

## Federal Regulations

# ¶153,143. Preamble to Prop Regs. 12/17/2009. Fed. Reg. Vol. 74, No. 241 p. 67009.

[REG-101896-09]

**Basis Reporting by Securities Brokers and Basis Determination for Stock;**  
**Proposed Rule** Reg. §§1.408-7, 1.1012-1, 1.6039-2, 1.6042-4, 1.6044-5, 1.6045-1, 1.6045-2, 1.6045-3, 1.6045-4, 1.6045-5, 1.6045A-1, 1.6045B-1, 1.6049-6, 31.3406(b)(3)-2, 31.6051-4, 301.6721-1, 301.6722-1

## Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1), the Regulations on Employment Tax and Collection of Income Tax at the Source (26 CFR part 31), and the Regulations on Procedure and Administration (26 CFR part 301) relating to information reporting by brokers and others as required by section 6045. The document also contains proposed amendments relating to the scope and computation of basis by the average basis method under section 1012 and to new information reporting requirements by brokers, custodians, and issuers of securities under sections 6045A and 6045B. These sections were amended or added by section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343 (122 Stat. 3765, 3854 (2008)) (the Act). These proposed regulations are proposed to be issued under the authority contained in sections 1012, 3406, 6045, 6045A, 6045B, and 7805.

### 1. Returns of Brokers

Section 6045(g) provides that every broker that is required to file a return with the IRS under section 6045(a) showing the gross proceeds from the sale of a covered security must include in the return the customer's adjusted basis in the security and whether any gain or loss with respect to the security is long-term or short-term. Thus, a broker that is currently subject to gross proceeds reporting under section 6045(a) with respect to the sale of a covered security is also subject to the reporting of adjusted basis of that security and whether any gain or loss with respect to that security is long-term or short-term under section 6045(g).

Section 1.6045-1(a)(1) provides that the term broker generally means any U.S. or foreign person that, in the ordinary course of a trade or business, stands ready to effect sales to be made by others. However, with respect to a sale (including a redemption or retirement) effected at an office outside the United States, a broker includes only a person described as a U.S. payor or U.S. middleman in §1.6049-5(c)(5). Additionally, under §1.6045-1(g)(1), reporting is not required with respect to certain holders of securities that are exempt foreign persons. U.S. and foreign brokers that are subject to gross proceeds reporting under the existing rules will also be subject to reporting under the rules of section 6045(g).

#### a. Covered Security

For purposes of reporting under section 6045(g), section 6045(g)(3)(A) provides that a covered security is any specified security acquired on or after the applicable date if the

security: (1) Was acquired through a transaction in the account in which the security was held; or (2) was transferred to that account from an account in which the security was a covered security, but only if the broker receiving custody of the security receives a statement under section 6045A (described later in this preamble) with respect to the transfer.

### **b. Specified Security**

Section 6045(g)(3)(B) provides that a specified security is any: (1) Share of stock in a corporation; (2) note, bond, debenture, or other evidence of indebtedness; (3) commodity, or a contract or a derivative with respect to the commodity, if the Secretary determines that adjusted basis reporting is appropriate; and (4) other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate.

### **c. Applicable Date**

The applicable date of the reporting requirements under section 6045(g) depends on the type of specified security that is sold. 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)), section 6045(g)(3)(C)(i) provides that the applicable date is January 1, 2011. For stock in a RIC (RIC stock) or stock acquired in connection with a DRP (DRP stock) (for which additional rules are described later in this preamble), section 6045(g)(3)(C)(ii) provides that the applicable date is January 1, 2012. For any other specified security, section 6045(g)(3)(C)(iii) provides that the applicable date is January 1, 2013, or a later date determined by the Secretary. The reporting rules related to options transactions apply only to options granted or acquired on or after January 1, 2013, as provided in section 6045(h)(3).

### **d. Reporting Method**

A broker must report a customer's adjusted basis under the following statutory rules. Under section 6045(g)(2)(B)(i)(I), a broker must report the adjusted basis of any security (other than RIC stock or DRP stock) using the first-in, first-out (FIFO) basis determination method unless the customer notifies the broker of the specific stock to be sold or transferred by means of making an adequate identification of the stock sold or transferred at the time of sale or transfer. Under section 6045(g)(2)(B)(i)(II), a broker must report the adjusted basis of RIC stock or DRP stock in accordance with the broker's default method under section 1012 unless the customer notifies the broker that the customer elects another permitted method.

## **2. Determination of Basis**

### **a. In General**

For any sale, exchange, or other disposition of a specified security on or after the applicable date, section 1012(c) provides that the conventions prescribed by regulations under section 1012 for determining adjusted basis apply on an account by account basis.

### **b. RIC Stock**

Section 1012(c)(2) provides that RIC stock acquired before January 1, 2012, is treated as held in a separate account from RIC stock acquired on or after that date. However, a RIC

may elect (at the time and in the form and manner prescribed by the Secretary), on a stockholder by stockholder basis, to treat all stock in the RIC held by the stockholder as one account without regard to when the stock was acquired (single-account election). When this election applies, the average basis of a customer's stock is computed by averaging the basis of shares of identical stock acquired before, on, and after January 1, 2012, and all the shares are treated as covered securities. If a broker holds RIC stock as a nominee of the beneficial owner of the shares, the broker makes the election.

### **c. DRP Stock**

If stock is acquired on or after January 1, 2011, in connection with a DRP, section 1012(d)(1) provides that the basis of that stock is determined under one of the basis computation methods permissible for RIC stock. Accordingly, the average basis method may be used for determining the basis of DRP stock. This special rule for DRP stock, however, applies only while the stock is held as part of the DRP. If the stock is transferred to another account, under section 1012(d)(2), each share of stock has a cost basis in that other account equal to its basis in the DRP immediately before the transfer (with adjustment for charges connected with the transfer).

Section 1012(d)(4)(A) provides that a DRP is any arrangement under which dividends on stock are reinvested in stock identical to the stock on which the dividends are paid. Stock is treated as acquired in connection with a DRP if the stock is acquired pursuant to the DRP or if the dividends paid on the stock are subject to the DRP. Under section 1012(d)(3), in determining basis under this rule, the account by account rules of section 1012(c), including the single-account election available to RICs, apply.

