.S. or foreign bank located outside the United States, the District of Columbia, or any U.S. possessions. For example, an account is an offshore account if it is maintained in a foreign country at a branch of a U.S. bank or subsidiary of a U.S. bank.[240]

Documentary evidence includes, but is not limited to, a certificate of residence issued within the last three years by a tax official of the country of which the payee claims to be a resident, as well as any documentation issued by an authorized governmental body that includes the individual's name, address, and photograph, such as a passport. If such documentation is older than three years at the time of presentation, a payee must also provide original copies of bank statements, utility bills, medical bills, or other documents that support their claim of foreign status.[241]

A special rule may apply if a branch or office of a bank or other financial institution is located in a country in which it is not customary to obtain documentary evidence. In this case, the bank or financial institution may rely on a statement which meets the requirements of Reg. §1.6049-5(c)(4)(i).[242]

For the payor to be able to rely on this documentary evidence, they must have established procedures in place to obtain, review, and maintain this information to sufficiently confirm the payee's identity and support his claim of foreign status. Documentation must be complete to allow the payor to report payments on Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, at year end.[243]

In all cases, a payor may not rely on a withholding certificate or documentary evidence if he has actual knowledge or reason to believe that any information he has received is not reliable or true. Exemptions from reporting and withholding applicable to payments made to a non-U.S. person may not apply if the payor has reason to believe that the payee is a U.S. person who is not an exempt recipient.[244]

b. *Determining Status as U.S. or Foreign Payee*

A payor must be able to correctly determine the status of a payee if the appropriate reporting and withholding is to occur. Reportable payments made to a U.S. person dictate that the payor file Forms 1099. However, payments made to a non-U.S. person may be reportable on Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, or may be entirely exempt from any reporting or withholding. To successfully report payments to the IRS as well as recipients or payees, a payor must possess certain documentation that confirms the status of the payee.

If the withholding agent cannot reliably associate a payment with a valid withholding certificate or valid documentary evidence, it must presume that the payee is an individual, a trust, or an estate, if the payee appears to be such person (e.g., based on the payee's name or information in the customer file). In the absence of reliable indications that the payee is an individual, a trust, or an estate, the withholding agent must presume that the payee is a corporation or one of the persons enumerated under Reg. §1.6049-4(c)(1)(ii)(B) through §1.6049-4(c)(1)(ii)(Q) if it can be so treated without the need to furnish documentation. If the withholding agent cannot treat a payee as a person described in Reg. §1.6049-4(c)(1)(ii)(A)(1) through §1.6049-4(c)(1)(ii)(Q), then the payor must presume that the payee is a partnership. For a domestic partnership, the presumption is that the entity is a U.S. nonexempt recipient subject to reporting and withholding.[245]

If documentary evidence has been provided for an offshore account but the classification of the payee is not clear, then the payor must make the presumption that the entity is an exempt entity included in Reg. §1.6049-4(c)(1)(ii)(B) through §1.6049-4(c)(1)(ii)(Q) if it can be so treated under any one of those paragraphs without the need to furnish documentation. If this presumption cannot be made, then the entity is presumed to be a corporation unless the withholding agent knows, or has reason to know, that the entity is not classified as a corporation for U.S. tax purposes.[246]

If a withholding agent makes a payment to a payee who is defined to be an exempt recipient under Reg. §1.6049-4(c)(1)(ii) and the payee has not provided any documentation, the

[238] Reg. §1.6049-5(b)(16). For a discussion of notional principal contracts, see 189 T.M., *U.S. Taxation of Notional Principal Contracts*.

[239] *See* PLR 201426002.

[240] Reg. §1.6049-5(c)(1).

[241] Reg. §1.1441-6(c)(3), §1.1441-6(c)(4).

[242] Reg. §1.6049-5(c)(4)(i).

[243] Reg. §1.6049-5(c)(1).

[244] Reg. §1.6049-5(c)(3).

[245] Reg. §1.1441-1(b)(3)(ii)(B).

[246] Reg. §1.1441-1(b)(3)(ii)(C).

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payee is presumed to be a foreign person and not a U.S. person based on any of the following indicia:

(1) The withholding agent has actual knowledge that the payee's employer identification number begins with the two digits "98";

(2) The withholding agent's communications with the payee are mailed to an address in a foreign country;

(3) The name of the payee indicates that the entity is the type of entity that is on the per se list of foreign corporations contained in §301.7701-2(b)(8)(i) (and, in the case of a name which contains the designation "corporation" or "company," the withholding agent has a document that reasonably demonstrates the payee was incorporated in the relevant jurisdiction);

(4) The payment is made with respect to an offshore obligation; or

(5) The withholding agent has a telephone number for the person outside of the United States with respect to an account opened after July 1, 2014.[247]

Special rules apply when a withholding agent makes a withholdable payment[248] to an exempt recipient. A withholdable payment that a payor makes to an entity who is an exempt recipient under Reg. §1.6049-4(c)(1)(ii), specifically a corporation, a foreign government, an international organization, a foreign central bank of issue, a financial institution, a nominee or custodian, a broker, or a swap dealer, is presumed to be made to a foreign payee in the absence of documentation (including documentary evidence) that would establish the entity as a U.S. person.[249] A withholding agent will be allowed to apply this rule to all payments (including payments other than withholdable payments) made with respect to an obligation. This presumption requires the withholding agent or payor to report payments to the exempt recipient on Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, at year end and withhold 30% from all payments.

Comment: The requirement to solicit documentation from an exempt recipient to confirm their U.S. status is a significant departure from procedures upon which U.S. payors have been able to rely, especially when making payments to financial institutions and corporations. Moreover, U.S. payors who do not make payments to foreign persons in the course of their trade or business may not have the ability to report and withhold from a payment made to an entity presumed to be foreign. These changes should cause payors and withholding agents to develop standard procedures to solicit documentation from all payees to whom they make payments.

If indicia of foreign status exists, the 30-day grace period provisions of §3406(e) do not apply for dividends and interest from stocks and debt obligations that are actively traded;[250] dividends from a redeemable security issued by an investment company; dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are publicly offered and registered with the SEC; or amounts paid with respect to loans of certain securities.[251] At any time during the grace period, if the payor credits an account with broker proceeds from sales of securities, or amounts reportable under §6042, §6045, §6049, or §6050N, the payor may treat the payee as a foreign person if, at the beginning of the grace period, the address of record is in a foreign country, the payor has been furnished the information contained in a withholding certificate (beneficial owner withholding certificate),[252] or the payor holds a withholding certificate that is no longer reliable (other than because the validity period[253] has expired).[254]

If the account is newly opened, the grace period begins on the date that the account is first credited.[255] In the case of an existing account for which the payor holds a Form W-8 or other documentary evidence of foreign status, the payor may apply the grace period provisions in Reg. §1.1441-1(b)(3)(iv) beginning on the date that the payor first credits the account after the existing documentation held with regard to the account can no longer be relied upon (other than because the validity period has expired).[256] A new account is treated as an existing account for purposes of the grace period if the account holder already holds an account at the branch location at which the new account is opened, or if the account is treated as a consolidated obligation to the extent the account does not receive any amounts subject to withholding under Chapter 3 of the Code.[257] A new account is also treated as an existing account if an account is held at another branch location if the institution maintains an account information system described in Reg. §1.1441-1(e)(4)(ix). The grace period expires on the earlier of the close of the 90th day from the beginning of the grace period or from the date valid documentation was received.[258] The grace period will also end if the remaining account balance is equal to or less than 28% (or other statutory tax rate that is applicable to backup withholding) of the total amounts credited to the account from the beginning of the grace period that would have been subject to backup withholding if the presumption rules did not apply.[259]

In the case of payments made to foreign intermediaries or flow-through entities that are subject to withholding under Chapter 3 of the Code and for which valid documentation is not available, the presumption rules of Reg. §1.1441-1(b)(2)(v) and §1.1441-5(c)(1), §1.1441-5(e)(2), and §1.1441-5(3) apply (sub-

[247] Reg. §1.1441-1(b)(3)(iii)(A)(1).

[248] Reg. §1.1473-1(a). A withholdable payment is defined to be any payment (1) of U.S.-source fixed or determinable annual or periodic income, and (2) for sales or other dispositions occurring after December 31, 2018, any gross proceeds from the sale or other disposition of any property that can produce interest or dividends that are U.S.-source FDAP income.

[249] Reg. §1.1441-1(b)(3)(iii)(A)(2). This presumption will not apply to a withholdable payment made to a payee determined to be a U.S. exempt recipient before July 1, 2014 with respect to a preexisting obligation. Thus, a payor is not required to solicit new documentation from an exempt recipient if the account or relationship was established before July 1, 2014.

[250] Reg. §1.1092(d)-1.

[251] Reg. §1.6049-5(d)(2)(ii), §1.1441-6(c)(2).

[252] Described in Reg. §1.1441-1(e)(2), as amended by T.D. 9890, 85 Fed. Reg. 192 (Jan. 2, 2020) (adding requirement to collect account holder's foreign TIN and date of birth).

[253] Described in Reg. §1.1441-1(e)(4)(ii)(A).

[254] Reg. §1.6049-5(d)(2)(ii).

[255] Reg. §1.6049-5(d)(2)(ii).

[256] Reg. §1.6049-5(d)(2)(ii).

[257] Reg. §1.6049-5(d)(2)(ii).

[258] Reg. §1.6049-5(d)(2)(ii).

[259] Reg. §1.6049-5(d)(2)(ii).

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stituting the term "payor" for the term "withholding agent") to identify the payee. If a payment of an amount subject to withholding cannot be reliably associated with valid documentation from a payee in accordance with Reg. §1.1441-1(b)(2)(vii), the presumption rules of Reg. §1.1441-1(b)(3)(v), §1.1441-5(d), §1.1441-5(e)(6) apply to determine the payee's status. If the payment is a withholdable payment, see Reg. §1.1471-3(c)(3) for rules to identify the payee and see Reg. §1.1471-3(f)(5) for the presumption rule that apply to amounts treated as made to a foreign intermediary or flow-through entity (by substituting the term "payor" for the term "withholding agent").[260] Payments not subject to withholding under Chapter 3 of the Code are treated as payments made to an exempt recipient unless the payor has reason to believe that the recipient is a nonexempt U.S. person.[261]

If the payments being made to a foreign intermediary or flow-through entity are U.S.-sourced bank deposit interest or short-term original issue discount (OID), the general rule is that the payment is presumed to be made to an undocumented U.S. payee that is not an exempt recipient unless the payor has documentation from the payees of the payment and the payment is allocated to foreign payees as a group, and to each U.S. nonexempt recipient payee.

However, if a payment is made to a person who is exempt under Reg. §1.6049-4(c)(1)(ii) that has not provided an intermediary withholding certificate, but the payor knows or has reason to know that the payee may be an intermediary, the payor must still apply the presumption rules that would deem the payee to be an undocumented U.S. payee that is not an exempt recipient even if a payor has reason to know that such a person may be an intermediary, even if that person has provided documentation as an intermediary for another account with the same payor.[262]

Deposits with banks and other financial institutions that remain on deposit for a period of two weeks or less, amounts of OID arising from a sale and repurchase transaction that is completed within a period of two weeks or less, or amounts relating to certain obligations issued in bearer form may be treated as paid to an exempt entity unless the payor has actual knowledge that the payee or recipient is a U.S. person. Thus, these payments would not be subject to withholding or reporting requirements.[263]

c. Determining when Amounts Are Considered Paid Outside the United States

The term interest or original issue discount (OID) excludes payments or amounts from sources outside the United States that are paid outside the United States by a non-U.S. payor or non-U.S. middleman.[264] If the payor or middleman completes certain acts necessary to effect payment outside the United States, then the payment is not required to be reported under §6049. A payment drawn on a U.S. bank account or made by wire or electronic transfer from a U.S. account may still be considered to be paid outside the United States.[265]

(1) Amounts Paid on Deposits or Accounts with Banks and Other Financial Institutions Outside the United States

Amounts are considered paid at the branch or office at which the amount is credited unless the branch or office is receiving the payment as an agent of the payee. The branch or office must be a permanent place of business that is regularly maintained, occupied, and used to carrying on banking business. The office must have at least one employee who is regularly in attendance during normal business hours. The branch or office must also receive deposits and engage in other banking activities described in Reg. §1.864-4(c)(5)(i).[266]

(2) Coupon Bonds and Discount Obligations in Bearer Form

An amount paid with respect to a bond with coupons attached (including a certificate of deposit (CD) with detachable interest coupons) or a discount obligation not in registered form is considered paid where the coupon or the discount obligation is presented to the payor or its paying agent for payment. If an obligation is not in registered form, there must be arrangements reasonably designed to ensure that the obligation will be sold or resold only to a person who is not a U.S. person. Moreover, interest is payable only outside the United States and its possessions, and on the face of the obligation there must be a statement that any U.S. person who holds such obligation will be subject to limitations under the U.S. income tax laws.[267]

An amount paid with respect to a bond with coupons attached, including a certificate of deposit with detachable interest coupons, or a discount obligation that is not in registered form (within the meaning of §163(f) and the regulations thereunder) is considered to be paid where the coupon or the discount obligation is presented to the payor or its paying agent for payment.[268]

(3) Foreign-Targeted Registered Obligations

Where the payor is the issuer or the issuer's agent, an amount is considered paid outside the United States with respect to a foreign-targeted registered obligation issued before January 1, 2016 if either the amount is paid by transfer to an account maintained by the registered owner outside the United States, or by mail to an address of the registered owner outside the United States, or by credit to an international account. An international account means the book entry account of a financial institution or of an international financial organization with the Federal Reserve Bank of New York for which the Federal Reserve Bank of New York maintains records that specifically identify an international financial organization or a financial institution as either a non-U.S. person or a foreign branch of a U.S. person as registered owner.[269]

An obligation is considered to be targeted to foreign markets if it is sold or resold in connection with its original issuance only to foreign persons or to foreign branches of U.S.

[260] Reg. §1.6049-5(d)(3)(i).
[261] Reg. §1.6049-5(d)(3)(ii).
[262] Reg. §1.6049-5(d)(3)(iii).
[263] Reg. §1.6049-5(d)(3)(iv).
[264] Reg. §1.6049-5(b)(6).
[265] Reg. §1.6049-5(e)(1).
[266] Reg. §1.6049-5(e)(2).
[267] §163(f).
[268] Reg. §1.6049-5(e)(3).
[269] Reg. §1.6049-5(e)(4).

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financial institutions in accordance with procedures similar to those for bearer obligations. However, the provisions of Reg. §1.6049-5(e) that require an obligation to be offered for sale or resale in connection with its original issuance only outside the United States do not apply with respect to registered obligations offered for sale through a public auction. Similarly, the provisions of Reg. §1.6049-5(e) that require delivery to be made outside the United Stated do not apply to registered obligations offered for sale through a public auction if the obligations are considered to be in registered form by virtue of the fact that they may be transferred only through a book entry system. The obligation, if evidenced by a physical document other than a confirmation receipt, must contain on its face a legend indicating that it has been sold or resold in connection with its original issuance in accordance with those procedures.[270]

7. Form 1099-INT

a. Information Required on Form 1099-INT

Interest payments are reportable on Form 1099-INT, *Interest Income*. This form must include the payee's name, address, taxpayer identification number (TIN), as well as the total amount of interest paid, and federal income tax withheld resulting from backup withholding. Other amounts that may need to be disclosed include early withdrawal penalties, investment expenses, foreign tax paid and the country to which the withheld tax applies, tax-exempt interest, and private activity bond interest.

The most current version of Form 1099-INT and Instructions can be found on the IRS website.[271]

b. Filing Deadlines and Other Requirements

The Form 1099-INT is not required to be issued if the total aggregate amount of interest paid is less than $10, or the payee is an exempt recipient. However, the form must be issued if any amount of income tax is reported.[272]

Payments may only be aggregated by account, insurance contract, or investment certificate and reported accordingly. Thus, if a payee has more than one account, insurance contract or investment contract, separate reporting on Form 1099 is required for each account.[273]

Forms are required to be issued to payees after April 30th of the year of payment, and no later than January 31st of the following year.[274] Forms may be hand delivered in person, sent via the U.S. Postal Service, posted to a website accessible to the payee, or transmitted electronically to the payee's email address.[275] Forms are to be filed with the IRS on paper no later than February 28th or by March 31st if filed electronically.[276]

For discussion on additional reporting requirements, see V., below.

B. Original Issue Discount (OID)

1. Subject to Reporting

a. In General

Original Issue Discount (OID) is generally associated with the issuance of a long-term debt instrument when it is issued for a price less than its stated redemption price at maturity (the principal amount). The OID, which is considered to be a form of interest, is the difference between the stated redemption price at maturity and the issue price. All debt instruments that pay no interest before maturity (zero coupon bonds) are presumed to be issued at a discount. The majority of OID bonds are zero coupon bonds. However, it is possible for a bond that makes periodic coupon payments to also have OID.

Under §1273(a), OID is defined as the excess of a debt instrument's "stated redemption price at maturity" over its "issue price."[277] Debt instruments are considered to be originally issued at a discount if a difference exists under the last terms of purchase agreed to by the issuer and the first holder.[278] If, after original issue, the market value of a debt instrument declines (for example, due to an increase in prevailing interest rates) and the bond is subsequently sold to another holder (not the first holder), any difference between the stated redemption price of the bond at maturity or, if an OID instrument, its original issue price plus already accrued OID, and the purchase price of the bond (i.e., its tax basis in the hands of the buyer) is considered to be "market discount."[279] Market discount, with the exception of market discount associated with REMICs and certain other debt instruments under §6049(d)(7)(C), is not subject to the §6049 information reporting rules.[280]

An instrument's stated redemption price at maturity is the total amount due on maturity of the instrument as fixed by the last modifications made to its sale agreement.[281] The stated redemption price includes the stated principal amount, i.e., generally the instrument's face value, plus any interest and other amounts payable at maturity. Interest based on a fixed rate and payable unconditionally at fixed periodic intervals of one year or less during the entire term of the instrument is not considered part of the stated redemption price.[282] There is deemed to be no OID when the discount is less than one quarter of one percent of the stated redemption price at maturity multiplied by the number of complete years to maturity.[283]

The issue price of the instrument is dependent upon whether it is publicly offered or issued for property. When the debt is publicly offered and is not issued for property, the issue price is the initial offering price for the debt at which a substan-

[270] Reg. §1.871-14(e)(2).

[271] See IRS Pub. 1220, *Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G*, for instructions in completing the boxes relating to payments to state taxing authorities.

[272] Reg. §1.6049-4(b)(1), §1.6049-6(a).

[273] Reg. §1.6049-4(d)(1).

[274] Reg. §1.6049-6(c).

[275] *See* General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G). See also the 2002 Job Creation and Worker Assistance Act (JCWAA), which authorizes the electronic issuance of certain Forms 1099. *See also* T.D. 9114, 69 Fed. Reg. 7567 (Feb. 18, 2004).

[276] *See* Rev. Proc. 2012-30, 2012-33 I.R.B. 165; General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[277] §1273(a).

[278] §1273(a)(2), §1273(b)(1), §1273(b)(2).

[279] §1278(a)(2).

[280] §6049(d)(6), §6049(d)(7)(C).

[281] §1273(a)(2).

[282] §1273(a)(2).

[283] §1273(a)(3).

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tial amount was sold.[284] When the debt is issued for property other than money (including stock, other securities and services rendered) and offered to the public, the issue price is the fair market value of the property.[285] The issue price for other debt instruments is generally the price paid by the first buyer of the debt.[286]

For debt instruments initially sold together with a call or a put (i.e., an option or a warrant), or other security (collectively, an "investment unit"), the issue price is determined by allocating a portion of the issue price to each element of the investment unit based on the element's fair market value. The allocation to the debt instrument becomes the issue price for calculating the amount of OID specific to the debt instrument.[287]

The following simple example illustrates the OID concept:

> *Example:* Corporation C publicly issues serial zero-coupon bonds in registered form. The bonds provide for a single payment at their maturity in three years. This payment will include the stated principal amount of $100,000, i.e., the bond's face value, plus $34,100 of interest at 10%, compounded semi-annually. A substantial amount of the bonds are sold at $112,000 in their initial offering. The OID formula is: (stated principal + interest to be paid at maturity) − (issue price). Applying the formula, the bonds are each issued with $22,100 of original issue discount: ($100,000 + $34,100) − ($112,000) = $22,100.

For tax reporting purposes, the amount and timing of the total OID that is reportable is dependent upon the applicability of §1272.[288] If the instrument is covered under §1272, OID is to be treated as paid and, thus, reportable under §6049 when includible in the holder's gross income.[289] In general, §1272 applies to obligations with maturities of more than one year ("long-term") if issued after July 1, 1982 and included in income based on a constant interest rate.[290] For debt instruments issued by a corporation after May 27, 1969, and before July 2, 1982, interest to be included in gross income is calculated as a ratable monthly amount multiplied by the number of months (complete plus partial) held by the owner.[291]

If the OID instrument is within the reportable categories listed under §6049(b), but not covered under §1272, OID becomes reportable at the instrument's maturity or, if earlier, its redemption.[292] These items include long-term obligations issued on or before May 27, 1969, U.S. savings bonds, and debt instruments with fixed maturities of not more than one year ("short-term"), e.g., U.S. Treasury bills.[293] Tax-exempt obligations,[294] obligations issued by natural persons before March 2, 1984, and loans between natural persons not made in the course of a trade or business and not exceeding $10,000, even though expressly excluded under §1272, are also excluded under §6049(b)(2)(A) and §6049(b)(5), respectively, and, thus, are not reportable.[295]

Original issue discount on a bearer obligation issued before January 1, 1983, is reportable at the earlier of the obligation's maturity or its redemption.[296]

For long-term OID obligations, the issue date of the instrument is critical in determining the proper tax accrual and, thus, the timing and amount of OID includible in a taxpayer's income.[297] The OID on instruments issued after July 1, 1982, but before January 1, 1985, is includible in income on the basis of a constant yield.[298] The annual OID amount equals the sum of daily portions of the OID for each day during the taxable year the instrument is held, allowing for an amortization of a portion of any acquisition premium paid.[299]

The accrual period for an instrument issued after 1984 is based on a six-month period that ends on the day corresponding to the instrument's stated maturity date or six months before the maturity date.[300] For debt instruments issued after April 3, 1994, accrual periods may be any length and may vary over the term of the debt instrument. The accrual period cannot exceed one year and all payments must be made on either the first or last day of the accrual period.[301]

For instruments issued on or before July 1, 1982, OID is includible in gross income on a ratable basis.[302] The annual OID amount equals the ratable monthly portion of OID, multiplied by the number of complete months that the instrument is held in the taxable year, plus any fractional part of a month in the case of a change in ownership.[303] The ratable monthly portion is defined to equal the total OID in the instrument, divided by the total number of months from the date of the instrument's original issue to its stated maturity date, offset by a share of any acquisition premium paid by the holder.[304]

b. Short-Term OID

Original issue discount (OID) on short-term debt instruments with maturities of one year or less is treated for purposes of §6049 as paid in the calendar year the instruments mature or, if earlier, are redeemed. These instruments, that are exceptions to the provisions of §1272, include tax-exempt obligations, U.S. savings bonds, publicly traded commercial paper or U.S. Treasury bills, and OID on bearer obligations regardless of their maturities if issued before January 1, 1983.[305]

[284] §1273(b)(1).

[285] §1273(b)(3), §1273(b)(5). See §1274 for abusive circumstances when the issue price may be imputed.

[286] §1273(b)(2).

[287] §1273(c).

[288] §6049(d)(6)(A).

[289] §6049(d)(6)(A)(i).

[290] §1272(a).

[291] §1272(b).

[292] §6049(d)(6)(A)(ii).

[293] §1272(a)(2). *See also* IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments.*

[294] The 2005 Tax Increase Prevention and Reconciliation Act (TIPRA), Pub. L. No. 109-222, §503, removed the exemption to report tax-exempt interest payments under §6049(b) beginning with tax year 2006. However, information reporting for tax-exempt OID under §6049 will still not be required until future guidance is provided by the IRS and Treasury.

[295] §1272(a)(2).

[296] §6049(d)(6)(A)(ii).

[297] §1272(a), §1272(b).

[298] §1272(a).

[299] §1272(a)(3) and §1272(a)(7) and IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments.*

[300] §1272(a)(5) and IRS Pub. 1212.

[301] Reg. §1.1272-1(b) and IRS Pub. 1212.

[302] §1272(b)(1).

[303] §1272(b)(1).

[304] §1272(b)(2)–§1272(b)(4).

[305] §1272(a)(2), §6049(d)(6)(A)(ii); Reg. §1.6049-5(b). If the short-term instrument is issued for face value and pays stated interest but only at maturity,

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The amount of OID includible in gross income is treated as "reportable interest" and thus reportable on Form 1099-INT.[306] The amount reported is the difference between the stated redemption price at maturity and the original issue price, disregarding any acquisition premium or purchase allowance.[307]

If a short-term discount obligation is retired or redeemed any discount must be reported on Form 1099-INT. If the holder's actual purchase price is known, it may be used to calculate the amount includible on Form 1099-INT. Thus, the amount included on Form 1099-INT includes consideration of any acquisition premium paid or market discount experienced. Gross proceeds from the retirement or redemption of a short-term obligation (apart from long-term pre-1983 bearer obligations) are not required to be reported on Form 1099-B unless the obligation is sold before maturity, in which case reporting is required. Moreover, accrued discount to the date of sale is not reportable on Form 1099-INT or Form 1099-OID.[308]

In determining the owner's purchase price, middlemen, brokers, and those required to complete 1099-INT may look to the holder's copies of their purchase confirmations or similar records, or check their own transaction records to determine the price the holder paid for his obligation. If a holder's purchase price cannot be obtained, the reporter is generally required to report the OID from the short-term obligation as if the holder acquired the obligation at its original issue price.[309]

A special rule exists for reporting Treasury bills (T-bills). If the holder's purchase price cannot be determined, Form 1099-INT must be completed using the noncompetitive discount price for the T-bill with the longest maturity that matured on the same date that the specific T-bill reported matured. These prices are reflected in Section III-A of IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments*.[310] Similar rules have been applied to short-term discount obligations within Section III including the Federal Home Loan Banks (FHL Banks), the Federal National Mortgage Association (Fannie Mae), Federal Farm Credit Bank (FFCB), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Agricultural Mortgage Corporation (Farmer Mac).[311]

> *Example:* There are 13-week and 26-week T-bills maturing on the same date as the T-bill being redeemed. The price actually paid by the owner cannot be established by owner or middleman records. The payor treats as the issue price of the T-bill the noncompetitive discount price (expressed as a percent of principal) shown in Section III-A of IRS Pub. 1212 for a 26-week bill maturing on the same date as the T-bill redeemed. The interest reportable on Form 1099-INT is the OID (per $1,000 of principal) shown in Section III-A for that obligation.[312]

If the discount reflected on Form 1099-INT is estimated in this manner, the recipient must take care to include the total amount of interest reported to them in their income tax return. Adjustments must then be made and clearly reflected in the recipient's tax return to reduce (or increase) the taxable amount in accordance with the official instructions for the tax return being filed.[313]

c. U.S. Savings Bonds

Discount on U.S. savings bonds is not covered under §1272, and, therefore, must be reported as interest on Form 1099-INT when the instrument matures or, if earlier, is redeemed.[314] The amount that must be reported is the difference between the redemption amount paid and the initial investment price. For purposes of completing Forms 1099-INT, these amounts may not be reduced by any amounts previously taken into the holder's taxable income by reason of a §454 election to be taxed currently on annual increases in the redemption price of the bond.[315]

If the savings bond was previously transferred to, and reissued in the name of, the person presenting the bond for payment, the reportable interest on its redemption may not be reduced by any amounts that accrued before the re-issuance, even though those amounts were reportable at the time on Form 1099-INT to the transferor.[316] If a §1037 tax-deferred exchange occurs, only the actual cash paid to the holder, if any, is reportable on Form 1099-INT.[317]

d. Certificates of Deposit

OID on certificates of deposit (CDs) that are issued, purchased, or renewed after 1970 must be reported on Form 1099-OID if the investment's term is more than one year and the amount of OID is $10 or more. These same reporting requirements are also applicable to other deposit arrangements, such as time deposits and bonus savings plans for which payments of interest are deferred until maturity. The general long-term OID rules apply in calculating reportable amounts.[318]

Early withdrawal penalties of interest and principal may be assessed when funds are withdrawn before the maturity date of the investment. These forfeited amounts are reportable in Box 3 of Form 1099-OID. These charges may not be offset against OID reported in Box 1 or interest reported in Box 2.[319]

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the instrument may be considered issued with OID under §1273. As such, OID on the instrument may be subject to these rules since excepted under §1272.

306 *See* IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments*; Instructions for Forms 1099-INT and 1099-OID.

307 *See* IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments*; Instructions for Forms 1099-INT and 1099-OID.

308 *See* IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments*; Instructions for Forms 1099-INT and 1099-OID.

309 *See* IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments*; Instructions for Forms 1099-INT and 1099-OID.

310 *See* IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments*; Instructions for Forms 1099-INT and 1099-OID.

311 *See* IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments*; Instructions for Forms 1099-INT and 1099-OID.

312 *See* IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments*; Instructions for Forms 1099-INT and 1099-OID.

313 IRS Pub. 17, IRS Pub. 550, and IRS Pub. 1212.

314 §6049(d)(6)(A)(ii), §1272(a)(2)(B), and Instructions for Forms 1099-INT and 1099-OID.

315 §454(c); Reg. §1.6049-4(d)(9).

316 Reg. §1.6049-4(d)(9) and IRS Pub. 550, *Investment Income and Expenses*.

317 Reg. §1.6049-4(d)(9) and IRS Pub. 550, *Investment Income and Expenses*.

318 IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments*; Instructions for Forms 1099-INT and 1099-OID.

319 Instructions for Form 1099-OID.

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Investments of this nature, which are considered to have OID under §1273, but are excepted from §1272 as short-term obligations, are reported in the same manner as other short-term obligations. Discount from these investments is reportable as interest on Form 1099-INT for the calendar year in which the investment matures or, if earlier, the year it is redeemed or withdrawn.[320]

e. Tax Reporting for Stripped Debt Instruments

"Bond or coupon stripping" occurs when the ownership interest in a bond, debenture, note, certificate, or other evidence of indebtedness is separated from one or more of its coupons before they become payable. For tax purposes, when the stripped bond or coupon is sold, the sold portion is considered to be a separate debt instrument that is originally issued at a discount on the date of purchase.[321] Generally, stripped bonds and coupons are issued as zero coupon instruments without stated interest. Examples include instruments issued by the U.S. Treasury's Separate Trading of Registered Interest and Principal Securities (STRIPS) program and government-sponsored enterprises such as the Resolution Funding Corporation and the Financing Corporation, as well as debt instruments backed by U.S. Treasury securities that represent ownership interests in those securities offered primarily by brokerage firms, variously called CATS, COUGRs, TIGRs, etc.[322]

Special rules apply to sales and purchases of stripped bonds and coupons that occur after July 1, 1982. If a stripped bond was purchased after July 1, 1982, it is considered to have been issued with OID equal to the difference between its stated redemption price at maturity and its ratable share of the total purchase price of all issues sold, based on its then fair market value. If the instrument purchased after July 1, 1982, was a stripped coupon, the amount payable on the due date of the coupon is used instead of the stated redemption price as defined in §1273(a)(2).[323] Thus, the ratable share of the purchase price is generally the holder's acquisition price.[324] This approach effectively eliminates the need for OID adjustments for market premiums or any considerations of market discount.

However, if an obligation is acquired after October 22, 1986, any market discount that accrued before the date of sale of the stripped bond or coupon must be included in income to the extent the discount has not been previously reported.[325]

OID on stripped bonds and coupons purchased after July 1, 1982 with maturities of more than one year is computed using a constant-yield method that corresponds to the actual economic accrual of interest. OID is allocated over the time that the instrument is held through a series of adjustments to the acquisition price for each accrual period. Accrual periods vary depending upon whether the stripped coupon or bond was purchased before 1985.[326]

OID on short-term stripped coupons or bonds with maturity dates of one year or less is includible in gross income in the year of their maturity date (or payment due date) or, if earlier, the year of their redemption. The rule differs if the holder is the person who stripped the bond or coupon, in which case OID is includible in gross income as it accrues.[327] These amounts, if reportable under §6049, must be included on Form 1099-INT when paid.

Note: Section 6049(d)(6)(B) defines OID for reporting purposes as having "the meaning given to such term by section 1273(a)." With respect to OID on a strip instrument under §1286, the definition of OID includes the use of the purchase price to calculate OID as opposed to §1273(a) that requires the use of the original issue price in the calculation. Thus, OID from stripped coupons or bonds does not have the same technical meaning given to the term by §1273(a) and literally may not be within the §6049(d) definition. However, OID applicable to stripped coupons or bonds is required to be calculated based on the rules of §1272 and treated as paid at the time that the OID is includible in the holder's gross income.[328] This amount is to be reported on Form 1099-OID.[329] Brokers and middlemen should rely on IRS Pub. 1212 (Section II tables) to calculate the appropriate amount of OID to be reported.

Holders may need to make adjustments to the amount of OID reported on Form 1099-OID that is included in their personal tax returns. The gross amount of OID from Form 1099-OID should be shown in the holder's return along with appropriate adjustments to reflect the correct amount of income.[330]

f. Tax-Exempt Bonds and Coupons

The OID on a stripped tax-exempt bond or on a stripped coupon from a tax-exempt bond is generally not taxable. However, the holder of this type of instrument must comply with certain requirements if the instrument was acquired after October 22, 1986. Subsequent to this date, the holder must accrue OID on the instrument to determine its basis when the instrument is eventually sold.[331]

2. Who Must Report

Reporting is required if the payor is one of the following:

- an issuer with any bond outstanding or other evidence of indebtedness in registered or bearer form issued with OID;
- an issuer of a certificate of deposit (CD) made, purchased, or renewed after 1970 if the CD has OID and a term of more than one year;
- a financial institution having other deposit arrangements, such as time deposits or bonus savings plans, if the arrangements have OID and a term of more than one year;
- a broker or other middleman holding an OID obligation, including CDs as nominee for the actual owner;

[320] §6049(d)(6)(A)(ii).
[321] §1286.
[322] §1286(d).
[323] §1286(a), §1286(e)(4).
[324] IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments.*
[325] IRS Pub. 1212.
[326] §1272; IRS Pub. 1212.
[327] §1281(b)(1)(F).
[328] §6049(d)(6)(A)(i).
[329] IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments*; Form 1099-OID, *Instructions to Recipient.*
[330] IRS Pub. 1212; IRS Pub. 17, *Your Federal Income Tax (For Individuals).*
[331] For discussion of OID on tax-exempt and tax-advantaged debt instruments, see 183 T.M., *Tax-Advantaged Bonds*; IRS Pub. 1212; Instructions for Form 1099-INT and Instructions for Form 1099-OID.

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• a trustee or middleman of a WHFIT or widely held mortgage trust (WHMT); or

• a real estate mortgage investment conduit (REMIC), a holder of an ownership interest in a financial asset securitization investment trust (FASIT), or an issuer of a collateralized debt obligation (CDO).

Reporting on Form 1099-OID is not required if the payee is a corporation, a tax-exempt organization, an IRA, an Archer MSA or Medicare Advantage MSA, a U.S. agency, a state, the District of Columbia, a U.S. possession, or a registered securities or commodities dealer.[332]

3. Additional Reporting Requirements

a. Form 8281

Issuers of certain publicly offered debt instruments having OID must file Form 8281, *Information Return for Publicly Offered Original Issue Discount Instruments*, within 30 days after the date of issuance.[333] The information provided on that form will enable the IRS to update IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments*, that is used by brokers and middlemen to identify publicly offered OID debt instruments that they hold as nominees.[334] An issuer who fails to timely file Form 8281 may be subject to a penalty of 1% of the aggregate issue price of the debt unless it can be shown that the failure was due to reasonable cause and not willful neglect. The maximum penalty for any issue is $50,000.[335]

Publicly offered debt instruments include serial obligations, debt instruments issued in exchange for other debt instruments or for stock, a debt instrument sold together with options or warrants (an investment unit), sinking fund instruments, or convertible instruments. An obligation registered with the Securities and Exchange Commission (SEC) is a publicly offered debt instrument. However, an obligation exempt from SEC registration may also be publicly offered as noted in Reg. §1.1275-1(h).

The information reporting requirements apply to any debt instrument that has OID if the instrument is part of an issue the offering of which is registered with the SEC after the issue date of the debt instrument.[336] For example, this rule applies to a newly issued debt instrument (B bond) exchanged for an otherwise identical non-SEC-registered debt instrument (A bond) if the B bond is part of an issue the offering of which is registered with the SEC and the B bond has an issue date that is the same as the issue date of the A bond for tax purposes because the exchange is not a realization event under Reg. §1.1001-3. For these debt instruments, Form 8281 must be filed within 30 days after the date the offering is registered with the SEC.[337]

An exception from reporting on Form 8281 applies to regular interests of a real estate mortgage investment conduit (REMIC) or collateralized debt obligations (CDOs), instruments for which OID is de minimis, tax-exempt obligations, short-term obligations (maturity is one year or less), certificates of deposit (CDs) issued by banks or financial institutions, CDs sold by brokers or other middlemen, or a public offering of stripped bonds or stripped coupons, including instruments issued under the Department of the Treasury's Separate Trading of Registered Interest and Principal Securities (STRIPS) program and instruments that constitute ownership interests in U.S. Treasury securities.[338]

b. IRS Pub. 1212

IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments*, is comprised of general information relative to the different types of debt instruments that may have OID that is required to be reported. However, the publication does not include U.S. savings bonds, certificates of deposit (CDs) and other face amount certificates issued at a discount, obligations issued by tax-exempt organizations, OID instruments that matured or were entirely called by the issuer before the tables were posted on the IRS website, mortgage-backed securities and mortgage participation certificates, long-term OID debt instruments issued before May 28, 1969, certain short-term obligations, debt instruments issued at a discount by states and their political subdivisions, REMIC regular interests and collateralized debt obligations (CDOs), commercial paper and bankers acceptances issued at a discount, obligations issued by individuals at a discount, foreign obligations not traded in the United States and obligations not issued in the United States, and OID instruments for which no information was available.

The OID tables that are to be used to calculate the amount of OID to report are only available on the IRS website.[339] The tables are posted to the website in late November or early December of each year and are divided into three sections. Tables are reposted in January of the subsequent year to include November and December information. Section I includes information pertinent to publicly offered long-term debt instruments such as the name of the issuer, Committee on Uniform Security Identification Procedures (CUSIP) number, issue date, maturity date, the issue price expressed as a percent of principal or of stated redemption price at maturity, the annual stated or coupon interest rate, the yield to maturity that will be added to Section I-B bonds issued after December 31, 2006, total OID accrued up to January 1 of a calendar year, the daily OID for the accrual periods falling in a calendar year and subsequent year for long-term debt instruments issued after July 1, 1982, and the total OID per $1,000 of principal or maturity value for a calendar year or subsequent year. Section II contains information pertinent to stripped coupons and principal components of U.S. Treasury and government-sponsored enterprise debt instruments. This section also includes debt instruments backed by U.S. Treasury securities that represent ownership interests in those securities. Section III includes information specific to short-term discount obligations. For each obligation, this list includes the CUSIP number, maturity date, issue date, issue price

[332] Instructions for Forms 1099-INT and 1099-OID.

[333] Reg. §1.1275-3(c); Instructions for Form 8281, *Information Return for Publicly Offered Original Issue Discount (OID) Instruments.*

[334] IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments*, may also be used by owners of certain debt securities to determine the amount of OID to include in their tax returns.

[335] §6706(b).

[336] Reg. §1.1275-3(c)(4), T.D. 9616, 78 Fed. Reg. 23,116 (Apr. 18, 2013), applicable to debt instruments that are part of an issue the offering of which is registered with the SEC on or after January 1, 2014.

[337] Reg. §1.1275-3(c)(4).

[338] Reg. §1.1275-3(c)(3).

[339] *See* https://www.irs.gov/forms-pubs/original-issue-discount-oid-tables.

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expressed as a percent of principal, and discount to be reported as interest for a calendar year per $1,000 of redemption price. Short-term obligations reported in Section III-B have been discontinued by the Student Loan Marketing Association.

4. Form 1099-OID

a. Filing Requirements for Form 1099-OID

The information required to be reported on Form 1099-OID should include much of the same general information required on Form 1099-INT such as the name, address and taxpayer identification number (TIN) of the payee, as well as the payor's name, address, and the payor's employer identification number (EIN).[340] An account number is required when multiple accounts for the same payee are to be reported on more than one Form 1099-OID.

Generally, a separate Form 1099-OID must be filed for each discount obligation even if several OID obligations are held by the same person. However, the amount of OID may be aggregated from two or more obligations on the same Form 1099-OID if the same person holds more than one certificate of the same issue for the same period of time during the calendar year and each certificate has the same proportional amount of OID to report.[341]

The information reporting requirements for OID conform to those for interest as defined in §6049. Payments of OID aggregating $10 or more that are includible in gross income under §1272 must be reported on Form 1099-OID. However, the aggregation rule does not apply if backup withholding has occurred, in which case reporting is always required to reflect the amount of taxes withheld irrespective of the amount of OID that is reported.[342]

The most current version of Form 1099-OID and Instructions can be found on the IRS website.[343]

b. Additional Reporting Requirements

The copy (Copy B) that is sent to the recipient or payee must also include a statement to alert the payee that the amount of OID reported may not be the correct figure to report on the payee's income tax return.

Any qualified stated interest and OID paid on a taxable obligation may both be reported on Form 1099-OID. Alternatively, the interest may be reported separately on Form 1099-INT rather than on Form 1099-OID. However, OID tax-exempt interest that is $10 or more must be reported on Form 1099-OID.[344]

C. Dividends and Other Corporate Distributions

1. Dividends Subject to Reporting

Dividends are defined for reporting purposes to include any distribution by a corporation that is considered a dividend under §316, any payment made by a stockbroker to any person as a substitute for a dividend, and a distribution from a regulated investment company (RIC).[345]

For the recipient, dividends are distributions of money, stock, or other property paid by the corporation. The most common types of distributions are ordinary dividends, capital gain distributions, and nondividend distributions.

a. Dividends Distributed by a Corporation that Are Defined Under §316

Under §316, a dividend is any distribution of property made by a corporation to its shareholders out of accumulated earnings and profits or current earnings and profits, computed as of the close of the taxable year without reduction for distributions made during the taxable year.[346] For this purpose, property includes cash, securities, and any other property except stock or stock rights in the corporation making the distribution.[347]

The amount of the reportable dividend or other reportable shareholder distribution is generally the amount of money received, plus the fair market value of any other property received on the date of distribution.[348] These dividends are included in "Total Ordinary Dividends" Box 1a on Form 1099-DIV.[349]

> *Example:* Corporation X paid a taxable dividend per share of $2 in cash and a $12 principal amount of Corporate Y securities ($12 note). The fair market value of the $12 note on the distribution date was $11. The amount includible on Form 1099-DIV as an ordinary dividend should be $13 per share, $2 cash plus the $11 fair market value of each $12 note received.

If a distribution is not paid from accumulated and current earnings and profits, the distribution is deemed to be a return of capital to be offset against the shareholder's tax basis in their shares. Any distribution in excess of the tax basis of those shares is treated as if it were gain from the sale of the shares.[350] A return of capital, if determinable, is reported on Form 1099-DIV as "Nondividend Distributions," Box 3.[351] Nondividend distributions are considered fully or partially nontaxable as dividends only because the paying corporation's current and accumulated earnings and profits are less than the distributions. Nondividend distributions do not include tax-free stock dividends or distributions exchanged for stock in liquidations or redemptions.[352] A corporation making "nondividend distributions" to its shareholders resulting from its lack of earnings and profits also must file Form 5452, *Corporate Report of*

[340] Except on copies provided to the IRS, a truncated taxpayer identification number may be used on Form 1099-OID. Reg. §1.6049-6(b)(3), T.D. 9675, 79 Fed. Reg. 41,127 (July 15, 2014), effective for payee statements due after December 31, 2014. Reg. §1.6049-6(e)(5). The payer's taxpayer identification number (TIN) may not be truncated in any form. *See* Instructions for Forms 1099-INT and 1099-OID.

[341] Reg. §1.6049-6(b)(2); IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments.*

[342] Reg. §1.6049-6(b)(2); IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments.*

[343] See IRS Pub. 1220, *Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G*, for instructions in completing the boxes relating to payments to state taxing authorities.

[344] *See* Instructions for Form 1099-OID.

[345] Reg. §1.6042-3(a).

[346] §316(a)(1), §316(a)(2).

[347] §316(a), §317(a).

[348] §301(b)(1), §301(b)(3).

[349] *See* Instructions for Form 1099-DIV.

[350] §316(a)(1), §316(a)(2). *See also* §301(c).

[351] *See* Instructions for Form 1099-DIV and IRS Pub. 550.

[352] Form 5452, *Corporate Report of Nondividend Distributions.*

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Nondividend Distributions. This form, along with supporting data, must be filed with the payor's federal income tax return.[353]

Ordinary dividends also include dividend payments received from shares purchased and held by a dividend reinvestment plan (DRIP). These types of plans allow stockholders to use dividends to buy additional shares of stock in the same corporation rather than receiving a cash payment. Even though the cash dividends are not physically received by the stockholder, the dividends are still subject to reporting on Form 1099-DIV in the year they are paid.[354]

b. Substitute Payments

Brokers are required to report substitute payments to individuals, including payments in lieu of dividends, on Form 1099-MISC, *Miscellaneous Information*, Box 8.[355]

A substitute payment may be a payment in lieu of a dividend for which the ex-dividend date occurs during the period after the transfer of stock for use in a short sale, and before the closing of the short sale.[356] A short sale is a commonly used trading strategy that seeks to capitalize on an anticipated decline in the price of a security. The transaction is typically effected by borrowing shares from a broker who often represents both the short seller and the lender in the transaction. As a matter of course, margin account agreements with brokers usually provide for the lending of the client's securities that are subject to the margin agreement. The borrowed shares are immediately sold in the open market with the intention to buy them back at some point in the future. Once the shares are repurchased, they are returned to the broker or lender.

When dividends are paid on the shares that have been borrowed and the ex-dividend date occurs during the period after the transfer of stock for use in a short sale and before the closing of the short sale,[357] the owner of the securities on the ex-dividend date (the borrower) will be entitled to receive the actual dividend payment. If the dividend is deemed to be qualified, the payment may be taxed at the lower preferential rates. The transaction usually requires that the short seller (the borrower) make "in lieu of" (or substitute) payments to the lender to make up for dividend payments that would have been received by the lender had they not loaned the stock. Substitute payments are deemed received when the amount is paid or deemed paid to the broker on behalf of the customer.[358]

A broker may also be required to report substitute payments made to an individual in lieu of exempt-interest dividends or capital gain dividends paid by a RIC, distributions treated as a return of capital, or foreign tax credit dividends.[359] For purposes of §6045(d), dividends to which substitute payments are related are defined under §316 (the same as for §6042) but also include distributions treated as returns of capital under §301(c)(2) or §301(c)(3).[360]

When a broker receives a substitute payment in lieu of tax-exempt interest, exempt-interest dividends, or other items on behalf of the customer for which reporting is required, the broker must be able to determine the identity of the customer as of the record date with respect to whose securities were transferred and on whose behalf the broker received the substitute payments.[361]

No reporting for substitute payments is required if the total aggregate amount of the substitute payments is less than $10,[362] the recipient is an exempt entity,[363] or the recipient is an exempt foreign person.[364]

c. Distribution from a Regulated Investment Company (RIC)

A regulated investment company (RIC) is a domestic corporation registered throughout the tax year as a management company or unit investment trust under the Investment Company Act of 1940 (ICA) that elects to be treated as a business development company, or is a common trust fund or similar fund that is neither an investment company under §3(a)(1) of the ICA nor a common trust fund as defined under §584(a). Moreover, the RIC must meet the income test, asset test, and distribution requirements as explained in §851.