## **3. Other Broker Reporting Provisions**

### **a. Wash Sales**

Section 6045(g)(2)(B)(ii) provides that, unless the Secretary provides otherwise, a customer's adjusted basis in a covered security generally is determined for reporting purposes without taking into account the effect on basis of the wash sale rules of section 1091 unless the purchase and sale transactions resulting in a wash sale occur in the same account and are in identical securities (rather than substantially identical securities as required by section 1091).

### **b. S Corporations**

Section 6045(g)(4) provides that, for purposes of section 6045, an S corporation (other than a financial institution) is treated in the same manner as a partnership. This rule applies to any sale of a covered security acquired by an S corporation (other than a financial institution) after December 31, 2011. When this rule takes effect, brokers generally will be required to report gross proceeds and basis information to customers that are S corporations for securities purchased on or after January 1, 2012.

### **c. Short Sales**

In the case of a short sale, section 6045(g)(5) provides that gross proceeds and basis reporting under section 6045 generally is required for the year in which the short sale is closed (rather than, as under the present rule for gross proceeds reporting, the year in which the short sale is entered into).

#### **d. Options**

Section 6045(h)(1) provides that if a covered security is acquired or disposed of pursuant to the exercise of an option that was granted or acquired in the same account as the covered security, the amount received with respect to the grant or paid with respect to the acquisition of such option must be treated for reporting purposes as an adjustment to gross proceeds or as an adjustment to basis, as the case may be. Section 6045(h)(2) provides that gross proceeds and basis reporting is required when there is a lapse of, or a closing transaction with respect to, an option on a specified security or an exercise of a cash-settled option on a specified security. Section 6045(h)(3) provides that section 6045(h)(1) and (h)(2) do not apply to any option granted or acquired before January 1, 2013.

#### **e. Time for Furnishing Statements**

The Act amended section 6045(b) to extend the due date from January 31 to February 15 for furnishing certain information statements to customers, effective for statements required to be furnished after December 31, 2008. Section 6045(b) provides that the statements to which the new February 15 due date applies are statements required under section 6045 and statements with respect to other reportable items that are furnished with these statements in a consolidated reporting statement (as defined in regulations under section 6045). See Notice 2009-11 (2009-5 IRB 420), providing that, with respect to reportable items from calendar year 2008, brokers had until February 17, 2009, to report all items that they customarily reported on their annual composite form recipient statements. See §601.601(d)(2).

#### **4. Transfer Statements**

The Act added section 6045A, which provides that a broker and any other person specified in Treasury regulations (applicable person) that transfers to a broker a security that is a covered security in the hands of the transferring person must furnish to the broker receiving custody of the security (receiving broker) a written statement that allows the receiving broker to satisfy the basis reporting requirements of section 6045(g). Section 6045A(c) provides that, unless the Secretary provides otherwise, the statement required by this rule must be furnished to the receiving broker not later than fifteen days after the transfer of the covered security.

#### **5. Issuer Reporting**

The Act added section 6045B, which provides that an issuer of specified securities must file a return according to forms or regulations prescribed by the Secretary describing any organizational action (such as a stock split, merger, or acquisition) that affects the basis of the specified security, the quantitative effect on the basis of that specified security, and any other information the Secretary requires. Section 6045B(b) provides that this return must be filed within forty-five days after the date of the organizational action, unless the action occurs in December, in which case the return must be filed by January 15th of the following year.

Section 6045B(c) provides that an issuer must furnish, according to forms or regulations prescribed by the Secretary, to each nominee with respect to that security (or to each certificate holder if there is no nominee) a written statement showing: (1) The name, address, and telephone number of the information contact of the person required to file the return; (2) the information required to be included on the return with respect to the security; and (3) any other information required by the Secretary. This statement must

be furnished to the nominee or certificate holder on or before January 15th of the year following the calendar year in which the organizational action took place.

Section 6045B(e) provides that the Secretary may waive the return filing and information statement requirements if the person to which the requirements apply makes publicly available, in the form and manner determined by the Secretary, the name, address, telephone number, and e-mail address of the information contact of that person, and the information about the organizational action and its effect on basis otherwise required to be included in the return.

## **6. Penalties**

The Act amended the list of returns and statements in section 6724(d) for which sections 6721 and 6722 impose penalties for any failure to file or furnish complete and correct returns and statements. This section imposes a penalty on brokers for a failure to file returns or furnish complete and correct statements after a sale of securities as required by section 6045. Section 6724(d) now also imposes penalties with respect to the returns and statements required by sections 6045A and 6045B.

## **7. Request for Comments**

Notice 2009-17 (2009-8 IRB 575), published by the IRS on February 23, 2009, invited public comments regarding guidance under the new reporting requirements in sections 6045, 6045A, and 6045B and for determining the basis of certain securities under section 1012. In particular, Notice 2009-17 requested comments on the applicability of the reporting requirements, basis method elections, DRPs, reconciliation with customer reporting, special rules and mechanical issues, transfer reporting, issuer reporting, and broker practices and procedures. Many comments were received in response to Notice 2009-17. The comments were considered in developing the proposed regulations. See §601.601(d)(2).

## **Explanation of the Provisions and Summary of Comments**

The proposed regulations provide rules for determining basis and for reporting adjusted basis and whether any gain or loss on a sale is long-term or short-term. The proposed regulations also address the new reporting requirements imposed upon persons transferring custody of stock and upon issuers of stock.

The proposed regulations do not address rules regarding reporting for options, compensatory options, or other equity-based compensation arrangements, or reporting of adjusted basis for indebtedness, because indebtedness is only subject to the requirements of section 6045(g) if acquired on or after January 1, 2013, and options are only subject to the requirements of section 6045(g) and (h) if granted or acquired on or after January 1, 2013. These rules are expected to be addressed in future guidance.

The proposed regulations generally are limited to the amendments to the Internal Revenue Code (Code) under the Act in sections 1012, 6045, 6045A, 6045B, and 6724 and do not address requests from commentators regarding changes to substantive rules in other areas such as the rules regarding allocation of a return of capital. The proposed regulations also do not address technical issues related to information reporting such as electronic delivery of returns by brokers to customers. These comments are outside the scope of the proposed regulations.

## **1. Returns of Brokers**

Section 1.6045-1(c) requires brokers to make a return of information with respect to each sale by a customer of the broker effected by the broker in the ordinary course of a trade or business in which the broker stands ready to effect sales to be made by others. Section 1.6045-1(d) sets forth the information that the broker must include on the return.

The proposed regulations amend the definition of broker in § 1.6045-1(a)(1) to modify the exception for non-U.S. payors and non-U.S. middlemen. Under the revised rule, a non-U.S. payor or non-U.S. middleman would be a broker to the extent provided in a withholding agreement described in §1.1441-1(e)(5)(iii) between a qualified intermediary and the IRS or similar agreement with the IRS. The Treasury Department and IRS expect that such agreements generally will provide that the broker that is party to such agreement will be subject to the broker reporting requirements under section 6045 to the same extent as U.S. payors and U.S. middlemen. The Treasury Department and IRS request comments regarding the usefulness of information received from non-U.S. payors and non-U.S. middlemen, the costs to non-U.S. payors and non-U.S. middlemen of complying with such a requirement, and other potential effects of such a requirement in a withholding or reporting agreement with the IRS.

### **a. Form and Manner of New Broker Reporting Requirements**

The proposed regulations provide that brokers must report adjusted basis and whether any gain or loss with respect to the security is long-term or short-term on Form 1099-B, "Proceeds from Broker and Barter Exchange Transactions," or any successor form under section 6045(a) when reporting the sale of a covered security. They clarify that the basis reported by a broker is the total amount paid by a customer or credited against a customer's account as a result of the acquisition of securities adjusted for commissions and the effects of other transactions occurring within the account. The proposed regulations also require brokers to adjust the basis they report to take into account the information received on a transfer statement in connection with the transfer of a covered security (including transfers from a decedent and gift transfers) as well as information received from issuers of stock about the quantitative effect on basis from corporate actions. The proposed regulations generally do not require a broker to adjust the reported basis for transactions, elections, or events occurring outside the account. For example, with respect to wash sales (discussed in more detail later in this preamble), the proposed regulations require that a broker adjust the reported basis in accordance with section 1091 if both the purchase and sale transactions occur with respect to identical securities in the same account.

Commentators suggested that brokers be required to report certain warnings or indicators to a customer about potential discrepancies between the broker-reported basis and the basis the customer must report on the customer's income tax return. For example, commentators suggested that a flag be added to the information return that would alert a customer that a foreign issuer may not have reported to the broker all issuer actions affecting basis. The proposed regulations do not adopt these suggestions but, as discussed with respect to wash sales later in this preamble, require a broker to report to customers engaging in wash sales the amount of any disallowed loss. Brokers may communicate additional information on other statements furnished to customers if desired. The Treasury Department and IRS request further comments regarding whether additional information items should be required on the information return. A draft of the 2011 Form 1099-B is available for viewing and comment on the IRS Web site at <http://www.irs.gov/pub/irs-dft/f1099k-dft.pdf>.

For a sale of securities that were acquired on different dates or at different prices, some commentators requested that brokers be permitted to report the sale on a single information return. Other commentators asked that the proposed regulations require separate reporting of the sale of securities acquired on different dates or at different prices. The proposed regulations generally maintain the current requirement that brokers report a sale of securities within an account on one return, even if the sale involves multiple acquisitions, to limit the number of separate returns filed with the IRS and statements furnished to customers. However, because brokers must report whether any gain or loss on the sale of a covered security is short- term or long-term, and because noncovered securities must be reported separately from covered securities to avoid treatment as covered securities, a single sale in an account could necessitate as many as three returns if the sale included covered securities held more than a year, covered securities held one year or less, and noncovered securities.

#### **b. Scope of Covered Securities and Treatment of Noncovered Securities**

The proposed regulations clarify that a broker is not required to report adjusted basis and whether any gain or loss on a sale is long- term or short-term for securities that are excepted from all reporting under section 6045 at the time of their acquisition. For example, the new basis reporting requirements do not apply to a security purchased by an organization that is tax-exempt even if the organization later loses its tax-exempt status and becomes subject to gross proceeds reporting on the sale of securities under section 6045(a).

With respect to a security transferred into an account in a non- sale transaction, the security is a covered security under the proposed regulations if it was a covered security prior to transfer and the broker receives the statement required under section 6045A for the transfer (the transfer statement, discussed in more detail later in this preamble) indicating that the security is a covered security. Conversely, a security is a noncovered security if the broker receives a transfer statement indicating that the security is a noncovered security. A transferred security will be presumed to be a covered security unless the transfer statement expressly states that the security is a noncovered security.

If the receiving broker does not receive a transfer statement or receives a transfer statement that does not contain all of the required information, the proposed regulations permit the broker to treat the security as a noncovered security if, as suggested by commentators, the broker notifies the person that effected the transfer and requests a complete statement, and no complete statement is provided in response to this request before the broker reports the sale or subsequent transfer of the security. The proposed regulations do not require brokers to make this request more than once.

If a broker receives the information required on the transfer statement after reporting the sale of the security, the proposed regulations require the broker to file a corrected Form 1099-B if the reporting was incorrect or incomplete. Similarly, if an issuer furnishes the return required by section 6045B concerning corporate organizational actions (the issuer statement, discussed in more detail later in this preamble) after the broker has reported the sale of the security, the proposed regulations require the broker to file a corrected Form 1099-B to report any adjustments to basis not reflected previously. Commentators requested that corrected reporting not be required for de minimis adjustments or for statements furnished beyond a specific period after the close of the calendar year. The proposed regulations do not adopt either suggestion. The Treasury Department and IRS request further comments regarding corrected reporting.

Commentators expressed concern regarding the difficulty, in some cases, of determining whether a security is stock (for which basis must be reported for acquisitions beginning in January 2011 or January 2012) or indebtedness or another financial instrument (for which basis does not need to be reported for acquisitions in 2011 or 2012). Some commentators suggested that the proposed regulations classify each security or require issuers to file a classification report with the IRS to permit the IRS to publish a report identifying each security. The proposed regulations do not adopt this approach. Instead, the proposed regulations provide that, solely for purposes of determining the applicable date for basis reporting, any security an issuer classifies as stock is treated as stock. If no issuer classification has been made, the security is not treated as stock unless the broker knows, or has reason to know, that the security is reasonably classified as stock under general tax principles.