A RIC may be treated as a corporation for tax purposes. Thus, distributions of money or property other than amounts distributed in liquidation or redemption of shares or amounts designated as special dividends are generally taxed as ordinary dividends even though the RIC may be investing in bonds or equities that earn interest or dividends, or create short-term capital gains when investments are sold.[365] The most common form of a RIC is a mutual fund.

For further discussion of reporting for RICs, see IV.A., below.

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[353] §6042(d). *See* Instructions for IRS Form 5452.

[354] IRS Pub. 550, *Investment Income and Expenses*. Pursuant to Reg. §31.3406(b)(2)-4(c)(3), a dividend paid to a dividend reinvestment plan is subject to backup withholding under §3406 at the time and to the amount made available to the shareholder or credited to the shareholder's account. At the discretion of the payor, withholding under §3406 need not be applied to any excess of the fair market value of the shares of stock received by the shareholder or credited to the shareholder's account over the purchase price of the shares (including shares acquired by the shareholder at a discount in connection with the dividend distribution) or to any fee that is paid by the payor in the nature of a broker's fee for purchase of the stock or service charge for maintenance of the shareholder's account. The payor must, however, treat any excess amounts and fees on a consistent basis for each calendar year.

[355] Notice 2003-67.

[356] Reg. §1.6045-2(a)(4)(i)(B).

[357] Reg. §1.6045-2(a)(4)(i)(B).

[358] Reg. §1.6045-2(e).

[359] Reg. §1.6045-2(a)(3)(ii).

[360] Reg. §1.6045-2(a)(4)(iv).

[361] Reg. §1.6045-2(f)(1).

[362] Reg. §1.6045-2(b)(1).

[363] Reg. §1.6045-2(b)(2). An exempt recipient is an organization exempt from taxation under §501(a); an individual retirement account; the United States, a possession of the United States or an instrumentality or a political subdivision or a wholly owned agency of the foregoing; a State, the District of Columbia, or a political subdivision or a wholly owned agency or instrumentality of either of the foregoing; a foreign government or a political subdivision thereof; an international organization, or a foreign central bank of issue as defined in Reg. §1.6049-4(c)(1)(ii)(H), or the Bank for International Settlements. The determination of whether a person is an exempt entity shall be made in the manner described in Reg. §1.6045-1(c)(3)(i)(B).

[364] Reg. §1.6045-1(g)(1)(i). A return is not required to be furnished by the broker for substitute payments made to a foreign person who has provided documentation upon which the broker may rely in order to treat the recipient as a foreign person.

[365] §316, §301.

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2. Who Must Report

Every person who makes payments aggregating $10 or more to any other person of dividends and other distributions on stock must file an information return on Form 1099-DIV, *Dividends and Distributions*. Reporting is also required if a payor withheld and paid any foreign tax on dividends and other distributions on stock, withheld any federal income tax under the backup withholding rules, or paid $600 or more as part of a liquidation. This reporting obligation also extends to those nominees receiving payments of dividends on behalf of others except for husbands or wives who receive payments on behalf of their spouses.[366]

Under Reg. §1.6042-2(a)(1)(ii), banking institutions and trust companies (or their nominees) exercising trust powers, and other fiduciaries may be required to file Form 1041, *U.S. Income Tax Return for Estates and Trusts*, in lieu of filing Form 1099-DIV. The Form 1041 must report dividend payments and disclose the names, addresses, and tax identification numbers (TINs) of the true recipients.[367] If the owner is an organization exempt from taxation under §501(a), banking institutions and trust companies must file the appropriate annual return that includes the name, address, and identifying number of the record owner.[368]

A RIC acting as a custodian of a unit investment trust described in §851(f)(1) who receives dividend payments in their capacity as a nominee is also required to file Forms 1099-DIV.[369] However, this reporting responsibility may be assumed by the RIC if it agrees to comply with the requirements of §6042 and Reg. §1.6042-4 to issue the appropriate forms.[370]

3. When Dividends Are Considered Paid

For purposes of Form 1099-DIV reporting, an amount is deemed paid when credited to a person's account or set apart for that person without any substantial limitation or restriction on the time or manner of payment. If the dividend is made available to the shareholder to draw upon at any time and is brought within the shareholder's control, it is considered paid.[371]

For example, dividends that are made payable on December 31 and are paid by checks mailed on December 31 so that no shareholder will receive the checks until January of the following year should be considered reportable in the following year. The dividend is not considered to be made available until it is received in January and brought within the shareholder's control. On the other hand, if the dividends are posted to a unrestricted account on December 31 so that the owner can draw upon them at any time, the dividends are reportable to the owner in the year in which they are posted to the recipient's account.[372]

[366] §6042(a); Reg. §1.6042-2; Instructions for Form 1099-DIV.
[367] Reg. §1.6042-2(a)(1)(ii)(B).
[368] Reg. §1.6042-2(a)(1)(ii)(C).
[369] *See also* Reg. §1.851-7(d).
[370] Reg. §1.6042-2(a)(1)(iii).
[371] Reg. §1.6042-2(b).
[372] Reg. §1.451-2.

4. Qualified Dividends

Reportable dividends (Form 1099-DIV, Box 1a) are required to be classified as either qualified or nonqualified.[373] Qualified dividends are dividends paid during the tax year from domestic corporations and qualified foreign corporations. By definition, a qualified foreign corporation is incorporated in a possession of the United States or eligible for benefits of a comprehensive income tax treaty with the United States that the Treasury Secretary determines is satisfactory for this purpose and that includes an exchange of information program. If a foreign corporation does not meet these criteria, it may be treated as a qualified foreign corporation if the stock associated with the dividend paid is readily tradable on an established securities market in the United States.[374]

This differentiation between qualified and nonqualified results in a favorable reduction in the tax rate applicable to qualified dividends. For individuals, estates, and trusts, qualified dividends are generally taxed at lower income rates than the maximum ordinary income rate and may even be 0% for taxpayers in the lowest income tax brackets.[375]

The following dividends are not deemed to be qualified:[376]

- dividends from stocks that do not meet specific holding period requirements (dividends the recipient received on any share of stock held less than 61 days during the 121-day period that began 60 days before the ex-dividend date, or dividends attributable to periods totaling more than 366 days that the recipient received on any share of preferred stock held for less than 91 days during the 181-day period that began 90 days before the ex-dividend date);
- dividends that relate to payments that the recipient is obligated to make with respect to short sales or positions in substantially similar or related property;
- dividends paid by a regulated investment company (RIC) that are not treated as qualified dividend income under §854;
- dividends paid by a real estate investment trust (REIT) that are not treated as qualified dividend income under §857(c); and
- deductible dividends paid on employer securities.

[373] 2003 Jobs and Growth Tax Relief Reconciliation Act, Pub. L. No. 108-27, effective for Forms 1099-DIV received as of May 6, 2003.
[374] *See* Notice 2003-71, 2003-43 I.R.B. 922.
[375] *See* Notice 2003-79, 2003-50 I.R.B. 1206. Notice 2004-71, 2004-45 I.R.B. 793, was issued to provide that the simplified procedures and other rules contained in Notice 2003-79 be extended to apply to 2004 information reporting of distributions with respect to securities issued by foreign corporations. Effective for taxable years of foreign corporations beginning after December 31, 2004, the American Jobs Creation Act of 2004 (AJCA), Pub. L. No. 108-357, repealed the rules applicable to foreign personal holding companies and foreign investment companies from the Code. Notice 2006-3, 2006-3 I.R.B. 306, provides guidance for persons required to make returns and provide statements under §6042 with respect to securities issued by a foreign corporation, and for individuals receiving such statements. This notice provides for the extension of the simplified procedures regarding information reporting of distributions with respect to securities issued by foreign corporations and other rules contained in Notice 2003-79 and Notice 2004-71 for tax years 2003 and 2004, respectively, to tax year 2005 and future years.
[376] *See* Instructions for Form 1099-DIV.

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5. *Stock Traded After Dividend Record Date*

When stock is sold after the declaration of a dividend and after the date on which the seller becomes entitled to the dividend, the dividend is ordinarily income to the seller.[377] Under Rev. Rul. 82-11,[378] the date the stockholder becomes entitled to the dividend for tax purposes is determined to be the record date, i.e., the date the corporation determines record owners on its books for purposes of entitlement to the dividend.

For stock exchange purposes, the ex-dividend date generally establishes ownership of stock on the record date and thus determines who has the economic right to dividends when paid. Purchasers of stock before the ex-dividend date are deemed to have acquired the right to receive the dividend when paid. Sellers of stock on or after the ex-dividend date are considered to have retained the right to the dividend when paid. The ex-dividend date is usually fixed by a stock exchange on the second business day before the record date. This rule provides a uniform trade settlement period for those trading on the exchange. The rule holds true (i.e., the settlement period is respected) even though a buyer executing a stock purchase before the ex-dividend date may not be actually entered on the records of the corporation issuing the traded stock by its dividend record date.

Under certain stock exchange rules, when a dividend exceeds 25% of the market value of the stock, it is deemed to be an extraordinary dividend and the ex-dividend date, normally occurring before the record date, is postponed until after the record date. Under these circumstances, the seller, as holder of record who sells before the postponed ex-dividend date, usually remits the dividend through a due bill, which is a promissory note payable to the buyer.[379]

Rev. Rul. 82-11 provides that the operation of the stock exchange rules may not change the federal income tax consequences, and that the amount paid by a buyer for stock acquired after the record date but before the ex-dividend date is partly in consideration of his or her right to receive the dividend. The seller who sold after the record date but before the ex-dividend date of an extraordinary dividend would have been the record holder on the record date and, for tax purposes under Rev. Rul. 82-11, the true recipient of the dividend. In this situation, the dividend may be reportable to the seller on Form 1099-DIV even though the seller may never actually receive the dividend, or the dividend is ultimately passed to the buyer through satisfaction of the due bill.[380]

6. *Exceptions to Dividend Reporting*

Reportable dividends do not include the following:

- aggregated annual payments of dividends and other distributions on stock that are less than $10;[381]
- amounts paid by insurance companies to policy holders, apart from dividends on their capital stock (these payments are reportable on Form 1099-R);[382]
- amounts paid by mutual savings banks, savings and loan associations, or similar organizations (domestic and federal savings and loan associations, domestic building and loan associations, cooperative banks, and credit unions) for deposits, investment certificates, or shares that may be withdrawn or repurchased[383] (these amounts are considered interest and reportable under §6049 on Form 1099-INT);
- distributions made to a documented foreign beneficial owner, or to a recipient presumed to be a foreign beneficial owner (these payments may be reportable on Form 1042-S as required under Reg. §1.1461-1(b)(1));[384]
- distributions or payments made outside the United States by entities not considered to be U.S. payors or middlemen;[385]
- distributions or payments made during a period in which the amounts represent assets blocked under executive authority;[386]
- payments made by a foreign intermediary that it has received in its capacity as an intermediary, and payments made by a U.S. branch of a foreign bank or of a foreign insurance company;[387] and
- payments made to an exempt recipient unless backup withholding has occurred.[388]

Additional exceptions include the following:

- taxable dividend distributions (deemed to be a return of premium) reportable on Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, Etc.*;[389] and
- substitute payments in lieu of dividends (reportable on Form 1099-MISC, *Miscellaneous Information*).[390]

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[377] Reg. §1.61-9(c),

[378] 1982-1 C.B. 51.

[379] New York Stock Exchange Rule 703.00.

[380] See Rev. Rul. 93-84, 1993-2 C.B. 225, which held that a cash basis taxpayer must report the gain or loss realized from a year-end sale of stock or securities, traded on an established securities market, in the year in which the trade date falls. See also Senate Rep. No. 313, 99th Cong., 2d Sess. 131 (1986), which states that "for sales made on an established market, if cash settlement of transactions customarily occurs several business days after the date on which a trade is made, gain or loss will be recognized for federal income tax purposes by both cash and accrual method taxpayers on the date the trade is executed." Under these rulings, the trade date should control for purposes of dividend attribution.

[381] Reg. §1.6042-2(a).

[382] Reg. §1.6042-3(b)(1)(i).

[383] Reg. §1.6042-3(b)(1)(ii).

[384] Reg. §1.6042-3(b)(1)(iii).

[385] Reg. §1.6042-3(b)(1)(iv). For further discussion on when payments are deemed made outside the United States, see III.A. and III.B., above.

[386] Reg. §1.6042-3(b)(1)(v).

[387] Reg. §1.6042-3(b)(1)(vi). In all cases, a valid withholding certification is required to be presented to the payor or middleman.

[388] Reg. §1.6042-3(b)(1)(vii).

[389] Instructions for Form 1099-DIV.

[390] *See* Instructions for Form 1099-MISC. See also discussion of substitute payments at III.C.1.b., above.

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7. Special Transactions Subject to Reporting

a. Section 404(k) Dividends

Distributions from an employee stock ownership plan (ESOP) that are §404(k) dividends are to be reported on Form 1099-R. This information must be reported on a separate Form 1099-R and not combined or reported with any other distributions. Thus, a payee may receive multiple Forms 1099-R to reflect the payment of dividends as well as other distributions from the plan for the same tax year. However, if these dividends are paid directly from the corporation to the plan participant or beneficiary, the payments are still reported on Forms 1099-DIV.[391]

b. Dividends on Restricted Stock

Dividends paid on restricted stock transferred to an employee in connection with the performance of services are reportable as dividends if the stock is treated as substantially vested to the employee (or if the employee elects to include the excess of fair market value over the amount paid for the property in gross income as compensation for services for the year in which the property is received).[392] Dividends paid on stock not substantially vested to the employee are deemed to be compensation reportable in gross income.[393]

c. Taxable Distributions Made by Mutual and Money Market Funds

Amounts that are paid by a money market mutual fund are deemed to be dividend income rather than interest income and thus are reported on Form 1099-DIV.[394] These money market funds are not the same as money market accounts offered by financial institutions.

d. Distributions by an S Corporation

In general, distributions made by a subchapter S corporation are not considered to be dividends unless the distributions are made out of pre-election accumulated earnings and profits.[395]

e. Gain from Sale of Small Business Stock

The sale or exchange of qualified small business stock held in a regulated investment company (RIC) may create gains that qualify for favorable tax treatment under §1202 and must be reported on Form 1099-DIV. A noncorporate taxpayer may exclude a percentage of gain determined by reference to the taxpayer's acquisition date of qualified small business stock (QSBS) as well as the QSBS holding period. As discussed in detail in 760 T.M., *Small Business Corporation Stock: Special Tax Incentives*, at VII., the §1202 gain exclusion percentage is:

- 100% for QSBS acquired after July 4, 2025, and held for at least five years;
- 75% for QSBS acquired after July 4, 2025, and held for at least four years;
- 50% for QSBS acquired after July 4, 2025, and held for at least three years;
- 100% for QSBS acquired after September 27, 2010, and on or before July 4, 2025, and held for more than five years;
- 75% for QSBS acquired after February 17, 2009, and before September 28, 2010; and
- 50% for QSBS acquired on or before February 17, 2009.[396]

Capital gain distributions are reportable on Form 1099-DIV, Box 2a. Any part of a distribution that qualifies for this exclusion is reportable in Box 2c.

A qualified trade or business does not include services performed in a variety of fields including health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, or brokerage services. Also excluded is a business whose principal asset is the reputation or skill of one or more employees. Other businesses that do not meet the definition of a qualified trade or business include banking, financing, insurance, leasing, investing, farming, as well as any business that operates a hotel, motel, restaurant, or similar business. For additional discussion of qualified trades or businesses, see 760 T.M., *Small Business Corporation Stock: Special Tax Incentives*, at VIII.

In addition to reporting the distributions on Form 1099-DIV, the payor must provide a statement to the recipient for each §1202 gain that reflects the name of the corporation that issued the stock that was sold, the date(s) the RIC acquired and sold the stock, the recipient's part of the RIC's basis in the stock and the sales price, and the amount of the recipient's §1202 gain. The statement should also indicate if the gain is from the sale of empowerment zone business stock.[397]

8. Reportable Events

a. Common and Preferred Stock Dividends, Stock Splits, and Distributions of Warrants

A corporation may distribute additional shares of stock to existing shareholders via a stock dividend or a stock split. In general, neither transaction typically requires issuing Form 1099-DIV. A stock dividend is issued in proportion to the number of shares owned. Even though the corporation's total equity capital is not changed by the transaction, a transfer does occur usually from surplus to capital. The total value of the shares held by the investor subsequent to the transaction also does not change.

A stock split has no overall effect on total stockholders' equity. The only change is in the par value per share and the number of shares of stock outstanding. A reverse stock split de-

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[391] Announcement 2008-56, effective for distributions made in 2009 or later years.

[392] Rev. Proc. 80-11, *distinguished by* Rev. Proc. 83-38, and Rev. Rul. 83-22. *See also* Instructions for Form 1099-DIV.

[393] IRS Pub. 525, *Taxable and Nontaxable Income*.

[394] See the detailed discussion on Regulated Investment Companies (RICs) at IV., below.

[395] §1368(c)(2). *See also* IRS Pub. 550, *Investment Income and Expenses*.

[396] §1202(a), amended by the One Big Beautiful Bill Act (OBBBA), Pub. L. No. 119-21, §70431.

[397] *See* Instructions for Form 1099-DIV.

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creases the number of shares outstanding when shares are collapsed and the par value per share increases. Once again, there is no change in capital and no reporting is required.

The tax character of a stock split versus a stock dividend may differ under the rules of a stock exchange, such as the New York Stock Exchange, meaning that a transaction is deemed to be a stock dividend if the total amount of shares distributed is less than 25% of the outstanding shares. If the total number of shares distributed is 25% or more but less than 100% of the outstanding shares of the corporation, the event is considered a partial stock split. A distribution of 100% or more of the outstanding shares (as calculated before the distribution) is defined to be a stock split.[398]

When distributions of warrants or rights to acquire stock are made to existing shareholders on their outstanding common stock, distributions are not included in taxable income and are not subject to Form 1099-DIV reporting.[399]

However, if stock and stock warrants are distributed with respect to preferred stock, they are generally considered taxable dividends to the extent of the corporation's accumulated and current earnings and profits calculated at year end.[400] An exception to this rule applies if there is an increase in the conversion ratio of convertible preferred stock made solely to take account of a stock dividend or split of the stock into which it is convertible. This increase may not be considered a taxable dividend.[401]

Preferred stock distributions in the form of stock or stock warrants usually fall within the scope of the §316 dividend definition due to the mechanics of §305. Thus, the fair market value of the stock or warrant on the date of distribution may be considered reportable on Form 1099-DIV.[402]

Other distributions that may fall within the §316 definition of dividends and may be reportable on Form 1099-DIV include:

> (1) disproportionate distributions that result in receipt of property by some shareholders and an increase in proportionate interests of other shareholders in corporate assets or earnings and profits (under §305(b)(2)), and
>
> (2) mixed distributions of common and preferred stock that result in receipt of preferred stock by certain common shareholders and common stock by other common shareholders (under §305(b)(3)).[403]

Determining whether any of these events has occurred is important because a payor who is unable to identify the payment as a dividend by the filing due date must treat the entire distribution as a reportable dividend on Form 1099-DIV.[404] Publicly held corporations must issue written statements — such as dividend announcements, proxy statements, and sometimes a prospectus — concerning the tax status of their distributions. Nominees may rely on these documents in determining the proper tax reporting of the distribution to the actual shareholder.

b. Optional Dividends and Fractions in Lieu of Shares

A stockholder may elect to receive an optional dividend that may be paid in money or other property. An optional dividend payment is treated as a §301 taxable distribution of property even if the shareholder elects to receive stock or stock warrants.[405] The distribution, if taken in stock, warrants, or other property in lieu of cash, is reportable on Form 1099-DIV as an ordinary dividend under §316 and is subject to the filing requirements of §6042. The amount reportable is the fair market value of the stock, warrants, or other property.[406]

If the shareholder is not given the right to elect money or other property in lieu of stock when he or she receives a stock dividend or becomes entitled to a stock split on common stock, and receives cash in lieu of a fractional share, then for tax purposes, the cash addition is considered proceeds from the sale of his or her fractional share, not dividends. The fractional shares are deemed to be distributed and then redeemed (if by the issuer) or sold (if by a nominee).[407] Thus, cash in lieu of these fractional shares is subject to §6045 reporting requirements.[408] These principles are demonstrated in the following example:[409]

> *Example:* Corporation X declared a dividend payable in additional shares of its common stock to the holders of its outstanding common stock on the basis of two additional shares for each share held on the record date but with the provision that, at the election of any shareholder made within a specified period before the distribution date, he may receive one additional share for each share held on the record date plus a $12 principal amount of securities of Corporation Y owned by Corporation X. The fair market value of the stock of Corporation X on the distribution date was $10 per share. The fair market value of $12 principal amount of securities of Corporation Y on the distribution date was $11 but such securities had a cost basis to Corporation X of $9.
>
> (i) The distribution to all shareholders of one additional share of stock of Corporation X (with respect to which no election applies) for each share outstanding is not a distribution to which §301 applies. Thus, no reporting is required on Form 1099-DIV.
>
> (ii) The distribution of the second share of stock of Corporation X to those shareholders who do not elect to receive securities of Corporation Y is a distribution of property to which §301 applies, whether such shareholders are individuals or corporations. The amount of the distribution to which §301 applies is $10 per share of stock of Corporation X held on the record date (the fair market value of the stock of Corporation X on the distribution date). This is

[398] New York Stock Exchange Rule 703.00.

[399] §305(a), §305(d)(1); Reg. §1.305-1(a). A distribution of property under §317 does not include stock in the corporation making the distribution or rights to acquire such stock. *See also* IRS Pub. 550, *Investment Income and Expenses*.

[400] §305(b)(4).

[401] *Id.*

[402] Reg. §1.6042-3.

[403] Reg. §1.316-1(c).

[404] Reg. §1.6042-3(c).

[405] §305(b)(1), Reg. §1.305-2(a).

[406] §301(b)(1); Reg. §1.6042-3(a).

[407] IRS Pub. 550, *Investment Income and Expenses*.

[408] According to Reg. §1.6045-1(c)(3)(ix), 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.

[409] Reg. §1.305-2(b).

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the amount reportable on Form 1099-DIV as ordinary dividends.

(iii) The distribution of securities of Corporation Y in lieu of the second share of stock of Corporation X to the shareholders of Corporation X, whether individuals or corporations who elect to receive such securities, is also a distribution of property to which §301 applies.

(iv) In the case of the individual shareholders of Corporation X who elects to receive such securities, the amount of the distribution to which §301 applies is $11 per share of stock of Corporation X held on the record date (the fair market value of the $12 principal amount of securities of Corporation Y on the distribution date).

(v) In the case of the corporate shareholders of Corporation X electing to receive such securities, the amount of the distribution to which §301 applies is $9 per share of stock of Corporation X held on the record date (the basis of the securities of Corporation Y in the hands of Corporation X).

c. Stock Redemptions

When a corporation buys its own stock, the stock purchase is generally considered a redemption. For tax purposes, however, the purchase by a corporation of its own stock is only considered a redemption if the transaction meets one of several tests found in §302(b):

(1) a shareholder must completely terminate all interest in the corporation, i.e., redeem all stock held in the corporation;

(2) a shareholder's distribution must be substantially disproportionate to distributions made to other shareholders and distributions cannot be pro rata to each shareholder;

(3) the redemption is a distribution in partial liquidation of a corporation; or

(4) the redemption must not be "essentially equivalent to a dividend."[410]

Assuming the transaction meets one of these criteria, then the redemption must be treated as a partial or full distribution in exchange for the stock.[411] Moreover, the distribution would be considered gross proceeds from the disposition of stock reportable on Form 1099-B if all other requirements of §6045 are met.

If the transaction does not meet one of the §302(b) criteria, then it is treated as a distribution of property under §301 and becomes reportable on Form 1099-DIV pursuant to §6042(b)(1)(A).[412] This same reporting requirement may be applicable to redemptions of preferred stock (or warrants) that are deemed to be §306 stock (i.e., generally, preferred stock and warrants initially received by a shareholder in a tax-free reorganization or §351 exchange).[413]

If stock is exchanged for a debenture or debt instrument of the same corporation, the stock is considered to be redeemed and the transaction is subject to reporting on Form 1099-DIV. This transaction is generally taxable to the stockholder on receipt of the debt instrument.[414]

The complex nature of these transactions in conjunction with the applicability of §302(b) must be taken into account in determining how these transactions are to be treated for tax purposes. Should there be uncertainty as to the true character of the distribution at the time that Form 1099-DIV is required to be filed, a payor must report the full distribution as an ordinary dividend.[415]

9. Reorganizations and Spin-Offs

a. Reorganizations

Transactions from corporate reorganizations that include debt recapitalizations, equity readjustments and corporate mergers and acquisitions may be eligible for tax-free treatment assuming that certain requirements are met.

Stockholders may be allowed to exchange their original shares in the corporation for new shares in the same corporation or a related corporation that is a party to the reorganization. If the stockholder also receives cash or other property in addition to stock, the value of the money and other property received over and above the tax-free exchange of shares or securities may create a taxable gain. The taxable gain is either the lesser of the sum of money received plus the fair market value of other property, or the actual gain realized on the exchange.[416]

The term "other property" includes securities not tax qualified as part of the plan of reorganization. However, if the principal amounts of new tax-qualified securities received in the exchange exceed the principal amounts of old securities surrendered, then the fair market value of "other property received," which is part of the "taxable amount" calculation, includes only the fair market value of any excess principal amount. If no securities are surrendered, the excess is the entire principal amount of the securities received.[417] The sum of cash plus "other property," including the excess principal amount, are known collectively as "boot."

At the time of the exchange, if the gain inherent from the surrender of the old stock or securities is greater than the amount of "boot" received, then part of the gain is not recognized or taxed until a later disposition of the acquired stock or securities. Recognized gain (to the extent of the amount of "boot") is usually taxed at capital gains rates, unless the exchange itself has "the effect of the distribution of a dividend."[418]

[410] Reg. §1.302-2, §1.302-3, §1.302-4.
[411] §302(a).
[412] §302(d).
[413] §306(a)(2), §306(b)(1)(B), §306(c).
[414] §302(a), §317(b).
[415] Reg. §1.6042-3.
[416] §356(a)(1).
[417] §354(a)(2), §356(d)(2)(B).
[418] §356(a)(2).

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If an exchange with boot is considered to have the effect of a dividend distribution, then under the literal mechanics of §356(a)(2), the recognized amount, that is the value of boot, if less than the gain inherent in the old stock, is matched against the corporation's accumulated (not current) earnings and profits. To the extent accumulated earnings and profits cover the amount required to be recognized, the amount must be characterized as a taxable dividend. Any remaining amount is recognized as gain from the exchange of the "old" stock.[419]

Section 356 fails to cite §316, §302 or §301 in determining dividend treatment. Because §6042 provides that reportable dividends are those defined under §316, a position may exist that reorganization-related boot that is determined to be a dividend under §356 may not be reportable on Form 1099-DIV.[420]

b. Spin-Offs

In a tax-free spin-off, a corporation generally distributes a subsidiary's stock and securities to its shareholders.[421] Assuming that the terms of §355 are met, principally meaning that:

> (1) both the parent and the subsidiary are engaged in an active trade or business,[422] (2) the parent relinquishes control in the subsidiary in the spin-off,[423] and (3) the transaction was not used as a device for distributing earnings and profits (i.e., the spin-off had a business purpose)[424] the distribution is tax-free to the shareholders unless other property (boot) is distributed in the transaction.

Boot includes cash and property, such as corporate assets, and also includes other securities, apart from stock and securities in the target subsidiary. If boot is distributed, §356 controls its character in the same manner as in other reorganizations.[425] Spin-off-related dividends characterized under §356(a)(2), rather than §316 and §301, may not fall within the definition of reportable dividends for purposes of §6042.[426]

Spin-offs that do not meet the terms of §355 are taxable and related distributions are directly within the scope of §316 and §301. These distributions are covered by §6042 and are reportable as ordinary dividends in Box 1a of Form 1099-DIV. Taxable in-kind distributions, such as a corporation's distribution to its shareholders of interests in a partnership, would be subject to Form 1099-DIV reporting of the fair market value of the property distributed on the date of distribution.[427]

10. Form 1099-DIV

a. Information Required on Form 1099-DIV

The Form 1099-DIV must include the aggregate amount of dividend payments made in a calendar year, the name, address, and taxpayer identification number of the person receiving the payments, the amount of tax withheld, if any, and any other information required by the form.[428] Payments are to be aggregated and reported on a single Form 1099-DIV for each separate account. The $10 aggregation threshold is applicable independently for each separate account.[429]

The timing for the payment of distributions and dividends may create reporting issues. If the payor or reporting nominee is unable to determine if the payment, or any portion, is a dividend at the time Form 1099-DIV must be filed, then the payor must treat the entire amount as a dividend and report it on Form 1099-DIV.[430]

The most current version of Form 1099-DIV and Instructions can be found on the IRS website.[431]

b. Filing Deadlines and Other Requirements

Copies of Form 1099-DIV, or an acceptable substitute, must be provided to dividend recipients either in person or by first class mail after November 30 of the year of payment and no later than January 31 of the following year. Nominees acting as custodians of certain unit investment trusts must provide statements to recipients by February 10 of the following year. However, the statement may be furnished to the recipient at any time after April 30 if furnished with the final dividend payment for the year.[432]

A payor may furnish a recipient statement by the due date of February 15th under §6045 if the payments or distributions are included in a consolidated statement. A consolidated reporting statement is a grouping of statements furnished by the same broker or barter exchange to the same customer or group of customers on the same date for the same reporting year that includes a statement to report payments under §6042(c).[433]

[419] Reg. §1.356-1.

[420] See Rev. Rul. 93-61, 1993-2 C.B. 118, in which the IRS stated that in an acquisitive reorganization, the determination of whether boot is treated as a dividend distribution under §356(a)(2) is made by comparing the interest the shareholder actually received in the acquiring corporation with the interest the shareholder would have received if only stock had been received. Rev. Rul. 93-61, which revoked Rev. Rul. 75-83, 1975-1 C.B. 112, reflects the Supreme Court's holding in *Commissioner v. Clark*, 489 U.S. 726 (1989), that applied the §302 dividend equivalency rules for redemptions to determine whether the boot payment had the effect of a dividend distribution under §356(a)(2). At issue was whether the boot payment should be treated as if it were made (1) by the target corporation in a hypothetical §302 redemption of a portion of the shareholder's target stock before and separate from the reorganization exchange, or (2) by the acquiring corporation in a hypothetical §302 redemption of the acquiring stock that the shareholder would have received in the reorganization if there had been no boot distribution. The Court concluded that the treatment of a boot distribution is determined "by examining the effect of the exchange as a whole," and it held that the second approach better tested the effect of the payment of boot as a component in the overall exchange. See also Rev. Rul. 93-62, 1993-2 C.B. 118, in which the IRS concluded that gain recognized on the receipt of cash in an exchange of stock that otherwise qualifies under §355 is not treated as a dividend distribution under §356(a)(2). Rev. Rul. 93-62 supersedes Rev. Rul. 74-516, 1974-2 C.B. 121, to reflect the Supreme Court decision in *Commissioner v. Clark*, 489 U.S. 726 (1989).

[421] §355(a).

[422] §355(a)(1)(C), §355(b).

[423] §355(a)(1)(D).

[424] §355(a)(1)(B).

[425] §356(a)(1).

[426] *See* §356(a)(2), §6042.

[427] §301(b)(1), §301(b)(3); Reg. §1.6042-3(a)(1).

[428] Reg. §1.6042-2(a)(1); Instructions for Form 1099-DIV.

[429] Reg. §1.6042-4.

[430] §6042(b)(3); Reg. §1.6042-3(c).

[431] See IRS website for online fillable forms, Copy 1, B, 2, and C for Form 1099-DIV. See IRS Pub. 1220, *Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G*, for instructions in completing the boxes relating to payments to state taxing authorities.

[432] Reg. §1.6042-4(e)(1).

[433] Reg. §1.6042-4(e)(1).

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Example: D has a taxable account with B, a broker, consisting solely of stock in a single corporation. In Year 1, D receives reportable dividends from this stock and sells the stock. At year end, B must furnish a Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*, and Form 1099-DIV, *Dividends and Distributions*, to D in Year 2 for the sale and the dividends. B is required to furnish Form 1099-B to D by February 15th of Year 2. B must also furnish the statement to report the dividends by January 31st of Year 2. However, B must furnish the statement to report the dividends by February 15th of Year 2 if the information is furnished in a consolidated reporting statement.

Given the complexity of the reporting requirements for dividends and distributions, payors may request an extension of time to file statements with recipients. A written application explaining the circumstances for making the request must be transmitted via facsimilie to the Internal Revenue Service Technical Services Operation, Attn: Extension of Time Coordinator, who may grant an extension of up to 30 days. The extension request must be furnished by FAX (not by mail) and must be received by the date on which the statements are due to the recipients.[434] For further discussion of filing information returns with the IRS, see V., below.

c. Distributions in Liquidation

Every corporation making any distribution of $600 or more during a calendar year to any shareholder in liquidation of part or all of its capital stock is required to file a return that includes the name and address of the shareholder, the number and class of shares being distributed, and the total amount distributed on each class of stock. If a distribution consists of property other than money, the return shall include a description of the property and the fair market value of the property at the time of distribution. These distributions are required to be reported on Form 1099-DIV. A separate Form 1099-DIV must be prepared for each class of property that is distributed.[435] Cash distributions are reported separately from noncash distributions on Form 1099-DIV.[436]

The official Form 1099-DIV is not designed to accommodate the requirements for reporting all the information noted in the regulations. For example, there are no fields on the form to contain any descriptive information. To successfully comply with the requirements, the filer does have the option to issue substitute recipient statements that may incorporate the required information disclosures. For further discussion on substitute statements, see V., below.

D. Information Reporting by Brokers

1. In General

Brokers must file information returns reporting gross proceeds and other information for customer's transactions.[437] Brokers dealing in "covered securities" are required to also report the date of acquisition, whether the gain or loss is short-term or long-term, cost or other basis, and amount of loss disallowed by the wash sale rules.[438]

Note: The Infrastructure Investment and Jobs Act (Infrastructure Act),[439] clarified and expanded broker information reporting rules for digital assets under §6045 and §6045A. Those rules are discussed at length in 190 T.M., *Taxation of Cryptocurrency and Other Digital Assets.*

2. Broker Defined

The term "broker" includes a dealer, a barter exchange, any person who (for consideration) regularly acts as a middleman with respect to property or services,[440] and effective for returns required to be filed, and statements required to be furnished, after December 31, 2023, any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.[441]

Under the regulations, a broker is any person who, in the ordinary course of a trade or business, stands ready to effect sales to be made by others. A broker also includes a real estate reporting person who generally would be required to make an information return for a real estate transaction.[442] In the case of a sale of a digital asset, a broker includes only a U.S. digital asset broker.[443]

The definition of a broker includes a barter exchange[444] and an obligor that regularly issues and retires its own debt obligations, or a corporation that regularly redeems its own stock.[445] A broker may be a U.S. or foreign person or a governmental unit or any subsidiary agency thereof.[446] However, if a sale, redemption, or retirement is effected at an office outside the United States, only a U.S. payor or U.S. middleman is deemed to be a broker.[447] The following typically meet the definition of a broker:[448]

- 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 the mutual fund;

[434] Reg. §1.6042-4(e)(2); *2021 General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).*

[435] Reg. §1.6043-2(a).

[436] *See* Instructions for Form 1099-DIV.

[437] §6045(a).

[438] See §6045(g)(3) and Reg. §1.6045-1(a)(15) for the definition of covered securities.

[439] Pub. L. No. 117-58, §80603.

[440] *See* §6045(c)(1)(A)–§6045(c)(1)(C).

[441] §6045(c)(1)(D), added by Pub. L. No. 117-58, §80603(b). *Note:* Broker reporting requirements for transactions involving digital assets are discussed in 190 T.M., *Taxation of Cryptocurrency and Other Digital Assets.*

[442] Reg. §1.6045-1(a)(1). Real estate reporting requirements are discussed in 644 T.M., *Reportable Payments and Transactions Not Subject to Backup Withholding.*

[443] Reg. §1.6045-1(a)(1).

[444] §6045(c)(1)(B).

[445] Reg. §1.6045-1(a)(1). *See also* Reg. §1.6045-5(c)(5) (generally exempting from return requirements payments made to a nonresident alien individual, foreign partnership, or foreign corporation not engaged in trade or business within the United States).

[446] Reg. §1.6045-1(a)(1).

[447] *Id.*

[448] Reg. §1.6045-1(b)(1).

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

• a depositary 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;

• a stock transfer agent for a corporation, that records transfers of stock in the corporation, and that would ordinarily know the gross proceeds from sales;

• a dividend reinvestment agent for a corporation that stands ready to purchase or redeem shares;

• a person who in the ordinary course of a trade or business provides users with hosted wallet services to the extent such person stands ready to effect the sale of digital assets on behalf of its customers, including by acting as an agent for a party in the sale;

• a processor of digital asset payments;

• a person who in the ordinary course of a trade or business either owns or operates one or more physical electronic terminals or kiosks that stand ready to effect the sale of digital assets for cash, stored-value cards, or different digital assets, regardless of whether the other person is the disposer or the acquirer of the digital assets in such an exchange; or

• a person who in the ordinary course of a trade or business stands ready at a physical location to effect sales of digital assets on behalf of others.

The definition of a broker does not include an international organization described in Reg. §1.6049-4(c)(1)(ii)(G) that redeems or retires an obligation that it has issued.[449] Moreover, the term "broker" does not include a corporation that purchases odd-lot shares from its stockholders on an irregular basis,[450] or a person managing a farm on behalf of another party.[451]

In the absence of additional facts indicating that the person is a broker, the definition of a broker does not include:[452]

• a stock transfer agent for a corporation who routinely records transfers of stock and who would ordinarily not know the gross proceeds from sales;

• a person (such as a stock exchange) that merely provides facilities where sales are effected;

• an escrow agent or nominee who is not acting in the ordinary course of a trade or business;

• an escrow agent, otherwise a broker, who effects only incidental sales (such as sales to collect on collateral);

• a floor broker on a commodities exchange who maintains no records with respect to the terms of sales;

• a corporation that issues and retires long-term debt on an irregular basis;

• a clearing organization;

• a merchant who is not otherwise required to make a return of information and who regularly sells goods or other property (other than digital assets) or services in return for digital assets;

• a person solely engaged in the business of validating distributed ledger transactions, through proof-of-work, proof-of-stake, or any other similar consensus mechanism, without providing other functions or services; or

• a person solely engaged in the business of selling hardware or licensing software, the sole function of which is to permit a person to control private keys which are used for accessing digital assets on a distributed ledger, without providing other functions or services.

A broker effects a sale by acting as an agent for a party in the sale if the broker would ordinarily know the gross proceeds from the sale, acting as a principal in the sale, or a digital asset middleman for a party in a sale of digital assets.[453] Additionally, a broker effects a sale as an obligor retiring its own debt obligations, a corporation redeeming its own stock, or an issuer of digital assets redeeming those digital assets. However, a broker does not effect a sale when acting as an agent, principal or digital asset middleman for grants or purchases of options, the exercise of call options, or the act of entering into contracts that require delivery of personal property or an interest therein.[454]

Within the definitions of §6045, the person or party for whom the broker effects a sale is referred to as the customer. If the broker is acting as an agent, principle, or digital asset middleman in the transaction, the customer is the person or party actually making the sale.[455] For payment transactions involving digital assets, the term customer also includes a person who transfers digital assets in a sale (a buyer) to a Processor of Digital Asset Payments (PDAP) to the extent that the PDAP has an agreement with the buyer for the provision of digital asset payment services that provides that the PDAP may verify such person's identity or otherwise comply with anti-money laundering (AML) program requirements.[456] Customers also include a person who transfers digital assets or directs the transfer of digital assets in exchange for property or services.[457]

For reporting purposes, the broker must treat customers who are reflected in the broker's records as the reportable principals of the property being sold or disposed.[458] No reporting is required by the broker if the customer is an exempt recipient.[459]

Example 1: The records of X, a broker, show an account in the name of B. B is a nominee for C. All reporting with respect to the account must treat B as the customer.[460]

[449] Reg. §1.6045-1(a)(1).
[450] Instructions for Form 1099-B (reference to Reg. §1.6045-1(a)(1)).
[451] §6045(c)(1) flush language.
[452] Reg. §1.6045-1(b)(2); PLR 201514001.
[453] Reg. §1.6045-1(a)(1).
[454] Reg. §1.6045-1(a)(10)(ii).
[455] Reg. §1.6045-1(a)(2)(i).
[456] Reg. §1.6045-1(a)(2)(ii)(A).
[457] Reg. §1.6045-1(a)(2)(ii)(B), §1.6045-1(a)(2)(ii)(C).
[458] Reg. §1.6045-1(h)(1).
[459] Reg. §1.6045-1(c)(3)(i)(A).
[460] Reg. §1.6045-1(h)(2).

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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.[461]

3. *Sale Defined*

Under the regulations, the term "sale" under §6045 means any disposition of securities, commodities, options, regulated futures contracts, securities futures contracts, or forward contracts, and includes redemptions of stock, retirements of debt instruments (including a partial retirement attributable to a principal payment received on or after January 1, 2014), and entering into short sales, but only to the extent any of these actions are conducted for cash.[462]

In the case of an option, a regulated futures contract, a securities futures contract, or a forward contract, a sale includes any closing transaction.[463] When a closing transaction for a regulated futures contract involves making or taking delivery, there are two sales, one resulting in profit or loss on the contract, and a separate sale on the delivery.[464] When a closing transaction for a contract described in §988(c)(5) (forward contract, futures contract, option, or similar financial instrument) involves making delivery, there are two sales, one resulting in profit or loss on the contract, and a separate sale on the delivery.[465] When a closing transaction in a forward contract involves making or taking delivery, the broker may treat the delivery as a sale without separating 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.[466]

In the case of digital assets, the term sale also includes:[467]

- Any disposition of a digital asset in exchange for cash or stored-value cards;
- Any disposition of a digital asset in exchange for a different digital asset; and
- The delivery of a digital asset pursuant to the settlement of a forward contract, option, regulated futures contract.

Sales also include any disposition of a digital asset in consideration for any services provided by a broker that is a real estate reporting person or for the sale of real property involving a real estate reporting person.[468] Additionally, sales include the payment by one party of a digital asset to a PDAP in return for the payment of that digital asset, cash or a different digital asset to a second party.[469]

The term "sale" does not include entering into a contract that requires delivery of personal property or an interest in personal property, the initial grant or purchase of an option, or the exercise of a purchased call option for physical delivery (except for a contract described in §988(c)(5)).[470] The term "sale" also does not include a constructive sale or a mark to fair market value.[471]

A closing transaction is a lapse, expiration, settlement, abandonment, or other termination of a position, including a right or an obligation under a forward contract, a regulated futures contract, a securities futures contract, or an option.[472]

4. *Security Defined*

There are three definitions that are important to the categorization of securities under the reporting requirements of §6045, §6045A, and §6045B. First is the term "security."

Under the regulations, the term "security" means:

- a share of stock in a foreign or domestic corporation;
- an interest in a trust;
- an interest in a partnership;
- a debt obligation;
- 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;
- an interest in a share of stock in a corporation or a debt obligation (but not including executory contracts that require delivery of the security);
- certain options;[473] or
- a securities futures contract.[474]

The second term is "covered security."[475] The term "covered security," to which the additional basis and other information reporting requirements apply, is defined as any specified security acquired on or after the applicable date if the security was acquired through a transaction in the account in which such security is held; or was transferred to that account from an account in which the security was a covered security, but only if the broker received a statement[476] with respect to the transfer.[477]

The third term is "specified security."[478] The term "specified security" is defined in the statute as:

- any share of stock in a corporation;
- any note, bond, debenture, or other evidence of indebtedness;

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[461] Reg. §1.6045-1(h)(2).
[462] Reg. §1.6045-1(a)(9)(i).
[463] Reg. §1.6045-1(a)(9)(i).
[464] Reg. §1.6045-1(a)(9)(i).
[465] Reg. §1.6045-1(a)(9)(i). A broker may assume that any customer's functional currency is the U.S. dollar. Reg. §1.6045-1(a)(9)(i).
[466] Reg. §1.6045-1(a)(9)(i). Aggregate reporting is discussed at III.D.14.b., below.
[467] Reg. §1.6045-1(a)(9)(ii)(A).
[468] Reg. §1.6045-1(a)(9)(ii)(B), Reg. §1.6045-1(a)(9)(ii)(C).
[469] Reg. §1.6045-1(a)(9)(ii)(D).
[470] Reg. §1.6045-1(a)(9)(i).
[471] Reg. §1.6045-1(a)(9)(i).
[472] Reg. §1.6045-1(a)(8).
[473] Described in Reg. §1.6045-1(m)(2).
[474] Reg. §1.6045-1(a)(3).
[475] §6045(g).
[476] Under §6045A.
[477] §6045(g)(3)(A).
[478] §6045(g)(3)(B).

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- any commodity, or contract or derivative with respect to such commodity, if the Secretary determines that adjusted basis reporting is appropriate;
- any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate; and
- effective for returns required to be filed, and statements required to be furnished, after December 31, 2023, any digital asset (as defined in §6045(g)(3)(D)).[479]

A specified security is not a covered security, and thus not subject to the additional reporting requirements, unless it is acquired on or after the applicable date.[480]

The applicable date varies, depending on the type of security. The statutory applicable dates are:

- January 1, 2011, for stock in or of a corporation (other than stock in a regulated investment company (RIC) or stock acquired in connection with a dividend reinvestment plan (DRP));
- January 1, 2012, for stock in a RIC (RIC stock) or stock acquired in connection with a DRP (DRP stock);
- January 1, 2013, or such later date determined by the Secretary, for any other specified security; and
- January 1, 2023, in the case of any specified security which is a digital asset.[481]

The definition of "covered security" and "specified security" has been amplified by the regulations, and applicable dates have been determined for various debt instruments.

The regulations define a "covered security" to be a specified security that is:[482]

- stock in or of a corporation (other than stock in a RIC or stock acquired in connection with a DRP) that is acquired for cash in an account on or after January 1, 2011;
- RIC stock or DRP stock acquired for cash in an account on or after January 1, 2012;
- a specified security described in Reg. §1.6045-1(a)(14)(ii)[483] and Reg. §1.6045-1(n)(2)(i),[484] (not including the debt instruments described in Reg. §1.6045-1(n)(2)(ii))[485] acquired for cash in an account on or after January 1, 2014;
- a specified security described in Reg. §1.6045-1(a)(14)(ii)[486] and Reg. §1.6045-1(n)(3)[487] acquired for cash in an account on or after January 1, 2016;
- an option described in Reg. §1.6045-1(a)(14)(iii)[488] granted or acquired for cash in an account on or after January 1, 2014 (except those relating to an option on a digital asset);[489]
- any securities futures contract;
- a specified security transferred to an account if the broker or other custodian of the account receives a transfer statement reporting the security as a covered security;
- an option on a digital asset granted or acquired in an account on or after January 1, 2026;
- a specified security that is a digital asset that is acquired in a customer's account by a broker providing custodial services for such specified security on or after January 1, 2026, in exchange for cash, stored-value cards, different digital assets, or any other property or services; or
- a specified security that is a securities futures contract that requires delivery of a digital asset, but not a digital asset itself, that is entered into or acquired in an account on or after January 1, 2026.

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[479] §6045(g)(3)(B)(iv), as amended by Pub. L. No. 117-58, §80603(b). The term "digital asset" means any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary. §6045(g)(3)(D), as added by Pub. L. No. 117-58, §80603(b).

[480] §6045(g)(3)(C).

[481] See §6045(g)(3)(C)(iii), as amended by Pub. L. No. 117-58, §80603(b), applicable to returns required to be filed, and statements required to be furnished, after December 31, 2023. For further discussion of the broker information reporting rules for sales or exchanges of digital assets, see 190 T.M., *Taxation of Cryptocurrency and Other Digital Assets*.

[482] Reg. §1.6045-1(a)(15)(i).