Some commentators expressed a desire to report adjusted basis and whether any gain or loss on a sale is long-term or short-term for noncovered securities. Other commentators requested that the regulations prohibit such reporting on Form 1099-B and permit reporting only of adjusted basis and whether any gain or loss on a sale is long-term or short-term to the customer on statements not filed with the IRS. In order to encourage more reporting of information and simplify reporting by taxpayers on their income tax returns, the proposed regulations allow brokers the option of reporting adjusted basis and whether any gain or loss on a sale is long-term or short-term for noncovered securities on a security by security basis. Therefore, a broker may choose to report this information for any given noncovered security. The proposed regulations also provide that a broker that chooses to report this information with respect to a noncovered security is not subject to penalties under section 6721 or 6722 for any failure to report such information correctly, provided that the broker indicates on Form 1099-B that the sale reported is a sale of a noncovered security. The instructions to the tax return will inform taxpayers of their duty to verify the information reported by brokers and to adjust the reported information when necessary to reflect the taxpayer's correct information. This duty applies equally to covered and noncovered securities.

### **c. Determination of Basis Required To Be Reported**

Section 6045(g)(2)(B)(i)(I) provides that, except for RIC stock or DRP stock, a broker must report using the FIFO basis determination method unless the customer notifies the broker of the specific security to be sold or transferred by means of making an adequate identification of the security sold or transferred at the time of sale or transfer. With respect to RIC stock or DRP stock, section 6045(g)(2)(B)(i)(II) provides that a broker must report adjusted basis in accordance with the broker's default method under section 1012 unless the customer notifies the broker that the customer elects another permitted method.

The proposed regulations clarify that, when a customer sells less than the entire position of a security in an account, the selling broker must follow the customer's instruction, if any, adequately identifying the security sold or, when applicable, requesting that average basis be used to compute the basis of eligible stock. Thus, under the proposed regulations, a broker must report basis using any permitted lot identification and basis determination method the customer chooses when the customer provides a valid instruction (discussed in more detail later in this preamble). Absent a valid instruction from the customer, the proposed regulations clarify that a broker must report basis of a security (other than stock eligible for averaging) using the FIFO basis determination method when reporting the sale. The proposed regulations also clarify that, absent a valid instruction to use another method, a broker must report basis for stock eligible for averaging using the broker's default basis determination method.

Commentators requested that brokers and customers be permitted to report basis by different methods and that brokers be permitted to report basis for all sales using only one of the permitted basis determination methods, for example, the average basis method. The proposed regulations do not adopt these requests because section 1012 permits customers to report basis by a different permissible method than the default method selected by the broker and section 6045 requires brokers to follow instructions from customers regarding this selection. The requested rules are inconsistent with the goal of conforming broker reporting with taxpayer basis determination method elections to facilitate and promote compliance in taxpayer reporting of income.

## **2. Average Basis Method**

Section 1.1012-1(e) provides rules for computing the basis of RIC stock by averaging the cost of all shares in the account (the average basis method). Taxpayers may elect to use the average basis method for RIC stock acquired at different prices and maintained by a custodian or agent in an account for the periodic acquisition, redemption, sale, or other disposition of the stock.

Consistent with section 1012(d)(1), the proposed regulations extend the average basis method to shares of stock acquired after December 31, 2010, in connection with a DRP, and clarify that shares are eligible for averaging only if they are identical.

Commentators suggested that stock should be eligible for averaging together if it has the same Committee on Uniform Security Identification Procedures (CUSIP) number. The proposed regulations adopt this suggestion and define identical shares of stock as stock with the same CUSIP number (or other security identifier number as permitted in additional guidance of general applicability, see § 601.601(d)(2)). However, for purposes of defining a DRP, the proposed regulations provide that the stock of a successor entity or entities that result from certain corporate actions such as mergers, consolidations, split-offs, or spinoffs, is identical to the stock of the predecessor entity. Thus, corporate actions will not cause stock acquired in connection with a DRP to become ineligible for averaging because, for example, a dividend declared before the action and paid after the action is completed is not reinvested in stock with the same CUSIP number. The proposed regulations further provide, however, that shares of stock acquired in connection with a DRP are not identical to shares of stock with the same CUSIP number that are not acquired in connection with a DRP.

## **3. Broker's Default Basis Determination Method**

Consistent with section 6045(g)(2)(B)(i)(II), the proposed regulations provide that the basis of RIC stock and DRP stock is determined in accordance with a broker's default method, unless a taxpayer elects another permitted method.

### **a. Consistency in Use of Average Basis Method**

Commentators suggested that the proposed regulations should not require brokers to compute basis for a DRP using the average basis method for taxpayers electing this method. The proposed regulations do not adopt this recommendation because it is inconsistent with the statutory requirement that the average basis method be available to any taxpayer that desires to use it for a DRP, as well as with the goal of conforming broker reporting with taxpayer basis determination method elections to facilitate and promote compliance in taxpayer reporting of income. The proposed regulations specify that a broker must compute basis using the basis determination method the taxpayer elects. The proposed regulations also provide that the taxpayer must report gain or loss

on its return using the method the taxpayer elects or, if the taxpayer fails to make an election, the broker's default method.

#### **b. Default Method**

Commentators suggested that a broker should be allowed to determine a default basis determination method when a taxpayer fails to elect a method for determining the basis of RIC stock or DRP stock. Consistent with section 6045(g)(2)(B)(i)(II), the proposed regulations do not prescribe a broker default method, which each broker may determine.

#### **c. Communicating Default Method to Taxpayers**

A commentator suggested that the proposed regulations should require that a broker notify a taxpayer of the broker's default method by the earlier of opening a new account or January 1 of the year the average basis method election is effective. Other commentators suggested, however, that the proposed regulations should not specify how brokers communicate their default basis determination method to taxpayers. The proposed regulations do not require a specific method or time for this communication.

### **4. Definition of Dividend Reinvestment Plan**

#### **a. Issuer and Non-Issuer Plans**

A commentator requested that the proposed regulations broadly define dividend reinvestment plan to include both broker administered plans and issuer, or corporate, administered plans. Other commentators suggested, however, that if brokers are required to use the average basis method, the definition should include only issuer-administered plans. The proposed regulations define dividend reinvestment plan to include a written arrangement, plan, or program administered by an issuer or non-issuer of stock. Neither the statute nor the legislative history indicates any Congressional intent to limit the average basis method to issuer-administered plans.