[483] I.e., any debt instrument defined in Reg. §1.1275-1(d) and any instrument or position that is treated as a debt instrument under a specific provision of the Code (other than certain interests in or mortgages held by a REMIC, certain other debt instruments with payments subject to acceleration, and pools of debt instruments the yield on which may be affected by prepayments) or a short-term obligation described in §1272(a)(2)(C). Reg. §1.6045-1(a)(14)(ii).

[484] I.e., a debt instrument that provides for a single fixed payment schedule for which a yield and maturity can be determined under Reg. §1.1272-1(b); a debt instrument that provides for alternate payment schedules for which a yield and maturity can be determined under Reg. §1.1272-1(c); or a debt instrument for which the yield can be determined under Reg. §1.1272-1(d). Reg. §1.6045-1(n)(2)(i).

[485] I.e., a debt instrument that provides for more than one rate of stated interest (including a debt instrument that provides for stepped interest rates); a convertible debt instrument; a stripped bond or stripped coupon subject to §1286; a debt instrument that requires payment of either interest or principal in a currency other than the U.S. dollar; a debt instrument that, at one or more times in the future, entitles a holder to a tax credit; a debt instrument that provides for a payment-in-kind (PIK) feature; a debt instrument issued by a non-U.S. issuer; a debt instrument for which the terms of the instrument are not reasonably available to the broker within 90 days of the date the debt instrument was acquired by the customer; a debt instrument that is issued as part of an investment unit; or a debt instrument evidenced by a physical certificate unless such certificate is held (whether directly or through a nominee, agent, or subsidiary) by a securities depository or by a clearing organization. Reg. §1.6045-1(n)(2)(ii).

[486] I.e., any debt instrument defined in Reg. §1.1275-1(d) and any instrument or position that is treated as a debt instrument under a specific provision of the Code (other than certain interests in or mortgages held by a REMIC, certain other debt instruments with payments subject to acceleration, and pools of debt instruments the yield on which may be affected by prepayments) or a short-term obligation described in §1272(a)(2)(C). Reg. §1.6045-1(a)(14)(ii).

[487] I.e., a debt instrument described in Reg. §1.6045-1(n)(2)(ii) or one not otherwise described in Reg. §1.6045-1(n)(2)(i). For example, Reg. §1.6045-1(n)(3) applies to variable rate debt instruments, inflation-indexed debt instruments, and contingent payment debt instruments because these instruments are not described in Reg. §1.6045-1(n)(2)(i). Reg. §1.6045-1(n)(3).

[488] I.e., any option described in Reg. §1.6045-1(m)(2), which describes an option on one or more specified securities (which includes an index substantially all the components of which are specified securities); an option on financial attributes of specified securities; or a warrant or a stock right. Reg. §1.6045-1(m) does not apply to compensatory options. Reg. §1.6045-1(a)(14)(iii) (reference to Reg. §1.6045-1(m)(2)).

[489] Reg. §1.6045-1(a)(15)(i)(E). Note that the original 2014 effective date for reporting gross proceeds and basis for options on debt instruments that provide for one or more payments denominated in a foreign currency and those issued by non-U.S. issuers, was delayed until January 1, 2016. *See* Reg. §1.6045-1(m)(2)(ii)(B).

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The regulations define a "specified security" as:[490]

• any share of stock (or any interest treated as stock) in an entity organized as, or treated for tax purposes as, a corporation (for this purpose, a security classified as stock by the issuer is treated as stock, and if the issuer has not classified the security, the security is not treated as stock unless the broker knows that the security is reasonably classified as stock under general tax principles);

• any debt instrument described in Reg. §1.6045-1(a)(17),[491] other than certain interests in or mortgages held by a REMIC, certain other debt instruments with payments subject to acceleration, and pools of debt instruments the yield on which may be affected by prepayments, or a short-term obligation described in §1272(a)(2)(C);

• any option described in Reg. §1.6045-1(m)(2);

• any securities futures contract;

• any digital asset; or

• any forward contract requiring the delivery of a digital asset.

A covered security is considered acquired in a customer's account at a broker or custodian if the security is acquired by the customer's broker or custodian or acquired by another broker and delivered to the customer's broker or custodian.[492] A security that is acquired due to a stock dividend, stock split, reorganization, redemption, stock conversion, recapitalization, corporate division, or other similar action is considered acquired for cash in an account.[493]

5. *Gross Proceeds Subject to Reporting*

Treatment of an option granted or acquired on or after January 1, 2014 is governed by Reg. §1.6045-1(m), as follows: For options that are covered securities, but not §1256 options,[494] if a specified security (other than an option) is acquired or disposed of in a physical settlement pursuant to the exercise of an option, the broker must adjust the basis of the acquired asset or the gross proceeds amount as appropriate to account for any payment related to the option, including the premium.[495] For an option that is settled for cash, a broker must reflect on Form 1099-B all payments made or received on the option. For a purchased option, a broker must report as proceeds the gross proceeds from settlement minus any costs related to the settlement of the option. For a written option, a broker must report as proceeds the premium received decreased by any amounts paid on the option and report $0 as the basis of the option.[496]

Except for the sale of digital assets, "gross proceeds" is the amount on a sale[497] that is the total paid to the customer or credited to the customer's account as a result of the sale.[498] This amount is reduced by the amount of any accrued and unpaid interest as of the sale date[499] and increased by any amount not paid or credited by reason of repayment of margin loans.[500] The accrued interest that is subtracted from gross proceeds must be reported on Form 1099-INT unless it is exempt under §103.[501] Accrued OID reportable on Form 1099-OID, as well as any market discount, is not netted against gross proceeds. In the case of a closing transaction (other than one related to an option) that results in a loss, gross proceeds is the amount debited from the customer's account.[502]

If gross proceeds are from the sale of identical stock,[503] a broker is required to report the gross proceeds by averaging the proceeds of each share if the stock is sold at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the customer that reports an aggregate total price or an average price per share.[504] However, a broker may not average the proceeds if the customer notifies the broker in writing of an intent to determine the proceeds of the stock by the actual proceeds per share and the broker receives the notification by January 15 of the calendar year following the year of the sale. The January 15 deadline may be extended but not beyond the due date for filing the return.[505]

For sales before January 1, 2014, a broker may, but is not required to, reduce gross proceeds by the amount of commissions and transfer taxes, provided the treatment chosen is consistent with the broker's books, and must reduce gross proceeds by these amounts for sales on or after January 1, 2014.[506]

For securities sold pursuant to the exercise of an option granted or acquired before January 1, 2014, a broker may, but is not required to, take the option premiums into account in determining the gross proceeds of the securities sold, provided the treatment chosen is consistent with the broker's books.[507]

Gross proceeds from the sale of a digital asset are equal to the sum of the total cash paid to the customer or credited to the customer's account from the sale plus the fair market value of any property or services received (including services giving rise to digital asset transaction costs), reduced by the amount of digital asset transaction costs.[508] The fair market value of a digital asset is measured at the date and time the transaction took place.[509] Determining the fair market value of services or property received or credited in exchange for a digital asset is a bit more complicated. Generally, the broker must use a reasonable valuation method looking to the contemporaneous evidence of value. For example, the purchase price of the same services, goods, or other property would have held if a U.S. dollar valu-

[490] Reg. §1.6045-1(a)(14).

[491] I.e., a debt instrument as defined in Reg. §1.1275-1(d) and any instrument or position that is treated as a debt instrument under a specific provision of the Code.

[492] Reg. §1.6045-1(a)(15)(ii).

[493] Reg. §1.6045-1(a)(15)(iii).

[494] Reg. §1.6045-1(m)(4).

[495] Reg. §1.6045-1(m)(4)(i).

[496] Reg. §1.6045-1(m)(4)(ii).

[497] *See* Reg. §1.6045-1(a)(9) (definition of "sale").

[498] Reg. §1.6045-1(d)(5)(i).

[499] Reg. §1.6045-1(d)(5)(i) (reference to Reg. §1.6045-1(d)(3)).

[500] Reg. §1.6045-1(d)(5)(i).

[501] Reg. §1.6045-1(d)(5)(i) (reference to Reg. §1.6045-1(d)(3)).

[502] Reg. §1.6045-1(d)(5)(i).

[503] Reg. §1.6045-1(d)(5)(i) (reference to Reg. §1.1012-1(e)(4) (definition of identical stock)).

[504] Reg. §1.6045-1(d)(5)(i).

[505] Reg. §1.6045-1(d)(5)(i).

[506] Reg. §1.6045-1(d)(5).

[507] Reg. §1.6045-1(d)(5).

[508] Reg. §1.6045-1(d)(5)(ii)(A), added by T.D. 10000, 89 Fed. Reg. 56,480 (July 9, 2024).

[509] Reg. §1.6045-1(d)(5)(ii)(A)(1).

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ation was applied.[510] To determine the fair market value of services giving rise to digital asset transaction costs, the broker must look to the fair market value of the digital assets used to pay for such transaction costs. In determining the fair market value of a digital asset, the broker may perform its own valuations or rely on valuations performed by a digital asset data aggregator,[511] provided such valuations apply a reasonable valuation method for digital assets.[512] The determination of gross proceeds from the sale of digital assets is thoroughly discussed in 190 T.M., *Taxation of Cryptocurrency and Other Digital Assets.*

A payor defined to be a broker[513] must report the sale as occurring on the date the sale is entered on the broker's books.[514] This date is typically referred to as the trade date.[515] For sales of digital assets that are effected when digitally recorded using cryptographically secured distributed ledger technology, such as a blockchain or similar technology, the broker must report the date of sale as the date when the transactions are recorded on the ledger. For sales of digital assets that are effected by a broker and recorded in the broker's books and records (commonly referred to as an off-chain transaction) and not directly on a distributed ledger or similar technology, the broker must report the date of sale as the date when the transactions are recorded on its books and records without regard to the date that the transactions may be later recorded on the distributed ledger or similar technology.[516]

6. Calculation of Basis

Brokers are required to report the adjusted basis of covered securities that are sold.[517] The initial cost basis of a security that is acquired for cash is the total amount of cash paid by the customer or credited against the customer's account for the security, increased by the commissions and transfer taxes related to its acquisition.[518]

A broker may, but is not required to, take option premiums into account in determining the initial basis of securities purchased or acquired pursuant to the exercise of an option granted or acquired before January 1, 2014[519] (i.e., the option is not a covered security). A broker also may increase initial basis for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangements, granted or acquired before January 1, 2014[520] (again, the option is not a covered security). A broker may not increase initial basis for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangements granted or acquired on or after January 1, 2014.[521]

A broker must report the basis of identical stock[522] by averaging the basis of each share if the stock is purchased at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the customer that reports an aggregate total price or an average price per share.[523] However, a broker may not average the basis if the customer timely notifies the broker in writing of an intent to determine the basis of the stock by the actual cost per share.[524]

For options that are covered securities, but not §1256 options,[525] if a specified security (other than an option) is acquired or disposed of in a physical settlement pursuant to the exercise of an option, the broker must adjust the basis of the acquired asset or the gross proceeds amount as appropriate to account for any payment related to the option, including the premium.[526] For an option that is settled for cash, a broker must reflect on Form 1099-B all payments made or received on the option. For a purchased option, a broker must report as basis the premium paid plus any costs (for example, commissions) related to the acquisition of the option.[527] For a written option, a broker must report $0 as the basis of the option.[528]

For a right (including a warrant) to acquire stock received in the same account as the underlying security in a §305 distribution, a broker is permitted, but not required, to apply the rules described in §305 and §307 when reporting or accounting for the basis of the option and the underlying equity.[529] If a stock right or warrant is acquired from the initial distributee, the buyer or transferee must apply the rules (just discussed) applicable to options that are covered securities, but not §1256 options.[530]

The initial basis of a security transferred to an account is generally the basis reported on the transfer statement.[531] If a transfer statement indicates that the security is acquired as a gift, a broker must apply the relevant basis rules for property acquired by gift in determining the initial basis, but is not required to adjust basis for gift tax.[532] A broker must treat the initial basis as equal to the gross proceeds from the sale if the relevant basis rules for property acquired by gift prevent recognizing both gain and loss, or if the relevant basis rules treat the initial basis of the security as its fair market value as of the date of the gift and the broker neither knows nor can readily ascertain this value.[533] If the transfer statement did not report a date for

[510] Reg. §1.6045-1(d)(5)(ii)(A)(1).
[511] A digital asset data aggregator is an information service provider that provides valuations of digital assets based on any reasonable valuation method. Reg. §1.6045-1(d)(5)(ii)(B).
[512] Reg. §1.6045-1(d)(5)(ii)(A)(1). A reasonable valuation method for digital assets is a method that considers and appropriately weighs the pricing, trading volumes, market capitalization and other factors relevant to the valuation of digital assets traded through digital asset trading platforms. Reg. §1.6045-1(d)(5)(ii)(A)(3).
[513] *See* Reg. §1.6045-1(a)(1) (definition of "broker").
[514] Reg. §1.6045-1(d)(4)(i).
[515] *See* Form 1099-B, *Instructions for Recipient.*
[516] Reg. §1.6045-1(d)(4)(ii), added by T.D. 10000, 89 Fed. Reg. 56,480 (July 9, 2024).
[517] See Reg. §1.6045-1(a)(15) for the definition of covered securities.
[518] Reg. §1.6045-1(d)(6)(ii)(A).
[519] Reg. §1.6045-1(d)(6)(ii)(A).
[520] Reg. §1.6045-1(d)(6)(ii)(A).
[521] Reg. §1.6045-1(d)(6)(ii)(A).
[522] Reg. §1.6045-1(d)(6)(ii)(A) (reference to Reg. §1.1012-1(e)(4) (definition of identical stock)).
[523] Reg. §1.6045-1(d)(6)(ii)(A).
[524] Reg. §1.6045-1(d)(6)(ii)(A).
[525] Reg. §1.6045-1(m)(4).
[526] Reg. §1.6045-1(m)(4)(i).
[527] Reg. §1.6045-1(m)(4)(ii).
[528] Reg. §1.6045-1(m)(4)(ii).
[529] Reg. §1.6045-1(m)(4)(iii).
[530] Reg. §1.6045-1(m)(4)(iii).
[531] Reg. §1.6045-1(d)(6)(ii)(B)(1) (reference to Reg. §1.6045A-1 (transfer statements)).
[532] Reg. §1.6045-1(d)(6)(ii)(B)(2).
[533] Reg. §1.6045-1(d)(6)(ii)(B)(2).

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the gift, the broker must treat the settlement date for the transfer as the date of the gift.[534]

Adjusted basis is generally determined by treating as correct any incorrect dollar amount not required to be corrected under the §6721(c)(3) or §6722(c)(3) safe harbors for certain de minimis errors. However, if a broker voluntarily, or by requirement, files a corrected information return and furnishes a corrected payee statement, then regardless of any provision under §6721 or §6722, the adjusted basis must be based on, and consistent with, the dollar amount as reported on the corrected information return and corrected payee statement.[535]

Generally, the initial basis of the digital asset is the fair market value of the digital asset received at the time of the exchange, increased by any digital asset transaction costs allocable to the acquisition of the digital asset.[536] For a digital asset acquired in exchange for a debt instrument, the initial basis of the digital asset attributable to the debt instrument is the issue price of the debt instrument, plus any allocable digital asset transaction costs.[537] In the case of a sale of one digital asset in exchange for another digital asset differing materially in kind or extent, the total digital asset transaction costs paid by the customer are allocable to the digital assets disposed (unless the digital assets received in the original transaction are withheld to pay digital asset transaction costs).[538] See 190 T.M., *Taxation of Cryptocurrency and Other Digital Assets* for further discussion.

7. Transfer Statements

Brokers or other persons transferring covered securities to a broker are required to furnish to the receiving broker information required by regulations to enable the receiving broker to meet its information reporting requirements.[539] The statement must be furnished to the receiving broker not later than 15 days after the date of settlement for the transfer of the covered security.[540]

The Infrastructure Act adds a new provision for broker information reporting on transfers of digital assets that are covered securities, provided the transfer is not a sale and is not to an account maintained by a person that the broker knows or has reason to know is also a broker, effective for returns required to be filed, and statements required to be furnished, after December 31, 2023.[541] However, the IRS determined that digital assets generally should be exempt from transfers reporting requirements under §6045A until further guidance is issued.[542]

The regulations place the duty to furnish the transfer statement on the person effecting the transfer of custody if the person is an "applicable person." An "applicable person" is a broker, any person that acts as a custodian of securities in the ordinary course of a trade or business, any issuer of securities, and any agent of these persons. An applicable person does not include the beneficial owner of the securities, any governmental unit or agency or instrumentality of a governmental unit with respect to escheated securities, or any person that acts solely as a clearing house for the transfer.[543]

The transfer statement must include the date the statement is furnished; the name, address, and telephone number of the applicable person furnishing the statement; the name, address, and telephone number of the broker receiving custody of the security; the name and account number of the customer or customers for the account from which the security is transferred (if different, the name and account number of the customer or customers for the account to which the security is transferred); the CUSIP number of the security transferred (if applicable) or other security identifier number; the date the transfer was initiated and the settlement date of the transfer; the adjusted basis; and acquisition date.[544]

A transferor must furnish a separate statement for each security and, if transferring custody of the same security acquired on different dates or at different prices, each acquisition.[545]

The regulations provide special rules affecting certain types of transfers:

- *Cash on delivery accounts and multiple broker arrangements* — A custodian or other transferor that transfers custody of a security to a broker solely to effect a sale must furnish a transfer statement only to the broker that effects the sale. However, no transfer statement is required if the transferor itself either effects the sale or is required to report the sale of the security.[546] A broker that effects a purchase but does not receive custody of the security must furnish a transfer statement to the broker receiving custody. However, no transfer statement is required if the broker effects the purchase solely at the instruction of the broker receiving custody.[547]

- *Exempt recipients and exempt foreign payees* — A transferor is not required to furnish a transfer statement for a security that, after the transfer, is held for a customer that is an exempt recipient under Reg. §1.6045-1(c)(3)(i) or an exempt foreign person under Reg. §1.6045-1(g)(1)(i).[548]

- *Securities lending transactions* — A transferor that lends or borrows securities as a principal is not required to furnish a transfer statement for a security that is transferred pursuant to such lending or borrowing arrangement (for example, when a customer opens or closes a short sale). This exception does not apply when a transferor transfers a security under a lending or borrowing arrangement of the customer. This exception also does not apply when a transferor transfers a previously borrowed security to another

[534] Reg. §1.6045-1(d)(6)(ii)(B)(2).

[535] Reg. §1.6045-1(d)(6)(vii), T.D. 9984, 88 Fed. Reg. 87,696 (Dec. 19, 2023), effective for information returns required to be filed and payee statements required to be furnished after December 31, 2023.

[536] Reg. §1.6045-1(d)(6)(ii)(C)(1).

[537] Reg. §1.6045-1(d)(6)(ii)(C)(1) (referencing Reg. §1.1012-1(h)(1)(v)).

[538] Reg. §1.6045-1(d)(6)(ii)(C)(2) (referencing §1.6045-1(d)(5)(iv)(C)).

[539] §6045A; Reg. §1.6045A-1(a).

[540] §6045A(c); Reg. §1.6045A-1(a)(5).

[541] *See* §6045A(d), as added by Pub. L. No. 117-58, §80603(b)(2)(A)(ii).

[542] *See* Preamble to T.D. 10000, 89 Fed. Reg. 56,480 (July 9, 2024); Announcement 2023-2. For further discussion of broker information reporting requirements regarding digital assets, see 190 T.M., *Taxation of Cryptocurrency and Other Digital Assets*.

[543] Reg. §1.6045A-1(a)(3).

[544] Reg. §1.6045A-1(a)(1)(i) (reference to Reg. §1.6045A-1(b)).

[545] Reg. §1.6045A-1(a)(1)(i).

[546] Reg. §1.6045A-1(a)(1)(ii)(A).

[547] Reg. §1.6045A-1(a)(1)(ii)(B).

[548] Reg. §1.6045A-1(a)(1)(iii).

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account of the same customer (for example, to satisfy an existing short sale obligation).[549]

• *Certain money market funds* — A transferor of stock in a regulated investment company is not required to furnish a transfer statement.[550]

• *Section 1256 Options* — A transferor of a §1256 option must furnish a transfer statement.[551]

A transfer statement is not required for specified security, the sale of which is reportable as a digital asset after the application of special coordination rules.[552] If a transferor chooses to provide a transfer statement for such a specified security that is a tokenized security[553] and reports some or all of the required information, the transferor will not be subject to §6722 penalties.[554]

Additional information is required for a transfer of a debt instrument that is a covered security.[555] For these transfers, the transfer statement must include a description of the payment terms used by the broker to compute any basis adjustments; the issue price of the debt instrument; the issue date of the debt instrument (if different from the original acquisition date of the debt instrument); the adjusted issue price of the debt instrument as of the transfer date; the customer's initial basis in the debt instrument; any market discount that has accrued as of the transfer date; any bond premium that has been amortized as of the transfer date; any acquisition premium that has been amortized as of the transfer date; and whether the transferring broker has computed any of this information by taking into account any elections, and, if so, which election or elections were taken into account by the transferring broker; and the date through which the transferring broker made adjustments.[556]

Option transfers also involve additional reporting requirements.[557] For a transfer of an option that is a covered security, the transfer statement must include the date of grant or acquisition of the option; the amount of premium paid or received; and any other information required to fully describe the option, which may include a security identifier used by option exchanges, or details about the underlying asset, quantity covered, exercise type, strike price, and maturity date.[558]

Transfers of borrowed securities and transfers pursuant to an inheritance also are subject to additional reporting requirements. For borrowed securities, the transfer statement must indicate that a transferred security is borrowed if the transferor knows that the security is transferred pursuant to a lending or borrowing arrangement. The transfer statement must not report an adjusted basis if the transferor knows that the transferred security is lent or borrowed pursuant to a short sale. The receiving broker may be subject to special transfer reporting rules upon receipt of a borrowed security if the security is used to satisfy an existing short sale obligation.[559]

A transfer statement for a transfer of a security from a decedent or decedent's estate must indicate that the security is inherited.[560] The transfer statement must report the date of death as the original acquisition date and must report adjusted basis according to the instructions or valuations furnished by an authorized representative of the estate, including any required adjustments to basis for property acquired from a decedent. If a transferor has not received instructions or valuations from an authorized representative, the transferor must report basis as the fair market value of the security on the date of death. However, if the transferor neither knows nor can readily ascertain the fair market value of the security on the date of death at the time the transfer statement is prepared, the transfer statement must indicate that the transfer consists of an inherited security but may otherwise report the security as if it were a noncovered security. If the transferor cannot identify which securities in a joint account have been transferred from the decedent, the transferor must treat each security in the account as if it were a noncovered security but must not indicate that any security is an inherited security.[561]

A transfer statement is generally not required to be furnished with respect to noncovered securities. However, such a statement may be furnished if the statement clearly identifies the securities as noncovered.[562] A transferor that chooses to report nonrequired information is not subject to penalties under §6722 for failure to report this information correctly if the transfer statement identifies the security as a noncovered security.[563] A transferor must furnish a transfer statement within fifteen days after the date of settlement for the transfer.[564]

8. *Returns by Issuers Relating to Actions Affecting Basis of Specified Securities*

The reporting requirement for actions affecting basis of specified securities apply as follows:[565]

• organizational actions occurring on or after January 1, 2011, that affect the basis of specified securities other than stock in a regulated investment company;

• organizational actions occurring on or after January 1, 2012, that affect the basis of stock in a regulated investment company;

[549] Reg. §1.6045A-1(a)(1)(iv).
[550] Reg. §1.6045A-1(a)(1)(v).
[551] *See* Reg. §1.6045A-1(b)(4)(iv) and Reg. §1.6045A-1(b)(3)(x); Reg. §1.6045A-1T(e) and §1.6045A-1T(f). The temporary rules also list the data specific to §1256 options that must be provided in addition to the data required for non-§1256 options (Reg. §1.6045A-1T(e)(2)), and are now included in Reg. §1.6045A-1(b)(4)(iv) when the temporary rules were removed by T.D. 9750.
[552] Reg. §1.6045A-1(a)(1)(vi). Special coordination rules are detailed in Reg. §1.6045-1(c)(8).
[553] Tokenized securities are described in Reg. § 1.6045-1(c)(8)(i)(D).
[554] Reg. §1.6045A-1(a)(1)(vi).
[555] Reg. §1.6045A-1(b)(3).
[556] *See* Reg. §1.6045A-1(b)(3); Reg. §1.6045A-1(b)(3)(x).
[557] Reg. §1.6045A-1(b)(4).
[558] *Id.*
[559] Reg. §1.6045A-1(b)(7).
[560] Reg. §1.6045A-1(b)(8). Additional requirements apply to transfers to satisfy a cash legacy (Reg. §1.6045A-1(b)(8)(ii)) and transfers in gift. Reg. §1.6045A-1(b)(9).
[561] Reg. §1.6045A-1(b)(8).
[562] Reg. §1.6045A-1(b)(6).
[563] Reg. §1.6045A-1(b)(6).
[564] Reg. §1.6045A-1(a)(3). See also Notice 2010-67, which provides transitional relief from the reporting requirements for transfers of securities effective January 1, 2011. Brokers and custodians who fail to provide transfer statements as required for tax year 2011 will not be subject to penalties imposed under §6722 for failure to provide such statements. Transferred stock not reported on a transfer statement for 2011 may be treated as a noncovered security upon its subsequent sale or transfer.
[565] Reg. §1.6045B-1(j).

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• organizational actions occurring on or after January 1, 2014, that affect the basis of debt instruments described in Reg. §1.6045-1(n)(2)(i)[566] (not including the debt instruments described in §1.6045-1(n)(2)(ii));[567]

• organizational actions occurring on or after January 1, 2016, that affect the basis of debt instruments described in Reg. §1.6045-1(n)(3);[568]

• organizational actions occurring on or after January 1, 2014, that affect the basis of options described in §1.6045-1(a)(14)(iii);[569]

• organizational actions occurring on or after January 1, 2014, that affect the basis of securities futures contracts; and

• organizational actions occurring on or after January 1, 2025, that affect the basis of digital assets.[570]

Issuers of specified securities are required to file information returns reporting: (i) a description of any organizational action affecting the basis of the specified security;[571] (ii) the quantitative effect on the basis of the specified security resulting from the action;[572] and (iii) any other information prescribed by the Treasury Secretary.[573]

The regulations require a reporting issuer to identify itself and the security on the return and provide information about the organizational action and the quantitative effect on the basis resulting from the action.[574]

The issuer return must be filed with the IRS on or before the 45th day following the organizational action, or, if earlier, January 15 of the year following the calendar year during which the organizational action occurred. The issuer may file the return before the date of the organizational action if the quantitative effect on basis is determinable beforehand.[575] Regulations provide that an issuer may make reasonable assumptions about facts that cannot be determined before this due date and must file a corrected return once the facts are determined if necessary to report the correct quantitative effect on basis. Under the regulations, it is expected that an issuer will treat a payment that may be a dividend consistently with its treatment of the payment under §6042(b)(3) and Reg. §1.6042-3(c).[576]

A written statement with the requisite information is required to be furnished to security holders or their nominees.[577] However, the Treasury Secretary may waive the reporting requirements if the person required to make the return makes the information publicly available.[578] The regulations provide that both the return filing and information statement requirements are waived if an issuer posts a statement with the required information in a readily accessible format in an area of its primary public website dedicated to this purpose by the same due date for reporting the organizational action to the IRS and keeps the form accessible to the public for 10 years.[579] This public reporting relieves the issuer of its duty both to file the return with the IRS and to furnish the statement to its nominees and certificate holders.[580]

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[566] I.e., a debt instrument that provides for a single fixed payment schedule for which a yield and maturity can be determined under Reg. §1.1272-1(b); a debt instrument that provides for alternate payment schedules for which a yield and maturity can be determined under Reg. §1.1272-1(c); or a debt instrument for which the yield can be determined under Reg. §1.1272-1(d). Reg. §1.6045-1(n)(2)(i).

[567] I.e., a debt instrument that provides for more than one rate of stated interest (including a debt instrument that provides for stepped interest rates); a convertible debt instrument; a stripped bond or stripped coupon subject to §1286; a debt instrument that requires payment of either interest or principal in a currency other than the U.S. dollar; a debt instrument that, at one or more times in the future, entitles a holder to a tax credit; a debt instrument that provides for a payment-in-kind (PIK) feature; a debt instrument issued by a non-U.S. issuer; a debt instrument for which the terms of the instrument are not reasonably available to the broker within 90 days of the date the debt instrument was acquired by the customer; a debt instrument that is issued as part of an investment unit; or a debt instrument evidenced by a physical certificate unless such certificate is held (whether directly or through a nominee, agent, or subsidiary) by a securities depository or by a clearing organization. Reg. §1.6045-1(n)(2)(ii).

[568] I.e., a debt instrument described in Reg. §1.6045-1(n)(2)(ii) or one not otherwise described in Reg. §1.6045-1(n)(2)(i). For example, Reg. §1.6045-1(n)(3) applies to variable rate debt instruments, inflation-indexed debt instruments, and contingent payment debt instruments because these instruments are not described in Reg. §1.6045-1(n)(2)(i). Reg. §1.6045-1(n)(3).

[569] I.e., any option described in Reg. §1.6045-1(m)(2), which describes an option on one or more specified securities (which includes an index substantially all the components of which are specified securities); an option on financial attributes of specified securities; or a warrant or a stock right. Reg. §1.6045-1(m) does not apply to compensatory options. Reg. §1.6045-1(a)(14)(iii) (reference to Reg. §1.6045-1(m)(2)).

[570] Reg. §1.6045B-1(j)(7) (referencing digital assets described in Reg. §1.6045-1(a)(14)(v) or (vi), that are also described in one or more paragraphs of Reg. §1.6045-1(a)(14)(i) through (iv)), added by T.D. 10000, 89 Fed. Reg. 56,480 (July 9, 2024). Broker reporting requirements for digital asset transactions are discussed in 190 T.M., *Taxation of Cryptocurrency and Other Digital Assets*.

[571] §6045B(a)(1).

[572] §6045B(a)(2).

[573] §6045B(a)(3).

[574] Reg. §1.6045B-1(a)(1). Under Reg. §1.6045B-1(h), if the organizational action results in an option writer replacing the original option contract with a different number of option contracts, the option writer must prepare an issuer return as required by §1.6045B-1.

[575] §6045B(b); Reg. §1.6045B-1(a)(2)(i). In Notice 2011-18, 2011-11 I.R.B. 549, the IRS provided transitional relief from information reporting requirements in §6045B that apply to issuers of stock with respect to organizational actions that affect the basis of the stock. The Notice provides that, for organizational actions occurring in 2011, the IRS will not impose penalties against issuers for missing the deadline to file a return reporting the action or make the return publicly available provided that the issuer filed the return with the IRS or made it publicly available by January 17, 2012. The Notice does not apply to an issuer's requirement to furnish the same information to the issuer's stockholders and nominees of its stockholders. In Notice 2012-11, 2012-5 I.R.B. 346, the IRS provided that, due to the number of questions that arose following the release of the final Form 8937, *Report of Organizational Actions Affecting Basis of Securities*, and instructions, and recognizing that the release date provides a very limited time frame remaining before the due date of the form, the IRS will permit an issuer to publicly report an organizational action by posting either Form 8937 or the required information in a readily accessible format to an area of its primary public web site. The IRS will treat the issuer as having filed Form 8937 and furnished issuer statements to stockholders or nominees on the date of posting of the Form 8937 or the required information. Further, the IRS said no penalties will be imposed for reporting incorrect information under §6721 or §6722 provided issuers make good-faith efforts in timely posting the Form 8937 or the required information on websites, or filing accurate Forms 8937 and furnishing the corresponding issuer statements. This transitional relief is limited to reporting organizational actions occurring in 2011 and does not apply to issuers of stock in a regulated investment company that are not subject to the issuer reporting requirements for 2011 organizational actions.

[576] Reg. §1.6045B-1(a)(2)(ii).

[577] §6045B(c).

[578] §6045B(e) (reference to §6045(g)(3)(C)).

[579] Reg. §1.6045B-1(a)(3), §1.6045B-1(b)(4).

[580] Reg. §1.6045B-1(b)(4).

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The regulations require a domestic or foreign issuer to furnish a written statement to each holder of record that is not an exempt recipient as of the record date of the corporate action and all subsequent holders of record through the date the issuer furnishes the statement.[581] If the security is held in the name of someone other than the holder of record on the books of the issuer, the regulations require the issuer to furnish the statement to the nominee listed on its books unless such nominee is the issuer or the issuer's agent.[582] For example, an issuer must furnish statements to the participants of the issuer's direct stock purchase plan even if the plan is listed as a nominee for the participants. An issuer may furnish to its holders and nominees a copy of the return that it files with the IRS.[583]

The regulations provide that a RIC or REIT is deemed to satisfy the requirements of §6045B for undistributed capital gains affecting basis of its stock that is reported on Form 2438, *Undistributed Capital Gain Tax Return*, and Form 2439, *Notice to Shareholder of Undistributed Long-Term Capital Gains*. Further, RICs, REITs, and brokers holding custody of RIC and REIT stock must adjust basis in accordance with the information reported on the forms.[584]

The regulations deem an S corporation to satisfy the requirements under §6045B if it reports the effect of the organizational action on the proper Schedule K-1 for each shareholder, timely files the schedules with the IRS, and timely furnishes the schedules to all proper parties.[585]

The regulations provide that a successor entity of an issuer that fails to satisfy the §6045B reporting obligations must satisfy these reporting obligations, and that if neither the issuer nor the successor entity satisfies these reporting obligations, then both parties are jointly and severally liable for any applicable penalties.[586]

9. Special Reporting Issues

a. Transactions in Foreign Currency

Proceeds from a sale that are paid in a foreign currency must be converted into U.S. dollars for reporting purposes. The conversion should be based on the spot rate on the payment date or a reasonable spot rate convention.[587] However, if a broker is required to report the sale of a security that is traded on an established securities market, then the broker must determine the U.S. dollar amounts at the spot rate or pursuant to a reasonable spot rate convention as of the settlement date of the purchase or sale, as applicable.

b. Stock Options

If an employee, former employee, or other service provider, in connection with the performance of services, obtains substantially vested shares of stock from the exercise of a stock option, and sells that stock through a broker on the same day, then the broker may not be required to report the sale on Form 1099-B.

This exception is deemed to be an "excepted sale" under Reg. §1.6045-1(c)(3)(ii) and is applicable to a sale of stock acquired by a service provider through the exercise of an option if (1) the sale is executed for the service provider on the same day that the stock being sold is acquired through the exercise of an option; (2) the option was granted in connection with the performance of services, such that the federal tax consequences of the transactions are governed by §83; (3) the service recipient certifies in writing to the broker that the recipient will report any compensation income generated by the exercise of the option, or disposition of the stock acquired in the exercise of the option, in accordance with §6041 or §6051, and the broker either (a) does not charge a commission or other fee on the transaction, or (b) does charge a commission or other fee on the transaction and furnishes to the service provider the written statement described in Rev. Proc. 2002-50.

The exception does not apply if the service recipient uses an amount other than the shares' sale price to calculate the compensation income generated to the service provider by the option exercise. The exception also does not apply to the exercise of a stock option if, at the date of grant, the stock option had a readily ascertainable fair market value as defined in Reg. §1.83-7(b).[588]

c. Reporting Sale or Exchange of Partnership Interest

A §751(a) exchange occurs when a partner sells or exchanges all or part of a partnership interest. Any money or other property received for the interest is attributable to the partnership's unrealized receivables or inventory items. Partnerships generally must report §751(a) exchanges on Form 8308, *Report of a Sale or Exchange of Certain Partnership Interests*. Form 8308 must be filed as an attachment to Form 1065, *U.S. Return of Partnership Income*, for the partnership's tax year that includes the last day of the calendar year in which the §751(a) exchange occurred, unless Form 1099-B, *Proceeds from Broker and Barter Exchange Transactions*, is required for the transaction under §6045.[589]

Note: Partnerships report, among other items, the partnership and transferor partner's share of gain or loss from a §751 deemed sale on Form 8308, Part IV. For §751(a) exchanges during calendar years 2023 and 2024, the IRS provided limited §6722 penalty relief for partnerships that failed to furnish Form 8308 with a completed Part IV by the Reg. §1.6050K-1(c)(1) deadline, if certain requirements were satisfied.[590] The IRS has since removed Reg. §1.6050K-1(c)(2) and amended Reg. §1.6050K-1(c)(1) to eliminate partnerships' obligation to provide information required by Form 8308, Part IV, by January 31 of the year following the calendar year in which the §751(a) exchange occurred. Partnerships must still furnish Form 8308, Parts I, II, and III by the Reg. §1.6050K-1(c)(1) deadline.[591]

[581] Reg. §1.6045B-1(b)(1), §1.6045B-1(b)(3), and §1.6045B-1(b)(5).
[582] Reg. §1.6045B-1(b)(3).
[583] Reg. §1.6045B-1(b)(1).
[584] Reg. §1.6045B-1(d).
[585] Reg. §1.6045B-1(c).
[586] Reg. §1.6045B-1(e).
[587] Reg. §1.6045-1(d)(8).
[588] Rev. Proc. 2002-50.
[589] §6050K; Reg. §1.6050K-1. *See also* Instructions for Form 8308.
[590] Notice 2025-2, Notice 2024-19.
[591] T.D. 10048, 91 Fed. Reg. 29,362 (May 20, 2026), Reg. §1.6050K-1(c)(1). *See also* Instructions for Form 8308.

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Brokers are required to withhold 10 percent of proceeds from the sale of an interest in a foreign-traded entity when the broker knows the entity is a publicly-traded partnership (PTP).[592] Brokers are not required to withhold, or may withhold at a reduced rate, if a broker relies on a transferor's exemption certification or a PTP representation on a qualified notice indicating an exception applies.[593] Notice 2023-8 allows brokers to rely on late certifications in certain circumstances.

d. Short Sales

When a customer enters into a short sale, the broker is not required to file an information return until the year the customer delivers a security to satisfy the short sale obligation. The return must be made without regard to the constructive sale rule in §1259 or to §1233(h). In general, the broker must report on a single return the information required except that the broker must report the date the short sale was closed in lieu of the sale date. The broker must also report the relevant information regarding the security sold to open the short sale and the adjusted basis of the security delivered to close the short sale and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of §1222).[594]

If a short sale is closed by delivery of a noncovered security, a broker is not required to report adjusted basis and whether any gain or loss on the closing of the short sale is long-term or short-term. A broker that chooses to report this information is not subject to penalties under §6721 or §6722 for failure to report this information correctly if the broker indicates on the return that the short sale was closed by delivery of a noncovered security.[595]

If a short sale obligation is satisfied by delivery of a security transferred into a customer's account accompanied by a transfer statement indicating that the security was borrowed, the broker receiving custody of the security may not file an information return; instead, the receiving broker must furnish a statement to the transferor that reports the amount of gross proceeds received from the short sale, the date of the sale, the quantity of shares, units, or amounts sold, and the CUSIP number of the sold security or other security identifier number that the Secretary may designate. The statement to the transferor also must include the transfer date, the name and contact information of the receiving broker, the name and contact information of the transferor, and sufficient information to identify the customer. If the customer subsequently closes the short sale obligation in the transferor's account with nonborrowed securities the transferor is responsible for filing the return of information required in which case, the transferor must rely on the account information furnished by the receiving broker on the return unless the transferor knows that the information furnished is incorrect or incomplete. A failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause for purposes of penalties under §6721 and §6722.[596]

e. Wash Sales

A broker must apply the wash sale rules under §1091 if both the sale and purchase transactions are of covered securities with the same CUSIP number or other security identifier number that the IRS designates.[597] If the covered security is also a digital asset, a broker must apply the wash sale rules under §1091 if both the sale and purchase transactions are of covered securities with the same CUSIP number or other security identified number that the IRS designates.[598] This rule does not apply, however, if the securities are purchased and sold from different accounts, if the purchased security is transferred to another account before the wash sale, or if the securities are treated as held in separate accounts.[599] A security is not purchased in an account if it is purchased in another account and transferred into the account.[600] In addition, a broker is not required to apply the wash sale rules if a customer has in writing both informed the broker that the customer has made a valid and timely election under §475(f)(1) (election of mark to market for traders in securities or commodities) and identified the account as solely containing securities subject to the election.[601]

If a wash sale occurs after a broker has completed a return or statement reporting a sale of a covered security, the broker must redetermine whether gain or loss on the sale is long-term or short-term. If the return or statement included information inconsistent with this redetermination, the broker must correct the return or statement by the applicable original due date set forth in this section for the return or statement.[602]

There are a number of rules that a broker is not required to apply in complying with the §6045 reporting requirements. A broker is not required to apply §1259 (regarding constructive sales), §475 (regarding the mark-to-market method of accounting), or §1296 (regarding the mark-to-market method of accounting for marketable stock in a passive foreign investment company) when determining whether any gain or loss on the sale of a security is long-term or short-term.[603] In addition, a broker is not required to apply §852(b)(4)(A) and §857(b)(8) (regarding effect of distributed and undistributed capital gain dividends on a loss on sale of regulated investment company or real estate investment trust shares held six months or less) or §852(b)(4)(B) (regarding loss disallowance on sale of regulated investment company shares held six months or less due to receipt of tax-exempt dividends), or §1092 (regarding straddles), §1233(b)(2) (regarding effect of short sale on holding period of substantially identical property), or Reg. §1.1221-2(b) (regarding hedging transactions) when determining whether any gain or loss on the sale of a security is long-term or short-term.[604]

[592] §1446(f)(1); Reg. §1.1446(f)-4(a)(2). *See* Notice 2023-8 (broker may presume foreign-traded entity is not a PTP unless broker has actual knowledge to the contrary).

[593] Reg. §1.1446(f)-4(b).

[594] Reg. §1.6045-1(c)(3)(xi)(A), applicable for a short-sale of a security entered into on or after January 1, 2011.

[595] Reg. §1.6045-1(c)(3)(xi)(B).

[596] Reg. §1.6045-1(c)(3)(xi)(C).

[597] Reg. §1.6045-1(d)(7)(ii)(A)(1).

[598] Reg. §1.6045-1(d)(7)(ii)(A)(2).

[599] Reg. §1.6045-1(d)(7)(ii)(B) (reference to §1.1012-1(e) (generally, covered and noncovered securities would be treated as held in separate accounts)).

[600] Reg. §1.6045-1(d)(7)(ii)(B).

[601] Reg. §1.6045-1(d)(7)(ii)(C).

[602] Reg. §1.6045-1(d)(7)(ii)(D).

[603] Reg. §1.6045-1(d)(7)(iii).

[604] Reg. §1.6045-1(d)(7)(iv), Reg. §1.6045-1(d)(7)(v).

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10. Exceptions to Requirement to Report

No information return is required for the following:

1. Sales for exempt recipients, including corporations (domestic and foreign), charitable organizations, IRAs, the United States, a state, or political subdivisions.[605] The exception for a corporation does not apply to sales of covered securities acquired on or after January 1, 2012, by an S corporation as defined in §1361(a).[606]

2. Excepted sales.[607]

3. Sales initiated by exempt recipients including dealers in securities, financial institutions, and futures commission merchants registered with the Commodity Futures Trading Commission.[608] If a broker is instructed to initiate a sale by one of these recipients, then no information return 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 proceeds to the beneficial holder who is not an exempt recipient, or crediting the gross proceeds on the sale to that holder's account, is required to report the sale.[609]

4. Cash on delivery account. If a sale of securities is effected through a "cash on delivery" or similar account, only the broker that receives the gross proceeds from the sale against delivery of the securities sold is required to report the sale. However, if the broker's customer is a "second-party broker" that is, an exempt recipient, only the second-party broker is required to report the sale.[610]

Example: 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. Thus, D is considered the customer of K and L. 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 then required to make a return of information with respect to the sale because D is L's customer and is not an exempt recipient.[611]

5. Sales by custodians and trustees provided the sales are reported on a properly filed Form 1041, *U.S. Income Tax Return for Estates and Trusts.*

6. Sales at issue price of interests in certain regulated investment companies (RICs). No return of information is required with respect to a sale of an interest in a RIC that holds itself out as a money market fund that computes its current price per share for purposes of distributions, redemptions, and purchases to stabilize the price per share at a constant amount approximating its issue price or the price at which it was originally sold to the public.[612]

7. Obligor payments on:

a. nontransferable obligations, such as savings bonds or CDs, savings accounts, checking accounts, and NOW accounts,[613]

b. obligations for which the entire gross proceeds are reported on other Forms 1099, such as stripped coupons issued before July 1, 1982, retirements of short-term obligations with original issue discount (OID) that are reported on Form 1099-INT, or callable demand obligations that have no premium or discount,[614]

c. retirement of short-term obligations (i.e., obligations with a fixed maturity date not exceeding one year from the date of issue) that have OID, as defined in §1273(a)(1), with or without application of the de minimis rule,[615]

d. demand obligations that also are callable by the obligor and that have no premium or discount.[616]

8. Sales of foreign currency unless under a forward or regulated futures contract that requires delivery of foreign currency.[617]

9. Sales of fractional shares of stock if gross proceeds are less than $20.[618] However, it is important to note that this is a reportable payment under §3406 and may be subject to backup withholding if the payment is greater than the $10 threshold under §3406. Thus, a payment from the sale of fractional shares that is less than $20 but subject to backup withholding would be reportable on Form 1099-B.[619]

10. Retirements of book entry or registered form obligations if no interim transfers have occurred.[620]

11. Exempt foreign persons as defined in Reg. §1.6045-1(g)(1)(i).

12. Sales of Commodity Credit Corporation certificates. Except as otherwise provided in a revenue ruling or revenue procedure, no return of information is required under §6045 with respect to a sale of a commodity certificate issued by the Commodity Credit Corporation under 7 C.F.R. §1470.4.[621]

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605 Reg. §1.6045-1(c)(3)(i)(B).

606 *Id.*

607 Reg. §1.6045-1(c)(3)(ii). No return is required for a sale effected by a broker that is designated as an excepted sale by the IRS in a revenue ruling or revenue procedure.

608 Reg. §1.6045-1(c)(3)(i)(B)(6), §1.6045-1(c)(3)(i)(B)(7), §1.6045-1(c)(3)(i)(B)(11).

609 Reg. §1.6045-1(c)(3)(iii) (also referred to as the "multiple broker rule").

610 Reg. §1.6045-1(c)(3)(iv).

611 Reg. §1.6045-1(c)(4)(iii).

612 Reg. §1.6045-1(c)(3)(vi).

613 Reg. §1.6045-1(c)(3)(vii)(A).

614 Reg. §1.6045-1(c)(3)(vii)(B).

615 Reg. §1.6045-1(c)(3)(vii)(C).

616 Reg. §1.6045-1(c)(3)(vii)(D).

617 Reg. §1.6045-1(c)(3)(viii).

618 Reg. §1.6045-1(c)(3)(ix).

619 §3406(b)(5). *See also* General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

620 Reg. §1.6045-1(c)(3)(x).

621 Reg. §1.6045-1(c)(3)(xi), §1.6045-1(c)(7)(ii).

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13. Spot or forward sales of agricultural commodities.

14. Some sales of precious metals.

15. Grants or purchases of options, exercises of call options, or entering into contracts that require delivery of personal property.

16. Short-term obligations issued on or after January 1, 2014.[622]

17. Certain redemptions.[623]

11. Commodities

a. In General

In general, a commodity is any type of personal property or an interest in the trading of regulated futures contracts which has been approved by the Commodity Futures Trading Commission (CFTC) including lead, palm oil, rapeseed, tea, tin, or an interest in any of the foregoing. A commodity may also be any other personal property that the Treasury Secretary determines is to be treated as a "commodity" under §6045 once notification is published in the Federal Register.[624]

Reporting on Form 1099-B for sales of commodities is required if the trading of regulated futures contracts in the property has been approved by the CFTC even if the contracts are not actively traded.[625] However, there are exceptions for certain sales of agricultural commodities and precious metals.

b. Sales of Agricultural Commodities

No return of information is required under §6045 for a spot or forward sale of an agricultural commodity.[626] Agricultural commodities include grain, feed, livestock, meat, oil seed, timber, or fiber.[627] A spot sale is a sale that results in almost immediate delivery of a commodity.[628] A forward sale is a sale under a forward contract.[629]

However, reporting is required for sales of agricultural commodities under a regulated futures contract, sales of derivative interests in agricultural commodities, and sales of receipts for agricultural commodities issued by a designated warehouse.[630] A designated warehouse is a warehouse, depository, or other similar entity designated by a commodity exchange in which, or out of which, a particular type of agricultural commodity is deliverable to satisfy a regulated futures contract.[631] Sales of warehouse receipts issued by any other warehouse are not reportable.

c. Sales of Precious Metals

Sales of precious metals in a quantity less than that required to satisfy a Commodity Futures Trading Commission (CFTC)-approved regulated futures contract (RFC) are not subject to reporting. A sale of a precious metal in any form that cannot be used to satisfy a CFTC-approved RFC is not reportable.[632]

> *Example:* Form 1099-B is not required to be filed for the sale of a single gold coin in the form and quality deliverable in satisfaction of a CFTC-approved contract because all CFTC contracts for gold coins currently call for delivery of at least 25 coins.

Sales of precious metals for a single customer during a 24-hour period must be aggregated and treated as a single sale to determine if this exception applies.[633]

d. Reportable Futures, Foreign Currency, and Other Forward Contracts Defined

Under §6045, a regulated futures contract is a reportable transaction within the meaning of §1256(b).[634] For purposes of §1256(b), §1256(g)(1) defines a regulated futures contract as a contract for which the amount that must be deposited and the amount that may be withdrawn is based upon a system of marking-to-market coupled with what is traded on, or subject to the rules of a qualified board or exchange. To be "a qualified board or exchange," the entity must be registered with the Securities and Exchange Commission (SEC), designated as a contract market by the Commodity Futures Trading Commission (CFTC), or determined by the Treasury Secretary to have adequate rules to carry out the purpose of §1256.[635]

Reportable foreign currency contracts include contracts in a currency in which positions are also traded through regulated futures contracts, contracts traded in the interbank market, and contracts priced by reference to an interbank market price.[636] Brokers must report these foreign currency contracts in accordance with the rules for reporting regulated futures contracts.[637]

A reportable "forward contract" means an executory contract that requires delivery of a §6045 "commodity" in exchange for cash and is not a regulated futures contract.[638] Executory contracts requiring delivery of personal property (or an interest therein), which is not within the §6045 definition of "commodity," in exchange for cash may be a reportable "forward contract" only if it is a type that may be treated as a "forward contract" from the date specified in a declaration notice published in the Federal Register.[639] Additionally, executory contracts that require delivery of a digital asset in exchange for cash, stored value cards, a different digital asset, or any other disposition of digital assets for property or services are reportable as a forward contract (as long as the contract is not

[622] Reg. §1.6045-1(c)(3)(xiii).
[623] Reg. §1.6045-1(c)(3)(xiv).
[624] Reg. §1.6045-1(a)(5).
[625] Reg. §1.6045-1(a)(5)(i).
[626] Reg. §1.6045-1(c)(7)(i).
[627] Reg. §1.6045-1(c)(7)(iv)(A).
[628] Reg. §1.6045-1(c)(7)(iv)(B).
[629] Reg. §1.6045-1(c)(7)(iv)(C).
[630] Reg. §1.6045-1(c)(7)(iii).
[631] Reg. §1.6045-1(c)(7)(iv)(D).
[632] Rev. Proc. 92-103. *See also* T.D. 8452, 57 Fed. Reg. 58,983 (Dec. 14, 1992).
[633] Instructions for Form 1099-B.
[634] Section 1256(b) defines a "[§]1256 contract" to include any regulated futures contract, any foreign currency contract, any nonequity option, any dealer equity option, and any dealer securities futures contract. A §1256 contract does not include any securities futures contract or option on such a contract unless such contract or option is a dealer securities futures contract.
[635] §1256(g)(7).
[636] §1256(g)(2). *See* Prop. Reg. §1.1256(g)-2.
[637] §988(c)(1)(B)(iii).
[638] Reg. §1.6045-1(a)(7)(i).
[639] Reg. §1.6045-1(a)(7)(ii).

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also a regulated futures contract).[640] For this purpose, cash includes U.S. dollars and any foreign currency readily convertible into U.S. dollars.[641]

12. Acquisition of Control or Substantial Change in Capital Structure

A broker that holds shares on behalf of a customer in a corporation that the broker knows or has reason to know, based on readily available information, has engaged in a transaction of acquisition of control or substantial change in capital structure must report the transaction on Form 1099-B unless the recipient is an exempt entity. Information is deemed to be readily available if it is obtained from a clearing organization such as the Depository Trust Company (DTC) or appears on the IRS website, www.IRS.gov.[642] Specific to this type of transaction, an entity is exempt if only cash is received in exchange for the corporation's stock, or the entity is exempt under Reg. §1.6043-4(b)(5) or Reg. §1.6045-1(c)(3)(i).[643]

13. Barter Exchange Reporting

a. In General

Any organization with members or clients that contract either with each other or the organization to trade or barter property or services, i.e., a "barter exchange," must complete IRS Form 1099-B to report those exchanges of personal property or services.[644] For purposes of §6045, the term "broker" includes a barter exchange.[645]

For this purpose, property or services are considered exchanged through a barter exchange if payment is made by means of credit on the books of the barter exchange or scrip issued by the exchange, or the exchange arranges a direct exchange of property or services between members.[646] Within the meaning of these terms, both credit and scrip must be transferable from one member to another in payment for property or services.[647]

A barter exchange does not include arrangements that provide solely for the informal exchange of similar services on a noncommercial basis.[648]

Example: Three individuals 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 subject to the reporting requirements of §6045.

Persons who do not contract a barter exchange but who trade services do not file Form 1099-B. However, reporting may be required on Form 1099-MISC.

A barter exchange is required to report each transaction on Form 1099-B to include the name, address, and taxpayer identification number (TIN) 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.[649] Barter exchange transactions must be reported on a calendar basis rather than a more frequent reporting regime that may be elected to report sales transactions.[650]

Barter exchange transactions are subject to backup withholding in the event that the recipient has failed to provide the required documentation to certify their U.S. or foreign status, or the exchange has been notified by IRS of a name/TIN mismatch.[651]

If a corporate member or client provides property or services in an exchange for which information reporting is required, the barter exchange may report the sum of the transactions as an aggregated amount. The Form 1099-B must also include the name, address, and TIN of the corporate member or client.[652] The term "corporate member or client" means a member or client of a barter exchange that is a corporation as defined in §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 (i.e., Form W-9) as described in Reg. §31.3406(h)-3(a); or the name of the member or client contains the term "insurance company," "indemnity company," "reinsurance company," or "assurance company"; the name of the member or client contains an unambiguous expression of corporate status such as "Incorporated," "Inc.," "Corporation," "Corp.," or "P.C." (but not Company or Co.); or 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.[653]

b. Exceptions

A barter exchange through which there are fewer than 100 exchanges during the calendar year is not required to file Forms 1099-B. However, the Commissioner may require multiple barter exchanges to be combined for reporting purposes if IRS determines 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 from reporting.[654] Additionally, exchange transactions involving the exchange of one digital asset held by one customer of a broker for a different

[640] Reg. §1.6045-1(a)(7)(iii), added by T.D. 10000, 89 Fed. Reg. 56,480 (July 9, 2024).
[641] Reg. §1.6045-1(a)(12).
[642] Reg. §1.6045-3(a).
[643] Reg. §1.6045-3(b).
[644] Reg. §1.6045-1(a)(4), §1.6045-1(e)(2).
[645] §6045(c)(1)(B), §6045(c)(3).
[646] Reg. §1.6045-1(e)(2).
[647] Reg. §1.6045-1(e)(2).
[648] Reg. §1.6045-1(a)(4).
[649] Reg. §1.6045-1(f)(2)(i).
[650] Reg. §1.6045-1(f)(6).
[651] Reg. §31.3406(b)(3)-2.
[652] Reg. §1.6045-1(f)(2)(ii).
[653] Reg. §1.6045-1(f)(2)(iii).
[654] Reg. §1.6045-1(e)(2)(ii).

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digital asset held by a second customer of the same broker must be reported on Form 1099-DA as a digital asset sale (for each customer) and not as an exchange of personal property through a barter exchange.[655]

A barter exchange is also not required to report exchange transactions with exempt foreign persons who have provided the appropriate documentation as defined in Reg. §1.6045-1(g)(1) that certifies and supports their claim of foreign status such as one of the Form W-8 series.[656]

No reporting is required for exchanges involving property or services with a fair market value of less than one dollar ($1.00).[657]

14. Form 1099-B

a. Information Required on Form 1099-B

Generally, a broker is required to issue Form 1099-B showing the customer's name, address, and taxpayer identification number (TIN) property sold, Committee on Uniform Security Identification Procedures (CUSIP) number of the security sold (if known) or other security identifier number, adjusted basis of the security sold, whether any gain or loss is long-term or short-term capital gain, gross proceeds, sale date, and any other information required to be reported on the Form 1099, in the form, manner, and number of copies required by regulations.[658]

Special reporting rules apply to an asset sale of a security that is also a digital asset (i.e., a dual classification asset). Unless an exception below applies, Form 1099-DA, *Digital Asset Proceeds From Broker Transactions*, is required to report a dual classification asset and the sale is treated as a sale of a digital asset.[659]

A broker must file Form 1099-B instead of Form 1099-DA for sales of a dual classification asset for any of the following sales:

- sale of a digital asset that is also a §1256(b) contract;
- sale of a dual-classification asset that is a digital asset solely because the sale is cleared or settled on a limited-access regulated network; or
- sale of a dual-classification asset that is an interest in a money market fund.[660]

When completing Form 1099-B, brokers must indicate whether commissions and option premiums have been netted against gross proceeds. The official form contains a check box that makes this disclosure. If a substitute form is issued, the form must contain language that provides this information to the recipient.[661]

Unlike other form types that allow for reporting aggregated amounts, each sales transaction must be reported separately on Form 1099-B with the exception of transactions involving regulated futures, foreign currency contracts, or §1256 option contracts which may be reported on an aggregate basis.[662]

For most form types, recipient statements are typically required to be issued annually. However, a broker may elect to issue Forms 1099-B to recipients at any time during the calendar year (monthly, quarterly, or annually) but no later than February 15th of the following calendar year.[663] Information returns for these transactions may be filed any time during the year based on the filing election of the broker but no later than the annual filing dates in accordance with the guidelines discussed at V., below.

The most current version of Form 1099-B and Instructions can be found on the IRS website.

b. Aggregate Reporting of Regulated Futures and Foreign Currency Contracts

In the context of reportable regulated futures contracts, foreign currency contracts and forward contracts, a reportable sale is any closing transaction that terminates the contractual obligation, regardless of whether a delivery is actually effected.[664] Thus, a closing transaction, which requires tax reporting, includes the taking or making of a delivery, the paying or receiving of compensation for release from the binding contract, the entering of an offsetting position, or the selling of the contract to another party.[665]

When closing a regulated futures contract by making or taking delivery of the commodity, two reportable sales occur. The profit or loss on the contract is considered reportable proceeds from the sale of the contract position, and the proceeds received from the actual delivery of the commodity is considered reportable gross proceeds from the separate sale of the commodity delivered.[666]

Under the regulations, exceptions from this dual reporting requirement (i.e., reporting of both the "delivery sale" and the "contract sale") apply to foreign currency and other reportable forward contracts. When closing a forward contract by making or taking delivery, the delivery is considered a sale without separation of the profit or loss on the contract from the profit or loss on the delivery, except that taking delivery of U.S. dollars is not a sale.[667] A sale of foreign currency, that is, the "delivery sale," other than a sale pursuant to a forward contract or regulated futures contract that requires delivery of the currency, is also expressly excepted from reporting.[668]

If a foreign currency contract is closed by making or taking delivery, the net realized profit or loss is determined by

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[655] Reg. §1.6045-1(e)(2)(iii), added by T.D. 10000, 89 Fed. Reg. 56,480 (July 9, 2024).

[656] Reg. §1.6045-1(g)(2). *See also* Instructions for Form 1099-B.

[657] Notice 2000-6. *See also* Instructions for Form 1099-B.

[658] Reg. §1.6045-1(d)(2)(i). For a sale of a covered security on or after January 1, 2014, a broker must also report whether gain or loss is ordinary.

[659] Reg. §1.6045-1(c)(8).

[660] Form 1099-DA and broker information reporting rules for digital asset transactions are discussed in 190 T.M., *Taxation of Cryptocurrency and Other Digital Assets*.

[661] Reg. §1.6045-1(d)(5)(i). See also IRS Pub. 1179, *General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns*, which provides guidance on preparing acceptable substitute forms for certain information returns, including Form 1099-B.

[662] Reg. §1.6045-1(d)(2)(i), (5); Instructions for Form 1099-B.

[663] §6045(b). Moreover, if a payor is providing a consolidated recipient statement to a payee that contains Form 1099-B as well as other form types that are required to be filed by January 31st, all form types will be considered timely filed by February 15th. *See also* Notice 2009-11.

[664] Reg. §1.6045-1(a)(8), §1.6045-1(a)(9).

[665] *Id.*

[666] Reg. §1.6045-1(a)(9), §1.6045-1(c)(5)(i).

[667] Reg. §1.6045-1(a)(9).

[668] Reg. §1.6045-1(c)(3)(viii).

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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 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 is determined by comparing the contract price to the broker's price for similar contracts at the close of business of the relevant year.[669]

Profits and losses from regulated futures and foreign currency contracts are generally reported on an annual aggregate basis, rather than transactionally, as is the case for gross proceeds reporting of security sales and other reportable forward contract closings.[670] If account owners advise a broker in writing that their taxable year is other than a calendar year, a broker may elect to report for those owners on the basis of their taxable years.[671] The following information must be included on Form 1099-B for sales of regulated futures and foreign currency contracts:

(1) the name, address, and taxpayer identification number (TIN) of the customer;

(2) the realized profit (or loss) from all regulated futures contracts closed during the calendar year;

(3) the unrealized profit (or loss) in all open regulated futures contracts at the end of the preceding calendar year;

(4) the unrealized profit (or loss) in all open regulated futures contracts at the end of the current calendar;

(5) the aggregate profit (or loss) for the present reporting year, calculated to be the sum of realized profit or loss from all regulated futures contracts closed during the calendar year and unrealized profit or loss in all open regulated futures contracts at the end of the current year less unrealized profit or loss in all open regulated futures contracts at the end of the preceding calendar year; and

(6) any other information required by Form 1099.[672]

For this purpose, the end of a year is the close of business on the last business day of such year. In reporting for these contracts, the broker shall make the appropriate 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.[673]

The following examples illustrate the rules applicable to reporting for regulated futures contracts:

Example 1: On October 30, Year 5, C, an individual who is a calendar year taxpayer not otherwise exempt from reporting, buys one March Year 6, put on Treasury Bond futures (i.e., C purchases an option to enter into a short regulated futures contract of $100,000 face value U.S. Treasury bonds). C pays $500 for the option. On December 19, 2015, C, through D, exercises the option and enters into the futures contract. On February 15, Year 6, C, through D, enters into a closing transaction with respect to the futures contract. These are C's only transactions in the account. Since D's books list C's regulated futures contract on December 31, Year 5, D must report for C, for Year 5, the unrealized profit or loss in the contract as of December 31, Year 5. For Year 6, D will report the same amount for C as the unrealized profit or loss at the beginning of Year 6. The return of information for Year 6 will also include the gain or loss from the contract in the net realized profit or loss from all regulated futures contracts sales during 2016.[674]

Example 2: The facts are the same as in *Example 1* except that C does not enter into the closing transaction, but instead, on March 20, Year 6, D informs C that C will make delivery under the contract. On March 22, Year 6, C does so; consequently, C becomes entitled to the gross proceeds. D enters the closing transaction on its books on March 20, Year 6. In addition to the returns of information required as described in *Example 1*, D must report the March 22, Year 6 delivery as a separate transaction. D may use as the sale date for the delivery either March 20, Year 6, the date the transaction is entered on the books of D, or March 22, Year 6, the date C becomes entitled to the gross proceeds. D may not deduct the $500 premium from the gross proceeds with respect to the March 22, Year 6 delivery.[675]

Example 3: The facts are the same as in Example 2 except that C buys a call on Treasury bond futures and takes delivery. D will supply the returns of information required as described in *Example 1*. D is not required to make a return of information with respect to C's taking delivery.[676]

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 Reg. §1.6045-1(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.[677]

E. Miscellaneous Payments

This chapter addresses information reporting for various payments that are not reportable on other Forms 1099 discussed in this Portfolio.

[669] Reg. §1.6045-1(c)(5)(i)(B).

[670] Reg. §1.6045-1(c)(5)(i); General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G). *See* Form 1099-B and instructions.

[671] *Id.*

[672] Form 1099-B and Instructions. *See also* 17 C.F.R. §1.33.

[673] Reg. §1.6045-1(c)(5)(i).

[674] Adapted from Reg. §1.6045-1(c)(5)(iii) *Ex.* 1.

[675] Adapted from Reg. §1.6045-1(c)(5)(iii) *Ex.* 2.

[676] Adapted from Reg. §1.6045-1(c)(5)(iii) *Ex.* 3.

[677] Adapted from Reg. §1.6045-1(c)(5)(iii) *Ex.* 4.

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1. Miscellaneous Information — Form 1099-MISC and Nonemployee Compensation — Form 1099-NEC

a. In General

Form 1099-MISC, *Miscellaneous Information*, has been designed to report a variety of payments on a single form type even though the requirement to report is based on different sections of the IRC.

b. Sections 6041 and 6041A

Persons who make payments in the course of a trade or business that are deemed to be fixed or determinable income must report these transactions on Form 1099-MISC, *Miscellaneous Information*, or Form 1099-NEC, *Nonemployee Compensation*. Persons are typically engaged in a trade or business for gain or profit. However, in the context of §6041, persons may be engaged in a trade or business on a not-for-profit basis that include tax-exempt organizations as well as trusts of qualified pension or profit-sharing plans of employers, certain organizations exempt from tax under §501(c) or §501(d), farmers' cooperatives that are exempt from tax under §521, and widely held fixed investment trusts (WHFITs).[678]

Reportable payments include salaries, wages, commissions, fees, and other forms of compensation for services, when aggregated, equal $2,000 or more in any calendar year, adjusted for inflation for calendar years after 2026 ($600 or more for tax years before 2026).[679] Other reportable amounts include interest (including original issue discount (OID)), rents, royalties, annuities, pensions, and other gains, profits, and income aggregating $2000 or more.

For tax years beginning after 2024, §6041 also requires:

- a separate accounting of amounts designated as cash tips; and
- the occupation of the person receiving the tips.[680]

The aggregated amount is the sum of all payments reportable on Form 1099-MISC with the exception of direct sales of $5,000 or more of consumer products to a buyer for resale.[681]

However, the thresholds that trigger reporting are different for royalties ($10), substitute dividends and tax-exempt interest payments reportable by brokers ($10), fishing boat proceeds (any amount), and payments of §409A income (any amount).[682] The amount to be reported on Form 1099-MISC is the amount includible in the gross income of the payee which will typically be the amount of the payment before any deductions for fees, commissions, expenses, or other amounts owed by the payee.[683]

Income is fixed when it is to be paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained. The income need not be paid annually or at regular intervals to be determinable. Moreover, increasing or decreasing the amount of the payments does not make the payments any less determinable under §6041.[684]

In general, reportable payments that are not required to be reported on specific Forms 1099 may be reported under §6041 on Form 1099-MISC. These payments do not include any amounts required to be reported as dividends under §6042(a), distributions in liquidation under §6043(a)(2), patronage dividends under §6044(a), certain broker transactions under §6045, interest as described in §6049(a)(1) or §6049(a)(2), royalties under §6050N(a), or cancellation of indebtedness required under §6050P(a) or §6050P(b). Interest paid with respect to a notional principal contract excluded from the definition of interest under Reg. §1.6049-5(b)(16) is also reportable under §6041.[685] The term "interest" as used in §6041 includes all interest, other than interest coming within the definition of interest provided in Reg. §1.6049-5(a). For example, a closely held corporation borrows money from one of its officers on a promissory note not in registered form bearing annual stated interest of $300. The corporation also pays annual royalties to the officer of $1,800. An information return is required under §6041 to report the payments to the officer because the interest does not come within the definition of interest in Reg. §1.6049-5(a) and the aggregate of interest and royalties exceeds $2,000.[686]

Under §6041A, a person engaged in a trade or business who pays remuneration equal to or exceeding the §6041(a) reporting threshold (discussed above) to any person for services performed during the calendar year is required to prepare a return to report the name and address of the person providing the service as well as the aggregate amount paid for the services.[687] In some cases, the person engaged in trade or business may also be required to report any goods or materials incidental to the services.[688] If a person engaged in a trade or business sells consumer products aggregating $5,000 or more to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person in the home (or other

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[678] Reg. §1.6041-1(b)(1).

[679] §6041(a), amended by the One Big Beautiful Bill Act (OBBBA), Pub. L. No. 119-21, §70433(a), applicable to payments made after 2025, §6041(h), added by the OBBBA, §70433(b), former §6041(a). *See also* REG-113229-25, 91 Fed. Reg. 20,599 (Apr. 17, 2026), proposing amendments to Reg. §1.6041-1, §1.6041-2, §1.6041-7, §1.6041-10, §1.6041A-1, §31.3406(b)(3)-1, and §31.3406(g)-2 to reflect the changes made by OBBBA §70433 that apply to payments made after 2025.

[680] §6041(a), amended by the OBBBA, §70201(f); *see also* §224 (deduction for qualified tips), added by the OBBBA, §70201(a); Reg. §1.6041-1(a)(1)(i).

[681] Aggregation also would exclude information reported to the states.

[682] *See* Instructions for Form 1099-MISC. *See also* General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[683] Reg. §1.6041-1(f). *See* PLR 201444001 (entity that administers state program to compensate homeowners for decline in home value is not required to report compensation amount when entity does not know homeowner's basis in property and therefore cannot know amount includible in homeowner's gross income).

[684] Reg. §1.6041-1(c). *See* FAA 20124402F (§6041(a) is conditioned on payor knowing nature and amount of payment; if payor cannot determine either nature of payment or amount, payor is not required to file information return).

[685] For a discussion of notional principal contracts, see 189 T.M., *U.S. Taxation of Notional Principal Contracts*.

[686] Reg. §1.6041-1(a)(1)(ii).

[687] §6041A(a)(2), amended by the OBBBA, §70433(c), applicable to payments made after 2025.

[688] *See, e.g.*, Rev. Rul. 81-232 (payments for auto parts used in automobile repair are incidental to auto repair services and are reportable, especially where auto repair shop does not hold itself out as dealer in parts and portion of payment attributable to parts is not considered payment of bill for merchandise); TAM 9521003 (payments for nautical artifacts are not reportable because items are "merchandise" within meaning of Reg. §1.6041-3(d), even though seller expends significant labor to "produce" them).

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than in a permanent retail establishment), then the seller must prepare a return to report the name and address of the buyer.[689]

For tax years beginning after December 31, 2024, §6041A also requires:

- a separate accounting of amounts designated as cash tips; and
- the occupation of the person receiving the tips.[690]

For cash tips required to be reported for tax periods before January 1, 2026, persons required to file returns or statements under §6041(a), §6041A(a), or certain other information reporting provisions, may approximate a separate accounting of amounts designated as cash tips by any reasonable method specified by Treasury and the IRS.[691]

Section 6041A also requires a federal executive agency as defined under §6050M to report payments for services provided by corporations.[692] This is an exception to the general rule that a corporation is exempt from reporting and withholding.

c. Reportable Payments

Certain types of payments are specifically included under §6041 as described below:

(1) Payments for life insurance, endowment, or annuity contracts are required to be reported unless: (i) payment is made by reason of death of the insured or the surrender before maturity or lapse of a policy; (ii) such payments are considered to be interest under §6049; (iii) the payment is subject to reporting under Reg. §1.6047-1 relating to employee retirement plans; or (iv) the payment is deemed to be wages in the form of group term life insurance.

(2) Fees for professional services paid to attorneys, physicians, and members of other professions are required to be reported if paid by persons engaged in a trade or business and paid in the course of such trade or business.[693] In addition, an exchange of services between individuals in the course of their trades or businesses are reportable transactions even though no cash was exchanged. An example would be an attorney who represents a painter for nonpayment of business debts in exchange for the painting of the attorney's law offices. The amount reportable by each on Form 1099-MISC is the fair market value of his or her own services performed. However, if the attorney represents the painter in a divorce proceeding, this is an activity that is unrelated to the painter's trade or business and the attorney must report on Form 1099-MISC the value of painting the law offices because the work is in exchange for legal services that are separate from the painter's business.[694]

(3) Amounts paid as prizes and awards that are required to be included in gross income under §74 and Reg. §1.74-1 when paid in the course of a trade or business are required to be reported.[695] Winnings from lotteries, game shows, contests, or drawings are also reportable transactions.

(4) Amounts paid as disability payments under §105(d) are required to be reported under this section.[696]

(5) Under §6041, payments made after December 31, 2000 with respect to notional principal contracts are required to be reported unless the payment is made outside the United States by a non-U.S. payor or non-U.S. middleman. A payment is also not reportable if the payment is made outside the United States by a U.S. payor who is not a U.S. person and the payor has no actual knowledge that the payee is a U.S. person. In addition, reporting is not required if the payor is a foreign branch of a U.S. bank.[697] The amount required to be reported is limited to the amount of cash paid from the notional principal contract as described in Reg. §1.446-3(d).[698] A nonperiodic payment is reportable for the year in which an actual payment is made. Any amount of interest calculated under Reg. §1.446-3(g)(4) that is deemed to be a significant nonperiodic payment is reportable under §6041 rather than under §6049.[699]

d. Middleman Rules

A person that makes a payment in the course of their trade or business on behalf of another person may be required to report such payments as the payor if they perform management or oversight function in connection with the payment, or if they have a significant economic interest in the payment.[700] Simply performing an administrative function in processing payments is not considered a management or oversight function. However, effecting payment to avoid property liens or loss of collateral does constitute significant economic interest and would thus require reporting on the part of the payor.[701]

If more than one person meets the requirements to act as payor and report the payment, then the person most directly connected to the payee must report the payment unless the par-

[689] §6041A(b).

[690] §6041A(a), amended by the OBBBA, §70201(f)(2)(A).

[691] OBBBA, §70201(k), applicable to tax years beginning after December 31, 2024.

[692] §6041A(d)(3)(A). *See also* Rev. Rul. 2003-66, for examples of this requirement.

[693] Reg. §1.6041-1(d)(2).

[694] See Instructions for Form 1099-MISC.

[695] Reg. §1.6041-1(d)(3).

[696] Reg. §1.6041-1(d)(4).

[697] Reg. §1.6041-1(d)(5).

[698] See Prop. Reg. §1.446-3(c), for proposed regulations that would revise the definition of "notional principal contract," including: (1) providing that a notional principal contract requires one party to make two or more payments to a counterparty (and for this purpose, the fixing of an amount is treated as a payment, even if such payment is to be made at a later date); (2) expanding the definition of "specified index" under Reg. §1.446-3(c)(2)(ii) to include nonfinancial indices that are comprised of any objectively determinable information that is not under the control of either party, is not unique to any party's circumstances, and cannot be reasonably expected to front-load or back-load payments accruing under the contract; (3) specifying that a credit default swap is a notional principal contract; and (4) stipulating that an option on any contract that is a notional principal contract is not included as a §1256 contract.

[699] Prop. Reg. §1.446-3(c).

[700] Reg. §1.6041-1(e)(1). *But see* PLR 202318001 (revoked ruling that municipal corporation was subject to reporting requirements), *revoking in part* PLR 202016001 (where municipal corporation providing grants to homeowners preapproves list from which homeowners may select design professionals and manufacturer/installers, requires that work performed complies with prescribed conditions, and inspects contractors' work before disbursement of grant proceeds, corporation exercises management/oversight functions and is subject to reporting requirements).

[701] Reg. §1.6041-1(e)(1).

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ties designate in a written agreement which payor will make an information return.[702]

Following are examples that illustrate these requirements:

Example 1: B, a bank, provides financing to C, a real estate developer, for a construction project. B makes disbursements from the account for labor, materials, services, and other expenses related to the construction project. In connection with the payments, B performs the following functions: approves payments to the general contractor or subcontractors; ensures that loan proceeds are properly applied and that all approved bills are properly paid to avoid mechanics' or material men's liens; conducts site inspections to determine whether work has been completed (but does not check the quality of the work). B is performing management or oversight functions in connection with the payments and is subject to the information reporting requirements of §6041 with respect to payments.[703]

Example 2: Mortgage Company D holds a mortgage on business property owned by E. When the property is damaged by a storm, E's insurance company issues a check payable to both D and E in settlement of E's claim. Pursuant to the contract between D and E, D holds the insurance proceeds in an escrow account and makes disbursements, according to E's instructions, to contractors and subcontractors performing repairs on the property. D is not performing management or oversight functions, but D has a significant economic interest in the payments because the purpose of the arrangement is to ensure that property on which D holds a mortgage is repaired or replaced. D is subject to the information reporting requirements of §6041 with respect to the payments to contractors.[704]

In the case of a lessee who makes payments to a real estate agent who is acting on behalf of the property owner, the requirement to report the lease payments falls to the real estate agent and not the lessee.[705]

Example 3: G is a rental agent who manages certain rental property on behalf of property owner H. G finds tenants, arranges leases, collects rent, responds to tenant inquiries regarding maintenance, and hires and makes payments to repairmen. G subtracts her commission and any maintenance payments from rental payments and remits the remainder to H. With respect to payments to repairmen, G is performing management or oversight functions and is subject to the information reporting requirements of §6041. With respect to the payment of rent to H, G is subject to the information reporting requirements of §6041 regardless of whether she performs management or oversight functions or has a significant economic interest in the payment.[706]

[702] Reg. §1.6041-1(e)(2).
[703] Reg. §1.6041-1(e)(5).
[704] Reg. §1.6041-1(e)(5).
[705] Reg. §1.6041-3(d).

e. Exceptions

Payments for which reporting on Form 1099-MISC isn't required are as follows:

- payments to a corporation[707] with the exception of payments to medical and health care providers, fish purchases for cash, attorneys' fees, gross proceeds paid to an attorney, substitute payments in lieu of dividends or tax-exempt interest, and payments by a federal executive agency for services;[708]
- payments for merchandise, telegrams, telephone, freight, storage, and similar items;
- wages paid to employees;[709]
- payments made to former employees while they are on active duty for a period of more than 30 days in the Armed Forces or other uniformed services (these payments are reported on Form W-2);
- business travel allowances paid to employees (these payments may be reportable on Form W-2);
- the cost of current life insurance protection (reportable on Form W-2 or Form 1099-R);
- payments to a tax-exempt organization including tax-exempt trusts (IRAs, HSAs, Archer SAs, and Coverdell ESAs), the United States, a state, the District of Columbia, a U.S. possession, or a foreign government;
- certain payment card transactions if a payment card organization has assigned a merchant/payee a Merchant Category Code (MCC) indicating that reporting is not required;
- certain payments under legislatively provided social benefit programs for the promotion of general welfare that are not includible in an individual's gross income (the general welfare exclusion);[710]
- nontransferable, no-cash-value reward points awarded enrollees in discount program where points are only re-

[706] Reg. §1.6041-1(e)(5). See Reg. §1.6041-3(d) for rules relating to rental agents. See Reg. §1.6041-1(f) to determine the amount that G should report to H as rent.

[707] The 2010 Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §9006, amended §6041(a) and added §6041(i), but the 2011 Comprehensive 1099 Taxpayer Protection Act, Pub. L. No. 112-9, §2, struck this provision before it became effective. Former §6041(h) required that payors report payments of gross proceeds (goods and services) made to corporations not exempt from tax under §501(a), beginning January 1, 2012.

[708] The 2010 Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §9006, and 2010 Small Business Jobs Act, Pub. L. No. 111-240, §2101, amended §6041(a), §6041(h), and §6041(i), but the 2011 Comprehensive 1099 Taxpayer Protection Act, Pub. L. No. 112-9, §2 and §3, struck these provisions before they became effective.

[709] Reported on Form W-2, *Wage and Tax Statement.*

[710] *See* PLR 201127007 (federally funded grant payments made by taxpayer for job training and related services needed to redeploy employees adversely affected by implementation of a statutory program are excluded from employees' income under the general welfare exclusion and thus are not subject to information reporting requirements under §6041). For the general welfare exclusion to apply, the IRS generally requires that the payments: (1) be made from a governmental general welfare fund; (2) be for the promotion of the general welfare (i.e., generally on the basis of individual or family need, including financial or employment status); and (3) not be made for services furnished by the recipient. *See* PLR 201127007.

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deemable to purchase at discount goods and services offered by third-party vendors;[711]

• payments that are excluded from the payee's gross income under §104(a)(2) as compensation for injuries or sickness;[712]

• a payment to an informer as an award, fee, or reward for information relating to criminal activity, if such payment is made by a federal, state, or local government agency, or by a nonprofit organization exempt from tax under §501(c)(3) that makes the payment to further the charitable purpose of lessening the burdens of government;[713]

• payments to individuals as scholarships or fellowship grants within the meaning of §117(b) (however, scholarship or fellowship grants that are taxable to the recipient because they are paid for teaching, research, or other services as a condition for receiving the grant are considered wages and must be reported on Form W-2);[714]

• student qualified emergency financial aid grants;[715]

• Economic Injury Disaster Loan (EIDL) grants;[716]

• loan subsidies;[717]

• shuttered venue operator grants;[718]

• utility service's application of disaster relief funds under §139(b)(1) to reduce or eliminate customer's bill arrearages;[719] and

• the value of replacement of property owners' lead service lines by public water systems and state governments, if the replacement does not give rise to gross income to the property owners.[720]

f. Rents

Aggregated payments equal to or exceeding the §6041(a) reporting threshold (see III.E.1.b., above) for the calendar year for rents such as real estate rentals paid for office space, machine rentals, and pasture rentals are reportable on Form 1099-MISC and Form 1099-NEC.[721] In the case of rentals that include the rental of both a machine and an operator, the rental should be prorated between the rent for the machine (reported as Rents) and the charge for the operator (reported on Form 1099-NEC, *Nonemployee Compensation*).

g. Royalties

Under §6050N a payor must report payments of royalties aggregating $10 or more before any reductions for severance and other taxes and fees. Royalties are reported on Form 1099-MISC. Examples of royalties include payments for the rights to exploit natural resources such as oil, gas, coal, timber, sand, gravel, and other mineral interests, intangible property including copyrights, musical compositions artistic works, trade names, trademarks, franchises, books and other literary material, as well as software licenses. However, surface royalties are reportable as rents on Form 1099-MISC, oil and gas payments for a working interest are deemed to be nonemployee compensation reportable on Form 1099-NEC and timber royalties made under a pay-as-cut contract should be reported on Form 1099-S, *Proceeds From Real Estate Transactions.*

A form is not required to be issued if the payee is a corporation, an exempt organization, the United States government or an agency of the foregoing, a state, the District of Columbia or any other state agencies, a foreign government, or an international organization.[722] An exception from reporting is also applicable if the payee is a non-U.S. person.[723] Returns of information are not required for payments made by a foreign intermediary, and payments made by a U.S. branch of a foreign bank or a foreign insurance company.[724] Moreover, returns of information are not required for payments of royalties from sources outside the United States made outside the United States by a non-U.S. payor or non-U.S. middleman.[725]

h. Prizes and Awards

Generally, aggregated prizes and awards that are not for services performed which are equal to exceed the §6041(a) reporting threshold (see III.E.1.b., above) for the calendar year are reportable on Form 1099-MISC.[726] If the payment is in the form of merchandise, the amount reportable is the fair market value of the property at the time the payment is made.[727]

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711 *See* PLR 201117014 (company is not subject to information reporting requirements under §6041 for reward points awarded enrollees in discount program: (1) where points are redeemable to purchase goods and services offered by third-party vendor; and (2) where reward points are not transferable, may not be redeemed for cash, and do not have cash value and therefore are not income to enrollee).

712 *See* PLR 201327002 (payment from not-for-profit fund, created by consortium of insurance companies to replace certain structured settlement annuity benefits reduced due to original insurer's insolvency and liquidation, made to fund beneficiary with respect to structured settlement agreement retains its character as payment excludible from beneficiary's gross income under §104(a)(2); thus fund is not required to file or furnish information returns under §6041 for such payment).

713 Reg. §1.6041-3(l).

714 Reg. §1.6041-3(n).

715 Pub. L. No. 116-260, Div. N, Title II, Subtitle B, §277(a); Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, §3504; Pub. L. No. 116-136, Div. B, Title VIII, §18004, §18008. See IRS News Release IR-2021-70 (Mar. 30, 2021), explaining that higher education institutions are not required to file or furnish Form 1099-MISC reporting the emergency financial aid grants under the CARES Act (Pub. L. No. 116-136) or COVID Relief Act (Pub. L. No. 116-260), but that any amounts that qualify for the tuition and fees deduction or the American Opportunity Credit or Lifetime Learning Credit trigger the reporting requirements under §6050S.

716 Pub. L. No. 116-260, Div. N, Title II, Subtitle B, §278(b)(1); Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Pub. L. No. 116-260, Div. N, Title III, §331; Pub. L. No. 116-136, Div. A, Title I, §1110(e).

717 Pub. L. No. 116-260, Div. N, Title II, Subtitle B, §278(c)(1); Pub. L. No. 116-136, Div. A, Title I, §1112(c). Lenders who have already reported subsidized loan payments as income of the borrower on Forms 1099-MISC must file and furnish corrected Forms 1099-MISC that exclude such amounts. *See* Announcement 2021-2.

718 Pub. L. No. 116-260, Div. N, Title II, Subtitle B, §278(d)(1); Pub. L. No. 116-260, Div. N, Title III, §324(b).

719 PLR 202221002.

720 Announcement 2024-10.

721 IRS Publication 1099, *General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).*

722 §6050N(c).

723 Reg. §1.6050N-1(c)(1)(i).

724 Reg. §1.6050N-1(c)(1)(iii).

725 Reg. §1.6050N-1(c)(1)(ii).

726 IRS Pub. 1099, *General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).*

727 Reg. §1.6041-1(g).

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Prizes and awards paid to employees are reportable on Form W-2 rather than Form 1099.

For a detailed discussion of prizes and awards excluded from gross income, and thus not reportable on Form 1099-MISC, see 501 T.M., *Gross Income: Overview and Conceptual Aspects*.

In the case of a winner who is entitled to a large cash prize such as a lottery, the winner has 60 days to choose the option of receiving either a lump sum distribution or an annuity payable over at least 10 years. The payment of winnings is considered made when actually paid. Therefore, if a winner chooses an annuity, the payor must file Form 1099-MISC each year to report the annuity paid during that year.[728]

i. Other Income

Reportable payments exceeding the §6041(a) threshold amount that cannot be correctly reported on any other Form 1099 or cannot be reported in any other box on Form 1099-MISC may be reported as *Other Income*. Payments reflected as other income are not subject to taxes. Payments that may be reported as *Other Income* include the following:

- *Generally, all punitive damages, any damages for nonphysical injuries or sickness, and any other taxable damages.* However, not reportable are damages received on account of personal physical injuries or physical sickness, damages that do not exceed the amount paid for medical care for emotional distress, damages received on account of nonphysical injuries under a written binding agreement, court decree, or mediation award in effect on or issued by September 13, 1995, or damages that represent a replacement of capital. Damages received on account of emotional distress, including physical symptoms such as insomnia, headaches, and stomach disorders, are not considered received for a physical injury or physical sickness and are reportable unless described above. However, damages received on account of emotional distress due to physical injuries or physical sickness are not reportable.[729]

- *Deceased employee wages.* Unpaid wages and benefits payable to a deceased employee's estate or beneficiary are reportable based on when the payment is made. If the payment occurs during the year of death, then the Form 1099-MISC to the estate or beneficiary would reflect the gross amount of the unpaid wages and benefits even though the employer may have withheld Medicare and social security taxes. If the payment occurs in the year subsequent to death, then the amount reported is simply the gross amount of the unpaid wages and benefits.[730]

- *Indian gaming profits and payments to tribal members.* If a payor makes payments to members of Indian tribes from the net revenues of class II, or class III gaming activities conducted or licensed by the tribes, then the payor is required to withhold federal income tax on payments made and file Form 1099-MISC, Distributions made to tribal members are reportable as *Other Income* and the taxes withheld are reflected in the appropriate box.[731]

- Payments made to former employees while they are in military service with the United States government or active service with the National Guard, if they are on active duty for a period of 30 days or fewer. Payments made for active duty greater than 30 days is reported on Form W-2.[732]

- *Termination payments to former self-employed insurance sales people.* These payments are not subject to self-employment tax and are thus reportable as *Other Income* only if the payments are received from an insurance company for services performed as a salesperson; the payments are received after termination; the salesperson did not perform any services for the company after termination and before the end of the year; the salesperson enters into a covenant not to compete against the company for a least one year after date of termination; the amount of the payments depends primarily on policies sold by, or credited to the sales person's account during the last year of service or to the extent that policies remain in force for some period after termination, or both; and the amount of the payments does not depend on length of service or overall earnings from the company.[733]

- A payment or series of payments made to individuals for participating in a medical research study or studies.[734] The IRS has clarified that this income is reportable as Other Income, rather than on Form 1099-NEC as nonemployee compensation.

- *Foreign agricultural workers.* Compensation exceeding the §6041(a) reporting threshold for the year paid to an H-2A visa agricultural worker who did not provide a valid taxpayer identification number (TIN) is reported as *Other Income*. These payments are subject to backup withholding that is reported as *Federal Taxes Withheld*.[735]

[728] *See* Instructions for Form 1099-MISC.

[729] Reg. §1.104-1(c).

[730] *See* IRS Pub. 1099, *General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G)*; Instructions for Form 1099-MISC and Form 1099-NEC. In the year that an employee dies, an employer must also report the accrued wages, vacation pay, and other compensation paid after the date of death on Form W-2 at year end. Payments made in the same year the employee dies are subject to withholding for social security and Medicare taxes. Payments are reported on Form W-2 as social security and Medicare wages to ensure that proper credit is received for the employee.

[731] Reg. §31.3402(r)-1. *See also* Instructions for Form 1099-MISC.

[732] *See* Rev. Rul. 2009-11. The IRS determined that payments made by the employer to its employees while on active military duty constitute differential wage payments that must be treated as wages for income tax withholding purposes. Accordingly, the IRS ruled that the employer must withhold income taxes on the differential wage payments and report the payments on each employee's Form W-2. The IRS ruled that the differential wage payments are not wages for purposes of FICA and FUTA taxes because the individuals are scheduled to be on active military duty for an extended period of time rather than being temporarily absent.

[733] §1402(k). *See* IRS Pub. 533, *Self-Employment Tax*. *See also* Instructions for Form 1099-MISC.

[734] *See* Instructions to Form 1099-MISC.

[735] *See* IRS General Instructions for Forms W-2 and W-3, and IRS Instructions for Form 1099-MISC and Form 1099-NEC. An employer must report compensation of $600 or more paid to an H-2A agricultural worker on Form W-2, *Wage and Tax Statement*, not on Form 1099-MISC or Form 1099-NEC. However, if the worker fails to provide a valid TIN, an employer must report

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j. Fishing Boat Proceeds

The share of all proceeds from the sale of a catch or the fair market value of a distribution in kind to each crew member of fishing boats with normally fewer than 10 crew members is reportable on Form A fishing boat has normally fewer than 10 crew members if the average size of the operating crew was fewer than 10 on trips during the preceding four calendar quarters. The boat operator may make separate returns on Form 1099-MISC for each crew member for each voyage, or he may aggregate the information for an individual for all or any part of a return period in which the type of catch and the percentage due the crew member remain the same.[736]

Cash payments of up to $100 per trip that are contingent on a minimum catch and are paid solely for additional duties (such as mate, engineer, or cook) for which additional cash payments are traditional in the industry are reportable. However, wages are reported on Form W-2.

k. Medical and Health Care Payments

Payments equal to or exceeding the §6041(a) threshold (see III.E.1.b., above) that a payor makes in the course of a trade or business to a physician or other supplier of medical or health services are reportable on Form 1099-MISC, *Medical and Health Care Payments*. Includible are payments made by medical and health care insurers under health, accident, and sickness insurance programs. Payments that are a combination of charges for services as well as injections, drugs, dentures, and similar items are reportable in total.

The exemption from issuing Form 1099-MISC to a corporation does not apply for medical and health care payments made to a corporation, not including payments to tax-exempt recipients such as hospitals, extended care facilities, or to a hospital or extended care facility owned by the United States, a state, the District of Columbia, or any of their political subdivisions, agencies, or instrumentalities.[737]

l. Nonemployee Compensation

Payments equal to or exceeding the §6041(a) threshold (see III.E.1.b., above) for the year made in the course of a trade or business to a nonexempt person or entity (not an employee) for services rendered are deemed to be nonemployee compensation reportable on Form 1099-NEC.[738] Federal executive agencies must also report payments on this Form that they make to vendors for services, including payments to corporations.[739] Payments that are not reportable as nonemployee compensation on Form 1099-NEC and are not reportable in any box on Form 1099-NEC or Form 1099-MISC include the cost of current life insurance protection (reported on Form W-2 or Form 1099-R), employee wages, travel or auto allowances, bonuses (report on Form W-2), or the cost of group term life insurance paid on behalf of a former employee (report on Form W-2).[740]

The following types of payments are deemed to be nonemployee compensation reportable on Form 1099-NEC:

- professional service fees paid to attorneys (including corporations), accountants, architects, contractors, and engineers;
- payments to independent contractors;[741]
- fees paid by one professional to another, such as fee-splitting or referral fees;
- payments by attorneys to witnesses or experts in legal adjudication;
- commissions paid to nonemployee salespersons that are subject to repayment but not repaid during the calendar year;
- a fee paid to a nonemployee, including an independent contractor, or travel reimbursement for which the nonemployee did not account to the payor if the fee and reimbursement exceed the §6041(a) threshold for the year;
- payments to nonemployee entertainers for services;
- exchanges of services between individuals in the course of their trades or businesses;
- taxable fringe benefits for nonemployees;
- gross oil and gas payments for a working interest;
- directors' fees;
- commissions paid to licensed lottery ticket sales agents;
- payments to §530 workers;
- fish purchases for cash;[742]
- payments to an insurance salesperson who is not a common law or statutory employee;
- nonqualified deferred compensation (§409A) income (plus earnings) that is includible in gross income because the nonqualified deferred compensation (NQDC) plan fails to satisfy the requirements of §409A; and

the payments on Form 1099-MISC or Form 1099-NEC and backup withhold 28% from the payments.

[736] Reg. §1.6050A-1. *See also* Instructions for Form 1099-MISC.

[737] *See* Instructions for Form 1099-MISC and Form 1099-NEC. For discussion of reporting to employees the costs of their employer-sponsored group health plan coverage on Form W-2 under §6051(a)(14), see 355 T.M., *Health Care Reforms — Implications for Employee Benefit Plans*, and 392 T.M., *Withholding, Social Security and Unemployment Taxes on Compensation.*

[738] §6041A(a); Reg. §1.6041-1(a)(1)(i)(A). For discussion of reporting to employees the costs of their employer-sponsored group health plan coverage on Form W-2 under §6051(a)(14), see 335 T.M., *Health Care Reforms — Implications for Employee Benefit Plans*, and 392 T.M., *Withholding, Social Security and Unemployment Taxes on Compensation.*

[739] Rev. Rul. 2003-66 provides guidance for federal executive agencies in connection with the reporting requirements under §6041A and §6050M for the payment of services.

[740] Reg. §1.6041-2(a), §1.6041-3(a).