#### **b. Reinvestment of Dividends**

A commentator suggested that a plan requiring reinvestment of only a portion of the dividends paid should qualify as a DRP under the proposed regulations. The proposed regulations provide that a plan qualifies as a DRP if the plan documents require that at least 10 percent of any dividend paid be reinvested in identical stock. Assuming this 10 percent requirement is met, a plan may reinvest different percentages of dividends in different stocks.

A commentator opined that a plan should not be considered a DRP if the stock is not paying dividends when the issuer offers the plan. Another commentator verbally stated that the proposed regulations should provide that a plan may qualify as a DRP even if the stock has never issued dividends or ceases to pay dividends. This commentator noted that the stock of a start-up company may be included in a DRP in the expectation of paying dividends in the future, and that a company that traditionally pays dividends may be required to temporarily suspend dividends, for example in the case of bankruptcy reorganization. The proposed regulations provide that a stock may be held in a DRP even if no dividends have ever been declared or paid or the issuer has ceased paying dividends.

A commentator suggested that the term dividends should include all income from stock for purposes of a DRP. The proposed regulations do not define dividends. Specific comments are requested on whether and how the regulations should define dividends, such as whether the regulations should define the term by reference to section 316, or more broadly to include any payment or distribution from stock, including ordinary dividends, capital gains dividends or distributions, non-taxable returns of capital, and cash dividends in lieu of fractional shares. Comments may address industry practices that relate to this definition.

### **c. Acquired in Connection With a DRP**

Commentators suggested that subsequent additions to a DRP, such as purchases or transfers of stock, be eligible for the average basis method. A commentator recommended that subsequent additions be separated into separate averaging pools. Another commentator suggested that a single averaging pool should be allowed for all post-effective date identical stock. One commentator stated that brokers have difficulty distinguishing non-DRP purchases of stock from purchases of stock with the same CUSIP number in a DRP, and therefore brokers should be allowed to apply the same basis determination method to all stock with the same CUSIP number in an account.

Consistent with section 1012(d)(4), the proposed regulations provide that stock is acquired in connection with a DRP if the stock is acquired under the DRP or the dividends paid are subject to the DRP. Stock acquired in connection with a DRP includes the initial purchase of stock in the DRP, subsequent transfers of identical stock into the DRP, additional periodic purchases of identical stock through the DRP, and all identical stock acquired through reinvestment of dividends paid under the DRP.

### **d. Withdrawal From or Termination of a DRP**

A commentator asked about the consequences if a DRP is terminated or a taxpayer transfers shares from a DRP at one broker to a broker that does not offer a DRP. The proposed regulations provide that, if a taxpayer withdraws from a DRP or the plan administrator terminates the DRP, shares of identical stock acquired after the withdrawal or termination are not acquired in connection with a DRP. After the withdrawal or termination, the taxpayer may no longer use the average basis method for the stock, but the basis of each share of stock immediately after the change is the same as the basis immediately before the change.

## **5. Computing Average Basis**

### **a. Elimination of Double-Category Method**

Under §1.1012-1(e)(3) and (4), taxpayers compute average basis using either a double-category method, which divides stock by holding period and averages long-term shares separately from short-term shares, or a single-category method, which averages all shares together regardless of holding period.

Commentators suggested that the proposed regulations eliminate the double-category method and noted that it is not widely used. One commentator stated that problems may occur when shares are transferred between accounts that use different methods. The proposed regulations adopt this suggestion and eliminate the double-category method. The proposed regulations provide that average basis is computed by averaging the basis of all identical stock in an account regardless of holding period and include a transition rule that requires taxpayers using the double-category method to average the basis of all

identical stock in an account on the date of publication of final regulations. Specific comments are requested on whether the double-category method should be retained.

Section 1.1012-1(e)(4)(iii) provides that the single-category method may not be used if it appears that the taxpayer's purpose is to convert long-term gain or loss into short-term gain or loss, or vice versa. Consistent with the elimination of the double-category method, the proposed regulations remove this provision. The proposed regulations include ordering rules that specify that the holding period of stock to which the average basis method applies is determined on a FIFO basis.

#### **b. Wash Sales**

Section 1.1012-1(e)(4)(iv) provides that section 1091(d) and the associated regulations apply to wash sales of stock from an account using the single-category method of computing average basis. Commentators suggested that brokers should not be required to apply these rules to stock held in separate accounts.

Section 6045(g)(2)(B)(ii) provides that, for purposes of reporting, brokers must apply the wash sale rules only to acquisition and sale transactions in the same account and for identical securities. The rules for brokers are discussed later in this preamble.

For a taxpayer using the average basis method, the proposed regulations provide that the taxpayer must apply section 1091 and the associated regulations (dealing with wash sales of substantially identical securities) in computing average basis regardless of whether the stock or security sold or otherwise disposed of and the stock acquired are in the same account or in different accounts.

#### **c. Basis After Change From Average Basis Method**

The proposed regulations provide that, except for a revocation of the average basis method election (discussed later in this preamble), if a taxpayer changes from the average basis method to another basis determination method for any reason, the basis of each share of stock immediately after the change is the same as the basis immediately before the change.

### **6. Time and Manner of Making the Average Basis Method Election**

Section 1.1012-1(e)(6) provides that a taxpayer elects to use the average basis method on an income tax return for the first taxable year the taxpayer wants the election to apply.

#### **a. Manner of Making the Average Basis Method Election**

Under the proposed regulations, a taxpayer elects the average basis method for covered securities by notifying the custodian or other agent for the taxpayer's account in writing. The taxpayer makes a separate election for each account holding stock for which the average basis method is permissible. A taxpayer uses the procedures under the current regulations to elect the average basis method for noncovered securities.

Commentators requested that the proposed regulations provide guidance on how taxpayers must inform brokers of their basis determination method. Commentators suggested that brokers may obtain this information through documents provided to a taxpayer opening an account and urged that the rules be flexible and allow electronic

communication. The proposed regulations require that a taxpayer must notify a custodian or agent in writing of an average basis method election, but otherwise do not specify how a taxpayer must communicate a basis determination method.

#### **b. Time for Making the Average Basis Method Election**

Some commentators suggested that taxpayers should be allowed or required to choose a basis determination method when opening an account or when acquiring stock for which the average basis method is permitted. Other commentators stated that taxpayers should choose a method by the date of a sale. The proposed regulations provide that taxpayers may elect the average basis method at any time, effective for sales after the date of the election.