[741] The failure to report payments to independent contractors is a significant issue with Treasury and the IRS. Independent contractors who do not receive Forms 1099 from a payor may fail to include payments for services in their taxable income. Unlike payments of wages that are subject to federal tax withholding, payments reportable on Form 1099-NEC are not subject to any withholding unless the payments become subject to backup withholding. In her National Taxpayer Advocate's 2003 Annual Report to Congress, Nina Olson recommended to Congress that some requirement to withhold from payments of nonemployee compensation be implemented. Treasury has yet to bring about any changes to effect withholding from these types of payments.

[742] Instructions for Forms 1099-MISC and 1099-NEC.

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• golden parachute payments made to an independent contractor.[743]

m. Substitute Payments

Brokers are required to report substitute payments to individuals, including payments in lieu of dividends, on Form 1099-MISC, *Substitute Payments in Lieu of Dividends or Interest.*[744]

A substitute payment may be a payment made in lieu of a dividend for which the ex-dividend date occurs during the period after the transfer of stock for use in a short sale, and before the closing of the short sale.[745] A short sale is a commonly used trading strategy that seeks to capitalize on an anticipated decline in the price of a security. The transaction is typically effected by borrowing shares from a broker who often represents both the short seller and the lender in the transaction. As a matter of course, margin account agreements with brokers usually provide for the lending of the client's securities that are subject to the margin agreement. The borrowed shares are immediately sold in the open market with the intention to buy them back at some point in the future. Once the shares are repurchased, they are returned to the broker or lender.

When dividends are paid on the shares that have been borrowed and the ex-dividend date occurs during the period after the transfer of stock for use in a short sale and before the closing of the short sale,[746] the owner of the securities on the ex-dividend date (the borrower) will be entitled to receive the actual dividend payment. If the dividend is deemed to be qualified, the payment may be taxed at the lower preferential rates. The transaction usually requires that the short seller (the borrower) make "in lieu of" (or substitute) payments to the lender to make up for dividend payments that would have been received by the lender had they not loaned the stock. Substitute payments are deemed received when the amount is paid or deemed paid to the broker on behalf of the customer.[747]

A broker may also be required to report substitute payments made to an individual in lieu of exempt-interest dividends, capital gain dividends paid by a regulated investment company (RIC), distributions treated as a return of capital, or foreign tax credit dividends.[748] For purposes of §6045(d), dividends to which substitute payments are related are defined under §316 (the same as in §6042) but also include distributions treated as returns of capital under §301(c)(2) or §301(c)(3).[749]

When a broker receives a substitute payment in lieu of tax-exempt interest, exempt-interest dividends, or other items on behalf of the customer for which reporting is required, the broker must be able to determine the identity of the customer as of the record date with respect to whose securities were transferred and on whose behalf the broker received the substitute payments.[750]

[743] Reg. §1.280G-1.
[744] *See* Notice 2003-67.
[745] Reg. §1.6045-2(a)(4)(i)(B).
[746] Reg. §1.6045-2(a)(4)(i)(B).
[747] Reg. §1.6045-2(e).
[748] Reg. §1.6045-2(a)(3)(ii).
[749] Reg. §1.6045-2(a)(4)(iv).
[750] Reg. §1.6045-2(f)(1).

No reporting for substitute payments is required if the total aggregate amount of the substitute payments is less than $10,[751] the recipient is an exempt entity,[752] or the recipient is an exempt foreign person.[753]

n. Direct Sales of $5,000 or More

The payor must place an "X" in the checkbox shown on Form 1099-MISC for sales of $5,000 or more of consumer products made to a person on a buy-sell, deposit-commission, or other commission basis for resale (by the buyer or any other person) anywhere other than in a permanent retail establishment. A transaction is on a buy-sell basis if the buyer performing the services is entitled to retain part or all of the difference between the price at which the buyer purchases the product and the price at which the buyer sells the product as part or all of the buyer's remuneration for the services. A transaction is on a deposit-commission basis if the buyer performing the services is entitled to retain part or all of a purchase deposit paid by the consumer in connection with the transaction as part or all of the buyer's remuneration for the services.[754]

This reporting requirement does not require the payor to enter a specific dollar amount. This information may be given to the payee or recipient in the form of a letter or notification other than the official Form 1099-MISC.[755]

o. Crop Insurance Proceeds

Crop insurance proceeds exceeding the §6041(a) threshold for the year paid to farmers by insurance companies are reportable unless the farmer has informed the insurance company that expenses have been capitalized under former §278, §263A, or §447.[756]

p. Excess Golden Parachute Payments

The term "golden parachute" is used to describe a defensive strategy used by a corporation to counter a hostile takeover. A golden parachute is created when an employer enters into an agreement with a key executive to pay amounts in excess of the employee's usual compensation in the event that the control of the employer changes or there is a change in the ownership of a substantial portion of the employer's assets. The end result is that the acquiring organization would be forced to either pay the additional costs associated with this agreement or to cease any plans to continue with the acquisition.

[751] Reg. §1.6045-2(b)(1).
[752] Reg. §1.6045-2(b)(2). An exempt recipient is an organization exempt from taxation under §501(a); an Individual Retirement Account; the United States, a possession of the United States or an instrumentality or a political subdivision or a wholly owned agency of the foregoing; a State, the District of Columbia, or a political subdivision or a wholly owned agency or instrumentality of either of the foregoing; a foreign government or a political subdivision thereof; an international organization, or a foreign central bank of issue as defined in Reg. §1.6049-4(c)(1)(ii)(H), or the Bank for International Settlements. The determination of whether a person is an exempt entity is made in the manner described in Reg. §1.6045-1(c)(3)(i)(B).
[753] Reg. §1.6045-1(g)(1)(i). A return need not be furnished by the broker for substitute payments made to a foreign person who provided documentation upon which the broker may rely in order to treat the recipient as a foreign person.
[754] §6041A(b). See *Instructions for Forms 1099-MISC and 1099-NEC.*
[755] §6041A(e). *See also* Instructions for Form 1099-MISC.
[756] §451(d). *See also* Instructions for Form 1099-MISC and Form 1099-NEC.

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A parachute payment is any payment that is in the nature of compensation, the payment is to, or for the benefit of, a disqualified individual, the payment is contingent on a change in the ownership of a corporation, the effective control of a corporation, or the ownership of a substantial portion of the assets of a corporation, and the payment has as aggregate present value of at least three times the individual's base amount.[757] An excess parachute payment is the amount of the excess of any parachute payment over the base amount (the average annual compensation for services includible in the individual's gross income over the most recent five tax years).[758] This amount is reportable on Form 1099-MISC as *Excess Golden Parachute Payments*.

Under §280 an independent contractor may be considered a disqualified individual.[759] If the golden parachute is applicable to an independent contractor and not an employee, the golden parachute payment is reported in Box 7 along with any other compensation.

q. Section 409A Income and Deferrals

Amounts that are deferred income under §409A because the nonqualified deferred compensation plan fails to satisfy the requirements of §409A are reportable on Form 1099-MISC, *Section 409A Income*.[760] An amount reported in this box must also be reported on Form 1099-NEC, *Nonemployee Compensation*, because this amount is generally subject to self-employment tax.

With respect to §409A deferrals, reporting is not required pursuant to interim guidance[761] issued by IRS to employers and payors on their reporting and wage withholding requirements for calendar year 2008 for all deferrals of compensation and amounts includible in gross income under §409A. Notice 2008-115 is effective for calendar year 2008 and later calendar years until the IRS issues further guidance subsequent to finalizing proposed regulations[762] that describe the calculation of amounts includible in income under §409A(a) and the additional taxes imposed by §409A(a).

Under Notice 2008-115, employers and payors are not required to report on Form W-2 or Form 1099-MISC amounts deferred during the year under a nonqualified deferred compensation plan subject to §409A.[763] Employers and payors who comply with the rules under this notice will not be liable for additional income tax withholding or penalties or be required to provide subsequent corrected information returns or payee statements.

r. Gross Proceeds Paid

Special rules apply to payments made to an attorney or a party acting under the supervision of an attorney. Payments to an attorney that would otherwise be reportable under §6045(f) are required to be reported under §6041 and not §6045(f). This exception applies only if the payments are reportable with respect to the same payee under both sections. Thus, a person who, in the course of a trade or business, pays $2,000 of taxable damages to a claimant by paying that amount to the claimant's attorney is required to file an information return under §6041 regarding the claimant, as well as another information return under §6045(f) with respect to the claimant's attorney.[764] Gross proceeds paid to an attorney for legal services are reported on Form 1099-MISC, *Gross Proceeds Paid to an Attorney*.

However, a payment to an attorney for legal fees is reportable as *Nonemployee Compensation*.

Under these guidelines, the same payment information may be reported to multiple payees depending on the manner in which the payment is made. Legal settlements may require the payor to issue a check made payable to more than one payee such as the claimant and the claimant's attorney. Assuming that the payment is taxable income to the claimant, the payor may be required to issue Forms 1099-MISC to both the attorney as well as the claimant for the same gross amount of the payment.[765]

A payor that is required to file an information return is required to solicit a TIN from the attorney at or before the time the payor makes a payment to the attorney. The attorney must furnish the correct TIN to the payor, but is not required to certify the TIN. In the event that the attorney fails to provide a valid TIN, the payor is obligated to backup withhold from all payments.[766] This action may result in funds being withheld from the gross proceeds paid to the attorney and the claimant as joint payees.

> *Example:* Corporation P, a defendant, settles a suit brought by C for $300,000 of damages. P will pay the damages by a joint check to C and his attorney, B. B failed to furnish P with B's TIN. P is required to deduct and withhold 28% from the $300,000 under §3406(a)(1)(A) and Reg. §1.6045-5(e). P writes the check to C and B as joint payees, in the amount of $216,000. P also must file an information return with respect to B in the amount of $300,000. If the damages are reportable under §6041 because they are not excludible from gross income under existing legal principles, and are not subject to any exception under §6041, P must also file an information return with respect to C pursuant to Reg. §1.6041-1(a) and (f) in the amount of $300,000.[767]

Payments to an attorney that are not reportable on Form 1099-MISC include wages that are reported on Form W-2 and profits distributed by a partnership by its partners that are reportable on Schedule K-1 (Forms 1065 or 1065-B).[768] Also not reportable are payments made to an attorney responsible for

[757] Reg. §1.280G-1 Q&A-2.

[758] Reg. §1.280G-1 Q&A-3. *See also* Rev. Proc. 2003-68, which addresses the valuation of stock options relative to §280G.

[759] Reg. §1.280G-1 Q&A-15.

[760] *See* Notice 2008-113, *modified by* Notice 2010-6.

[761] Notice 2008-115, *modified by* Notice 2010-6.

[762] REG-148326-05. *See also* REG-123854-12 (not affecting applicability of Notice 2008-115, but withdrawing Prop. Reg. §1.409A-4(a)(1)(ii)(B), as included in REG-148326-05, and replacing it with a new Prop. Reg. §1.409A-4(a)(1)(ii)(B)).

[763] *See* Instructions for Forms 1099-MISC, 1099-NEC, W-2, and W-3.

[764] *See* §6041(a); Reg. §1.6041-1(a)(1)(iii).

[765] In the case of lost or back wages, the payor would be required to issue Form W-2 to the claimant for the gross amount of the payment. The payor also would be required to withhold the appropriate taxes from the payment. See also Reg. §1.6045-5(f) for examples that illustrate various reporting scenarios.

[766] Reg. §1.6045-5(e).

[767] Reg. §1.6045-5(f) *Ex.* 6.

[768] For tax years beginning after 2017, Form 1065-B is obsolete. *See* Instructions for Form 1065-B.

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closing a transaction within the meaning of Reg. §1.6045-4(e)(3) for the sale or exchange or financing of any present or future ownership interest in real estate described in Reg. §1.6045-4(b)(2)(i) through §1.6045-4(b)(2)(iv), or payments made to an attorney who is a trustee in bankruptcy under Title 11 of the United States Code.[769]

s. Federal Income Tax Withheld

If a payee or recipient fails to provide a valid taxpayer identification number (TIN), then the payor is required to effect backup withholding from the payments. The amount withheld is reportable on Form 1099-MISC as *Federal Income Tax Withheld.* Amounts subject to backup withholding are rents, royalties net of severance taxes, other income, fishing boat proceeds to the extent paid in cash, medical and health care payments, nonemployee compensation (reportable on Form 1099-NEC) except fish purchases for cash, substitute payments in lieu of dividends or interest, crop insurance proceeds, and gross proceeds paid to an attorney.

The most current version of Form 1099-MISC and Instructions can be found on the IRS website.[770]

2. Form 1099-K — Payment Settlement Entity Reporting

A payment settlement entity (PSE) must file an information return to report the name, address, and taxpaer identification number (TIN) of each participating payee to whom it has made one or more payments in settlement of reportable payment transactions, and the gross amount of those reportable payment transactions. Such information generally must be reported on Form 1099-K.[771]

A reportable payment transaction is any transaction for which a payment card is accepted as payment[772] or any third-party network transaction for the provision of goods or services that is settled through a third-party payment network.[773]

A "third-party payment network:"

- creates centrally organized accounts to settle payment for a substantial number of unrelated persons providing goods or services;
- provides settlement standards and mechanisms;
- guarantees payment for providing goods or services; and
- does not include any agreement or arrangement that provides for the issuance of payment cards.[774]

Note: If a crowdfunding website or its payment processor makes distributions meeting the reporting threshold, and contributors received goods or services for their contributions, a 1099-K is required.[775] Additionally, distributions to the crowdfunding organizer require a copy of the 1099-K to be furnished to the organizer. If distributions are made directly to individuals or businesses for whom the organizer solicited funds, Form 1099-K must be furnished to those individuals or businesses for amounts meeting the reporting threshold.

The §6050W reporting requirements are more expansive and inclusive than the requirements under §6041.[776]

Under §6050W(b)(1), a PSE is, with respect to payment card transactions, the merchant-acquiring entity,[777] or, with respect to third-party network transactions, the TPSO.[778]

Note: Section 3406(a)(1) requires the PSE (merchant-acquiring bank or third-party network) to withhold when a payment card merchant fails to provide a valid TIN.[779]

"Payment card" means any card issued pursuant to an agreement or arrangement that provides for (1) one or more issuers of such cards, (2) a network of persons unrelated to each other, and the issuer, who agrees to accept such cards as payment, and (3) standards and mechanisms for settling the transactions between the merchant-acquiring entities and the persons who agree to accept such cards as payment. Acceptance as payment of any account number or other indicia associated with a payment card may be treated in the same manner as accepting a payment card as payment.[780] No reporting is required for withdrawals from an automated teller machine and cash advances or loans against the cardholder's account; acceptance of convenience checks issued in connection with a payment card

[769] Reg. §1.6045-5(c).

[770] See IRS Pub. 1220, *Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G*, for instructions in completing the boxes relating to payments to state taxing authorities.

[771] §6050W(a). A participating payee is any person who accepts a payment card as payment, or, in the case of a third-party network transaction, any person who accepts payment from a third-party settlement organization (TPSO). §6050W(d)(1)(A); Reg. §1.6050W-1(a)(5). *See* Notice 2023-10, obsoleted by REG-112829-25, 91 Fed. Reg. 934, 935 (Jan. 9, 2026). *See also Form 1099-K FAQs.*

[772] §6050W(c)(2).

[773] §6050W(c)(3) (reference to §6050W(d)(3)(A)(iii)).

[774] §6050W(d)(3); Reg. §1.6050W-1(c)(3). *See, e.g.*, PLR 201535008 (no TPSO because taxpayer had only a single provider and not a substantial number of persons). *See also Form 1099-K FAQs.*

[775] For further information on reporting crowdfunding activities, see *Form 1099-K FAQs. See also* IRS Fact Sheet FS-2024-28 (Aug. 2024).

[776] For a further discussion of §6041, see III.E.1.b., above.

[777] §6050W(b)(2); Reg. §1.6050W-1(a)(4) (domestic or foreign entity).

[778] §6050W(b)(3); Reg. §1.6050W-1(a)(4) (domestic or foreign entity). An automated-clearing house does not qualify as a TPSO with reportable payments because an automated-clearing house merely processes electronic payments between buyers and sellers through wire transfers, electronic checks, and direct deposits. *See also* PLR 201907006 (taxpayer that uses two software platforms enabling customers to accept online check, credit card, debit card, and ACH payment transactions over internet is a TPSO), PLR 201719009 (central organization having contractual obligation to make payments to participating payees of third-party network transaction and providing third-party payment network is a TPSO), PLR 202112002 (online platform facilitating rental transactions between landlords and property managers is a TPSO). *But see* PLR 201622011 (taxpayer that does not settle transactions or guarantee payment to provider for services to its clients is not a TPSO), PLR 201539025 (taxpayer with separate agreements with customer and provider, neither of which depended on transaction settlement between customer and provider, is not a TPSO and therefore has no §6050W reporting obligation), PLR 201219013 (taxpayer operating comparison website for various providers' services and accepting credit and debit card payments for service purchases is not a TPSO because taxpayer is a participating payee in payment card context).

[779] §3406(b)(3)(F) (includes §6050W as reportable payments). *See* Rev. Proc. 2003-9; IRS Pub. 2108, *Federal Agency TIN Matching Program*, IRS Pub. 2108-A, *On-Line Taxpayer Identification Number (TIN) Matching Program.* The regulations do not eliminate the §6050W backup withholding requirements under any circumstances, even when the potential for duplicate withholding exists. For a discussion of §3406, see II., above.

[780] §6050W(d)(2). Payment cards may include credit cards, debit cards, and stored-value cards (including gift cards), as well as payment through any distinctive marks of a payment card (such as a credit card number). *See* Reg. §1.6050W-1(b)(3), §1.6050W-1(b)(4), PLR 201201001 (pharmacy benefit management business not required to report because it does not allow plan participants to transfer funds to providers).

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account; or transactions for which the payee or merchant is related to the issuer of the payment card.[781]

A PSE or an electronic payment facilitator must report a transaction when it submits an instruction to transfer funds to a payee account to settle the reportable payment transaction.[782] However, in PLR 201619006, even though the taxpayer paid providers via a third party, the taxpayer was considered the TPSO for payment purposes and maintained the primary reporting responsibility. The IRS ruled that when the taxpayer made those payments, it merely deposited the funds in an account on behalf of the provider. Unlike the above electronic payment facilitator, the IRS reasoned the third party was not acting as a payment processor on behalf of the taxpayer.

Special tie-breaker rules apply for digital asset payments made in settlement of a third-party network transaction, or the goods or services provided are digital assets.[783] If a payor makes a payment using digital assets and the exchange is a sale of digital assets by the payor, the amount paid to the payor in settlement of that exchange is subject to broker reporting rules under §6045, and not §6050W.[784] Likewise, if the goods or services in an exchange are digital assets, the exchange is a sale of digital assets by the payee, and the payor is a broker effecting the sale of digital assets, the amount paid to the payee in settlement of that exchange is subject to broker reporting rules under §6045, and not §6050W.[785]

> *Example:* CRX is a shared-service organization that performs accounts-payable services for numerous purchasers that are unrelated to CRX. A substantial number of sellers of goods and services, including Seller S, have established accounts with CRX and have agreed to accept payment from CRX in settlement of their transactions with purchasers. The agreement between sellers and CRX includes standards and mechanisms for settling the transactions and guarantees payment to the sellers, and the arrangement enables purchasers to transfer funds to providers. Pursuant to this seller agreement, CRX accepts cash from purchasers as payment as well as digital assets, which it exchanges into cash for payment to sellers. Additionally, CRX is a processor of digital asset payments (PDAP). P, an individual not otherwise exempt from reporting, purchases one month of services from S through CRX's organization. S also is an individual not otherwise exempt from reporting. S's services are not digital assets. To effect this transaction, P transfers 100 units of DE, a digital asset, to CRX. CRX, in turn, exchanges the 100 units of DE for $1,000, based on the fair market value of the DE units, and pays $1,000 to S.
>
> CRX's arrangement constitutes a third-party payment network because a substantial number of persons that are unrelated to CRX, including S, have established accounts with CRX, and CRX is contractually obligated to settle transactions for the provision of goods or services by these persons to purchasers, including P. Thus, CRX is a third-party settlement organization and the transaction involving P's purchase of S's services using 100 units of digital asset DE is a third-party network transaction.
>
> P's payment of 100 units of DE to CRX in return for the payment by CRX of $1,000 in cash to S is a sale of the DE units that is effected by CRX, a PDAP and broker. Accordingly, CRX must file an information return under §6045 with respect to P's sale of the DE units.
>
> S's services are not digital assets. Accordingly, CRX's payment of $1,000 to S in settlement of the reportable payment transaction is subject to the reporting rules under §6050W.[786]

Section 6050W(e) provides an exception for de minimis payments by TPSOs with respect to third-party network transactions of any participating payee. Under the exception, TPSO payments settling third party network transactions are required to be reported only if the gross amount of payments to a payee exceeds $20,000 and the number of transactions exceed 200 with respect to the payee. The de minimis standard does not apply to payment card transactions.[787]

Generally, a U.S. payor or U.S. middleman PSE need not issue a payee statement for payments made to a payee with a foreign address as long as, prior to payment, the PSE has in its files documentation to support treating the payment as made to a foreign person in accordance with Reg. §1.1441-1(e)(1)(ii).[788] For payments made pursuant to a contractual obligation before January 1, 2011, a PSE need not issue a payee statement to a participating payee with a foreign address if the PSE neither knows nor has reason to know that the payee is a U.S. person.[789] Moreover, if a PSE is not a U.S. person or U.S. middleman, no reporting is required if the participating payee has a foreign address and the PSE neither knows or has reason to know that the participating payee is a U.S. person.[790]

Section 6050W(a) requires that a PSE report the gross amount of reportable payment transactions on Form 1099-K.

[781] Reg. §1.6050W-1(b)(5).

[782] Reg. §1.6050W-1(a)(2) (references to Reg. §1.6050W-1(a)(4) and §1.6050W-1(d)(2)).

[783] Reg. §1.6050W-1(c)(5)(i) (applicable to payments after December 31, 2024).

[784] Reg. §1.6050W-1(c)(5)(i)(A).

[785] Reg. §1.6050W-1(c)(5)(i)(B). For further discussion of reporting digital asset transactions, see 190 T.M., *Taxation of Cryptocurrency and Other Digital Assets*.

[786] Reg. §1.6050W-1(c)(5)(ii)(A).

[787] §6050W(e), amended by the One Big Beautiful Bill Act (§172(b)(1)(A)), Pub. L. No. 119-21, §70432(a), effective for calendar years beginning after Dec. 31, 2021.

[788] §6050W(d)(1)(B); Reg. §1.6050W-1(a)(5)(ii). Notice 2011-71, *supplemented by* Notice 2012-2, provides guidance to PSEs that are U.S. payors or U.S. middlemen about the circumstances requiring a PSE to obtain, review, and maintain documentation to establish that a participating payee is a foreign person for purposes of §6050W. Until the IRS amends the regulations, the PSE will be required to make the information return only if: (1) there is a U.S. address associated with the participating payee (whether a residence address or correspondence address); (2) the PSE has standing instructions to direct the payment to a bank account maintained in the United States; (3) the participating payee submits for payment in U.S. dollars; or (4) the PSE knows or has reason to know that the participating payee is a U.S. person. A PSE will not be required to make the information return if the PSE obtains from the participating payee a valid Form W-8 or documentary evidence establishing the payee's non-U.S. status and the PSE does not know that the payee is a U.S. person. Notice 2012-2.

[789] Reg. §1.6050W-1(a)(5)(ii)(A).

[790] Reg. §1.6050W-1(a)(5)(ii)(B).

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Gross amount means the total dollar amount of aggregate reportable payment transactions for each participating payee disregarding any adjustments for credits, charge-backs, cash equivalents, discount amounts, fees, refunded amount or any other amounts. The dollar amount of each transaction is determined on the date of the transaction.[791]

Payment card and third-party network transaction reporting is due to the IRS by February 28 (March 31, if filed electronically), of the year following the transactions.[792] PSEs must furnish a "payee statement" to each participating payee by January 31 of the year following the calendar year in which the reportable payment is made, showing the information reported on Form 1099-K.[793] Payee statements may be provided electronically with the payee's prior consent.[794]

One of the more significant issues relevant to §6050W deals with reporting the same information on more than one form type. Certain payment card transactions are reportable under §6050W as well as §6041. The regulations eliminated this duplication by requiring reporting for payment card transactions only under §6050W because reporting under this section covers all payment card transactions and, thus, effectively encompasses all payments subject to §6041 reporting made by payment cards. Accordingly, any payment card transaction that otherwise would be reportable under both §6041 and §6050W must be reported under §6050W and not §6041.[795] However, the regulations do not provide relief from reporting under §6041 for third-party network transactions because these transactions are not subject to reporting unless the de minimis thresholds are met. Thus, the payor must report under §6041 because it cannot determine with certainty whether a third-party network transaction is required to be reported under §6050W.[796]

Taxpayers may contract with a third party to prepare and file Form 1099-K. However, the responsible entity is liable for any penalties under §6721 and §6722 if the reporting requirements are not met. In addition, the name, address, and TIN of the entity responsible for filing must be reported in the boxes for filer's information.[797]

3. *Patronage Dividends and Form 1099-PATR*

Cooperatives as defined under §1381 that pay $10 or more in patronage dividends and other distributions described in §6044(b) or withhold federal income taxes on those distributions under the backup withholding rules must complete Form 1099-PATR, *Taxable Distributions Received From Cooperatives.* A cooperative that is primarily engaged in the retail sale of goods or services that are generally for personal living, or family use of the members may be exempt from filing Form 1099-PATR if the cooperative files Form 3491, *Consumer Cooperative Exemption Application*, and receives a determination of exemption from the IRS.[798] A cooperative is generally not required to file a return for payments made to a corporation, a tax-exempt organization including tax-exempt trusts (HSAs, Archer MSA, and Coverdell ESAs), the United States, a state, a possession, or the District of Columbia.[799]

For a cooperative to qualify for the exemption from reporting, 85% of its gross receipts for the preceding taxable year, or 85% of its aggregate gross receipts for the preceding three taxable years, must have been derived from the sale at retail of goods or services of a type that is generally for personal, living, or family use. In determining when an item is of a type that is generally for personal, living, or family use, an item that may be purchased either for such use or for business use and when acquired for business purposes is generally purchased at wholesale will, when sold by a cooperative at retail, be treated as goods or services of a type generally for personal, living, or family use.[800]

An exemption from reporting applies beginning with the payments made during the calendar year in which the determination is made and will automatically cease to be effective beginning with payments made after the close of the first taxable year of the cooperative in which less than 70% of its gross receipts are derived from the sale at retail of goods or services of a type that is generally for personal, living, or family use.[801]

Patronage dividends are defined as amounts a cooperative pays to patrons or members in money, or in the form of "qualified or consent checks" under §1388(c), "qualified written notices of allocation," or other property based on the quantity or value of business done for the specific patron. Payments that are reportable as patronage dividends must be paid under an existing written obligation to pay the patron and must be determined by reference to the cooperative's net earnings from business conducted on behalf of its patrons.[802] Patronage dividends are reported on Form 1099-PATR.

The term "qualified written notice of allocation" means a written notice of allocation that may be redeemed in cash at its stated dollar amount at any time within a period beginning on the date the notice of allocation is paid and ending not earlier than 90 days from such date, but only if the patron receives written notice of the right of redemption at the time he receives the written notice of allocation, and a written notice of allocation that the patron has consented to include the allocation in gross income at the stated dollar amounts.[803]

In this context, the term "written notice of allocation" means any capital stock, revolving fund certificate, per-unit retain certificate, certificate of indebtedness, letter of advice, or other written notice, that discloses to the recipient the stated dollar amount allocated to him by the organization and the portion that constitutes a patronage dividend. However, a written notice of allocation paid as a patronage dividend is not reportable on Form 1099-PATR unless 20% or more of the amount of the patronage dividend or payment is paid in money

[791] Reg. §1.6050W-1(a)(6).

[792] Reg. §1.6050W-1(g). For information on when the IRS requires electronic filing, see General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[793] Reg. §1.6050W-1(h)(1). The term "participating payee" includes any governmental unit as well as any agency or instrumentality thereof. Reg. §1.6050W-1(a)(5).

[794] Reg. §1.6050W-1(h)(1), §1.6050W-2(a)(1), §1.6050W-2(a)(2).

[795] Preamble, T.D. 9496.

[796] Preamble, T.D. 9496.

[797] For further discussion, see the IRS FAQs, *Form 1099-K Frequently Asked Questions*, on the IRS website.

[798] Reg. §1.6044-4(a)(1).

[799] Reg. §1.6044-3(c).

[800] Reg. §1.6044-4(a)(2).

[801] Reg. §1.6044-4(a)(3).

[802] §1388(a).

[803] §1388(c)(1).

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or by qualified check.[804] A "nonqualified written notice of allocation" means a written notice of allocation that is not considered to be qualified, or a qualified check that is not cashed on or before the 90th day after the close of the payment period for the taxable year for which the distribution is paid.[805]

Nonpatronage distributions paid by farmer's cooperatives exempt from tax under §521 are reportable on Form 1099-PATR as *Nonpatronage Distributions.* These amounts relative to distributions with respect to earnings derived from sources other than patronage may be paid in money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation). Also categorized as nonpatronage distributions are amounts relating to redemption of nonqualified written notices of allocation previously paid as distributions with respect to earnings derived from sources other than patronage that are paid in money or other property (except written notices of allocation).[806]

Other amounts reportable on Form 1099-PATR include the following:

Per-Unit Retain Allocations. The total amount of §1388(f) "per-unit retain allocations" paid to a patron for products marketed for him or her (the amount of which is fixed without reference to the cooperative's net earnings pursuant to an agreement between the cooperative and the patron) but only if paid in cash, §1388(h) "qualified per-unit retain certificates" (reportable at face value), and other property (reportable at fair market value).[807]

Federal Income Tax Withheld. If the patron has failed to provide a valid TIN, patronage dividends, nonpatronage distributions, per-unit retain allocations, redemption of nonqualified notices, and retain allocations are subject to 28% backup withholding to the extent such payments are in cash or qualified check.[808]

Redemption of Nonqualified Notices and Retain Allocations. Represents the total of any amounts paid in money or other property reported at fair market value as they relate to redemptions of "nonqualified written notices of allocation" issued as patronage dividends, "nonqualified written notices of allocation" issued by a §521 farmer's cooperative as nonpatronage allocations, and "nonqualified per-unit retain certificates" issued with respect to marketing.[809]

Domestic Production Activities Deduction. A patron who receives a qualified payment from a specified agricultural or horticultural cooperative is allowed a deduction under §199A(g)(2) or former §199(d)(3)(A) for the tax year the qualified payment is received for the portion of the cooperative's §199A or former §199[810] deduction passed through to the patron and identified by the cooperative in a written notice mailed to the person during the payment period described in §1382(d). The deduction applies to any cooperative that is engaged in the manufacturing, producing, growing, or extracting in whole or significant part of any agricultural or horticultural product, or the marketing of agricultural or horticultural products.[811]

The term "qualified payment" means any amount of a patronage dividend or per-unit retain allocation, as described in §1385(a)(1) or §1385(a)(3) received by a patron from a cooperative, that is attributable to the portion of the cooperative's qualified production activities income (QPAI), for which the cooperative is allowed a §199A or former §199 deduction.[812] For this purpose, patronage dividends and per-unit retain allocations include any advances on patronage and per-unit retains paid in money during the tax year.[813] A cooperative must reduce its §1382 deduction by an amount equal to the portion of any qualified payment that is attributable to the cooperative's former §199 deduction passed through to the patron.[814] For purposes of determining its §199A or former §199 deduction, the cooperative's QPAI and taxable income are computed without taking into account any deduction allowable under §1382(b) or §1382(c) (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).[815] The maximum deduction percentage under §199A or former §199 is 9%.[816] The deduction under either section is the applicable percentage of the lesser of the QPAI of the taxpayer for the tax year, or the taxable income (determined without regard to §199A or former §199) for the tax year.[817]

For the patron to qualify for the deduction, the cooperative must designate the patron's portion of the §199A or former §199 deduction in a written notice mailed to the patron no later than the 15th day of the ninth month following the close of the tax year. The cooperative may use the same written notice, if any, that it uses to notify patrons of their respective allocations of patronage dividends, or may use a separate timely written notice to comply with the written notice requirement for this deduction.[818]

Investment Credit. This is the amount of the patron's share of unused investment credits that the cooperative passes through.[819]

Work Opportunity Credit. The amount of the total work opportunity credit for the patron.[820]

Patron's AMT Adjustment. The total alternative minimum tax (AMT) patronage dividend adjustment for the patron.[821]

Other Credits and Deductions. Certain credits may be available to be passed through to the patron depending on the tax year. These credits are short-term in nature and typically expire after several years. Form 1099-PATR should separately

804 §1388(c), §6044(b)(1)(A).

805 §1388(d).

806 Reg. §1.6044-3(a)(2).

807 §1388(f), §6044(b)(1)(D), §6044(d)(2).

808 Reg. §31.3406(b)(2)-5.

809 §1382(b)(2), §1382(b)(4), §1382(c)(2)(B), §6044(b)(1)(C), §6044(b)(1)(E); Reg. §1.6044-3(a)(1)(ii) and Reg. §1.6044-3(a)(2)(ii).

810 The former §199 domestic production activities deduction (discussed in 510 T.M., *Section 199: Deduction Relating to Income Attributable to Domestic Production Activities*) was repealed by the TCJA, effective for tax years beginning after 2017. No deduction may be taken under §199A (discussed in 537 T.M., *Qualified Business Income Deduction: Section 199A*) for a qualified payment to which this transition rule applies.

811 §199A(g)(4)(A), former §199(d)(3)(F).

812 §199A(g)(2)(E), former §199(d)(3)(E).

813 Prop. Reg. §1.199A-8(d)(2)(ii), Reg. §1.199-6(e).

814 Prop. Reg. §1.199A-8(d)(2)(ii), Reg. §1.199-6(b).

815 §199A(g)(1)(C), former §199(d)(3)(C).

816 §199A(g)(1)(A), former §199(a).

817 §199A(g)(1)(A), former §199(a)(2).

818 Prop. Reg. §1.199A-8(d)(3), Reg. §1.199-6(g).

819 *See* Instructions for Form 1099-PATR.

820 *See* Instructions for Form 1099-PATR.

821 *See* Instructions for Form 1099-PATR.

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reflect the type and amount of each of the following credits and deductions that may be passed through:[822]

- the empowerment zone credit (Form 8844);
- the low sulfur diesel fuel production credit (Form 8896);
- the credit for small employer health insurance premiums (Form 8941);
- the credit for employer differential wage payments (Form 8932);
- the deduction for capital costs incurred by small refiner cooperatives when complying with EPA sulfur regulations; and
- the biodiesel, renewable diesel, or sustainable aviation fuel mixture credit (Form 8864).

4. *Certain Government Payments and Form 1099-G*

Every person who makes payments of unemployment compensation aggregating $10 or more to an individual during a calendar year must make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the individual to whom paid. These payments are reportable on Form 1099-G, *Certain Government Payments*. Also reportable are payments received on a Commodity Credit Corporation (CCC) loan. Recipient statements must contain the name, address, and phone number of the information contact of the person required to make such return, and the aggregate amount of payments to the individual required to be shown on such return.[823] A person who is an officer or employee of the government unit having control of the payments received or made, must file Form 1099-G if, as a unit of a federal, state, or local government, they make payments of unemployment compensation, state or local income tax refunds, credits, or offsets, alternative trade adjustment assistance (ATAA) payments, taxable grants, or agricultural payments.

The following information is required to be reported on Form 1099-G:

Unemployment Compensation. Enter payments of $10 or more in unemployment compensation including Railroad Retirement Board payments for unemployment. If payments are made from a contributory program that has been deemed to be in the nature of unemployment compensation, such as California's Family Temporary Disability insurance payments, a payor must file a separate Form 1099-G for payments from each contributory program. The amount reported is the amount before any income tax was withheld.

State or Local Income Tax Refunds, Credits, or Offsets. Amounts reported reflect refunds, credits, or offsets of state or local income tax of $10 or more made to recipients. If recipients deducted the tax paid to a state or local government on their federal income tax returns, any refunds, credits, or offsets may be taxable to them. A payor is not required to furnish a copy of Form 1099-G or a substitute statement to the recipient if it can determined that the recipient did not claim itemized deductions on the recipient's federal income tax return for the tax year giving rise to the refund, credit, or offset.[824] However, Form 1099-G must be filed with the IRS in all cases.[825]

A tax on dividends, a tax on net gains from the sale or exchange of a capital asset, and a tax on the net taxable income of an unincorporated business are taxes on gain or profit rather than on gross receipts. Therefore, these monies are income taxes, and any refund, credit, or offset of $10 or more of these taxes is reportable on Form 1099-G. In the case of the dividends tax and the capital gains tax, if a payor can determine that the recipient did not itemize deductions as explained above, they are not required to furnish a Form 1099-G or substitute statement to the recipient. However, in the case of the tax on unincorporated businesses, a Form 1099-G or substitute statement must be furnished to the recipient in all cases, given that this is a tax that applies exclusively to income from a trade or business.[826]

If interest exceeding the §6041(a) threshold for the year is paid on the refund, Form 1099-INT, *Interest Income*, must be filed and a statement must be furnished to the recipient. For interest payments less than the §6041(a) threshold, the payor may choose to enter the amount with an appropriate description such as "Interest Income" in the blank box on Copy B of the Form 1099-G.

State or Local Income Tax Refunds for the Tax Year. Form 1099-G reflects the refund, credit, or offset for the current tax year. If the refund, credit, or offset is for a previous tax year, then the year for which the refund, credit, or offset was made would be shown on Form 1099-G.[827] Also, if the refunds, credits, or offsets are for more than one tax year, report the amount for each year on a separate Form 1099-G.[828]

Federal Income Tax Withheld. Report backup withholding at a 28% rate on payments required to be reported for taxable grants and agriculture payments. Report any voluntary federal withholding on unemployment compensation, CCC loans, and certain crop disaster payments. State income tax that is withheld must be labeled and reported on the statement to the recipient. However, a payor is not required to report state withholding to the IRS.

RTAA Payments. Report RTAA payments exceeding the §6041(a) threshold that you paid to eligible individuals under the Reemployment Trade Adjustment Assistance program.[829]

Taxable Grants and Rebates. Report any amount of a taxable grant exceeding the §6041(a) threshold for the year administered by a government program to provide subsidized energy financing or grants for projects designed to conserve or produce energy, but only with respect to energy property or a dwelling unit located in the United States. Also, report any amount of a taxable grant exceeding the §6041(a) threshold

[822] *See* Instructions for Form 1099-PATR.
[823] §6050B.
[824] Reg. §1.6050E-1(k)(2).
[825] Reg. §1.6050E-1(c).
[826] Reg. §1.6050E-1(f).
[827] Reg. §1.6050E-1(g).
[828] Reg. §1.6050E-1(e).
[829] Reemployment trade adjustment assistance (RTAA) benefits are available if the worker is age 50 or older and does not earn more than $50,000 annually in their new employment. If the worker qualifies, participation in RTAA allows them to receive a wage supplement when they accept new employment at a lower wage. RTAAs are in force through June 30, 2021. *See* the Trade Adjustment Assistance (TAA) Reauthorization Act of 2015, Pub. L. No. 114-27, §403, amending the Fair Trade Act of 1974.

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administered by an Indian tribal government. A federal grant is ordinarily taxable unless stated otherwise in the legislation authorizing the grant. Do not report scholarship or fellowship grants. Under certain circumstances, a taxable government rebate may be subject to information reporting.[830] Government grants and government rebates that are *not* includible in gross income, on the other hand, are not reportable.[831]

Agriculture Payments. Report USDA agricultural subsidy payments made during the year. If the payor is a nominee that received subsidy payments for another person, file Form 1099-G to report the actual owner and the amount of the payments.

Trade or Business Income (Checkbox). If the refund, credit, or offset reported is attributable to an income tax that applies exclusively to income from a trade or business and is not a tax of general application, a box on Form 1099-G should be checked to make this distinction.

Market Gain. For loans repaid on or after January 1, 2007, the CCC reports market gain associated with the repayment of a CCC loan whether the taxpayer repays the loan with cash or uses CCC certificates in repayment of the loan.[832]

State Information. Form 1099-G contains boxes that may be used to report payments to the various state taxing authorities. IRS does not require that these boxes be filled. A payor may use these boxes if they are participating in the Combined Federal/State Filing Program and/or filing returns with state tax departments. These boxes will accommodate information specific to two states.[833]

Beginning with the 2019 Form 1099-G, a "2nd TIN notice" checkbox was added to copies A and C of the form for the payor to mark if the payor was notified by the IRS twice within 3 calendar years that the taxpayer provided an incorrect TIN. If the payor marks box, the IRS will not send the payor any further notices about that account. However, if the payor received both IRS notices in the same year, or received them in different years but both notices related to information returns filed for the same year, the payor should not check the box.[834]

The most current version of Form 1099-G and Instructions can be found on the IRS website.

5. Gambling Winnings and Form W-2G

A payor who is in the business of conducting gaming or gambling activities must file Form W-2G, *Certain Gambling Winnings*, to report winnings from these activities as well as any federal income tax withheld on those winnings.[835] The requirement to report, and, in some cases, to withhold, is dependent upon the type of gambling, the amount of the gambling winnings, and generally the ratio of the winnings to the wager.

Gambling winnings from bingo, keno, or slot machine play are reportable, but not subject to withholding, if the winnings are equal to or exceed $2,000 in any calendar year after 2026, adjusted for inflation for calendar years after 2026 ($600 or more for tax years before 2026).[836]

On Form W-2G, a payor of reportable winnings from bingo, keno, or slot machine play must report the name, address, and taxpayer identification number (TIN) of the payor and of the payee (i.e., winner); a general description of two types of identification furnished to the payor for verification of the winner's name, address and TIN; the date and amount of the payment; the type of wagering transaction; in the case of a bingo or keno game, any number, color, or other designation assigned to the game; in the case of a slot machine, the identification number of the slot machine; and any other information required by IRS forms, instructions, revenue procedures, or other IRS guidance (together referred to as the "Reg. §1.6041-10(d) reportable information").[837] If a payor is obligated to file a Form W-2G, the payor must also provide each payee a written statement that contains the Reg. §10.6041-1(d) reportable information. The payor must furnish the statement to the payee on or before January 31st of the year following the calendar year in which payment of the reportable gambling winnings is made.[838]

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[830] For example, Home Energy Rebate Programs rebates exceeding the §6041(a) threshold paid by state organizations, Indian tribes, and third party administrators that facilitate payments to business taxpayers on behalf of any such state organization or Indian tribe, directly to a business taxpayer, that are includible in the business taxpayer's gross income and are not solely attributable to gross receipts from the sale of goods, may be subject to information reporting under §6041 by the state organization or Indian tribe making the rebate payment, unless the business taxpayer to whom the rebate payment is made is a taxable corporation or another exception applies. Announcement 2024-19. If information reporting is required under §6041, information returns for payments made by any state organization subject to the reporting requirement must be filed by the officer or employee having control of such payments or by the officer or employee appropriately designated to make such returns to the IRS, and must be furnished to the business taxpayer. *Id.* (references to Reg. §1.6041-1(b)(1), Reg. §1.6041-1(i), and Reg. §1.6041-3(p)). Announcement 2024-19 does not address whether payments of rebate amounts made directly to a business taxpayer in a U.S. Territory by a U.S. Territory or agency thereof are subject to information reporting.

[831] *See, e.g.*, Announcement 2024-19 (rebate under Department of Energy's Home Energy Rebate Programs paid to purchaser that is treated as purchase price adjustment); Notice 2021-6 (payments excluded from gross income under COVID-19-related legislation); Draft FAQs for Payments by Indian Tribal Governments to their Individual Members Under COVID-Relief Legislation and Notice of Tribal Consultation (May 24, 2021) (emergency relief payments by Indian tribal governments to or for the benefit of tribal members and their families for necessary expenses resulting from the COVID-19 pandemic).

[832] Notice 2007-63.

[833] *See* IRS Pub. 1220, *Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G.* Boxes for State Information and Copies 1 and 2 are provided for convenience only and do not have to be completed for IRS purposes. State Information boxes may also be used to report local income tax withheld on a payment of gambling winnings.

[834] Instructions for Form 1099-G. For purposes of the two-notices-in-three-years rule, the payor is considered to have received one notice and you are not required to send a second "B" notice to the taxpayer on receipt of the second notice. *See* General Instructions for Certain Information Returns.

[835] Reg. §1.6041-10(a), §1.6041-10(c), Reg. §1.6041-10(b)(2), concerning payor-selected "information reporting periods," applies to payments of reportable gambling winnings from bingo, keno, or slot machine play made on or after January 1, 2017. All other provisions of Reg. §1.6041-10 apply to payments of reportable gambling winnings from bingo, keno, or slot machine play made on or after December 30, 2016.

[836] *See* §6041(a), §6041(h); Prop. Reg. §1.6041-10(b)(1)(i)(A) (bingo), Prop. Reg. §1.6041-10(b)(1)(i)(B) (keno), Prop. Reg. §1.6041-10(b)(1)(i)(C) (slot play), REG-113229-25, 91 Fed. Reg. 20,599 (Apr. 17, 2026).

[837] Reg. §1.6041-10(c), §1.6041-10(d). *See also* CCA 201234025 (where gaming establishment followed established requirements to solicit winning patron's TIN at time of slot machine winnings, gaming establishment qualifies under Reg. §301.6724-1(f)(5)(i) for exception to annual solicitation requirement; further, where each reportable slot machine jackpot is separate and discreet transaction and there is no ongoing account or relationship between establishment and patron, establishment qualifies under Reg. §301.6724-1(f)(5)(ii) for exception to annual solicitation requirement).

[838] Reg. §1.6041-10(f). The statement is treated as timely furnished to the payee if it is provided to the payee at the time of payment or if it is mailed to

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The payee of reportable winnings from bingo, keno, or slot machine play must present two forms of identification to the gaming establishment, one of which must include the payee's photo.[839]

Payors of multiple winnings from bingo, keno, and slots may aggregate multiple winnings by one payee from the same type of game during the same information reporting period on one Form W-2G under an optional aggregate reporting method.[840] The period tracked for purposes of the optional aggregate reporting method is an "information reporting period," i.e., a 24-hour period that begins when a person places the first wager on a particular type of game at a "gaming establishment," and ends when the patron places his or her last wager on the same type of game at the same gaming establishment before the end of the information reporting period.[841] There are two optional information reporting periods: a "calendar day" and a "gaming day."[842] A calendar day is the period that begins at 12 a.m. on a calendar day and that ends not later than 11:59 p.m. the same calendar day, and a gaming day is a 24-hour period selected by the payor other than a calendar day.[843] Specific recordkeeping requirements are imposed on payors who use the aggregate reporting method:

- Payors are required to track all payments of reportable winnings made to a payee that originate with the same type of game during the information reporting period;[844]
- The employee or other individual charged with recordkeeping duties is required to sign the record for each entry the individual has responsibility for;[845] and
- The payor's bookkeeping system is required to have a separate entry for each payment of reportable winnings made to the same payee and reported under the aggregate reporting method.[846]

The payor's records for each payment must include the following information about each payment:

- The payee's signature verifying the data in the record;[847]
- The Reg. §1.6041-10(d) reportable information;[848]
- The time the winning transaction occurred;[849]
- The total amount of the payee's reportable winnings during the information reporting period;[850]
- For each particular payment, the amount of reportable winnings;[851]
- The method of payment;[852] and
- The name and unique identification number of the individual who the payor assigned responsibility for ensuring that data entry relating to the reportable winnings is complete and accurate.[853]

Aggregate reporting may not be used:

- For payments to foreign persons;
- For transactions in which where the payor is aware that the person making the wager is not entitled to the winnings or is not the sole person entitled to the winnings; or
- Where backup withholding applies to the payment.[854]

The following examples illustrate the operation of optional aggregate information reporting periods for bingo, keno, and slot machine play:

Example 1: Casino R uses the aggregate reporting method under Reg. §1.6041-10(g) to report certain reportable gambling winnings. For other regulatory purposes, Casino R uses a gaming day that begins at 3 a.m. and ends at 2:59 a.m. the following calendar day. Casino R chooses to use its gaming day as its information reporting period for purposes of Reg. §1.6041-10(b)(2) during Year 1. Accordingly, the information reporting period for each day during Year 1 begins at 3 a.m. and ends at 2:59 a.m. the following day. The information reporting period for December 31 of Year 1 begins at 3 a.m. on December 31 of Year 1 and ends at 11:59 p.m. on December 31 of Year 1. The information reporting period for January 1 of Year 2 begins at 12 a.m. on January 1 of Year 2 and ends at 2:59 a.m. on January 2 of Year 2.[855]

Example 2: The facts are the same as Example 1, except Casino R uses a calendar day as its information reporting period for purposes of Reg. §1.6041-10(b)(2) during Year 1. Accordingly, the information reporting period for each day during Year 1 begins at 12 a.m. and ends at 11:59 p.m. on the same day.[856]

For purposes of the following examples, assume that Casino R's information reporting period for all calendar years is a gaming day that begins at 3 a.m. and ends at 2:59 a.m. the fol-

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the payee on or before January 31st of the year subsequent to the year of payment. *Id.*

[839] Reg. §1.6041-10(d)(1)(iii), §1.6041-10(e). Alternatively, a payee may present a completed Form W-9 as the other form of identification. Reg. §1.6041-10(e)(2). Gaming establishments owned or licensed by a tribal government may waive the photo ID requirement for payees who are members of that federally-recognized Indian tribe and present a tribal member identification card issued by the same tribal government. Reg. §1.6041-10(d)(2).