#### **c. Revocation of Average Basis Method Election**

A commentator asked for clarification on how long brokers must retain basis information. Another commentator suggested that any revocation period should end by the earlier of the date of first sale, the end of the calendar year, or one year from the first purchase of stock.

In order to minimize broker recordkeeping requirements, the proposed regulations provide that a taxpayer may revoke the average basis method election by the earlier of one year from the date of making the election or the first sale or other disposition of the stock following the election. A broker may extend the one-year period but no longer than the first sale. A revocation applies to all identical stock in an account and is effective when the taxpayer notifies the broker or other custodian of the revocation. If a taxpayer revokes the election, the basis of each share of stock in the account is determined using another permissible method.

#### **d. Change From Average Basis Method**

Section 1.1012-1(e)(6)(ii) provides that a taxpayer that elects to use the average basis method may not revoke the election without the consent of the Commissioner. Under Rev. Proc. 2008-52 (2008-36 IRB 587), Section 30 of the Appendix, a taxpayer within the scope of Rev. Proc. 2008-52 uses the automatic consent procedures to change to the basis determination method described in §1.1012-1(c)(1) (FIFO or specific identification, discussed later in this preamble). The revenue procedure provides that the automatic consent procedures do not apply to RIC stock or to a change from FIFO to specific identification or vice versa, which is not a change in method of accounting. See § 601.601(d)(2).

A commentator recommended that taxpayers should not be able to change from the average basis method except by opening a new account. Other commentators opined that taxpayers should have broad discretion to change from the average basis method. Several commentators suggested that brokers should not be required to recreate a stock's original basis if a taxpayer changes from the average basis method.

The proposed regulations provide that a taxpayer may change from the average basis method to another permissible method at any time. A taxpayer's change in basis determination method applies to stock acquired on or after January 1, 2012, in a different manner than to stock acquired before January 1, 2012. Consistent with the account by account rules, discussed later in this preamble, a change in basis determination method applies to identical stock a taxpayer acquires on or after January 1, 2012, that the taxpayer holds in the same account. By contrast, a taxpayer's change in basis

determination method applies to all identical stock the taxpayer acquires before January 1, 2012, that the taxpayer holds in any account. Unless the taxpayer revokes the average basis method election, discussed earlier in this preamble, the taxpayer must change from the average basis method prospectively. Thus, the basis of each share of stock to which the change applies is the basis immediately before the change.

A commentator requested clarification on how often a taxpayer may change a basis method election. Commentators suggested that changes should be limited, for example to once per year. The proposed regulations do not limit the number of times or frequency a taxpayer may change basis determination methods.

A commentator suggested that the proposed regulations should require taxpayers to obtain the Commissioner's permission to change basis determination methods. Another commentator recommended that taxpayers be allowed to change from the average basis method without the Commissioner's permission. The proposed regulations clarify that a change in basis determination method is a change in method of accounting to which the provisions of sections 446 and 481 and the associated regulations apply. A taxpayer may change its basis determination method by obtaining the consent of the Commissioner under applicable administrative procedures. The IRS may publish additional guidance of general applicability, see §601.601(d)(2), that provides broad consent for taxpayers to change basis determination methods.

## **7. Applying Average Basis Method Account by Account**

Section 1.1012-1(e)(2) provides that a taxpayer must use the same basis determination method for all of the taxpayer's accounts in the same RIC. Section 1.1012-1(e)(6)(ii) provides that a taxpayer must apply an average basis method election to all shares (except certain gift shares) of a particular RIC that the taxpayer holds in any account.

### **a. Definition of Account**

Commentators requested that the proposed regulations define the term "account." Commentators noted that each fund of a RIC is treated as a single account, while a broker may hold other securities with different CUSIP numbers in a single account. Commentators suggested that accounts should be treated as separate accounts if they have different account numbers, and that subaccounts such as cash and margin accounts should not be treated as separate accounts.

The proposed regulations do not define the term account. Instead, the proposed regulations provide rules prescribing when stock must be treated as held in separate accounts and the result of that treatment.

### **b. Basis Determination Methods Applied Account by Account**

Commentators suggested that the proposed regulations allow a taxpayer to make separate basis calculations for the same stock held in two separate accounts, even if held by the same broker. The proposed regulations adopt this suggestion. Consistent with section 1012(c), the proposed regulations provide that the average basis method election applies to all identical RIC stock or DRP stock in an account. For sales or other dispositions of stock after 2011, a taxpayer may use different basis determination methods for identical stock held in two separate accounts, even if held by the same broker. A taxpayer also may use different basis determination methods for shares of stock held in the same account that are not identical.

For sales or other dispositions before 2012 of RIC stock or DRP stock for which a taxpayer has used the average basis method, the proposed regulations retain the rules requiring that the taxpayer use the average basis method for identical stock held in separate accounts. However, a taxpayer may use different basis determination methods for shares of stock held in the same account that are not identical.

### **c. Separate Accounts**

Consistent with section 1012(c)(2)(A), the proposed regulations provide that, absent a single-account election (explained later in this preamble), RIC stock or DRP stock that a taxpayer acquires before January 1, 2012, is treated as held in a separate account from any stock acquired on or after that date. The proposed regulations further provide that any stock that is a covered security (within the meaning of section 6045(g)(3)) is treated as held in a separate account from any stock that is a noncovered security regardless of when acquired, as is consistent with Congressional intent. The proposed regulations include an example in which a security acquired on or after January 1, 2012, is a noncovered security.

## **8. Single-Account Election**

Section 1012(c)(2) provides that, with respect to RIC stock, a RIC may elect (at the time and in the form and manner prescribed by the Secretary), on a stockholder by stockholder basis, to treat all stock in the RIC held by the stockholder as one account without regard to when the stock was acquired (single-account election). Section 1012(d)(3) provides that the account by account rules of section 1012(c), including the single-account election available to RICs, also apply to DRP stock.

### **a. Application and Scope of Election**

The proposed regulations provide that a RIC or DRP may make a single-account election to treat identical RIC stock or identical DRP stock held in separate accounts for which the taxpayer has elected to use the average basis method as held in a single account. If a broker holds the stock as a nominee, the broker, and not the RIC or DRP, makes the election. The single-account election is irrevocable. Commentators opined that a single-account election should not encompass stock a taxpayer acquires before January 1, 2012, if the basis information is unreliable. A commentator requested that the proposed regulations include a standard of reliability or, alternatively, allow brokers to exclude stock for which reliable basis information is not available from the single-account election. Another commentator requested penalty relief if reliable basis information is not available for pre-effective date shares.