[840] Reg. §1.6041-10(g)(1).

[841] Reg. §1.6041-10(g)(2), §1.6041-10(b)(2)(i). A "gaming establishment" is a business entity of a payor of reportable gambling winnings with respect to bingo, keno, or slot machine play. Reg. §1.6041-10(b)(2)(iv). The term includes all gaming establishments owned by the payor that use the same employer identification number issued to such payor under §6109.

[842] Reg. §1.6041-10(b)(2)(ii), §1.6041-10(b)(2)(iii).

[843] Reg. §1.6041-10(b)(2)(ii), §1.6041-10(b)(2)(iii). On December 31, all open information reporting periods must close at 11:59 p.m. to end by the end of the calendar year, and on January 1st, all information reporting periods must begin at 12:00 a.m. Reg. §1.6041-10(b)(2)(iii)(B), §1.6041-10(b)(2)(iii)(C); *see* Instructions for Forms W-2G and 5754.

[844] Reg. §1.6041-10(g)(3).

[845] Reg. §1.6041-10(g)(3).

[846] Reg. §1.6041-10(g)(3).

[847] Reg. §1.6041-10(g)(3)(i).

[848] Reg. §1.6041-10(g)(3)(ii).

[849] Reg. §1.6041-10(g)(3)(iii).

[850] Reg. §1.6041-10(g)(3)(iv).

[851] Reg. §1.6041-10(g)(3)(v).

[852] Reg. §1.6041-10(g)(3)(vi).

[853] Reg. §1.6041-10(g)(3)(vii).

[854] Reg. §1.6041-10(g)(4).

[855] Reg. §1.6041-10(b)(2)(v), *Ex. 1.*

[856] Reg. §1.6041-10(b)(2)(v), *Ex. 2.*

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lowing day (except for January 1 and December 31), and that individuals C, D, and E are U.S. persons:

Example 3: On Day 1, between 7 a.m. and 4 p.m., C places five wagers at casino R on five different slot machines. The first two wagers result in no win. The third wager results in a $2,000 win. The fourth wager results in a $2,500 win. The fifth wager results in an $800 win. Under Reg. §1.6041-10(b)(1)(i)(C), there are reportable gambling winnings from the slot machine play of $4,500 ($2,000 + $2,500). The $800 win is not a reportable gambling winning from slot machine play because it does not equal or exceed the $1,200 threshold. Because all of the amounts were won on the same type of game (even though each of the winnings occurred on different machines) during the same information reporting period, R is permitted to use the aggregate reporting method under Reg. §1.6041-10(g). If R decides not to use the aggregate reporting method, a separate Form W-2G would have to be filed and furnished for the payment of reportable gambling winnings of $2,000 and for the payment of reportable gambling winnings of $2,500. However, if R decides to use the aggregate reporting method, R may report total reportable gambling winnings from slot machine play of $4,500 ($2,000 + $2,500) on one Form W-2G.[857]

Example 4: Assume the same facts as Example 1, except that in addition to the winnings described in Example 1, at 5 a.m. on Day 2, C wins $3,250 from one slot machine play at casino R. Even though C played the same type of game (slot machine play) on Day 1 and Day 2, under Reg. §1.6041-10(b)(2), the win at 5 a.m. on Day 2 is a win during a separate information reporting period. Under Reg. §1.6041-10(g)(2)(i), the $3,250 of reportable gambling winnings on Day 2 cannot be aggregated with the reportable gambling winnings of $4,500 from Day 1 on a single Form W-2G. Accordingly, if R uses the aggregate reporting method, R must file two Forms W-2G with respect to C's reportable gambling winnings on Day 1 and Day 2. R must report $4,500 of reportable gambling winnings from slot machine play paid to C on Day 1 on the first Form W-2G, and $3,250 of reportable gambling winnings from slot machine play paid to C on Day 2 on the second Form W-2G.[858]

Example 5: On December 31 of Year 1 at 4:00 p.m., C wins $10,000 from one slot machine play at casino R. At 12:30 a.m. on January 1 of Year 2, C wins $4,000 from one slot machine play at casino R. Under Reg. §1.6041-10(b)(2)(iii)(B) and §1.6041-10(b)(2)(iii)(C), the win at 4 p.m. on December 31 of Year 1 and the win at 12:30 a.m. on January 1 of Year 2 are wins during different information reporting periods. Under Reg. §1.6041-10(g)(2)(i), the $4,000 of reportable gambling winnings on January 1 cannot be aggregated with the reportable gambling winnings of $10,000 from December 31 on a single Form W-2G. Accordingly, if R uses the aggregate reporting method, R must file two Forms W-2G with respect to C's reportable gambling winnings on Day 1 and Day 2. R must report $10,000 of reportable gambling winnings from slot machine play paid to C on December 31 on the first Form W-2G and $4,000 of reportable gambling winnings from slot machine play paid to C on January 1 on the second Form W-2G.[859]

Gambling winnings (other than winnings from bingo, keno, and slot machines) that exceed $5,000 may be subject to regular gambling withholding and reporting, or may be subject to backup withholding and reporting, depending on the type of wagering transaction, the amount of the proceeds from the wager, the odds associated with the wager, and other factors such as the availability of, and the validity of, the payee's taxpayer identification number (TIN).[860] Payors generally must withhold if the proceeds from a wager exceed $5,000 in a State-conducted lottery, other lottery, sweepstakes, or wagering pool.[861] In the case of other wagering transactions, payors generally must withhold if the proceeds from the wager exceed $5,000 and are at least 300 times as large as the amount wagered.[862] Gambling winnings subject to withholding may be subject to regular gambling withholding of 25% (33.33% for certain noncash payments) or to backup withholding at 28%.[863] If the recipient of winnings subject to regular gambling withholding does not provide a TIN or provides a TIN that does not contain the proper number of digits, then backup withholding will apply.[864] Regular gambling withholding is calculated on the total amount of gross proceeds (the amount of winnings less the amount wagered), not merely on the amount in excess of $5,000.[865] Regular gambling withholding is reported on Form W-2G.[866] Backup withholding is not imposed where the amount received by the payee is subject to withholding under some other provision of the Code, such as §3402(q)(1).[867] Backup withholding is discussed in detail at II.A., above.

For wagering transactions with respect to horse races, dog races, or jai alai, all wagers placed in a single parimutuel pool and represented on a single ticket, whether paper or electronic,

[857] Prop. Reg. §1.6041-10(g)(5), *Ex. 1*, REG-113229-25, 91 Fed. Reg. 20,599 (Apr. 17, 2026).

[858] Prop. Reg. §1.6041-10(g)(5), *Ex. 2.*

[859] Reg. §1.6041-10(g)(5), *Ex. 3.*

[860] §3402(q)(1), §3402(q)(3), §3402(q)(5), §3406(a); Reg. §31.3402(q)-1(a)(1).

[861] §3402(q)(3)(B), §3402(q)(3)(C)(i); Reg. §31.3402(q)-1(b)(1)(i), §31.3402(q)-1(b)(1)(ii).

[862] §3402(q)(3)(A), §3402(q)(3)(C)(ii); Reg. §31.3402(q)-1(b)(1)(iii). Winnings from bingo, keno, and slot machines are exempted from withholding under §3402(q)(1) by §3402(q)(5).

[863] *See* §3402(q)(1); §3406(a).

[864] §3406(a); Reg. §31.3406(a)-4(a)(1). A payor must deduct and withhold tax on a "reportable payment" made to a payee at the time the payor makes a payment to the payee (or to the account of the payee), if a condition for backup withholding exists. *Id.* Conditions under which backup withholding is required include where no TIN is furnished by a payee, or where the TIN furnished by a payee is incorrect. §3406(a)(1)(A), §3406(a)(1)(B). *See also* CCA 201246028 (where name and TIN do not match on Form W-2G, gaming establishment is not subject to backup withholding requirements; gaming establishment would only be subject to the backup withholding requirements if payee provided gaming establishment with TIN that does not contain proper number of digits).

[865] Reg. §31.3402(q)-1(b)(2).

[866] Reg. §31.3402(q)-1(e)(1).

[867] §3406(g)(2); Reg. §31.3406(g)-(2)(a), §31.3406(g)-(2)(d).

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are aggregated and treated as a single wager for purposes of determining the amount of the wager.[868]

Each payor who is making a payment subject to regular gambling withholding must obtain, and each payee of such a payment is obligated to provide, either:

• A statement containing the winner's name, address, and TIN, and a declaration that no one else is entitled to a portion of the winnings;[869] or

• A statement containing the name, address, and TIN of both the winner and of every person entitled to any portion of the winning payment.[870]

If the payor is making more than one payment of winnings subject to withholding with respect to a single wager (e.g., an annuity), the payee is required to furnish the payor a statement with respect to the first payment only, provided that the other payments are taken into account on a Form W-2G.[871]

A payor who makes a payment of gambling winnings subject to withholding must file Form W-2G at the Internal Revenue Service location designated in the instructions to Form W-2G on or before February 28 (March 31 if filed electronically) of the calendar year subsequent to the calendar year in which the payment of winnings is made.[872] Each Form W-2G in required to disclose:

• The payor's name, address, and TIN;[873]

• The payee's/winner's name, address, and TIN;[874]

• The date and amount of the payment, and the amount withheld;[875]

• The type of wagering transaction;[876]

• A general description of the two types of identification submitted by the payee, one of which must have the payee's photograph on it (except in the case of tribal member identification cards), that the payor relied on to verify the payee's name, address, and taxpayer identification number;[877]

• The amount of winnings from identical wagers;[878] and

• If applicable, any other information required by Form W-2G, the instructions to Form W-2G, or other guidance published in the Internal Revenue Bulletin.[879]

Every payor required to submit Form W-2G to the IRS must also provide a written statement that contains the information that is required to be included on the Form W-2G to each payee on or before January 31st of the year following the year in which payment was made.[880] The statement is treated as provided to the payee if it is either:

• Provided to the payee at the time of payment; or

• Mailed to the payee on or before January 31st of the year following the year in which payment was made.[881]

Poker tournament sponsors must withhold tax on, and report on, payments of more than $5,000 made to a winning payee in a tax year by filing an information return, usually on Form W-2G.[882]

If winnings are in a noncash form, such as a car or other merchandise, the fair market value (FMV) must be taken into account for reporting and withholding purposes.[883]

If more than one person shares in the winnings from a single wager, the total amount of the winnings (less the amount wagered) will determine the amount of the proceeds for purposes of reporting and withholding. Winnings should not be allocated to each winner before determining whether the withholding or reporting thresholds were reached.[884]

The following examples illustrate the operation of the regular gambling withholding rules:

Example 1: A purchases a lottery ticket for $1 in the State W lottery from an authorized agent of State W. A drawing is held, and A wins $5,002. State W must deduct and withhold tax at a rate of 25% from $5,001 ($5,002 less the $1 wager), or $1,250.25.[885]

Example 2: C purchases a lottery ticket for $1. On Date, the lottery drawing is held, and C wins the grand prize of $50,000, payable $500 monthly. The payor must deduct and withhold tax at a rate of 25% from each payment of winnings. Therefore, $124.75 must be withheld from the first monthly payment to C (($500 − $1) × 25% = $124.75) and $125 ($500 × 25%) must be withheld from each monthly payment thereafter.[886]

Example 3: D purchases a ticket for $1 in the State Y lottery from an authorized agent of State Y. On Date, a drawing is held and D wins $100 a month for the rest of D's life. It is actuarially determined that, on Date, D's life expectancy is 5 years. Based on that determination, the proceeds from the wager paid to D will exceed $5,000. Therefore, State Y must deduct and withhold $25 from each monthly payment made on or after Date. (None of such payments is reduced by the amount of the wager because

[868] Reg. §31.3402(q)-1(c)(1)(ii).
[869] Reg. §31.3402(q)-1(d)(1), §31.3402(q)-1(d)(2)(i).
[870] Reg. §31.3402(q)-1(d)(1), §31.3402(q)-1(d)(2)(ii).
[871] Reg. §31.3402(q)-1(d)(3).
[872] Reg. §31.3402(q)-1(e)(1).
[873] Reg. §31.3402(q)-1(e)(1)(i).
[874] Reg. §31.3402(q)-1(e)(1)(ii).
[875] Reg. §31.3402(q)-1(e)(1)(iii).
[876] Reg. §31.3402(q)-1(e)(1)(iv).
[877] Reg. §31.3402(q)-1(e)(1)(v), §31.3402(q)-1(e)(3). This requirement does not apply to winnings from a wager placed in a state lottery. *Id.*
[878] Reg. §31.3402(q)-1(e)(1)(vi).
[879] Reg. §31.3402(q)-1(e)(1)(vii). Form W-2G also contains boxes that may be used to report state and local income tax withheld on a payment of gambling winnings. The IRS does not require that these boxes be used and will not process any information reported in these boxes. *See* Instructions for Forms W-2G and 5754.
[880] Reg. §31.3402(q)-1(e)(5).
[881] Reg. §31.3402(q)-1(e)(5).
[882] Rev. Proc. 2007-57, *citing* Reg. §31.3402(q)-1(b). Payees may be obligated to file Form 5754, *Statement by Person(s) Receiving Gambling Winnings.*
[883] Reg. §31.3402(q)-1(c)(1)(iii)(B).
[884] Reg. §31.3402(q)-1(c)(1)(ii), §31.3406(g)-2(d)(3).
[885] Reg. §31.3402(q)-1(f), *Ex. 2.* As noted above, the current rate for regular gambling withholding is 25%.
[886] Reg. §31.3402(q)-1(f), *Ex. 3.*

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the amount of the wager was offset by the first payment of winnings which was made before Date).[887]

Example 4: E purchases a sweepstakes ticket for $1 in a sweepstakes conducted by W. E purchases the ticket on behalf of himself and on behalf of F and G, who have contributed equal amounts toward the purchase of the ticket and who have agreed to share equally in any prizes won. The ticket which E purchases wins $1,002. Since the proceeds of the wager ($1,002 − $1) are greater than $1,000, W is required to withhold and deduct 25 percent of such proceeds.[888]

Example 5: On February 1, 2017, a drawing is held in the State X lottery in which a winning ticket is selected. The person holding the winning ticket is entitled to proceeds of $100,000 payable either as a lump sum upon demand or $10,000 a year for 10 years. Under State law, the winning ticket must be presented to an authorized agent of State X before February 1, 2018. Until the ticket is presented, State X does not know the identity of the winner. On December 1, 2017, H, the winner, presents the winning ticket to an authorized agent of the State X lottery. The winnings are constructively paid to H on February 1, 2017. Since H, has the option of receiving the entire proceeds upon demand, State X is required to deduct and withhold $25,000 ($100,000 × 25%) from the proceeds of H's winnings on February 1, 2017; but for purposes of determining the time at which the deposit and inclusion on Form 941 of these taxes is to be made, the withholding shall be deemed to have been made on December 1, 2017.[889]

Example 6: J purchases a subscription to N magazine, at the regular subscription price. All new subscribers are automatically eligible for a special drawing. The drawing is held and J wins $50,000. Since J has not paid any more than the regular subscription price, J has not placed a wager or entered a wagering transaction. Therefore, N is not required to deduct and withhold J's winnings.[890]

Example 7: B places a $15 bet at the cashier window at the racetrack for horse A to win the fifth race at the racetrack that day. After placing the first bet, B gains confidence in horse A's prospects to win and places an additional $40 bet at the cashier window at the racetrack for horse A to win the fifth race, receiving a second ticket for this second bet. Horse A wins the fifth race, and B wins a total of $5,500 (100 to 1 odds) on those bets. The $15 bet and the $40 bet are identical wagers under Reg. §31.3402(q)-1(c)(1)(iii)(A) because winning on both bets depended on the occurrence of the same event and the bets are placed in the same parimutuel pool with the same payor. B then cashes the tickets at different cashier windows. Pursuant to Reg. §31.3402(q)-1(d) and §1.6011-3, B completes a Form W-2G indicating that the amount of winnings is from identical wagers and provides the form to each cashier. The payments by each cashier of $1,500 and $4,000 are less than the $5,000 threshold for withholding, but under Reg. §31.3402(q)-1(c)(1)(iii)(A), identical wagers are treated as paid with respect to a single wager for purposes of determining the proceeds from a wager. The payment is not subject to withholding or reporting because, although the proceeds from the wager are $5,445 ($1,500 + $4,000 − $55), the proceeds from the wager are not at least 300 times as great as the amount wagered ($55 × 300 = $16,500).[891]

Example 8: B makes two $1,000 bets in a single "show" pool for the same jai alai game, one bet on Player X to show and one bet on Player Y to show (a show bet is a winning bet if the player comes in first, second, or third in a single game). The bets are placed at the same time at the same cashier window, and B receives a single ticket showing both bets. Player X places second in the game, and Player Y does not place first, second, or third in the game. B wins $8,000 from his bet on Player X. Because winning on both bets does not depend on the occurrence of the same event, the bets are not identical bets under Reg. §31.3402(q)-1(c)(1)(iii)(A). However, pursuant to the rule in Reg. §31.3402(q)-1(c)(1)(ii), the amount of the wager is the aggregate amount of both wagers ($2,000) because the bets were placed in a single parimutuel pool and reflected on a single ticket. The payment is not subject to withholding or reporting because although the proceeds from the wager are $6,000 ($8,000 − $2,000), the proceeds from the wager are not at least 300 times as great as the amount wagered ($2,000 × 300 = $600,000).[892]

Form W-2G also contains boxes that may be used to report state and local income tax withheld on a payment of gambling winnings. The IRS does not require that these boxes be used and will not process any information reported in these boxes.[893]

F. *Acquisitions of Control and Changes in Capital Structure*

1. *Transactions Subject to Reporting*

a. *In General*

A corporation that is required to file Form 8806, *Information Return for Acquisition of Control or Substantial Change in Capital Structure*, must also file Forms 1099-CAP, *Changes in Corporate Control and Capital Structure*, for each shareholder who receives cash, stock, or other property pursuant to the acquisition of control or the substantial change in capital structure

[887] Reg. §31.3402(q)-1(f), *Ex. 5.*
[888] Reg. §31.3402(q)-1(f), *Ex. 7.*
[889] Reg. §31.3402(q)-1(f), *Ex. 8.*
[890] Reg. §31.3402(q)-1(f), *Ex. 9.*
[891] Reg. §31.3402(q)-1(f), *Ex. 10.*
[892] Reg. §31.3402(q)-1(f), *Ex. 11.*
[893] *See* Instructions for Forms W-2G and 5754.

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of the corporation.[894] Reporting is not required if the recipient is an exempt payee.[895]

b. Acquisition of Control

An acquisition of control of a corporation (first corporation) occurs if, in a transaction or series of related transactions before an acquisition of stock of the first corporation (directly or indirectly) by a second corporation: (1) the second corporation does not have control of the first corporation; (2) after the acquisition, the second corporation has control of the first corporation; (3) the fair market value of the stock acquired in the transaction and in any related transactions as of the date or dates on which such stock was acquired is $100 million or more; (4) the shareholders of the first corporation receive stock or other property pursuant to the acquisition; and (5) the first corporation or any shareholder of the first corporation is required to recognize gain (if any) under §367(a) and the regulations, as a result of the transaction.

Control is defined as the ownership of stock possessing at least 50% of the total combined voting power of all classes of stock entitled to vote, or at least 50% of the total value of shares of all classes of stock.[896]

c. Substantial Change in Capital Structure of a Corporation

A corporation has a substantial change in capital structure if it has a change in capital structure and the amount of cash and the fair market value of any property (including stock) provided to the shareholders of such corporation pursuant to the change in capital structure, as of the date or dates on which the cash or other property is provided, is $100 million or more.[897]

In general, a corporation has a change in capital structure if the corporation in a transaction or series of transactions merges, consolidates, or combines with another corporation or transfers all or substantially all of its assets to one or more corporations, transfers all or part of the assets to another corporation in a Title 11 bankruptcy or similar case and, in pursuance of the plan, distributes stock or securities of that corporation, or changes its identity, form, or place of organization, and the corporation or any shareholder is required to recognize gain (if any) under §367(a) and the regulations, as a result of the transaction.[898]

d. Examples

For purposes of the examples below, assume the transaction is not reported under §6042, §6043(a), or §6045, unless otherwise specified, and assume that the fair market value of the consideration provided to the shareholders exceeds $100 million.

Example 1: The shareholders of X, a domestic corporation and parent of an affiliated group, exchange their X stock for stock in Y, a foreign corporation, pursuant to §351 and §354. After the transaction, Y owns all the outstanding X stock. Assume that, under §367(a) and the regulations, the X shareholders must recognize gain (if any) on the exchange of their stock. Because the transaction results in an acquisition of control of X, X must file Form 8806 reporting the transaction. X must also file a Form 1099-CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the Y stock received by that shareholder, and X must furnish a copy of the Form 1099-CAP to that shareholder. If X elects on the Form 8806 to permit the IRS to publish information regarding the transaction, X is not required to file or furnish Forms 1099-CAP with respect to shareholders that are clearing organizations.

Example 2: The facts are the same as in *Example 1*, except X hires a transfer agent to effectuate the exchange. The transfer agent is treated as a broker under §6045 and is required to report the fair market value of the Y stock received by X's shareholders under Reg. §1.6045-3. Under Reg. §1.6043-4(b)(6), X is not required to file information returns with respect to a shareholder of record, unless X knows or has reason to know that the transfer agent does not satisfy its information reporting obligation under Reg. §1.6045-3 with respect to that shareholder. Thus, if the transfer agent satisfies its information reporting requirements under Reg. §1.6045-3 with respect to Shareholder B, an individual who receives X stock, X is not required to file a Form 1099-CAP with respect to B. Conversely, if the transfer agent does not have an information reporting obligation under Reg. §1.6045-3 with respect to one of X's shareholders of record (for example, a clearing organization that is an exempt recipient under Reg. §1.6045-3(b)(2)), or if X knows or has reason to know that the transfer agent has not satisfied its information reporting requirement with respect to a shareholder, then X must provide a Form 1099-CAP to that shareholder.

2. Who Must File Form 1099-CAP

A domestic corporation that is required to file Form 8806 must also file Forms 1099-CAP with the IRS and furnish recipient statements to nonexempt shareholders who receive cash, stock, or other property as a result of the acquisition of control or substantial change in capital structure of the corporation.[899] However, if the corporation can reasonably determine that the exchange of stock does not result in a recognized gain for the shareholder, then no reporting is required.[900] In addition, reporting is not required if the transaction involves the acquisition of control within an affiliated group or involves stock valued at less than $100 million,[901] the corporation makes the consent election on Form 8806,[902] the transaction is properly reported under §6043(a),[903] or information returns are filed under §6042

[894] Reg. §1.6043-4(b)(1).
[895] Reg. §1.6043-4(b)(5).
[896] Reg. §1.6043-4(c)(2).
[897] Reg. §1.6043-4(d)(1).
[898] Reg. §1.6043-4(d)(2).
[899] Reg. §1.6043-4(b)(1). *See also* Instructions for Form 1099-CAP.
[900] Reg. §1.6043-4(b)(5)(i).
[901] Reg. §1.6043-4(c)(1)(iii).
[902] Reg. §1.6043-4(a)(2).
[903] Reg. §1.6043-4(b)(6).

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(Forms 1099-DIV) or §6045 (Forms 1099-B) to appropriately report the transaction.[904]

3. Exempt Recipients

A corporation is not required to file returns for exempt recipients that are defined to include any shareholder who receives stock in an exchange that is not subject to gain recognition under §367(a) and the regulations thereunder, or any shareholder for whom the total amount of cash and the fair market value of stock and other property does not exceed $1,000. A shareholder is also considered to be an exempt recipient if it has provided the corporation with a properly completed exemption certification, i.e., Form W-9, or they are described as being exempt in Reg. §1.6049-4(c)(1)(ii). A shareholder that is a foreign beneficial owner of the corporation may be deemed to be exempt if it provides the payor with a valid Form W-8BEN or other documentation upon which the corporation may rely to treat the shareholder as a foreign payee. The corporation is also not required to file a return if, on January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property, the corporation was unaware that the shareholder had received such cash, stock, or other property in a transaction or series of related transactions that would have resulted in an acquisition of control or a substantial change in capital structure within the meaning of §6043.[905]

4. Form 8806

A corporation must file Form 8806, *Information Return for Acquisition of Control or Substantial Change in Capital Structure*, to report an acquisition of control or a substantial change in the capital structure of a domestic corporation that occurred after December 4, 2005. The reporting corporation or any shareholder is required to recognize gain (if any) under §367(a) and the regulations thereunder as a result of the transaction. If the reporting corporation transfers all or substantially all of its assets to an acquiring corporation in a transaction that constitutes a substantial change in the capital structure of the reporting corporation and the reporting corporation does not file Form 8806, the acquiring corporation must file Form 8806. If neither corporation files Form 8806, both corporations are jointly and severally liable for any applicable penalties.[906]

Corporations may not be required to file Form 8806 if the transactions were properly reported under §6043(a) for corporate liquidations or dissolutions, or if the reporting corporation reasonably determines that all of its shareholders who receive cash, stock, or other property related to the acquisition of control or substantial change in capital structure are exempt recipients under Reg. §1.6043-4(b)(5).[907]

Form 8806 includes a consent election that allows a corporation to consent to the publication of pertinent information relative to the transaction(s) on an IRS website or IRS publication in lieu of issuing Forms 1099-CAP to clearing organizations.[908] Moreover, this information must be made available to brokers to satisfy their reporting requirements. Any broker[909] that holds shares on behalf of a customer in a corporation that the broker knows or has reason to know based on readily available information has engaged in a transaction described in Reg. §1.6043-4(c) (acquisition of control) or Reg. §1.6043-4(d) (on substantial change in capital structure) must file a return of information with respect to a nonexempt customer.[910] Readily available information may include information from a clearing organization or information published by the IRS.

Form 8806 must be filed on or before the 45th day following the acquisition of control or substantial change in capital structure of the corporation, or, if earlier, on or before January 5th of the year following the calendar year in which the acquisition of control or substantial change in capital structure occurs.[911]

5. Clearing Organizations

A clearing organization, such as the Depository Trust Company (DTC), is not an exempt recipient, meaning that the corporation required to report must issue Forms 1099-CAP to the clearing organization with respect to shares they hold on behalf of shareholders. DTC or any other clearing organization that is a middleman or nominee for other shareholders must, in turn, issue Forms 1099-CAP to the final recipients. The corporation is not required to issue Forms 1099-CAP to a clearing organization if the corporation makes a consent election on Form 8806 as described above. Forms 1099-CAP must be furnished to the clearing organization by January 5th of the year following the calendar year in which the transaction occurred.[912]

6. Information Required on Form 1099-CAP

Forms must include the name, address, telephone number and TIN of the reporting corporation; the name, address and TIN of the shareholder; the number and class of shares in the reporting corporation exchanged by the shareholder; and the aggregate amount of cash and the fair market value of any stock or other property provided to the shareholder in exchange for their stock.[913] Forms 1099-CAP must be furnished to shareholders by January 31st of the year following the calendar year in which the transaction occurred, and must be remitted to the IRS by February 28th (or March 31st if filed electronically).[914]

The most current version of Form 1099-CAP and Instructions can be found on the IRS website.

[904] Reg. §1.6043-4(b)(5). *See also* Instructions for Form 1099-CAP.
[905] Reg. §1.6043-4(b)(5).
[906] Reg. §1.6043-4(a)(1). *See also* Instructions for Form 8806.
[907] Reg. §1.6043-4(a)(4), §1.6043-4(a)(5).
[908] Reg. §1.6043-4(a)(2).
[909] Reg. §1.6045-1(a)(1).
[910] Reg. §1.6045-3(a).
[911] Reg. §1.6043-4(a)(3).
[912] Reg. §1.6043-4(a)(3).
[913] Reg. §1.6043-4(b)(3). Except on copies provided to the IRS, a truncated taxpayer identification number may be used on Form 1099-CAP. Reg. §1.6043-4(b)(4).
[914] Reg. §1.6043-4(b)(2), §1.6043-4(b)(4).

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IV. Special Tax Reporting Issues

A. *Reporting for Regulated Investment Companies (RICs)*

1. *In General*

A domestic corporation registered under the Investment Company Act of 1940 (ICA) either as a management company or unit investment trust, or one that has elected to be treated as a business development company may qualify for favorable tax treatment as a regulated investment company (RIC).[915] RICs are most often referred to as "mutual funds," a term also used in connection with other investment vehicles that are not RICs, such as unit investment trusts in grantor trust format and limited partnerships.[916] Dividends paid to shareholders of a RIC may be deducted by the RIC in computing its taxable income, thereby avoiding taxation at the corporate level.[917] Moreover, the character of certain types of income earned by a RIC may be passed through to its shareholders on the distribution of those items.[918]

A business trust electing RIC status may be treated as a corporation for tax purposes even though the entity is not structured as a stock company.[919] As a corporation, a RIC's distribution of money or property, other than amounts distributed in liquidation or redemption of shares or amounts designated as special dividends, are generally taxable as ordinary dividends to the extent of the RIC's earnings and profits as defined under §316. Thus, a RIC may pay dividends even though the RIC may invest in bonds or equities and may earn interest, dividends, or short-term capital gains by selling its investments.[920]

Because the dividends paid by RICs fall under the definition of §316 dividends, the general reporting rules per §6042 are applicable to the issuance of Form 1099-DIV including those requirements for reporting returns of capital.[921] For a discussion of reporting dividends paid by a RIC, see II.C., above.

Gross proceeds from sales and redemptions of RIC shares are subject to §6045 reporting on Form 1099-B unless they are within the express regulatory exception of sales at issue price of interests in certain RICs.[922]

The following discussion describes the special tax rules and unique reporting requirements specific to transactions of a RIC.

2. *Dividends*

In general, dividends are reported on Form 1099-DIV in the year actually paid.[923] Dividends paid by a RIC are usually taxed to shareholders in the year the shareholders receive them, i.e., generally when paid.[924]

However, if a RIC or a real estate investment trust (REIT) declares a dividend in October, November, or December payable to shareholders of record on a specified date in such a month, the dividends are treated as paid by the RIC or REIT and received by the recipients on December 31 of such year as long as the dividends are actually paid by the RIC or REIT by the end of January of the following year. The dividends are reportable on Form 1099-DIV for the year preceding the January they are actually paid.[925]

If a dividend paid in January is subject to backup withholding, taxes must be withheld when the dividend is actually paid. Therefore, taxes would be withheld in January, deposited when appropriate, and generally reflected on Form 945, *Annual Return of Withheld Federal Income Tax*, for the year in which taxes were withheld. However, since the dividend is reportable on Form 1099-DIV in the prior year, the related backup withholding is also reportable on the prior year Form 1099-DIV.[926]

3. *Dividend Reinvestment Plans*

RICs usually allow shareholders to automatically reinvest dividends to purchase additional shares in the fund or give their shareholders the option of receiving all or part of their dividends in cash or new shares. Reinvested dividends paid in cash to an agent who acquires new shares in the open market are considered to be constructively received by the shareholder and, thus, subject to reporting on Form 1099-DIV for the year in which the dividends are credited to the shareholder. The amount reportable is the amount of dividends that would have been paid if not made subject to the reinvestment plan.[927]

Unless the payments are considered to be exempt-interest dividends, distributions under these plans are generally considered taxable optional stock dividends under §305(b)(1), even though a RIC may transfer the cash representing the dividend to an agent who then acquires the stock from the RIC. Taxable optional stock dividends are reportable on Form 1099-DIV in the year the stock is received. The reportable amount equals the fair market value of the stock on the distribution date.[928]

If deferred sales charges are paid by deductions from dividends, the sales charges may not be used to offset the amounts required to be reported on Form 1099-DIV. Instead, those charges are to be added to the basis of shares purchased as the charges are paid. The full amounts of dividends, not reduced by load charges, are to be reported on Forms 1099.[929]

4. *Capital Gains Dividends*

A RIC that has long-term capital gains may designate part of its dividend as a capital gain distribution or capital gain dividend. A capital gain dividend is defined by §852(b)(3)(C) as a dividend so designated by the RIC in a written notice mailed to its shareholders not later than 60 days after the close of the

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[915] §851(a). Certain types of common trust funds and business development companies may also qualify for RIC status. *See* §851(a)(1)(B), §851(a)(2).

[916] Discussions in this section apply only to entities satisfying the qualifications under §851–§855 and in certain cases to "real estate investment trusts" (REITs), which are taxed on similar principles.

[917] §852(b)(2)(D).

[918] See §852(b)(3) for "capital gain dividends" and §852(b)(5) for "exempt-interest dividends."

[919] §851(a), §851(b).

[920] §301, §316.

[921] §301(c)(2), §6042(b)(1).

[922] Reg. §1.6045-1(c)(3)(vi).

[923] §6042(a).

[924] §855(b); Reg. §1.852-4(a)(1).

[925] §852(b)(7), §857(b)(9).

[926] Reg. §31.3406(b)(2)-4. *See also* Instructions for Form 1099-DIV.

[927] Reg. §1.451-2(a). *See also* IRS Pub. 550, *Investment Income and Expenses.*

[928] Reg. §1.305-1(b). *See also* §301(b)(1); Reg. §1.6042-3(a).

[929] §852(f)(2)(A).

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RIC's taxable year. If the capital gain dividend is greater than the RIC's net capital gain for its taxable year (the excess of the net long-term capital gain over the net short-term capital loss), the capital gain dividend may be only that portion of the distribution that the net capital gain amount bears to the amount so designated. For this purpose, the net capital gain is computed without regard to net capital losses or net long-term capital losses after October 31st of the RIC's taxable year.[930]

Capital gain dividends are treated as long-term capital gain in the hands of the shareholder regardless of the amount of time the stock has been held in the fund.[931] These dividends are reportable as capital gain distributions on Form 1099-DIV as total capital gain distributions.[932] Any short-term gains are taxed as ordinary dividends in the hands of the shareholder to the extent of the RIC's earnings and profits. These gains are reported on Form 1099-DIV as total ordinary dividends and may also be reported as qualified dividends.[933]

5. *Exempt Interest Dividends*

A RIC that meets certain conditions may invest in tax exempt obligations, such as municipal bonds, that earn tax-exempt interest under §103. The RIC may in turn, pass through the tax-exempt character of net income from these investments to shareholders.[934] A RIC that is qualified to pay exempt-interest dividends may so designate the dividend in a written notice to shareholders not later than 60 days after the close of the RIC's taxable year.[935] A RIC is restricted from designating amounts that are in excess of the RIC's net income from tax-exempt obligations as exempt interest dividends.[936]

Tax-exempt interest dividends are reportable on Form 1099-DIV as exempt-interest dividends.[937] The reporting of this information does not convert the payments from being tax exempt to taxable income to the recipient. However, these payments must be taken into consideration as a "tax preference item" in the calculation of the alternative minimum tax.[938] In addition, certain tax-exempt interest dividends included in Form 1099-DIV must also be reported separately to reflect tax-exempt interest dividends paid by a RIC on specified private activity bonds issued after August 7, 1986, to the extent the dividends are attributable to interest on the bonds received by the RIC less an allocable share of the expenses.[939]

6. *Redemptions and Liquidations of RIC Shares*

The redemption provisions of §302 apply when a RIC reacquires its shares in the fund or the company from the shareholder for money or other property. Redemptions under §302 include the receipt of distributions from periodic cash withdrawal plans to the extent that the distributions reflect a disposition of a portion of the shares to the shareholder's account.[940] Redemptions are deemed to be sales of securities reportable on Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*, unless the transaction is considered to be a sale of an interest in a RIC that can hold itself out as a money market fund under Rule 2a-7 under the 1940 Investment Company Act (ICA) and 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. For example, a money market fund may set par value per share at one dollar ($1.00).[941]

Liquidating distributions made by a RIC to its shareholders are subject to the same reporting requirements as liquidating distributions made by regular corporations to their shareholders.

7. *Forms 2438 and 2439*

A RIC is allowed to retain net capital gains and designate them on a pro rata basis as taxable long-term capital gains to shareholders of record on the last day of the RIC's taxable year. Shareholders should then, in turn, include their share of these gains in their tax returns. Federal tax on these gains is paid by the RIC, and shareholders are then given a credit for the taxes. The tax credits are treated as advance payments of the shareholders' federal income taxes, similar to backup withholding or wage withholding.[942] Shareholders also may increase their tax basis in shares held in the fund by their allocable portion of the after-tax gain retained by the fund.[943]

A RIC that elects to retain capital gains must file Form 2438, *Undistributed Capital Gains Tax Return*, specifying the total undistributed capital gains, including the related tax to which the election applies. The return must be filed and the tax paid before the 30th day after the close of the RIC's tax year.[944]

A RIC that elects to retain its long-term capital gains is also required to issue Form 2439, *Notice to Shareholder of Undistributed Long-Term Capital Gains*, to each shareholder reflecting its amount of undistributed long-term capital gains and the amount of tax paid by the RIC or REIT. Form 2439

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[930] See §857(b)(3)(B) for a similar rule for capital gain dividends paid by REITs. Special rules apply to deficiency dividends from RICs and REITs. In addition to this notification, RICs must notify shareholders not later than 60 days after the close of their taxable years for any distributions that may be taken into account as dividends for purposes of the §243 corporate dividends-received deduction. *See also* §852(b)(2).

[931] §852(b)(3)(B); Reg. §1.852-4(b)(1). See §857(b)(3)(B) for REIT capital gain dividends retaining long-term capital gain treatment in the hands of shareholders.

[932] *See* Instructions for Form 1099-DIV and IRS Pub. 550, *Investment Income and Expenses*.

[933] §852(b)(2)(A). See Notice 2004-39, *modified by* Notice 2015-41, that describes how the reduction in rates made by the 2003 Jobs and Growth Tax Relief Reconciliation Act (JGTRRA), Pub. L. No. 108-27, and the JGTRRA transition rule (for taxable years that include May 6, 2003), apply to capital gain dividends of RICs and REITs.

[934] §852(b)(5).

[935] §852(b)(5)(A).

[936] §852(b)(5)(A).

[937] Beginning January 1, 2006, payments of tax-exempt interest are reportable on Form 1099-INT as required by changes to §6049(b)(2) (relating to exceptions) that was amended by the 2005 Tax Increase Prevention and Reconciliation Act (TIPRA), Pub. L. No. 109-222. Effective tax year 2012, payments of tax-exempt interest are reportable on Form 1099-DIV.

[938] *See* Instructions for Form 6251, *Alternative Minimum Tax — Individuals*.

[939] §852(b)(5)(B). *See* Instructions for Form 1099-DIV.

[940] §302(a).

[941] Reg. §1.6045-1(a)(9), §1.6045-1(c)(3)(vi).

[942] §852(b)(3)(D); Reg. §1.852-9(c)(2).

[943] See §852(b)(3)(D)(iii) for rules on the calculation of this tax basis adjustment.

[944] Reg. §1.852-9(a); Instructions for Form 2438.

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must be furnished to stockholders by the 60th day after the close of the fund's tax year.[945]

Form 2439 is issued with four copies. Copy "A" for all shareholders must be attached to the fund's Form 1120-RIC, *U.S. Income Tax Return for Regulated Investment Companies*, or Form 1120-REIT, *Income Tax Return for Real Estate Investment Trusts*, along with a copy of Form 2438. Copies "B" and "C" of Form 2439 are furnished to each shareholder. Copy "B" must be attached to the shareholder's tax return on which the tax credit is claimed and Copy "C" is for the shareholder's personal records. Copy "D" is for the RIC or REIT that issued the forms.[946]

If a RIC or REIT furnishes Form 2439 (Copy "B") to a nominee representing the actual owners, for example, brokerage firms retaining shares for clients, then the nominee should, in turn, complete Copies A, B, C, and D of another Form 2439 for each actual owner, specifying his or her share of the amounts allocated to the nominee. The forms prepared by the nominee should specify the nominee's name, address and tax identification number (TIN), along with the name and address of the RIC. The nominee should write "Nominee" in the upper right corner of the Copy "B" it received from the RIC or REIT and attach it to the Copy "A" that the nominee completed.[947] The nominee should file the Copy "B" it received from the RIC or REIT, along with Copy "A," with the IRS Service Center where the nominee files its income tax return. Copies "B" and "C" of the Forms 2439 should be provided to the actual owners within 90 days after the close of the RIC's tax year.[948] A nominee has 90 days after the close of the RIC's or REIT's tax year to complete these steps. Copy D is to be maintained by the RIC or REIT.[949]

8. Information Reporting Requirements for Certain RIC Expenses

a. Investment Expenses

Under §67(c), the IRS had the authority to prescribe regulations that require individual shareholders in a non-publicly-offered RIC to include in taxable income their pro rata share of the RIC's investment expenses.[950] This rule prohibits the pass-through of an indirect deduction of these RIC expenses to its shareholders.[951] Note that individual taxpayers may not deduct investment expenses, which are subject to the disallowance of miscellaneous itemized deductions.[952]

The instructions to Form 1099-DIV require the reporting of the recipient's pro rata share of certain amounts deductible by a non-publicly-offered RIC in computing its taxable income. The amount reportable as Investment Expenses, is the amount includible in the recipient's gross income under §67(c) and must also be included in *Total Ordinary Dividends*. These expenses are not included in Qualified Dividends.[953]

Section 67(c) expressly does not apply to publicly offered RICs. A publicly offered RIC reports gross dividends on Form 1099-DIV and shareholders may include only the net amount of dividends paid in taxable income. This is the amount of dividends actually received not increased by the investor's share of the fund's investment expenses.[954]

b. Foreign Taxes Paid

A RIC may invest in foreign securities that pay income subject to taxes withheld at the source and paid to a foreign country or U.S. possession. If the total asset value of a RIC at the end of the tax year is more than 50% from stock or securities of foreign corporations, the RIC may elect to pass the benefit of the RIC's foreign taxes paid to its shareholders as either a foreign tax credit or a deduction for foreign taxes paid.[955]

If a RIC makes this election, the shareholder will receive credit for taxes paid that must be included in the shareholder's gross income in its proportionate share of the foreign taxes paid by the RIC to a foreign country or U.S. possession. A shareholder must treat its proportionate share of the taxes paid as well as the related income inclusion as income derived from the same source as would be recognized by the RIC if the RIC did not make the pass-through election.[956]

Under this election, a RIC must provide written notice to each shareholder not later than 60 days after the close of its tax year, designating the shareholder's portion of foreign taxes paid to each country or U.S. possession and the portion of the total dividend that represents income derived from sources within each country or U.S. possession.[957] If a nominee is a recipient of such notice from the RIC, the nominee must in turn provide notices to shareholders unless the RIC agrees to provide the required information directly to shareholders.[958]

Information reporting on Form 1099-DIV is required for creditable foreign tax withheld and paid (within the meaning of §901) on dividends and other distributions on stock. The RIC must report only the amount of tax it elects to pass through to the stockholder as total foreign tax paid.[959] In addition to the requirement to file Forms 1099 with shareholders, a RIC making an election under §853 also must file a statement of election using Form 1118, *Foreign Tax Credit — Corporations*, which is attached to the RIC's federal tax return. The form must include the total amount of taxable foreign-source income received from sources within all foreign countries, as well as the amount of taxable income received from each country and possession of the United States, the total §901 foreign taxes

[945] §852(b)(3)(D)(i); Reg. §1.852-9; Instructions for Forms 2438 and 2439.
[946] *See* Instructions for Form 2439.
[947] Reg. §1.852-9(b)(2); Instructions for Form 2439.
[948] Reg. §1.852-9(b)(1); Instructions for Forms 2438 and 2439. A nominee acting as a custodian of a unit investment trust described under §851(f)(1) has 70 days (instead of 90 days) to provide Forms 2439 to actual owners. Nominees who are residents of foreign countries have 150 days. Instructions for Form 2439.
[949] Reg. §1.852-9(b)(2); Instructions for Form 2439.
[950] Reg. §1.67-2T(a)(5).
[951] §67(c). See IRS Pub. 550, *Investment Income and Expenses*, for a further discussion of investment expense limitations related to mutual fund investments.
[952] Beginning after 2017, miscellaneous itemized deductions are disallowed. §67(h), added by the One Big Beautiful Bill Act (OBBBA), Pub. L. No. 119-21, §70110.
[953] *See* Instructions for Form 1099-DIV.
[954] §67(c)(2).
[955] §853(a).
[956] §853(b)(2).
[957] Reg. §1.853-3(a).
[958] Reg. §1.853-3(b).
[959] *See* Instructions for Form 1099-DIV.