The proposed regulations provide that a RIC, DRP, or broker may make a single-account election only for stock for which it has accurate basis information. A RIC, DRP, or broker has accurate basis information if the RIC, DRP, or broker neither knows nor has reason to know that the basis information is inaccurate. See also section 6724 and the regulations thereunder regarding standards for relief from information reporting penalties. Stock for which accurate basis information is unavailable may not be included in the single-account election and must be treated as held in a separate account.

The proposed regulations provide that, once the single-account election is made, it applies to all identical stock that is a covered security a taxpayer later acquires in an account. If a taxpayer acquires identical stock that is a noncovered security in an account, a RIC, DRP, or broker may make another single-account election if the RIC, DRP, or broker has accurate basis information. In addition to allowing a RIC, DRP, or

broker to make a single-account election for some taxpayers and not others, consistent with section 1012(c)(2)(B), the proposed regulations allow a RIC, DRP, or broker to make the election for some identical stocks held for a taxpayer and not for other stocks.

#### **b. Time and Manner for Making the Single-Account Election**

The proposed regulations provide that a RIC, DRP, or broker makes the single-account election by clearly noting it on its books and records. The books and records must reflect the date of the election; the taxpayer's name, account number, and taxpayer identification number; the stock subject to the election; and the taxpayer's basis in the stock. The books and records reflecting the election must be provided to the taxpayer upon request. The proposed regulations provide that the single-account election may be made at any time and more than once for a specific stock.

The proposed regulations require a RIC, DRP, or broker to use reasonable means to notify a taxpayer of a single-account election. Reasonable means include mailings, circulars, and electronic mail. The notification may be sent separately to the taxpayer or included with the taxpayer's account statement, or by other means calculated to provide actual notice. The notice must identify the securities subject to the election and advise the taxpayer that the stock will be treated as covered securities without regard to the date acquired.

### **9. FIFO and Specific Identification Methods**

Section 1.1012-1(c)(1) provides that if a taxpayer acquires shares of stock on different dates or at different prices and sells or transfers some of those shares, and does not adequately identify the lot from which the shares are sold or transferred, the shares deemed sold or transferred are the earliest acquired shares (the FIFO rule). If a taxpayer makes an adequate identification of the shares sold under §1.1012-1(c)(2), (3), or (4), the shares treated as sold are the shares the taxpayer identified.

#### **a. FIFO Rule**

A commentator verbally requested that the proposed regulations clarify how the FIFO rule of §1.1012-1(c)(1) applies to stock splits. The commentator asked whether shares acquired from the split are treated as acquired on the date of the purchase of the original shares or on the date of the split. In general, the shares that are first acquired are the shares with the longest holding period. Therefore, this question is addressed by rules under sections 307 and 1223 and the associated regulations and is outside the scope of these regulations.

A commentator requested clarification on whether the FIFO rule applies to stock that is part of a stock certificate that includes multiple lots. In response to this comment, the proposed regulations clarify that the FIFO rule also applies to multiple lots represented by a single stock certificate.

#### **b. Timing of Lot Selection**

Commentators suggested that taxpayers that wish to identify a specific lot of stock to be sold should be required to do so at the time of trade. Some commentators recommended that taxpayers should be allowed to wait to identify stock until the settlement date or until the end of the year. Other commentators opined that post-sale changes to specific identification of stock should not be allowed.

Rev. Rul. 67-436 (1967-2 CB 266) holds that an identification of stock by the time of delivery, which was within four days of the sale date, complied with the requirement to identify stock at the time of the sale or transfer. Consistent with Rev. Rul. 67-436, the proposed regulations provide that a taxpayer makes an adequate identification of stock at the time of sale, transfer, delivery, or distribution if the taxpayer identifies the stock no later than the earlier of the settlement date or the time for settlement under Securities and Exchange Commission regulations. Rev. Rul. 67-436 will be obsoleted when these regulations are published as final regulations. See § 601.601(d)(2).

### **c. Standing Lot Selection Orders**

Several commentators recommended that the proposed regulations allow taxpayers to specify a lot selection method to their brokers through standing orders such as last-in-first-out or highest-in-first-out. In response to these comments, the proposed regulations clarify that taxpayers may establish a lot selection method by standing order.

### **d. Method of Communicating Lot Selection**

To provide maximum flexibility, the proposed regulations do not designate how taxpayers must communicate lot selection to brokers. Any reasonable method of communication, including electronic and oral communication, is permissible.

### **e. Confirmation of Sales**

Section 1.1012-1(c)(3)(i)(b) and (ii)(b) requires a broker or agent to provide written confirmation of the sale of stock a taxpayer has specifically identified within a reasonable time after sale. Commentators suggested that the broker or agent should determine whether to provide a confirmation and its form, and that current technology renders the confirmation requirement obsolete. Another commentator suggested that the proposed regulations allow brokers to provide lot information to taxpayers either by trade confirmation, monthly statements, or year-end reports. The proposed regulations do not amend the current confirmation requirement, which ensures that taxpayers receive necessary information in a timely manner. What is reasonable depends on the facts and circumstances.

### **f. Writing in Electronic Format**

Commentators suggested that the proposed regulations specifically authorize electronic written confirmation or recordkeeping. In response to these comments, the proposed regulations clarify that a written confirmation, record, document, instruction, or advice includes a writing in electronic format.

### **g. Identification by Trustee or Executor**

Section 1.1012-1(c)(4) provides that a trustee of a trust or executor or administrator of an estate makes an adequate identification if the trustee, executor, or administrator specifies the stock in writing in the books and records of the trust or estate. If the stock is distributed, the trustee, executor, or administrator must identify the stock in writing to the distributee.

A commentator verbally noted that this rule does not require a trustee, executor, or administrator to identify stock to a broker or other agent selling the stock. The proposed

regulations add the requirement that the trustee, executor, or administrator identify the stock to the broker or agent.

## **10. Reporting of Wash Sales**

Section 6045(g)(2)(B)(ii) provides that, unless the Secretary instructs otherwise, a broker is required to report the adjusted basis of a covered security without taking into account the effect on basis of the wash sale rules of section 1091 unless the purchase and sale transactions resulting in a wash sale occur in the same account and are for identical securities (rather than substantially identical securities).