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paid by the RIC, and the total taxes paid to each country. The RIC also must provide the total taxes paid to which the election does not apply by reason of any IRC provision other than §853(b), including but not limited to §901(j), §901(k), or §901(l). Form 1118 also must disclose the date, form, and contents of the notice to shareholders, and the proportionate share of creditable foreign taxes paid to each foreign country or possession during the tax year as well as the foreign income received from sources within each foreign country or possession during the tax year attributable to one share of stock of the RIC.[960]

B. Real Estate Mortgage Investment Conduits (REMICs) and Other Collateralized Debt Obligations (CDOs)

1. In General

The 1986 Tax Reform Act created a new investment vehicle called a real estate mortgage investment conduit (REMIC) designed to hold commercial and residential mortgages in trust and issue securities representing an undivided interest in these mortgages. In general, a REMIC is an entity that holds a fixed pool of mortgages secured by interests in real property. An entity that elects REMIC status issues multiple classes of interests to investors classified as "regular interests" and a single class of "residual interests."[961] For an entity to qualify for the REMIC election, substantially all of its assets on the close of the third month beginning after the REMIC's "startup day," or the date the REMIC issues all of its regular and residual interests, and at all times thereafter, must consist of qualified mortgages, temporary cash flow investments of qualified mortgage income, qualified reserve assets, and foreclosure property.[962] An election for an entity to be treated as a REMIC is irrevocable.[963]

Similar to partnership income, the income of a REMIC is generally passed through as taxable income to the holders of interests in the REMIC.[964] The REMIC may, however, be subject to tax on certain prohibited transactions, such as dispositions of mortgage assets except by foreclosure, default, replacement, bankruptcy or liquidation, receipt of income from assets that are not qualified mortgages or permitted investments, and compensation for services rendered by the REMIC.[965]

2. Form 8811

A REMIC must also file Form 8811, *Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations (CDOs).* Upon filing Form 8811, the instrument is included in IRS Pub. 938, *Real Estate Mortgage Investment Conduits (REMICs) Reporting Information (And Other Collateralized Debt Obligations (CDOs))*,[966] and listed representatives of the issuer must respond to requests for related tax information from nominees, corporations, non-calendar year taxpayers, and §6049(d)(7)(B) entities. The requesting person can locate the REMIC or issuer from whom information is needed and request the information from the official or representative of the REMIC or issuer in the manner specified in the publication. The publication will specify either an address or an address and telephone number. If IRS Pub. 938 provides only an address, the request must be made in writing and mailed to the specified address. Further, the request must specify the calendar quarters (e.g., all calendar quarters in 1989) and the classes of REMIC regular interests or collateralized debt obligations (CDOs) for which information is needed.[967] For CDOs, with the exception of the REMIC 95% asset test information, Forms 1099-INT or Forms 1099-OID must be accompanied by the same supplemental information statements, and provided to holders along with the Forms 1099 at the same time, as required for REMIC regular interests.[968]

3. Form 1066

For the first tax year, an entity wishing to elect REMIC status must file Form 1066, *U.S. Real Estate Mortgage Investment Conduit Income Tax Return*, accompanied by a separate statement disclosing:

(1) Information concerning the terms of the regular interests and the designated residual interest of the REMIC, or a copy of the offering circular or prospectus containing such information; or

(2) A description of the prepayment and reinvestment assumptions made in accordance with §1272(a)(6) and its regulations, including documentation supporting the selection of the prepayment assumption.[969]

For reporting purposes, a REMIC is required to file Form 1066 annually with the IRS. Form 1066 must be filed by the 15th day of the third month following the close of the taxable year. If the return will be the entity's final return, then Form 1066 is due by the 15th day of the third month following the date the REMIC ceased to exist.[970] The return filed for the REMIC's first taxable year must include the REMIC's employer identification number (EIN), which must not be the same as the identification number of any other entity; information concerning the terms and conditions of the regular interests and the residual interest of the REMIC, or a copy of the offering circular or prospectus containing such information; a description of the prepayment and reinvestment assumptions that are made pursuant to §1272(a)(6) and the regulations thereunder, including a statement supporting the selection of the prepayment assumption; the form of the electing qualified entity under State law or, if an election is being made with respect to a segregated pool of assets within an entity, the form of the entity that holds the segregated pool of assets; and any other information required by the form.[971] Returns filed for subsequent years must include the amount of principal outstanding on each class of regular interests as of the close of the taxable year, the amount of daily accruals determined under §860E(c), and the information specified in Reg. §1.860D-1(d)(2)(i), §1.860D-1(d)(2)(iv),

[960] Reg. §1.853-4. *See* T.D. 9357.
[961] §860D.
[962] §860D(a)(4), §860G(a)(5), §860G(a)(9).
[963] Reg. §1.860D-1(d)(1).
[964] §860A(b). *See* Reg. §1.860F-4(a).
[965] §860F(a).
[966] Reg. §1.6049-7(e)(5).
[967] Reg. §1.6049-7(e)(5).
[968] Reg. §1.6049-7(f).
[969] Instructions for Form 1066, *U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return.*
[970] Instructions for Form 1066.
[971] Reg. §1.860D-1(d)(2).

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and §1.860D-1(d)(2)(v).[972] Form 1066 must be accompanied by Schedules Q, the quarterly notices that must be provided to residual interest holders.[973]

The person authorized to sign the Form 1066 is dependent upon the startup date of the REMIC. For a REMIC with a startup date after November 9, 1988, Form 1066 may be signed by any person who could otherwise sign the return in the absence of a REMIC election, such as an officer of a corporation or a trustee of a trust. A REMIC formed before November 10, 1988, may elect to follow this provision or, absent an election, Form 1066 must be signed by a residual interest holder or fiduciary acting for the REMIC, who has furnished notice under Reg. §301.6903-1(b).[974]

In addition to filing Form 1066, a REMIC may be required to file Forms 1099-A to report abandonments and acquisitions through foreclosures,[975] Forms 1099-INT and 1099-OID to report accrued income of regular interest holders,[976] Forms 1099-MISC to report payments of rent, commissions, or other fixed or determinable income,[977] and Forms 1099-S to report proceeds from real estate transactions.[978] For reporting thresholds, see Worksheet 2.

4. *Records Retention*

REMICs must keep sufficient records for as long as their contents may be material in the administration of any Internal Revenue law, including records concerning investments to show that the REMIC is in compliance with §860A through §860G during each taxable year.[979]

5. *REMIC Regular Interest Holders*

a. *Regular Interest Holder Defined*

A regular interest in a REMIC is any interest that is issued on the startup day with fixed terms and which is designated as a regular interest if it unconditionally entitles the holder to receive a specified principal amount and interest payments with respect to such interest at or before maturity, which are payable based on a fixed rate, or consist of a specified portion of the interest payments on qualified mortgages that does not vary during the period that the interest is outstanding.[980] Because regular interests are treated as debt instruments by their holders for all purposes of the Code, earnings on regular interests may be characterized as interest, possibly including original issue discount (OID). Interest earnings must be based on a fixed rate (with variable rates allowed only to the extent provided in the regulations) and included in a holder's income using an accrual rather than a cash method of accounting.[981]

Regular interests may be issued with OID that must be calculated for each accrual period based on the increase in the present value of remaining payments on the instrument.[982] OID on a REMIC regular interest generally equals the difference between the present values of remaining payments on the instrument over the instrument's adjusted basis at the beginning of the accrual period.[983] The present value of remaining payments is determined on the basis of the instrument's original yield to maturity (compounded at the close of each accrual period), calculated on the assumption that prepayments of the underlying mortgages may occur and taking into account any prepayments that occur before the close of the accrual period.[984]

Gain on the disposition of a regular interest is treated as ordinary income to the extent the amount would have been included in income if the yield to maturity on the regular interest had been 110% of the applicable federal rate under §1274(d) at the beginning of the holding period less the amount included in income.[985]

b. *Special Exempt Recipient Rules*

Interest and OID paid to the holder of a REMIC regular interest or collateralized debt obligation (CDO) that is deemed to be an exempt recipient under §6049(d)(7)(B) is not subject to reporting on Forms 1099. These entities include an organization exempt from taxation under §501(a), an individual retirement account (IRA), the United States, a state, the District of Columbia, a possession of the United States, or a political subdivision or a wholly owned agency or instrumentality of any of the foregoing government entities, a foreign government, a political subdivision, or an international organization, a foreign central bank of issue or the Bank for International Settlements, and certain charitable trusts under §4947(a)(1). For calendar quarters and calendar years after 1988, exempt recipients also include corporations; securities and commodities dealers; real estate investment trusts (REITs); regulated investment companies (RICs); common trust funds under §584(a); charitable remainder trusts under §664(c); persons that hold the REMIC regular interest or CDO as middlemen (as defined in Reg. §1.6049-4(f)(4)); financial institutions such as mutual savings banks, savings and loan associations, building and loan associations, cooperative banks, homestead associations, credit unions, industrial loan associations or banks, or other similar organizations; and other REMICs.[986]

In lieu of Forms 1099 reporting, brokers and middlemen holding REMIC regular interests as nominees for corporations, non-calendar year taxpayers, securities and commodities dealers, REITs, RICs, common trust funds, financial institutions, and charitable remainder trusts may request certain information on their REMIC regular interest holdings.[987] Such requests from

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[972] Reg. §1.860F-4(b)(2).

[973] Reg. §1.860F-4(e). *See also* Instructions for Form 1066, at Schedule Q, *Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.* Note that Schedule Q (Form 1066) is a separate tax form that is not part of Form 1066.

[974] Reg. §1.860F-4(c). *See also* Instructions for Form 1066.

[975] §6050J, §860G(a)(8).

[976] Reg. §1.6049-7.

[977] Reg. §1.6041-1(a)(1), §1.6041-1(b)(2); *see also* Prop. Reg. §1.6041-1(a)(1)(i), Prop. Reg. §1.6041-1(a)(3), REG-113229-25, 91 Fed. Reg. 20,500 (Apr. 17, 2026).

[978] §6045(e); Reg. §1.6045-4.

[979] Reg. §1.860D-1(d)(3).

[980] §860G(a)(1).

[981] §860B(b), §860G(a)(1).

[982] §860B(d), §1272(a)(6)(C)(i).

[983] §1272(a)(6).

[984] §1272(a)(6)(B).

[985] §860B(c).

[986] Reg. §1.6049-7(c).

[987] Reg. §1.6049-7(e)(4). With the exception of brokers and middlemen acting as nominees, these entities hold their interests directly with the REMIC.

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interest holders should be made in writing or by telephone using information found in IRS Pub. 938, *Real Estate Mortgage Investment Conduits (REMICs) Reporting Information*, which is a compilation of contact information for REMICs including names of representatives or issuers, addresses, and telephone numbers.[988] A REMIC must respond to a request from an interest holder on or before the later of the 45th day after receipt of the request, the 45th day after the close of the calendar quarter for which the information was requested, or, if the request is made for the last calendar quarter in a year, no later than March 15 of the year following the calendar quarter for which the information was requested.[989] A representative of the REMIC may respond via telephone, written statements, printed publications, or any method agreed to by the parties.[990] Responses must be made by the later of 30 days after the close of the calendar quarter for which the information was requested or two weeks after receipt of the request.[991]

c. *Form 1099-INT, Form 1099-OID, and Special Supplement*

Interest totaling $10 or more that accrues to a REMIC regular interest during the calendar year is reportable on Form 1099-INT by any broker or middleman who holds any REMIC regular interest as a nominee for owners not otherwise exempt from this reporting requirement.[992] Form 1099-INT must include the name, address, and taxpayer identification number (TIN) of the record holder; the CUSIP number; account number, serial number, or other identifying number or information of each REMIC regular interest or collateralized debt obligation with respect to which a return is being made; the aggregate amount of interest paid or deemed paid to the record holder for the period during the calendar year for which the return is made; the name, address, and TIN of the person required to file this return; and any other information required by the form.[993]

For REMIC regular interests issued with OID, the reporting requirements for Form 1099-OID mimic those for Form 1099-INT for interests issued without OID. Form 1099-OID includes accrued interest that is considered to be "qualified periodic interest" for purposes of §1273(a)(2) and is reported as part of "other periodic interest." Stated interest to be paid on the instrument (i.e., the coupon rate) may not always be considered "qualified periodic interest," in which case it becomes part of the OID calculation resulting in the amount reportable as OID on Form 1099-OID.[994] For purposes of determining whether a REMIC regular interest is issued with OID and identifying the related amount, a broker or middleman may not rely on IRS Pub. 1212, *Guide to Original Issue Discount (OID) Instruments*. Information specific to REMICs must be obtained directly from the issuer, using IRS Pub. 938, *Real Estate Mortgage Investment Conduit (REMICs) Information Reporting*.

Forms 1099-INT and 1099-OID must be filed with the IRS after September 30 of the year paid but no later than February 28, or April 1, if filing electronically, of the following year.[995] The general provisions for filing extension requests apply,[996] as well as other basic §6049 reporting rules discussed at V., below.

For each Form 1099-INT and 1099-OID that is required to be filed, a statement must also be furnished by the REMIC to the holder named on the Form 1099.[997] The statement must contain all the information required to be included on Forms 1099-INT and 1099-OID, including a legend shown on Copy B of the official form, and an indication that this information is being furnished to the IRS.

The statement for the calendar year must also show information necessary to compute the accrual of market discount. This calculation may differ depending on whether the instrument was issued with OID. For an instrument issued without OID, for calendar years after 1989, this requirement is satisfied by furnishing to the holder for each accrual period during the year a fraction, the numerator of which equals the interest, other than OID, allocable to the accrual period. The denominator of the fraction equals the interest, other than OID, allocable to the accrual period plus the remaining interest, other than OID, as of the end of that accrual period. The REMIC or issuer must be consistent in the method used to calculate the fraction.[998] In the case of de minimis OID, the REMIC or issuer may choose to calculate the discount in the same manner as if the instrument had been issued after 1989 with OID.[999]

If the instrument was issued with OID, the discount for calendar years after 1989 is calculated using a fraction, the numerator of which equals the OID allocable to that accrual period and the denominator of which equals the OID allocable to that accrual period plus the remaining OID as of the end of that accrual period. Moreover, any events that have occurred prior to the close of the accrual period and the prepayment assumption that was determined as of the startup day of the REMIC or the issue date of the collateralized debt obligation (CDO) are to be taken into consideration in the calculation of the discount.[1000]

The supplemental statements must also disclose the percentage of REMIC assets that are qualifying real property loans under §593; the percentage of REMIC assets that are owned by domestic building and loan associations, domestic savings and loan associations, or Federal savings and loan associations;[1001] and the percentage of REMIC assets that are real estate assets associated with REITs.[1002] If real estate assets as a percentage of total REMIC assets are not 95% or greater, then additional reporting requirements apply.[1003]

[988] Reg. §1.6049-7(e)(5).
[989] Reg. §1.6049-7(f)(7)(ii).
[990] Reg. §1.6049-7(e)(3)(i).
[991] Reg. §1.6049-7(e)(3)(ii).
[992] *See* Instructions for Forms 1099-INT and 1099-OID.
[993] Reg. §1.6049-7(b)(2)(iii)(A).
[994] Reg. §1.6049-7(b)(2)(iii)(B).
[995] See IRS website for online fillable forms for Form 1099-OID. Reg. §1.6049-7(b)(2)(iv).
[996] Reg. §1.6081-1; General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).
[997] Reg. §1.6049-7(f)(1).
[998] Reg. §1.6049-7(f)(2), effective for calendar years after December 31, 1991.
[999] Reg. §1.6049-7(f)(2)(ii)(K).
[1000] Reg. §1.6049-7(f)(2)(ii)(K).
[1001] §7701(a)(19).
[1002] §856(c)(5)(B). In this context, the term "real estate assets" means real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other real estate investment trusts which meet the requirements of this section.
[1003] Reg. §1.6049-7(f)(3). *See also* §856(c)(5)(B).

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A statement must also include a holder's allocable share of §67(a) investment expenses related to their single class REMIC regular interests,[1004] that is, interests in those entities that would be classified as trusts had they not elected REMIC status.[1005] Those amounts must also be included as part of reportable interest on Form 1099-INT for REMIC regular interests issued without OID or as part of "other periodic interest" on Form 1099-OID for REMIC regular interests issued with OID.[1006]

The statement must be furnished to holders after April 30 of that year and on or before March 15 of the following year, but not before the final interest payment (if any) for the calendar year.[1007] To meet the statement requirement, the payor or filer must furnish a copy of Form 1099-INT or 1099-OID and separate statements containing the additional information to the REMIC or FASIT regular interest holder or CDO holder. These requirements may be satisfied either by providing a copy of the Form 1099 plus a separate statement containing the supplemental information, or a substitute statement containing all the required disclosures that complies with current IRS procedures for providing Form 1099 recipient statements.[1008]

Gross proceeds from sales and other dispositions of REMIC regular interests are treated as debt obligations for all purposes of the Code and fall within the definition of "securities" under Reg. §1.6045-1(a)(3).[1009] Thus, these transactions must be reported on Form 1099-B even though §860B(c) may require a portion of the gain on the disposition to be treated as ordinary income.

For further discussion of Form 1099-B reporting requirements, see III.D., above.

d. Foreign REMIC Holders

In general, a foreign holder of a registered REMIC regular interest should be eligible to claim exemption from both §6049 reporting/withholding and §1441 and §1442 reporting/withholding by providing the payor with a properly executed Form W-8. Certain REMIC holders, including a foreign corporation, a foreign government, a political subdivision thereof, an international organization, a foreign central bank of issue (as defined in Reg. §1.895-1(b)(1)), and the Bank for International Settlements, are deemed to be exempt from the reporting requirements under §6049(a).[1010]

6. Other Collateralized Debt Obligations (CDOs)

Collateralized debt obligations (CDOs) are subject to the same reporting requirements, exempt recipient definitions, and provisions for requests of information from nominees or issuers as those for REMIC regular interests.[1011] Qualified periodic interest (on OID instruments) or stated interest (on non-OID instruments), however, will not be reportable on an accrual basis, since §6049(d)(7)(A) and §860B(b) provide for accrual only for REMIC regular interests. Thus, for CDOs, only interest actually paid and OID accrued on the obligations may be included in the definition of "interest" for purposes of §6049(a) reporting.[1012]

For purposes of these regulations, the term "collateralized debt obligation" means any debt instrument (except a tax-exempt obligation) described in §1272(a)(6)(C)(ii) if issued after December 31, 1986.[1013] A debt instrument is defined as any debt instrument if payments can be accelerated by the prepayment of underlying obligations securing the instrument or by other events specified in the regulations. Examples include those debt obligations secured by automobile purchase loans; any consumer-related accounts receivables, such as from revolving credit accounts; commercial bank loans; or any other pool of debt obligations with prepayment provisions.

Similar to REMICs, issuers of collateralized debt instruments must file Form 8811, *Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations*, for instruments issued after December 31, 1986.[1014]

7. REMIC Residual Interest Holders

a. In General

For purposes of Subtitle F of the Code, a REMIC is treated as a partnership, and any holder of a residual interest is treated as a partner.[1015] A REMIC residual interest is an interest in a REMIC that is issued on the startup day, not a regular interest, and designated as a residual interest.[1016] To qualify as a REMIC, an entity may have only a single class of residual interests, and all distributions of the residual interests must be pro rata.[1017]

Holders of residual interests must take into account, on a quarterly basis, their daily portions of the REMIC's taxable income or net loss for each day during the tax year that the holders actually held their interests.[1018] The daily portion is calculated by allocating to each day in the quarter a ratable portion of the REMIC's quarterly taxable income or net loss in proportion to each residual interest holder's interests on that particular day.[1019] All allocated income or loss must be treated as ordinary in character.[1020] The holders' bases in their REMIC interests must be increased quarterly by any allocated taxable income and reduced by any actual distributions and/or allocated net losses from the REMIC.[1021]

For tax deduction purposes, losses from REMIC residual interests are limited to the holder's adjusted tax basis in its interest, calculated on the close of the respective calendar quarter (and not reduced by any net losses allocated to that particular quarter). Disallowed losses may be indefinitely carried for-

[1004] Reg. §1.67-3T(a)(2)(ii)(B).

[1005] Reg. §1.67-3T(f)(2)(ii).

[1006] Reg. §1.67-3T(f)(2)(ii). *See also* Instructions for Forms 1099-INT and 1099-OID.

[1007] Reg. §1.6049-7(f)(5)(i).

[1008] Reg. §1.6049-7(f)(6)(i).

[1009] However, a REMIC regular interest is not a "specified security" under Reg. §1.6045-1(a)(14)(ii) and, therefore, is not a "covered security" subject to the broker basis reporting requirements imposed by §6045(g).

[1010] Reg. §1.6049-7(c).

[1011] Reg. §1.6049-7, applicable for taxable years beginning after December 31, 1986.

[1012] Reg. §1.6049-7(a)(1).

[1013] Reg. §1.6049-7(d)(2).

[1014] Reg. §1.6049-7(b)(1).

[1015] Reg. §1.860F-4(a).

[1016] §860G(a)(2).

[1017] §860D(a)(3).

[1018] §860C(a)(1).

[1019] §860C(a)(2).

[1020] §860C(e)(1).

[1021] §860C(d).

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ward. Items of income, gain, loss or deduction allocable to a prohibited transaction; net income from foreclosure property; deductions for personal exemptions under §151; foreign taxes; charitable contributions provided in §170; net operating losses (NOLs) under §172; depletion; and §211 individual itemized deductions may not be taken into account.[1022]

In determining its taxable net income or net loss, the REMIC must use an accrual method of accounting and, except for certain modifications, calculate taxable income in the same manner as an individual.[1023] Interest accrued on the REMIC's regular interests is considered deductible interest expense to the REMIC.[1024]

Actual distributions made to a residual holder are not includible in the holder's gross income unless they exceed the holder's adjusted basis, in which case the excess is considered gain from the sale of the holder's interest.[1025]

Special rules prevent residual holders from reducing their taxable income below any "excess inclusions" for the year.[1026] "Excess inclusions" are defined as the excess of net income allocated from the REMIC over the sum of "daily interest accruals" for the days during the applicable calendar quarter in which the residual interests were held.[1027] Daily interest accruals are calculated by using 120% of the §1274 "federal long-term rate" compounded at the end of each quarter.[1028] Special rules apply to certain financial institutions and affiliated groups.[1029]

Holders may not offset "excess inclusions" by §172 NOLs.[1030] Also, excess inclusions are considered unrelated business income to tax-exempt holders.[1031] Moreover, the character of excess inclusions passes through to investors in REITs, RICs, common trust funds and certain cooperatives holding REMIC residual interests.[1032]

b. Form 1066, Schedule Q

A REMIC must mail or otherwise deliver a notice on Schedule Q, *Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation*, from Form 1066 to residual interest holders no later than the last day of the month following the close of each calendar quarter.[1033] Nominees of residual interest holders must provide the notice to actual owners no later than 30 days after receiving Schedule Q from the REMIC.[1034] Copies of Schedule Q for each person who was a residual holder at any time during the taxable year and for each quarter in which that person was a residual holder must be attached to and filed once a year with the REMIC's Form 1066.[1035]

Schedule Q discloses to residual holders their share of REMIC taxable income or net loss for the quarter; the amount, if any, of any excess inclusion; any allocable §67(a) investment expenses if the holder is also a pass-through entity; any information for the 95% REMIC asset tests; and any other information required by Schedule Q of Form 1066.[1036]

c. Treatment of Nonresident Alien Holders

If the holder of a residual interest in a REMIC is a nonresident alien individual or a foreign corporation, for purposes of §871(a), §881, §1441, and §1442, amounts includible in the gross income of the holder must be taken into account when paid or distributed (or when the interest is disposed of), and no exemption from the taxes imposed (and no reduction in the rates of such taxes) shall apply to any excess inclusion. Moreover, these amounts may be taken into account earlier where necessary or appropriate to prevent the avoidance of tax imposed.[1037]

C. Widely Held Fixed Investment Trusts (WHFITs)

1. In General

Trustees and middlemen are required to report all items of gross income and proceeds attributable to a trust interest holder (TIH) of a Widely Held Fixed Investment Trust (WHFIT) on Forms 1099.[1038] Prior to this date, this information was reported on Form 1041, *U.S. Income Tax Return for Estates and Trusts*, and Schedules K-1 thereof.

A WHFIT is defined to be an arrangement classified as a trust under Reg. §301.7701-4(c), in which at least one interest is held by a middleman. The term "middleman" means a trust interest holder who holds a trust interest on behalf of, or for the account of, another person, or who otherwise acts in a capacity as an intermediary for the account of another person (for example, a broker holding an interest in a street name for a customer).

A WHFIT may be classified as either a widely held mortgage trust (WHMT) or a non-mortgage widely held fixed investment trust. A widely held mortgage trust is a WHFIT whose assets consist of mortgages, regular interests in a REMIC, interests in other WHMTs, reasonably required reserve funds, amounts received on the assets just described pending distribution to trust investment holders (TIHs), and cash and short-term contracts for the purchase of the assets during an initial funding period.[1039] A non-mortgage widely held fixed investment trust (NMWHFIT) is a WHFIT other than a widely held mortgage trust.[1040]

WHFIT information may be calculated in any manner that enables a requesting person to determine with reasonable accuracy the WHFIT items required to be disclosed that are attrib-

[1022] §860C(e)(2).
[1023] §860C(b)(1).
[1024] §860C(b)(1)(A). Market discount under §1276(a) on the collateralized obligations would be includible in taxable income. *See* §860C(b)(1)(B).
[1025] §860C(c).
[1026] §860E(a)(1).
[1027] §860E(c)(1).
[1028] §860E(c)(2).
[1029] §860E(a)(2), §860E(a)(3).
[1030] §860E(a)(3).
[1031] §860E(b).
[1032] §860E(d).
[1033] Reg. §1.860F-4(e)(2)(i).
[1034] Reg. §1.860F-4(e)(3).
[1035] Reg. §1.860F-4(e)(4).
[1036] Reg. §1.860F-4(e)(1).
[1037] §860G(b). In 2008, the IRS published final regulations (T.D. 9415, 73 Fed. Reg. 40,171 (July 14, 2008)) providing guidance on income recognition, income sources, and withholding obligations when a real estate mortgage investment conduit residual interest is allocated to foreign persons, including foreign partners in a domestic partnership.
[1038] Final regulations were issued effective January 24, 2006 (T.D. 9241, 71 Fed. Reg. 4002 (Jan. 24, 2006)).
[1039] Reg. §1.671-5(b)(23).
[1040] Reg. §1.671-5(b)(12).

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utable to a beneficial owner for the taxable year of that owner. The manner of calculation must generally conform with industry practice for calculating the WHFIT items for the type of asset or assets held by the WHFIT, and must enable a requesting person to separately state any WHFIT item that, if taken into account separately by a beneficial owner, would result in an income tax liability different from that which would result if the owner did not take the item into account separately.[1041]

A trustee of a WHFIT may choose to calculate information on the basis of a calendar month, calendar quarter, or half or full calendar year, provided that a trustee uses the same calculation period for the life of the WHFIT and the information provided by the trustee meets the disclosure requirements. Regardless of the calculation period chosen by the trustee, the trustee must provide information solicited by a requesting person on a calendar year basis. The trustee may provide additional information to requesting persons throughout the calendar year at the trustee's discretion.[1042]

The cash receipts and disbursements method of accounting must be used by the WHFIT to calculate and report the appropriate information unless another method is required by the Code or regulations with respect to a specific trust item.[1043]

Some modifications of mortgages held by WHMTs that contain signed guarantee arrangements are not subject to WHFIT reporting.[1044] Treasury and the IRS determined that, pending future guidance, specific types of modifications made to mortgages held by a WHMT need not be reported if a guarantee arrangement compensates the trust or all the trust interest holders for any shortfalls that would otherwise arise because of the modifications.

2. Reporting Requirements

a. Providing Information to Requesting Persons

Certain information is required to be reported to a "requesting person" who may be a middleman, a beneficial owner who is a broker, a beneficial owner who is an exempt recipient who holds a trust interest directly and not through a middleman, a non-calendar-year beneficial owner who holds a trust interest directly and not through a middleman, or a representative or agent of any of the foregoing.[1045]

The following information must be provided by all WHFITs to a requesting person:

- name and taxpayer identification number (TIN) of the WHFIT,
- name and address of the trustee,
- CUSIP number, account number, serial number, or other identifying number of the WHFIT,
- classification of the WHFIT as either a widely held mortgage trust (WHMT) or a non-mortgage widely held fixed investment trust (NMWHFIT),
- calculation period of the WHFIT,
- items of income, expense and credit,
- non-pro-rata partial principal payments,
- asset sales and dispositions,
- redemptions and sales of WHFIT interests,
- bond premium information, and
- market discount.

Information must be provided to requesting persons on or before the later of the 30th day after the close of the calendar year to which the request relates, or the day that is 14 days after the receipt of the request.[1046] Information may be provided by written statement sent by first class mail to the address provided by the requesting person, by printed publication, by posting to an Internet website, electronic mail transmission, or by any other method agreed to by the trustee and the requesting person.[1047]

The trustee must also identify a representative of the WHFIT who will provide the information to the requesting person. The trustee also may identify an Internet website at which the trustee will provide the information. This information must be printed in a publication generally read by, and available to, requesting persons, stated in the trust's prospectus, or posted at the trustee's Internet website.[1048]

b. Requirement to Report on Forms 1099

A trustee must file the appropriate Forms 1099 with the IRS with respect to any trust investment holder (TIH) who holds an interest in the WHFIT directly and not through a middleman. Every middleman must file the appropriate Forms 1099 with the IRS with respect to any TIH on whose behalf or account the middleman holds an interest in the WHFIT or acts as an intermediary.[1049] A Form 1099 is not required with respect to a TIH who is an exempt recipient unless the trustee or middleman effects backup withholding under §3406 on payments made to an exempt recipient (because, for example, the exempt recipient has failed to furnish a Form W-9 on request). If the trustee or middleman implements backup withholding, then the amount withheld must be reported on a Form 1099.[1050]

Information to be provided on Forms 1099 include the name, address, and taxpayer identification number (TIN) of the TIH, information regarding the person filing the Form 1099, gross income, all non-pro-rata partial principal payments received by the WHFIT that are attributable or distributed to the TIH, trust sales proceeds, redemption asset proceeds, sale of a trust interest or interests on a secondary market established for the NMWHFIT for the calendar year, and any other information required by the Forms 1099.[1051]

[1041] Reg. §1.671-5(c)(1)(i).
[1042] Reg. §1.671-5(c)(1)(ii).
[1043] Reg. §1.671-5(c)(1)(iii)(A).
[1044] Notice 2008-77, 2008-40 I.R.B. 814, applicable for mortgage modifications as of January 1, 2007.
[1045] Reg. §1.671-5(b)(16).
[1046] Reg. §1.671-5(c)(4)(i)(A).
[1047] Reg. §1.671-5(c)(4)(ii).
[1048] Reg. §1.671-5(c)(4).
[1049] Reg. §1.671-5(d)(1)(i).
[1050] Reg. §1.671-5(d)(1)(ii).
[1051] Reg. §1.671-5(d)(2)(ii).

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c. *Written Tax Information Statement Submitted to a Trust Interest Holder (TIH)*

A tax information statement must be furnished to the TIH that includes the information provided to the IRS on Forms 1099 as well as additional information specific to all items of income, deduction and credit, information enabling unit interest holders to determine gain or loss on the sale or disposition of a WHFIT asset, information with respect to redemptions and sales of unit interests, and any other information necessary for a unit interest holder that is a beneficial owner of a unit interest to report, with reasonable accuracy, the items of income, deduction and credit attributable to the portion of the trust treated as owned by the unit interest holder.[1052]

Moreover, the written tax information statement must inform the TIH that the items of income, deduction, and credit, and any other information shown on the statement must be taken into account in computing the taxable income and credits of the TIH on the federal income tax return of the TIH. If the written tax information statement reports that an amount of qualified dividend income is attributable to the TIH, the written tax information statement also must inform the TIH that the TIH must meet the requirements of §1(h)(11)(B)(iii) to treat the dividends as qualified dividends.[1053]

The written tax information statement must be furnished to the TIH on or before March 15th of the year following the calendar year for which the statement is being furnished.[1054]

A trustee or middleman must maintain in its records a copy of any written tax information statement furnished to a TIH, and such supplemental data as may be required to establish the correctness of the statement for a period of no less than five years from the due date for furnishing the written tax information statement.[1055]

[1052] Reg. §1.671-5(e).

[1053] Reg. §1.671-5(e)(2)(ix).

[1054] Reg. §1.671-5(e)(3).

[1055] Reg. §1.671-5(e)(4).

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V. Year-End Reporting

A. *Who Is Required to Report*

The regulations that set forth the requirements for payments reportable on Forms 1099 are specific as to the person or entity deemed to be a payor of a reportable transaction. A payor subject to the reporting requirements is defined based on the tax status of the payor in conjunction with the type of payment that is to be reported such as interest, original issue discount, dividends, broker proceeds, or certain miscellaneous payments. However, the particular circumstances of a reportable transaction may dictate who the appropriate filer may be and what responsibilities the filer may have relative to information reporting irrespective of form type. Section 6041(a) and §6045 and related regulations address some specific situations that require filing of a Form 1099.[1056] Specific guidance is applicable to nominees or middlemen, successors of a merger, as well as qualified settlement funds to act in a reporting capacity as a payor or filer.

1. *Nominees/Middleman Returns*

Generally, anyone receiving a Form 1099 for amounts that belong in whole or in part to another person should, in turn, file another Form 1099 showing the actual owner as the recipient and the person acting as a nominee as the payor.[1057] Nominees must file information returns with the IRS in the required format on paper or in electronic format, depending upon whether the applicable thresholds have been met by the nominee.[1058] Recipient statements must also be provided to the actual owner.[1059] A husband or wife is not required to file a nominee return to show payments made for his or her spouse.[1060] In addition, those persons selling or buying debt obligations with original issue discount (OID) or accrued interest between payment dates are not required to file a Form 1099-OID or Form 1099-INT showing that portion of OID or stated interest allocable to the buyer/seller of the obligation.[1061]

2. *Successor/Predecessor*

For the calendar year in which a merger occurs, if the surviving corporation, partnership, or sole proprietorship becomes the owner of all the assets and assumes all the liabilities of the predecessor corporation, partnership, or sole proprietorship, the information reporting responsibilities may be assumed by the successor in part or full depending on the agreement between the parties. Combined filing is available if the predecessor would have been required to file information returns for the period before the merger and the successor entity becomes responsible for all reporting after the merger. All reportable payments, including backup withholding, would be combined and reported on a single Form 1097, 1099, 1098, 3921, 3922, 5498, or W-2G by the surviving entity. If an agreement is not reached between the separate entities involved in the merger, each entity may be required to prepare and file separate information returns for the period before the date of merger.[1062]

Parties to the merger may enter into an agreement to clearly define which payor or payors will be responsible for filing information returns with recipients and the IRS for the year in which the merger occurs. A combined reporting agreement between the merging entities must clearly state which forms are to be reported separately by each entity, or if the successor is going to be responsible for filing all forms for the entire year. Alternatively, the entities may agree to perform combined filing for only certain form types, a decision that may result from a difference in systems used for information reporting or reporting performed by certain business units. The ultimate objective should be to prepare and file information returns that clearly and accurately report the information to the recipient as well as the IRS.[1063]

If the successor does agree to file combined information returns for the entire year, they must notify IRS to this effect. The notification must include the successor and predecessor names, addresses, telephone numbers, and TINs, as well as the name and telephone number of the person who prepared the notification. The amount of federal income tax withheld by each entity for each form type filed on a combined basis must also be included in the notification. This statement is to be sent to the IRS Information Returns Branch separate from the filing of information returns by the required filing date for the returns. Failure to provide this information to the IRS will potentially create issues with the reconciliation of taxes withheld and reported on Form 945 for the entire year.[1064]

3. *Qualified Settlement Funds*

A qualified settlement fund (QSF) is defined under §468B as a fund, account or trust that is established pursuant to an order of a governmental authority and subject to continuing jurisdiction of that authority, to resolve any and all claims resulting from an event that gave rise to the claim, and (1) is defined as a trust under applicable state law, or (2) the assets of which are segregated from the other assets of the transferor or claimant. A QSF allows claimants to set up structured settlements without defendants' participation thereby allowing plaintiffs to receive the tax advantages of these settlements on terms that best meet their needs. Although QSFs are commonly used to settle

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[1056] CCA 201533012 (county court clerks issuing payments relating to litigation or court procedures, such as real estate foreclosures, are not required to file Form 1099).

[1057] *See* General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G). *See also* specific "Instructions for Recipient" on Copies "B" of Forms 1099-DIV, 1099-INT, and 1099-OID.

[1058] *See* General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G), Sections E and M, for specific instructions for filing returns with IRS and sending statements to recipients.

[1059] *See* General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[1060] General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[1061] *See* specific "Instructions for Recipient" on Copy "B" of Form 1099-OID.

[1062] *See* Rev. Proc. 99-50, and General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[1063] *See* Rev. Proc. 99-50, and General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G). Although IRS does not require the payor or filer to contact recipients to explain how information specific to their payments or transactions will be reported to them, a payor may minimize information reporting issues for recipients by providing additional materials that help the recipient to understand what is being reported to them as well as the IRS.

[1064] *See* Rev. Proc. 99-50.

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class action litigation, they also offer advantages to plaintiffs with individual claims.

A QSF is required to file information returns if it makes distributions to claimants where one or more transferors would have been required to make a return had that transferor made the distribution directly to the claimant. If a QSF makes a payment or distribution to a transferor, the fund is deemed to have made the payment or distribution to the transferor in the course of a trade or business, and thus would be subject to the reporting requirements of §6041(a) and §6041A. The QSF would also be subject to these reporting requirements if the QSF makes a payment or distribution to a recipient on behalf of a transferor or claimant. Moreover, for information reporting purposes, a payment made by the QSF on behalf of a claimant or transferor is considered a distribution to the claimant or transferor and is also subject to information reporting requirements.[1065]

B. Payments to Foreign Persons

Reportable payments of U.S.-source income payable to a foreign person or entity are reportable on Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*.[1066] Unlike the requirements applicable to a payee deemed to be a U.S. person that contain significant exemptions from reporting, the definition of a foreign person includes a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, a foreign estate, or any other person that is not a U.S. person. A foreign person may also include a foreign branch of a U.S. financial institution if the foreign branch is a qualified intermediary. Generally, the U.S. branch of a foreign corporation or partnership is treated as a foreign person.[1067] For example, payments made to a U.S. corporation are typically exempt from reporting, whereas, payments made to a foreign corporation are subject to reporting on Form 1042-S. The foreign status of a payee is based on the documentation provided, such as certification on Form W-8, Form 8233, Form W-9, and other supporting documentation.[1068] Generally, Form 1042-S must be filed electronically, effective for returns required to be filed during calendar years beginning after December 31, 2023.[1069]

Note: Filers of Form 1042 that claim a credit for taxes withheld by other withholding agents substantiate this credit by attaching paper copies of the Forms 1042-S they receive from those withholding agents to Form 1042. Despite final regulations generally mandating electronic filing of these forms, at present, withholding agents must still provide Forms 1042-S on paper for filers of Form 1042. The IRS is actively working to develop programming that would allow filers to electronically attach or submit Forms 1042-S with their Forms 1042 to substantiate their claimed credit, and expects to have programming in place by the time these regulations take effect at the end of the 2023 calendar year.[1070]

For a further discussion of Form 1042-S filing requirements, see 6565 T.M., *FATCA — Information Reporting and Withholding Under Chapter 4* (Foreign Income Series).

C. Widely Held Fixed Investment Trusts (WHFITs)

Trustees and middlemen of Widely Held Fixed Investment Trusts (WHFITs) are required to report all items of gross income and proceeds on the appropriate Forms 1099.[1071] A WHFIT is defined to be an arrangement classified as a trust under Reg. §301.7701-4(c), in which at least one interest is held by a middleman. The term "middleman" means a trust interest holder (TIH) who holds a trust interest on behalf of, or for the account of, another person, or who otherwise acts in a capacity as an intermediary for the account of another person (for example, a broker holding an interest in a street name for a customer).[1072] In addition, a tax information statement that includes the information provided to the IRS on Forms 1099 as well as additional information required in Reg. §1.671-5(e) must be furnished to trust interest holders (TIHs).

Items of gross income (including OID) attributable to the TIH for the calendar year including all amounts of income attributable to selling, purchasing, or redeeming of a trust holder's interest in the WHFIT must be reported.[1073]

For further discussion of reporting for WHFITs, see IV.C., above.

D. Types of Recipients

In general, a payor is required to file information returns for reportable transactions made to, or on behalf of, a nonexempt person. However, certain payments may not be reportable based on recipient status. A review of payee documentation may be required to determine which payments are to be reported.

[1065] Reg. §1.468B-2(l); General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[1066] General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G); Reg. §1.1461-1(c)(1); Instructions for Form 1042-S. In IRS Fact Sheet FS-2017-03 (Feb. 2017), the IRS provided additional clarification regarding Form 1042-S requirements for withholding agents and discusses common errors. For more information about these campaigns, see Large Business and International Compliance Campaigns on the IRS website. *Note:* In 2020 the Treasury Inspector General for Tax Administration found reporting discrepancies for Federal tax withheld on U.S. source income paid to foreign individuals, and recommended that the IRS modify its filter criteria to ensure that all withholding agents that do not file Form 1042 are identified and modify procedures to ensure that the withholding credit claimed onForm 1042 matches the withholding reported on Forms 1042-S. TIGTA Report 2020-40-021 (Jun. 17, 2020). The IRS responded that LB&I will modify its system filters to better identify withholding agents that do not file Form 1042. TIGTA Report 2020-40-021 (Jun. 17, 2020).

[1067] IRS Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

[1068] Reg. §1.1441-1(b)(2)(i), T.D. 9808, 82 Fed. Reg. 2045 (Jan. 6, 2017).

[1069] See Reg. §301.6011-2(b), §301.6011-2(c)(4), §301.6011-2(g), as amended by T.D. 9972, 88 Fed. Reg. 11,754 (Feb. 23, 2023), which generally requires filers to file electronically if they file 10 or more information returns of any type during the calendar year. The IRS may exempt certain returns from this electronic filing requirement through revenue procedures, publications, forms, instructions or other guidance, including postings on the IRS website. Reg. §301.6011-2(b)(4). For a discussion of waivers or exemptions from the electronic filing requirements, see V.J., below. *See also* Reg. §301.1474-1, as amended by T.D. 9972, 88 Fed. Reg. 11,754 (Feb. 23, 2023) (stating that financial institutions that are required to file Form 1042 or Form 1042-S must do so electronically); PMTA 2022-05 (Chief Counsel's Office advised that upon finalization of proposed regulations, failure to file certain specified returns electronically, including Form 1042, may result in additions to tax under §6651 and §6652).

[1070] *See* Preamble to T.D. 9972, 88 Fed. Reg. 11,754, 11,759 (Feb. 23, 2023).

[1071] Reg. §1.671-5(d), effective January 1, 2007.

[1072] Reg. §1.671-5(b).

[1073] Reg. §1.671-5(e)(1), §1.671-5(e)(2).

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1. *Joint Accounts*

a. *U.S. Persons*

If payments are made to an account with more than one individual owner or recipient (i.e., a joint account), general instructions require the applicable Form 1099 name field contain the name of the primary account owner. The primary owner's taxpayer identification number (TIN) must also be used. Additional account owners may be shown on the recipient statement,[1074] however, records filed with the IRS only contain fields for two names. The second name field may be used for another joint owner's name or as an extension of the primary owner's name. Filers must include as much information in the name fields as necessary for IRS to correctly associate the primary owner's name with the TIN reported. Using the correct name/TIN combination for reporting is important since the IRS compares the information filed on Forms 1099 with individual tax returns to identify payee underreporting. The IRS will subsequently compile payee name/TIN mismatches records for the filer and may ultimately assess penalties.[1075]

b. *Nonresident Aliens*

Payments made to joint account holders who are nonresident aliens are not reportable on Forms 1099; however, certain payments are required to be reported on Form 1042-S. A payor must be diligent in determining the status of each signer on a joint account belonging to nonresident aliens. If the payor has knowledge that one of the account holders is a U.S. person, payments must be reported on Forms 1099 using the name and TIN of the U.S. person even though the primary account holder may be a nonresident alien.[1076]

If the relevant payee listed on a jointly owned account or instrument provides a Form W-8 or documentary evidence described in Reg. §1.1441-1(e)(1)(ii) regarding its foreign status, withholding under §3406 applies unless every joint payee provides the statement regarding foreign status.[1077] In the absence of appropriate documentation for any one of the nonresident alien account holders, the undocumented person is presumed to be a U.S. person. If it appears the account holder is not an individual, the payment is presumed made to a foreign payee that is a nonparticipating FFI (foreign financial institution).[1078]

2. *Sole Proprietorship*

When reporting payments to an individual doing business as a sole proprietor, the individual's name should be shown on all records as the primary owner. If the individual is doing business using a different name, the business name should be shown on the second name line, for example, "John Jones" (first line), "d/b/a Jones Consulting" (second line). The individual's social security number (SSN) should be used for reporting purposes. However, a sole proprietor may also have an employer identification number (EIN) which may also be used. A sole proprietor would request an EIN if he is required to remit and report employment taxes. In this case, the EIN is associated with the individual's personal name, not the business name.[1079]

3. *Partnerships*

In general, Forms 1099 are required to be issued to a U.S. partnership since it is not deemed to be an exempt recipient.[1080] A payor must solicit Form W-9, *Request for Taxpayer Identification Number and Certification*, before making payments to the partnership to obtain the appropriate taxpayer identification number (TIN) and avoid backup withholding. For tax purposes, a partnership is required to obtain an employer identification number (EIN).[1081] The use of any partner's social security number in combination with the name of the partnership is prohibited and would result in subsequent penalties.

4. *Limited Liability Companies (LLCs)*

In general, a limited liability company (LLC) is a business entity organized in the United States under state law which affords its members limited personal liability for its debts. For tax purposes, an LLC is typically classified as a partnership meaning that the LLC has its own EIN separate from the TINs of the partners. For reporting purposes, the LLC's name and EIN would be used. In the absence of supporting documentation, the payor would presume that the LLC is a partnership for reporting and withholding purposes.[1082]

However, an individual may be a single member LLC disregarded as an entity separate from its owner under Reg. §301.7701-3 in which case the individual's name and SSN should be used for reporting purposes.[1083]

An LLC may also elect to be treated as a corporation for tax purposes by filing Form 8832, *Entity Classification Election*.[1084] For certification purposes, an LLC making this election and wishing to be treated as an exempt entity should attach documentation, such as a copy of Form 8832, to Form W-9 to ensure that the payor may treat them as exempt from reporting and backup withholding.

[1074] Assuming a substitute form is used, a payor may list all account owners on the forms sent to recipients. For accounts that have more than two owners, payors may wish to include all account owner names even though the information will not be remitted to IRS. See IRS Pub. 1179, *General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns*, which provides annual guidance on preparing acceptable substitute forms for certain information returns, including Forms 1099.

[1075] *See* IRS Pub. 1281, *Backup Withholding for Missing or Incorrect Name/TIN(s). See* IRS Pub. 1586, *Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs.* Payors may receive B Notices followed by penalty notice 972CG proposing to assess penalties for recipient statements issued with name/TIN mismatches.

[1076] Reg. §31.3406(h)-2(a)(3)(ii).

[1077] Reg. §31.3406(h)-2(a)(3)(i).

[1078] Reg. §1.1441-1(b)(3)(vii)(A), §1.6042-3(b)(3), §1.6045-1(g)(3), §1.6049-5(d)(2)(iii). These regulations were amended by T.D. 9808, 82 Fed. Reg. 2045 (Jan. 6, 2017).

[1079] *See* Instructions for Form W-9, *Request for Taxpayer Identification Number and Certification.* Reg. §301.6109-1 provides specific guidance relative to taxpayer identification numbers. *See* PMTA 2016-08.

[1080] A partnership is not included in the definition of exempt recipient in Reg. §1.6049-4(c)(1)(ii).

[1081] Reg. §301.6109-1(a)(1)(ii)(C). *See also* Instructions for Form W-9, *Request for Taxpayer Identification Number and Certification.*

[1082] *See* IRS Pub. 3402, *Taxation of Limited Liability Companies.*

[1083] *See* IRS Pub. 541, *Partnerships*, for additional information on LLCs.

[1084] Reg. §301.7701-3(c)(1)(i).

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5. Bankruptcy Estates

At the time that a recipient enters into bankruptcy, an estate is created to hold all legal and equitable interests of the recipient. The estate is a separate taxable entity from the recipient. If a recipient notifies the payor that he has entered into Chapter 11 bankruptcy and provides an EIN for the bankruptcy estate, then the name and EIN of the estate should be used to report post-petition gross income, proceeds, or other reportable payments. Once the bankruptcy has been closed, dismissed, or converted, the recipient should notify the payor of the change to ensure that future information is reported correctly to the appropriate recipient using the correct TIN.[1085]

6. Exempt Recipients

In general, payments made to an exempt recipient are not reportable or subject to backup withholding. However, a recipient's status may vary depending on the type of payment being made to the entity. For example, a medical services corporation would be considered an exempt recipient for most types of payments. However, a medical services corporation is not an exempt entity for payments that are reportable on Form 1099-MISC.[1086]

The payor must be able to readily determine that the entity is exempt, or documentation should be solicited to confirm the payee's claim of exempt status. If a payor chooses to report payments made to an exempt payee, the payment information must be reported based on the same requirements that apply to reportable payments. If backup withholding has occurred due to a payee's failure to provide appropriate documentation, reporting is always required irrespective of the payment amount or exempt status of the recipient.[1087]

E. Recipient Statements

1. In General

All recipient statements must contain the name, address, and taxpayer identification number (TIN) of the recipient as well as the name, address, and TIN of the payor who is issuing the information statement.

In response to increased identity theft, the IRS made permanent the use of truncated taxpayer identification numbers (TTIN) on limited payee statements, except on the versions provided to the IRS.[1088]

Under the final regulations, Social Security numbers (SSN), IRS individual taxpayer numbers (ITIN), IRS adoption taxpayer identification numbers (ATIN), and IRS employer identification numbers (EIN) may be truncated on payee statements and certain other documents, except on copies provided to the IRS.[1089] In order to truncate one of these identifying numbers, the first five digits are replaced by Xs or asterisks (e.g., XXX-XX-1234).[1090]

The use of a TTIN on a payee statement or other document required to be furnished to another person will not result in a penalty. A TTIN cannot be used on:

- a statement or other document if the use is prohibited by statute, regulation, other guidance published in the Internal Revenue Bulletin, form, or instructions;[1091]
- a statement or document if a statute, regulation, other guidance published in the Internal Revenue Bulletin, form, or instructions, specifically requires use of a SSN, ITIN, ATIN, or EIN and does not specifically state that the taxpayer identifying number may be truncated;[1092]
- any return, statement, or other document that is required to be filed with or furnished to the IRS;[1093] and
- any statement or other document that it furnishes to another person, i.e., a person may not truncate its own taxpayer identifying number.[1094]

Account numbers are required if multiple forms are issued to the same recipient for the same types of payment. An example would be a recipient who owns multiple certificate of deposit (CD) accounts with a financial institution. In the case of a single form being issued to a recipient, an account number is not required and will not prevent the information from being processed by the IRS. However, the IRS strongly encourages the use of account numbers for all forms that are issued. Once an account number is reported, the IRS will include this information on all subsequent correspondence — which may prove beneficial in addressing issues relevant to corrections or penalties.

Certain form types require that the payor provide a telephone number that gives the statement recipient direct access to a person who can answer questions about the statement information. Although the number is not designated to appear in a specific place on a recipient statement, such as a numbered box, the placement of the number on the statement must be conspicuous.[1095]

Statements to recipients/payees reported on Forms 1099 generally must be sent or transmitted no later than January 31 of the year following the year of reporting.[1096]

[1085] *See* IRS Pub. 908, *Bankruptcy Tax Guide.*

[1086] Reg. §1.6041-3(p).

[1087] *See* Reg. §1.6049-4(c)(1) for a list of exempt entities and requirements to report certain payments.

[1088] T.D. 9675, 79 Fed. Reg. 41,127 (July 15, 2014). *See also* Notice 2009-93, Notice 2011-38.

[1089] Reg. §301.6109-4(a).

[1090] Reg. §301.6109-4(a).

[1091] Reg. §301.6109-4(b). For examples of when the use of a TTIN is not permitted, see Reg. §301.6109-4(b)(3), T.D. 9861, 84 Fed. Reg. 31,717 (July 3, 2019), applicable to returns, statements, and other documents required to be filed or furnished after December 31, 2020. Reg. §301.6109-4(c).

[1092] Reg. §301.6109-4(b)(2)(ii), T.D. 9861, 84 Fed. Reg. 31,717 (July 3, 2019), applicable to returns, statements, and other documents required to be filed or furnished after December 31, 2020. Reg. §301.6109-4(c).

[1093] Reg. §301.6109-4(b)(2)(iii), T.D. 9861, 84 Fed. Reg. 31,717 (July 3, 2019), applicable to returns, statements, and other documents required to be filed or furnished after December 31, 2020. Reg. §301.6109-4(c). The regulations also prohibit truncation on any documents filed with the Social Security Administration under the internal revenue laws. Reg. §301.6109-4(b)(2)(iii).

[1094] Reg. §301.6109-4(b)(2)(iv).

[1095] See General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[1096] For the 2020 tax year only, Form 1099-MISC had to be sent to recipients by February 1, 2021, and filed with the IRS by March 1, 2021 (March 31, 2021 if filed electronically). For the 2020 tax year only, the deadline for filing Form 1099-NEC and providing a copy to the recipient was February 1, 2021. IRS News Release IR-2021-14 (Jan. 14, 2021).

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Forms may be filed on paper using either the official IRS forms or an acceptable substitute,[1097] or transmitted electronically.

Section 6045 allows payors to timely file Form 1099-B recipient statements by February 15th. For Forms 1099-B that are part of a consolidated recipient statement containing multiple form types, all form types provided in a consolidated recipient statement that includes Forms 1099-B will be considered timely filed by February 15th of the year after the year of reporting.[1098]

Section 6045(b) also extends the filing date to February 15th[1099] for certain payments made to attorneys that are reportable in the appropriate box on Form 1099-MISC, *Miscellaneous Information*, and substitute payments in lieu of dividends or interest, as well as real estate transactions reportable on Form 1099-S, *Proceeds From Real Estate Transactions*.[1100]

2. Paper Forms

Filers may report any required information to recipients on official IRS preprinted forms for the applicable tax year. Prior-year tax forms are also available for all reporting or filing requirements.[1101] Preprinted IRS forms may not be changed or altered in any fashion.

Filers may create substitute forms. Boxes must have the same box numbers and names shown on the IRS form. In addition, recipient substitute forms must include all statements, labels, and declarations included on the IRS form including all form instructions provided on the front and back of the official IRS form.[1102]

If a filer issues multiple recipient statements to the same recipient, composite or consolidated recipient statements may be issued to report information for more than one form type on a single statement. Although more than one form type may appear on a single page, a composite statement is an acceptable substitute only if the type of payment and the recipient's tax obligation with respect to the payment are as clear as if each required statement were furnished separately on an official IRS form. However, certain information that would be included in all forms, such as payor and payee name, address, and TIN, does not need to be repeated on each form type.[1103]

A composite recipient statement is permitted for reportable payments resulting from brokerage and barter transactions, dividends, interest, original issue discount, patronage dividends, and royalties. The following forms may be included on a composite substitute statement, when one payer is reporting more than one of these payments during a calendar year to the same form recipient:

- Form 1099-B;
- Form 1099-DA;
- Form 1099-DIV (except for §404(k) dividends);
- Form 1099-INT (except for interest reportable under §6041);
- Form 1099-MISC (only for royalties or substitute payments in lieu of dividends and interest);
- Form 1099-OID;
- Form 1099-PATR; and
- Form 1099-S (only for royalties).

Generally, other Form 1099 information (Form 1099-A, Form 1099-C, or Form 1099-NEC, etc.) should not be included on a composite statement with the information required on the forms listed in the preceding list. However, (1) substitute payments in lieu of dividends or interest reported in the appropriate box on Form 1099-MISC may be reported on a composite substitute statement with Form 1099-DIV; (2) Form 1099-B or Form 1099-DA information may be reported on a composite form with Form 1099-DIV (except for §404(k) dividends), Form 1099-INT (except for interest reportable under §6041), Form 1099-OID, and Form 1099-PATR; and (3) royalties reported on Form 1099-MISC or Form 1099-S may be reported on a composite form only with Form 1099-B, Form 1099-DIV (except for §404(k) dividends), Form 1099-INT (except for interest reportable under §6041), Form 1099-OID, and Form 1099-PATR.[1104]

3. Electronic Statements

Payors may also electronically transmit recipient statements rather than printing and mailing the statement via the U.S. Postal Service or a private delivery service approved by the IRS.[1105] Electronic recipient statements may be sent to an e-mail address or posted to a secure website. Information provided electronically must conform to the same requirements as those for substitute forms. Forms must be transmitted or posted to a website no later than January 31 and notification (written or electronic) must be sent to the recipient that the information is available.

For statement information delivered electronically, recipient consent confirming this delivery choice is required. Payor's must receive consent from the electronic address that will be used for statement delivery or notification. If the payor makes any hardware or software changes after receipt of the consent and before issuance of the recipient statement, the payor must advise the recipient of the change and request a new consent to ensure the recipient statement will be successfully delivered.[1106]

The scope and duration of electronic consent must be defined. Statements must also explain to the recipient how recipients may obtain a paper statement after submitting consent.

[1097] *See* General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[1098] §6045(b).

[1099] For the 2020 tax year only, if businesses were using Forms 1099-MISC to report amounts in Box 8, *Substitute Payments in Lieu of Dividends or Interest*, or Box 10, *Gross Proceeds Paid to An Attorney*, those forms were due to recipients by February 16, 2021. IRS News Release IR-2021-14 (Jan. 14, 2021).

[1100] §6045(e), §6045(f).

[1101] All forms are available online.

[1102] See IRS Pub. 1179, *General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns*, for detailed substitute form guidance.

[1103] IRS Pub. 1179.

[1104] *See* IRS Pub. 1179.

[1105] *See* IRS Pub. 1179.

[1106] *See* IRS Pub. 1179.

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Recipient must be notified of their right to withdraw consent by making a request in writing (electronically or on paper) to the payor or representative named on the statement. In turn, the payor or representative must confirm in writing the consent withdrawal request was received. The payor is required to explain the circumstances under which the electronic transmission process may be terminated as well as instructions on how the recipient can make changes to their personal information. The payor must provide a description of the hardware and software required for the recipient to access, print, and retain the information along with the date the information will no longer be available electronically. Payors are required to make the electronic statements available until October 15 following the end of the year being reported. If the payor makes any hardware or software changes after receiving recipient consent and before issuance of a statement, the payor must notify the recipient of the change and request a new consent to ensure that the recipient statement will be successfully delivered.[1107]

Proposed regulations would allow consolidated reporting statements to be furnished electronically,[1108] if the broker obtains the customer's consent under the applicable consent rules for each of the statements to be included in the consolidated reporting statement.[1109] Proposed alternative rules would also allow brokers to obtain consent to electronically furnish Forms 1099-DA payee statements without offering a paper delivery option.[1110]

> *Example:* Customer (C) has an account with B, a broker, consisting of stock in a single corporation and digital assets. In calendar year 1, C sells the stock and digital assets held in C's account. B must furnish payee statements to C on Forms 1099-B (1099-B statement) and Forms 1099-DA (1099-DA statement) reporting information about the sale of stock and digital assets. B obtains consent from C to provide the 1099-DA statement in an electronic format under Prop. Reg. §1.6045-1(k)(5). B does not obtain consent from C to provide the 1099-B statement in an electronic format under the applicable revenue procedures for electronic delivery of payee statements. For calendar year 1, B electronically furnishes the 1099-DA statement and the 1099-B statement to C in a consolidated reporting statement. B does not also furnish the 1099-B statement to C on paper.
>
> Because B did not obtain consent to provide the 1099-B statement in an electronic format, B failed to timely furnish a 1099-B statement to C. Accordingly, the §6722 failure to furnish penalty would apply to B regarding the 1099-B statement.[1111]

4. *Mailing Requirements for Recipient Statements*

The way payors report information to a recipient depends on the type of income being reported. More stringent requirements apply to Forms 1099-DIV (except §404(k) dividends), Form 1099-INT (except for interest reportable in a trade or business reportable under §6041), Form 1099-OID, Form 1099-PATR and timber royalties reportable under §6050N on Form 1099-MISC or Form 1099-S. Information being furnished on these forms must be provided to the recipient in person, via first class mail, or by electronic transmission.[1112]

For mailed statements, the official IRS form or acceptable substitute may also contain other enclosures, including Form W-2, Form W-8, Form W-9, Forms W-2G, Form 1097, Form 1098, forms in the 1099 series, Form 3921, Form 3922, and Form 5498. Additionally, the mailing may include a check from the account being reported, a letter explaining the reason no check is enclosed, an account statement, or a letter explaining the tax consequences of the information being reported. Advertisements or promotional materials may not be included with the recipient statement. However, company logos are allowed on the sender's envelope and on any nontax disclosure materials.[1113]

A recipient statement may be perforated to a check or account statement containing the legend "Important Tax Return Document Attached" in bold and conspicuous type. In addition, the envelope used for mailing the recipient statement must contain the legend "Important Tax Return Document Enclosed." This same legend must also be printed on other enclosures that are not attached to the recipient statement such as account statements or a letter explaining why a check is not enclosed. The legend is not required to be printed on any tax forms, tax statements, or letters that address tax consequences of the information being reported. However, the legend is not required to be printed on the envelope if the mailing only contains the payee or account statement, a Form W-8 or W-9, and a letter explaining the tax consequences of the information included in the statement.[1114]

The requirements for Forms 1099-B and 1099-MISC (with the exception of timber royalties reportable under §6050N) are not as stringent as those noted above.[1115] Recipient statements must still be delivered timely in person, by mail, or transmitted electronically, but the legend requirements do not apply. Mailings may also include other enclosures or materials.[1116]

[1107] IRS Pub. 1179.

[1108] Prop. Reg. §1.6045-1(k), REG-105064-25, 91 Fed. Reg. 10,983 (Mar. 6, 2026). Prop. Reg. §1.6045-1(k)(5) applies to payee statements required to be furnished on or after January 1 of the calendar year following the date the final regulations are published in the Federal Register.

[1109] Prop. Reg. §1.6045-1(k)(3)(iii). *See* IRS Pub. 1179 (4.6 Electronic Delivery of Recipient Statements).

[1110] Prop. Reg. §1.6045-1(k)(5). See 190 T.M., *Taxation of Cryptocurrency and Other Digital Assets*, for further discussion.

[1111] Prop. Reg. §1.6045-1(k)(5)(vii).

[1112] Reg. §1.6042-4(d), §1.6049-6(e)(2). *See also* General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[1113] Reg. §1.6042-4(d)(2), §1.6049-6(e)(2). However, see IRS Pub. 1179, disallowing slogans, advertising, and other logos on Form 1097-BTC, Form 1098, any forms in the 1099 series, Form 3921, Form 3922, Form 5498, Form W-2G, Form 1042-S, or any payee statement reporting amounts.

[1114] Reg. §1.6042-4(d)(2)–§1.6042-4(e)(2).

[1115] The requirement to include instructions to the recipient for each statement is waived for Form 1099-B. If multiple statements are being reported, only one set of instructions is required to be provided.

[1116] General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

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F. Payor Statements to the IRS

1. In General

Payors must file with the IRS any information records reported to recipients or payees. Payors may file on paper or electronic transmission. For returns required to be filed after 2023, payors required to file 10 or more information returns during a calendar year must file those returns electronically. Payors required to file fewer than 10 information returns during a calendar year are encouraged, but generally not required, to file electronically. Financial institutions required to report payments made under chapter 3 or chapter 4 must file Form 1042-S electronically, regardless of the number of returns to be filed. Information returns filed electronically should not also be filed on paper. Information filed on paper must be postmarked by February 28 (unless this date falls on a Saturday, Sunday, or legal holiday). Returns may also be filed by sending the information via an IRS approved private delivery service. Form 1096 must accompany all paper submissions.[1117] Forms filed electronically are generally due no later than March 31 (unless this date falls on a Saturday, Sunday, or legal holiday).[1118]

For calendar years beginning *after* December 31, 2023, records of the information reported to recipients or payees generally must be filed electronically.[1119]

Form 1099-NEC (whether paper or electronic) that reports nonemployee compensation must be filed with the IRS by January 31 of the next year.[1120]

2. Paper Filings

Official IRS forms should be used for paper filing. Substitute forms may be used only if they conform to the official form or to IRS specifications. Proposed Copy A substitutes must be exact official form replicas. If a payor files noncomforming substitute forms a §6721 failure to file a correct information return penalty may apply. Substitute form requirements include the use of certain types of ink and paper, as well as certain font sizes, styles, layout, margins, and other printing specifications. Since the IRS scans paper documents, substitute forms that don't meet these requirements may not be acceptable for IRS proceeding.[1121]

3. Electronic Filings

Forms not filed on paper must be transmitted to the IRS electronically through the FIRE (Filing Information Returns Electronically) System,[1122] or (for Forms 1099) the Information Returns Intake System (IRIS).[1123] For calendar years beginning *before* December 31, 2023, any corporation, partnership, employer, estate and/or trust, that is required to file 250 or more information returns must file those returns electronically. For calendar years beginning *after* December 31, 2023, this threshold for triggering mandatory electronic filing is reduced to 10 information returns of any type, aggregated for purposes of calculation.[1124] If the IRS's systems do not support electronic filing for a specific return required to be filed electronically with the IRS, a taxpayer will not be required to file that return electronically.[1125] Specific file layouts are available in IRS Pub. 1220, *Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498 and W-2G,* which is published annually.[1126]

Until further guidance is issued to the contrary, Form 1098-C may not be furnished electronically.[1127] Form 5498-QA can only be filed on paper.[1128] Beginning January 1, 2023, Form 1099-QA can be filed electronically.[1129]

G. Records Retention

The payor or filer must be able to reconstruct the information reported to the IRS for three years after the due date of the returns. Information for Form 1099-C or any forms that reported backup withholding must be maintained for four years from the due date of the returns. A paper copy of the recipient statement or an electronic copy that can be printed on demand are both acceptable.[1130]

H. Corrections

Corrections for recipient statements should be sent to the payee as soon as possible after the discovery of the error or change. Failure to issue corrections to the recipient and file the

[1117] General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G); see Tables, Charts, & Lists > Designated Private Delivery Services (PDS) > *Eligible Designated Private Delivery Services (PDS) Under §7502*, for a list of approved private delivery services.

[1118] General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G). See form instructions for the applicable form deadline, which varies by form (e.g., Form 1099-NEC and Form 1042-S).

[1119] See Reg. §301.6011-2(b), §301.6011-2(c)(4), §301.6011-2(g), as amended by T.D. 9972, 88 Fed. Reg. 11,754 (Feb. 23, 2023), which requires filers to file electronically if they file 10 or more information returns of any type during the calendar year. The IRS may exempt certain returns from this electronic filing requirement through revenue procedures, publications, forms, instructions or other guidance, including postings on the IRS website. Reg. §301.6011-2(b)(4). For a discussion of waivers or exemptions from the electronic filing requirements, see V.J., below.

[1120] General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[1121] IRS Pub. 1179, General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[1122] For detailed instructions on using the FIRE System, see the FIRE portal on the IRS website.

[1123] For detailed instructions on using the IRIS portal, see IRS Pub. 5718, *Information Returns Intake System (IRIS) Electronic Filing Application to Application (A2A) Specifications.*

[1124] Reg. §301.6011-2(b), §301.6011-2(c)(4).

[1125] *See* Preamble to T.D. 9972, 88 Fed. Reg. at 11,758.

[1126] General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G); IRS News Release IR-2023-14 (Jan. 25, 2023). Taxpayers can still file Forms 1099 electronically through FIRE for the 2023 filing season.

[1127] General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[1128] General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[1129] 2023 Instructions for Forms 1099-QA and 5498-QA.

[1130] *See* IRS Pub. 1220, *Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G*; General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G). *See also* Rev. Proc. 98-25 (requirements for retaining and managing records within Automatic Data Processing System). Payors must be diligent in maintaining copies of all original records as well as corrections for the appropriate time periods.

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changes with the IRS in a timely manner may subject the payor/filer to penalties.[1131]

If a payor files records with the IRS and then determines that the payor name and/or TIN information is incorrect, the payor must contact the IRS in writing to disclose the name and address of the payor, the type of error that has been made, the tax year, payor TIN, Transmitter Control Code (TCC) if applicable, type of return, number of payees, and filing method (paper or electronic). In addition, payors who have filed a significant number of records incorrectly or in duplicate should call the IRS as soon as possible to address the issue.[1132] Contacting the IRS expeditiously is imperative to minimizing or avoiding potential penalties.

For corrections filed on paper forms, the type of error that has occurred determines the number of forms that need to be filed to make the correction. Incorrect money amount(s), code, checkbox, or a return that was filed when one was not required are all considered to be Type 1 Errors that only require the filing of one corrected return to the recipient and the IRS. Type 2 Errors (missing or incorrect payee TIN, incorrect payee name, or original return filed using the wrong form type) require that the payor file one form to "zero out" or delete the incorrect information, along with a second form to report the correct information.[1133]

The importance of including unique account numbers on initial returns and corrected returns cannot be over emphasized. If there are multiple records of the same form type filed for the same payee and an account number is not present, the IRS does not have the ability to identify and make corrections to an original record and the change will not be processed.[1134]

If the payor or filer is making changes to 250 or more records, the corrections must be filed electronically. However, this requirement is independent of how the original records were filed. If a filer submitted all original records electronically irrespective of the number of records filed, corrections may still be made on paper as long as the threshold (250 or more forms) is not exceeded. For example, if a payor files 500 original forms electronically and he must file a total of 50 corrections, these corrections may be filed either electronically or on paper.[1135]

I. Extensions

1. Recipient Statements (Payee Statements)

A payor or filer who is unable to meet the deadlines for issuing recipient statements (payee statements) may request an extension for additional time to satisfy the reporting requirements. A request for extension of time to file may be made for Form 1094-C, Form 1095-B, Form 1095-C, Form 1097, Form 1098 series, Form 1099 series, Form 3921, Form 3922, Form 5498 series, Form 8596 series, Form W-2G, Form W-2 series, and Form 1042-S.[1136] The request is made on Form 15397, *Application for Extension of Time to Furnish Recipient Statements.*

To request an extension of time to furnish the statements to recipients that are normally due by January 31,[1137] a payer should fax (do not mail) an extension request letter to: Internal Revenue Service Technical Services Operation, Att'n: Extension of Time Coordinator. The letter must include (a) payer name, (b) payer TIN, (c) payer address, (d) type of return (Form 1042-S, Form W-2, specific Form 1099-family form), (e) a statement that the extension request is for providing statements to recipients, (f) reason for delay, and (g) the signature of the payer or authorized agent.[1138] The request must be signed by the taxpayer or his duly authorized agent, and must be received no later than the date on which the statements are due to the recipients.[1139] If the extension request is approved, generally the payer will be granted a maximum of 30 extra days to furnish the recipient statements.

2. Information Returns to the IRS

Filers and transmitters may request an automatic 30-day extension of time to file most information returns on Form 8809, *Application for Extension of Time to File Information Returns*, without an explanation.[1140] However, for returns in the Form W-2 series (except for Form W-2G) or a form reporting nonemployee compensation (Form 1099-NEC, *Nonemployee Compensation*), only one *nonautomatic* extension is permitted.[1141] The expedited Form W-2 series filing procedures, including automatic extensions, in Rev. Proc. 96-57 may still be followed.[1142] The IRS may allow one additional 30-day *nonautomatic* extension if a signed request is submitted, containing a

[1131] Reg. §301.6724-1(d)(1)(ii)(D). *See also* IRS Pub. 1220, Part A §11.04 and General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[1132] General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[1133] General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G). When filing corrected returns electronically, these categories are referred to as "One-transaction Corrections" and "Two-transaction Corrections." *See* IRS Pub. 1220, Part A §11.05.

[1134] IRS Pub. 1220, Part A §11.03 and General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G). An account number may be a checking account number, savings account number, serial number, or any other number assigned by the issuer that will distinguish the specific account (other than a TIN). *Id.*

[1135] IRS Pub. 1220, Part A §11.01 and General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[1136] IRS Pub. 1220 and General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

[1137] Form 1099-B and Form 1099-S may be timely filed by February 15 following the close of the tax year.

[1138] General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G). The FAX number is 877-477-0572 (International FAX: 304-579-4105).

[1139] Reg. §1.6081-1(b).

[1140] Reg. §1.6081-8(a), Reg. §1.6081-8(c). Extensions of time to file information returns with the IRS which are completed online via the Filing Information Returns Electronically (FIRE) system (in lieu of paper Form 8809, *Application for Extension of Time To File Information Returns*) receive instant results and noted that requests for more than one payer must be filed through the FIRE system. Announcement 2012-6. Envelopes or packages containing Forms 8809 must include an attention line in the address for the "Extension of Time Coordinator." Announcement 2012-6. *See* Rev. Proc. 2012-36, updating the requirements for filing Forms 1042-S through the FIRE system.

[1141] Reg. §1.6081-8(b).

[1142] Reg. §1.6081-8(f).

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detailed explanation, before the automatic extension period expires.[1143]

J. Waivers

The IRS may grant waivers or provide exemptions from the electronic filing requirements.[1144]

If a payor is required to file returns electronically and is unable to meet this requirement because of undue hardship, they generally must file Form 8508, *Application for a Waiver from Electronic Filing of Information Returns*, at least 45 days before the due date of the returns. This waiver allows the payor to submit returns on paper rather than remitting the information electronically in cases where the cost for issuing returns electronically is prohibitive compared to the cost of paper filing. The Instructions for Form 8508 provides additional examples of justifications for applying for a waiver from the electronic filing requirement. A waiver is only granted for a single tax year, meaning that additional requests must be made for subsequent years. A waiver that is granted for original returns is also applicable to any corrections filed for the same tax year. Given that waivers are typically granted in cases of undue hardship, the payor is required to provide additional documentation to support the request.[1145]

Additionally, the IRS may provide exemptions to the electronic filing requirements, in order to promote effective and efficient tax administration.[1146] For example, most filers of information returns should notify the IRS in advance that they are claiming a religious exemption by filing a Form 8508 in accordance with the form's instructions. For other administrative exemptions, a submission claiming the administrative exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, on the IRS website.[1147]

[1143] Reg. §1.6081-8(c); Reg. §1.6081-8(a)(2).

[1144] *See* Reg. §301.6011-2(c)(6), as amended by T.D. 9972, 88 Fed. Reg. 11,754 (Feb. 23, 2023).

[1145] *See* Reg. §301.6011-2(c)(6)(i). For further guidance of a waiver of the electronic filing requirements, see the applicable IRS revenue procedures, publications, forms, instructions, or other guidance on the IRS website. *See* Notice 2024-18, *modifying* Notice 2023-60, and *obsoleting* Notice 2010-13 (information about timely filing and correcting returns that are rejected during attempts to file electronically using IRS electronic filing systems are found in IRS publications specific to each IRS electronic filing system).

[1146] Reg. §301.6011-2(c)(6)(ii).

[1147] *See* Notice 2024-18, *modifying* Notice 2023-60, and *obsoleting* Notice 2010-13. For filers of Form 1120, Form 1120-F, Form 1120-S, Form 1065, and Form 990 claiming the religious exemption, see Notice 2024-18.

K. Combined Federal/State Filing Program

A transmitter may apply and be approved to participate in the Combined Federal/State Filing (CF/SF) Program. This program was established to simplify state information return filing and to assist payors or filers in avoiding the cumbersome duplication of submitting the same information to states and the IRS. Once the IRS approves a filer's participation in the program, the IRS will accept electronic media containing state reporting information and pass this information to the appropriate states participating in the program. Filers should contact participating states to determine if additional actions at the state level are required.[1148]

Under the program, only Forms 1099-B, 1099-DIV, 1099-G, 1099-INT, 1099-K, 1099-MISC, 1099-NEC, 1099-OID, 1099-PATR, 1099-R, and 5498 are remitted to the appropriate states. However, numerous states require that payments for which state withholding has occurred must still be reported directly to the states. With respect to corrections, the IRS will forward the changes made to the records for federal purposes. However, the IRS will not pass along corrections specific to state reporting. Corrected information must be provided directly by the filer to the appropriate state in the format required. Since every state has different filing requirements, care should be taken to ensure that state information is filed correctly and timely.[1149]

To request approval to participate in the CF/SF Program, an electronic test file coded for the program must be submitted to the FIRE Test System at https://fire.test.irs.gov/.[1150] If the test file is acceptable, an approval letter will be sent. A test file is only required for the first year of participation; however, the IRS highly recommends that a test file be submitted every year. Records in the test and actual file must conform to current procedures. Generally, test file results are sent via email within two days of submission. If the file is bad, errors can be determined by selecting "Check File Status" on the FIRE Test System website, and the transmitter should continue to send test files until a "good" file status is received.[1151]

[1148] See IRS Pub. 1220, *Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G*, for a complete list of participating states.

[1149] IRS Pub. 1220.

[1150] For testing availability dates, see *Filing Information Returns Electronically (FIRE)*, IRS, https://www.irs.gov/e-file-providers/filing-information-returns-electronically-fire.

[1151] IRS Pub. 1220; *FIRE Test System*, IRS, https://fire.test.irs.gov/.

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VI. Penalties

A. *In General*

Under §6721, §6722, and §6723, the IRS may impose penalties for information reporting failures specific to returns filed with the IRS, recipient statements, and other requests for information. The amount of a penalty may be fixed or may vary based on certain criteria; however, penalties imposed for intentional disregard are significantly greater. A payor that has received a penalty notice and seeks a waiver or abatement under §6724 must establish that a failure was due to reasonable cause and not due to willful neglect.

B. *Types of Failures Subject to Penalties*

1. *Failure to File Correct Information Returns*

Note: For amounts paid in 2025, the IRS will provide transitional relief by not imposing §6721 penalties in certain circumstances for qualified tips (§224) or qualified overtime compensation (§225).[1152]

A payor may be assessed a penalty of $250 (adjusted annually for inflation) for failure to file a correct information return if a return is not filed timely before the required filing date, does not include all the information required to be shown on the return, or the information reported is incorrect.[1153] The total amount imposed on any person for all failures during any calendar year on all information returns cannot exceed $3,000,000 (adjusted annually for inflation).[1154]

The penalty for failing to file timely or for filing corrections may be less than $250 per return if the returns are filed no later than August 1. Returns filed within 30 days from the required filing date are subject to a penalty of $50.[1155] The maximum penalty imposed for all failures filed within 30 days is $500,000 (adjusted annually for inflation).[1156] If returns are filed after 30 days from the original filing date but on or before August 1 of the year in which the required filing date occurs, the penalty imposed is $100 for each failure (adjusted annually for inflation).[1157] The maximum penalty imposed for all failures filed after 30 days but on or before August 1 cannot exceed $1,500,000 (adjusted annually for inflation).[1158]

An exception for de minimis failures to include all required information may apply if the failure is corrected on or before August 1 of the calendar year in which the required filing date occurs. The number of information returns to which this exception applies for any calendar year cannot exceed the greater of 10, or one half of 1% of the total number of information returns required to be filed by the person during the calendar year.[1159]

A safe harbor may apply if there are one or more failures relating to an incorrect dollar amount, and no single amount in error differs from the correct amount by more than $100, and no single amount reported for tax withheld on any information return differs from the correct amount by more than $25. If the safe harbor applies, no correction is required, and such return will be treated as having been filed with all of the correct required information. The de minimis error safe harbor applies only to inadvertent errors and not to intentional misreporting, intentional disregard of the filing requirements or information reporting requirements, a failure to file a return, or a failure to furnish a payee statement.[1160]

A payor who meets a gross receipts test for any calendar year may be subject to lower maximum penalties. A payor meets the gross receipts test for any calendar year if the average annual gross receipts of the payor for the most recent three taxable years ending before such calendar year do not exceed $5,000,000.[1161] The total penalty that can be imposed on a payor who meets this test is $1,000,000.[1162] Failures that are filed during the first 30 days after the original filing date can only be penalized up to $175,000 (adjusted annually for inflation).[1163] For the period after the first 30 days but before August 1, the maximum penalty is $500,000 (adjusted annually for inflation).[1164]

If one or more failures to file timely or to include correct information are due to intentional disregard, then each failure is subject to a penalty of $500 or, if greater, the statutory percentage.[1165] The term "statutory percentage" means (1) for a return other than a return required under §6045(a), §6041A(b), §6050H, §6050I, §6050J, §6050K, or §6050L, 10% of the aggregate dollar amount of the items required to be reported correctly; (2) for a return required to be filed by §6045(a), §6050K, or §6050L, 5% of the aggregate dollar amount of the items required to be reported correctly; (3) for a return required to be filed under §6050I(a), for any transaction (or related transactions), the greater of $25,000 or the amount of cash received in the transaction to the extent the amount of the cash does not exceed $100,000; or (4) in the case of a return required to be filed under §6050V, 10% of the value of the benefit of any contract with respect to which information is required to be included on the return. Moreover, there is no limit on the maximum penalty that may imposed.[1166]

The failure to file penalty under §6721 is discussed further in 634 T.M., *Civil Tax Penalties.*

[1152] Notice 2025-62, §3.01–§3.02, §5.

[1153] §6721(a)(2).

[1154] §6721(a)(1). For inflation-adjusted amounts, see Tables, Charts & Lists > Penalties > Failure to File Correct Information Returns > *Annually adjusted penalty amounts under §6721.*

[1155] §6721(b)(1)(A).

[1156] §6721(b)(1)(B).

[1157] §6721(b)(2)(A).

[1158] §6721(b)(2)(B). For inflation-adjusted amounts, see Tables, Charts & Lists > Penalties > Failure to File Correct Information Returns > *Annually adjusted penalty amounts under §6721.*

[1159] §6721(c).

[1160] §6721(c)(3). *See also* §6721(e), §6722(e). Note, however, that a payee may elect to waive the safe harbor (have it not apply), in which case the filer must issue a corrected return or statement. A payee may revoke the election at any time. See §6721(c)(3)(B); Reg. §301.6721-1(e)(3), T.D. 9984, 88 Fed. Reg. 87,696 (Dec. 19, 2023), effective for information returns required to be filed after December 31, 2023.

[1161] §6721(d)(2)(A).

[1162] §6721(d)(1)(A).

[1163] §6721(d)(1)(B).

[1164] §6721(d)(1)(C). For inflation-adjusted amounts, see Tables, Charts & Lists > Penalties > Failure to File Correct Information Returns > *Annually adjusted penalty amounts under §6721.*

[1165] §6721(e)(2). The amounts under §6721(e)(2) are adjusted for inflation. See Tables, Charts & Lists > Penalties > Failure to File Correct Information Returns > *Annually adjusted penalty amounts under §6721.*

[1166] §6721(e)(3).

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2. Failure to Furnish Correct Payee Statements

Note: For amounts paid in 2025, the IRS will provide transitional relief by not imposing §6722 penalties in certain circumstances for qualified tips (§224) or qualified overtime compensation (§225).[1167]

A $250 penalty may be imposed for each payee statement for which a failure has occurred as described above.[1168] The maximum amount that may be imposed on a single filer for all such failures during any calendar year may exceed $3,000,000.[1169]

The $250 penalty may be reduced if the statement failure is corrected within a specified period. For a failure that is corrected within the 30 days of the date prescribed for furnishing the statement, the penalty imposed is $50 per failure rather than $250.[1170] The total amount that may be assessed for corrections made during this period cannot exceed $500,000.[1171] If a correction is made after the 30th day after the due date for furnishing the statement, and on or before August 1 of the calendar year in which the required filing date occurs, the penalty imposed will be $100 in lieu of $250.[1172] Total corrections made during this period cannot exceed $1,500,000.[1173]

Penalties may not be imposed for a de minimis number of failures to include all required information that are corrected within the specified period after the due date for furnishing the statement and August 1.[1174] De minimis failures are defined to be errors that do not exceed the greater of 10 payee statements or one-half of 1% of the total number of payee statements required to be filed during the calendar year.[1175]

A safe harbor provision may apply if there are one or more failures relating to an incorrect dollar amount, and no single amount in error differs from the correct amount by more than $100, and no single amount reported for tax withheld on any information return differs from the correct amount by more than $25.[1176] If so, no correction is required, and such return will be treated as having been filed with all of the correct required information unless the payee with respect to such payee statement elects that the safe harbor provision not apply.[1177]

Lower limitations may be applicable to persons with gross receipts of not more than $5,000,000. A payor meets the gross receipts test for any calendar year if the average annual gross receipts of the payor for the most recent three taxable years ending before such calendar year do not exceed $5,000,000.[1178] The total penalty that can be imposed on a payor who meets this test is $1,000,000.[1179] Failures that are corrected within the first 30 days after the due date for furnishing the return are subject to a reduced maximum penalty of $175,000.[1180] For the period after the first 30 days but on or before August 1, the maximum penalty is $500,000.[1181]

If one or more failures to file timely or to include correct information are due to intentional disregard, then each failure is subject to a penalty of $500 or, if greater, the statutory percentage.[1182] The term "statutory percentage" means (1) for a payee statement other than a statement required under §6045(b), §6041A(e) (with respect to a return required under §6041A(b)), §6050H(d), §6050J(e), §6050K(b), or §6050L(c), 10% of the aggregate dollar amount of the items required to be reported correctly, or (2) for a payee statement required under §6045(b), §6050K(b), or §6050L(c), 5% of the aggregate dollar amount of the items required to be reported correctly. Moreover, the maximum penalty of $3,000,000 is no longer applicable, meaning that no limit exists as to the total penalties that could be imposed.[1183]

The failure to file correct payee statement penalty under §6722 is discussed further in 634 T.M., *Civil Tax Penalties.*

3. Failure to Comply with Other Information Reporting Requirements

Under §6723, the IRS may impose a $50 penalty for a failure to comply with other information reporting requirements. The maximum amount that will be imposed on any person for all failures relative to specified information reporting requirements is $100,000.[1184]

[1167] Notice 2025-62, §3.01–§3.02, §5.

[1168] §6722(a).

[1169] §6722(a)(1). The penalty amounts under §6722(a)(1) are adjusted for inflation. §6722(f). For inflation-adjusted amounts, see Tables, Charts & Lists > Penalties > Failure to Furnish Correct Payee Statements > *Annually adjusted penalty amounts under §6722.*

[1170] §6722(b)(1)(A).

[1171] §6722(b)(1)(B).

[1172] §6722(b)(2)(A).

[1173] §6722(b)(2)(B). The penalty amounts under §6722(b) are adjusted for inflation. §6722(f). For inflation-adjusted amounts, see Tables, Charts & Lists > Penalties > Failure to Furnish Correct Payee Statements > *Annually adjusted penalty amounts under §6722.*

[1174] §6722(c)(1).

[1175] §6722(c)(2).

[1176] §6722(c)(3)(A).

[1177] §6722(c)(3)(B). The de minimis error safe harbor applies only to inadvertent errors and not to intentional misreporting, intentional disregard of the filing requirements or information reporting requirements, a failure to file a return, or a failure to furnish a payee statement. Reg. §301.6722-1(d)(1), T.D. 9984, 88 Fed. Reg. 87,696 (Dec. 19, 2023), effective for payee statements required to be furnished after December 31, 2023. *See also* §6721(e), §6722(e). A payee may elect not to have the safe harbor apply, in which case the filer must issue a corrected return or statement. See §6722(c)(3)(B); Reg. §301.6722-1(d)(3).

[1178] §6722(d)(2).

[1179] §6722(d)(1)(A).

[1180] §6722(d)(1)(B).

[1181] §6722(d)(1)(C). The penalty amounts under §6722(d)(1) are adjusted for inflation. §6722(f). See Tables, Charts & Lists > Penalties > Failure to Furnish Correct Payee Statements > *Annually adjusted penalty amounts under §6722.*

[1182] §6722(e)(1), §6722(e)(2). The penalty amounts under §6722(e) are adjusted for inflation. §6722(f). See Tables, Charts & Lists > Penalties > Failure to Furnish Correct Payee Statements > *Annually adjusted penalty amounts under §6722.*

[1183] Reg. §301.6722-1(c)(2), T.D. 9984, 88 Fed. Reg. 87,696 (Dec. 19, 2023), effective for payee statements required to be furnished after December 31, 2023. The aggregate dollar amount used in computing the penalty is the amount that is not reported or is reported incorrectly. If the failure relates to a dollar amount, the statutory percentage is applied to the difference between the dollar amount reported and the amount required to be reported correctly. With regard to failures relating to any other item on the return, the statutory percentage would be applied to the aggregate amount of items required to be reported correctly. In determining such amount the same item shall be counted only once. For example, if a filer willfully fails to furnish a Form 1099-INT on which $800 of interest and $160 of federal income tax withheld (i.e., backup withholding) is required to be shown, only the $800 amount is taken into account in computing the penalty. Reg. §301.6722-1(c)(3).

[1184] §6723, Reg. §301.6723-1(a)(1).

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The definition of a "specified information reporting requirement" encompasses any requirement in the regulations under §6109 that a person must include his or her taxpayer identification number (TIN) on any return, statement, or other document. A person must also include the TIN of another person on any return, statement, or other document made with respect to that person, or furnish their TIN to another person. Also included are payments of alimony or separate maintenance payments under §215 that require the person receiving such payments to furnish their TIN to another person who must, in turn, include such TIN in their tax return. The penalty that may be imposed under this section is applicable to a person who is required to include the TIN of any dependent in their tax return, as well as the requirement to provide the notice under §6050K(c)(1) that requires that a transferor notify the partnership of an exchange of a partnership interest.[1185] A failure to comply with a specified information reporting requirement does not include an inconsequential error or omission if it does not frustrate the purpose or use for which the information is intended.[1186]

The failure to comply penalty under §6723 is discussed further in 634 T.M., *Civil Tax Penalties.*

C. Penalty Relief — Reasonable Cause

Information returns for which reasonable cause may be arguable include any statement of payments to another person required by:[1187]

- §6041(a) or §6041(b) (certain information at source);
- §6042(a)(1) (payments of dividends);
- §6044(a)(1) (payments of patronage dividends);
- §6049(a) (payments of interest);
- §6050A(a) (reporting requirements of certain fishing boat operators);
- §6050N(a) (payments of royalties);
- §6051(d) (information returns with respect to income tax withheld);
- §6050R (returns relating to certain purchases of fish); or
- §110(d) (qualified lessee construction allowances for short-term leases).

Also included is any return required by:

- §6041A(a) or §6041A(b) (returns of direct sellers);
- §6043A(a) (returns relating to taxable mergers and acquisitions);
- §6045(a) or §6045(d) (relating to returns of brokers);
- §6045B(a) (returns relating to actions affecting basis of specified securities);
- §6050H(a) or §6050H(h)(1) (mortgage interest received in trade or business from individuals);
- §6050I(a) or §6050I(g)(1) (cash received in trade or business, etc.);
- §6050J(a) (foreclosures and abandonments of security);
- §6050K(a) (exchanges of certain partnership interests);
- §6050L(a) (returns relating to certain dispositions of donated property);
- §6050P (returns relating to the cancellation of indebtedness by certain financial entities);
- §6050Q (certain long-term care benefits);
- §6050S (returns relating to payments for qualified tuition and related expenses);
- §6050T (returns relating to credit for health insurance costs of eligible individuals);
- §6052(a) (payment of wages in the form of term life insurance);
- §6050V (returns relating to applicable insurance contracts in which certain exempt organizations hold interests);
- §6053(c)(1) (relating to reporting with respect to certain tips);
- §6055 (relating to returns relating to information regarding health insurance coverage);
- §6056 (relating to returns relating to certain employers required to report on health insurance coverage);
- §1060(b) or §1060(e) (relating to reporting requirements of transferors and transferees in certain asset acquisitions);
- §4101(d) (relating to information reporting with respect to fuels taxes);
- §338(h)(10)(C) (relating to information required to be furnished to the Treasury Secretary in case of elective recognition of gain or loss);
- §6039(a) (relating to returns required with respect to certain options);
- §264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts);
- §6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements);
- §6050W (relating to returns to payments made in settlement of payment card transactions);
- §422(b) (relating to exercise of an incentive stock option);
- §423(c) (relating to the transfer of stock acquired through an employer stock purchase plan);
- §1461 (relating to payments of U.S. source income made to nonresident aliens);
- §6045A(d) (relating to transfers of certain digital assets) (effective after December 31, 2023);

[1185] Reg. §301.6723-1(a)(4).
[1186] Reg. §301.6723-1(a)(3).
[1187] §6724(d)(1)(A).

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• §6050Z (relating to reports relating to long-term care premium statements) (applicable for distributions made after December 29, 2025); or

• §6050AA (relating to reports for applicable passenger vehicle loan interest received in a trade or business from individuals for qualified passenger vehicle loans).[1188]

Reasonable cause may also be arguable for statement of the amount of payments to another person required to be made to the Treasury Secretary under §408(i) (relating to reports with respect to individual retirement accounts or annuities), or §6047(d) (relating to reports by employers, plan administrators, etc.),[1189] and for statements required to be filed with the Secretary under §6035 (relating to basis information given to persons acquiring property from a decedent).[1190]

A reasonable cause argument may be made if the filer establishes that there are significant mitigating factors with respect to the failure, or that the failure arose due to events beyond the filer's control. Moreover, the filer must also prove that it acted in a responsible manner both before and after the failure occurred.[1191]

Significant mitigating factors may include the fact that the failure occurred with respect to a type of return or statement that the filer has not been required to file before, or the fact that the filer has an established history of complying with the information reporting requirements with respect to which the failure occurred. In reviewing a filer's history of compliance, the IRS will determine whether the filer has incurred any penalties under §6721, §6722, or §6723 and, if so, to what degree the filer was successful in lessening its error rate from year to year.[1192]

In general, events beyond the filer's control include the unavailability of relevant business records, undue economic hardship related to filing on magnetic media, certain actions of the IRS, certain actions of an agent, and certain actions of the payee of any other person providing information necessary to file a return or recipient statement.[1193]

A filer must also be able to demonstrate that it has acted in a responsible manner.[1194] The filer must have exercised reasonable care in determining its filing obligations and handling account information in the same manner as a reasonably prudent person would use in the course of business. The filer must have also undertaken significant steps to avoid or mitigate any failures by requesting appropriate extensions of time to file information returns, taking steps to prevent an impediment or failure if foreseeable, acting to remove an impediment or the cause of a failure once it occurred, and rectifying any failures as quickly as possible once the failures or impediments were identified.[1195]

If a filer is seeking relief from a failure related to a missing or incorrect TIN, the filer must be able to demonstrate that it has acted in a responsible manner with respect to making the appropriate solicitations for a payee's TIN.[1196]

A payor may receive IRS Notice 972CG, which proposes to assess penalties for failures described in §6721, §6722, and §6723. The notice may contain accounts that were included in a backup withholding notification (B Notices), as well as other accounts not subject to backup withholding for which failures have occurred. Records that were not filed timely with the IRS or were filed on the wrong media would also be included in this notice.[1197] A payor seeking relief from a proposed or assessed penalty must contact the IRS in writing to request that the IRS make the determination that the failure was due to reasonable cause and not willful neglect.[1198] The payor must submit a written statement citing the specific provisions under which the waiver is being requested, setting forth all the facts alleged as the basis for reasonable cause, signed by the person required to file the return, and a declaration that the statements included in the letter are made under penalties of perjury.[1199] The letter should contain all pertinent information while being concise and to the point. Payors are strongly encouraged to include additional supporting documentation with the letter, such as copies of solicitations, B Notices, and any other materials that will further substantiate the claim that failures were due to reasonable cause and not intentional disregard.

Reasonable cause under §6724 is discussed further in 634 T.M., *Civil Tax Penalties.*

[1188] See §6724(d)(1)(B)(i)–§6724(d)(1)(B)(xxix), amended most recently by the One Big Beautiful Bill Act (OBBBA), Pub. L. No. 119-21, §70203, effective for indebtedness incurred after Dec. 31, 2024, which added §6724(d)(1)(B)(xxix).

[1189] §6724(d)(1)(C).

[1190] §6724(d)(1)(D).

[1191] Reg. §301.6724-1(a)(2), T.D. 9984, 88 Fed. Reg. 87,696 (Dec. 19, 2023), effective for information returns required to be filed and payee statements required to be furnished after December 31, 2023.

[1192] Reg. §301.6724-1(b).

[1193] Reg. §301.6724-1(c)(1). See Reg. §301.6724-1(c)(2) for how to establish reasonable cause due to the unavailability of the relevant business records.

[1194] Reg. §301.6724-1(a)(2)(iii).

[1195] Reg. §301.6724-1(d)(1).

[1196] Reg. §301.6724-1(d)(2), §301.6724-1(e)(1).

[1197] §6724(c).

[1198] IRS Publication 1586, *Reasonable Cause Regulations and Requirements for Missing or Incorrect Name/TINs*, provides general guidelines in the appropriate manner in which to respond to a penalty notice.

[1199] Reg. §301.6724-1(m).

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TABLE OF WORKSHEETS

Working Papers for this Portfolio can be found at https://bloombergtax.com.

Additional Resources

- IRS Pub. 5717, *Information Returns Intake System (IRIS) Taxpayer Portal User Guide.*
- IRS Pub. 5718, *Information Returns Intake System (IRIS) Electronic Filing Application to Application (A2A) Specifications.*
- IRS Pub. 5719, *Information Returns Intake System (IRIS) Test Package for Information Returns.*
- IRS *General Instructions for Certain Information Returns* (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).
- IRS guidance on filing information returns: www.irs.gov/inforeturn.
- IRS Information Returns Intake System (IRIS): www.irs.gov/iris.
- IRS Filing Information Returns Electronically (FIRE): https://www.irs.gov/e-file-providers/filing-information-returns-electronically-fire.

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