The proposed regulations provide that a broker is required to report adjusted basis in accordance with section 1091 only if both the purchase and sale transactions occur with respect to covered securities in the same account with the same CUSIP number (or other security identifier number that the Secretary may designate by publication in the Federal Register or in the Internal Revenue Bulletin). If a broker is required to apply section 1091 for reporting purposes, the broker must report the amount of the disallowed loss in addition to adjusted basis and gross proceeds for the sold security. The proposed regulations further provide that the broker must adjust the basis of the purchased security by the amount of the disallowed loss when reporting the eventual sale of the purchased security.

Commentators requested exceptions from reporting wash sales resulting in de minimis adjustments and wash sales triggered by scheduled periodic investments such as in an employee stock purchase plan or by automatic dividend reinvestment. Because the underlying substantive rules disallow losses in these situations, the proposed regulations do not adopt these recommendations. In addition, commentators requested an exception from reporting for wash sales for high frequency traders such as day traders based on the belief that high frequency traders generally make timely and valid elections to use the mark-to-market method of accounting under section 475(e) or (f) and that section 475(d)(1) therefore exempts them from the wash sale rules. Commentators also requested that the regulations provide a general exception from basis reporting for high frequency traders based on the belief that section 475 makes basis reporting superfluous for most high frequency traders. The proposed regulations do not adopt these recommendations, in part because the proposed regulations provide generally that reporting should occur without regard to the mark-to-market method of accounting. The Treasury Department and IRS request further comments on the treatment of high frequency traders, including specifics about the burden that basis reporting may impose, and how brokers can identify customers that have made valid and timely mark-to-market accounting method elections under section 475(e) or (f) and which transactions by these persons are subject to the provisions of section 475.

Commentators asserted that identical securities could have separate CUSIP numbers, potentially after a change to the name of the issuer. To facilitate administration of wash sale reporting, the proposed regulations interpret identical securities to mean securities with the same CUSIP number (or other security identifier number that the Secretary may designate by publication in the Federal Register or in the Internal Revenue Bulletin).

## **11. Reporting of Short Sales**

In the case of a short sale, section 6045(g)(5) provides that gross proceeds and basis reporting under section 6045 is generally required for the year in which the short sale is closed rather than, as under the present law rule for gross proceeds reporting, the year in which the short sale is entered into.

The proposed regulations implement this change to reporting of short sales by requiring brokers to report all short sales opened on or after January 1, 2010, for the year in which the short sale is closed. For sales that are opened and closed in 2010, the proposed regulations require brokers to report only gross proceeds information with respect to the securities sold to open the short sale, which is consistent with how brokers currently report short sale transactions. For sales closed on or after January 1, 2011, using covered securities, however, the proposed regulations require brokers to report both the information concerning the securities sold to open the short sale and the information concerning the securities acquired to close the short sale on a single return of information. For sales closed on or after January 1, 2011, using noncovered securities, the proposed regulations require brokers to report only the information concerning the securities sold to open the short sale and permit, but do not require, brokers to report adjusted basis for the securities acquired to close the short sale and whether any gain or loss on the short sale is long-term or short-term. The proposed regulations provide that reporting adjusted basis and whether any gain or loss on the short sale is long-term or short-term is not subject to penalty under section 6721 or 6722 if the Form 1099-B indicates that the sale reported is a sale of a noncovered security. These requirements are in line with the reporting beginning with calendar year 2011 of both adjusted basis and gross proceeds on Form 1099-B.

Under section 1233, satisfaction of a short sale obligation through other borrowed property does not close a short sale. The proposed regulations address this situation and provide that, if an obligation arising from a short sale is satisfied by the receipt of transferred securities that themselves are borrowed from or through the person effecting the transfer, the receiving broker should not file a Form 1099-B but should instead provide the information regarding the short sale of the borrowed securities to the person effecting the transfer. Under the proposed regulations, the person effecting the transfer must file Form 1099-B when the obligation is finally satisfied and the short sale is closed.

The proposed regulations modify the backup withholding rules for short sales to provide that backup withholding can occur only at the time the short sale is closed and becomes subject to reporting under section 6045(g)(5).

Commentators requested that brokers not be responsible for the additional reporting requirements related to short sales that are opened before January 2011 but also requested clear guidance on how to implement reporting for short sales opened prior to January 2011 to prevent duplicate reporting. The proposed regulations prevent duplicate reporting by requiring brokers to report short sales opened prior to January 2011 under current rules except for short sales opened in 2010 that remain open into 2011. Instead of reporting the sale for calendar year 2010, the proposed regulations require that brokers report these sales for the year in which the sale is closed.

Finally, commentators requested that the reporting of short sales not require brokers to apply the constructive sale rules of section 1259, which can trigger the recognition of gain if the investor also holds or acquires an appreciated position in the same securities, or the rules under section 1233(h) concerning limitations imposed on investors that own property substantially identical to the short sale property. The proposed regulations provide for these exclusions from reporting.

## **12. Reporting of Sales by S Corporations**

Under §1.6045-1(c)(3)(i)(B)(1), a broker currently is not required to report sales of securities by corporations. Section 1.6045-1(c)(3)(i)(C) currently permits a broker to treat a customer as a corporation if the broker has actual knowledge that the customer is

a corporation, if the customer files a Form W-9, "Request for Taxpayer Identification Number and Certification," exemption certificate claiming an exemption as a corporation, or, absent knowledge to the contrary, if the name of the customer contains an unambiguous expression of corporate status such as "Corporation" or "Incorporated."

To comply with the new requirement under section 6045(g)(4) that brokers report sales by customers that are S corporations of covered securities acquired on or after January 1, 2012, the proposed regulations exclude S corporations from the list of exempt Form 1099-B recipients, but only for sales of covered securities acquired on or after January 1, 2012. The proposed regulations also curtail the ability of brokers to rely solely on the name of the customer to determine whether the customer is a corporation exempt from reporting, but only for sales of covered securities acquired on or after January 1, 2012. Commentators requested that the proposed regulations retain this rule because its removal potentially requires brokers to seek a certification from all corporate customers. The proposed regulations do not adopt this recommendation, however, because brokers cannot infer from a customer's name whether the customer is taxed as an S corporation or C corporation. Commentators also requested that accounts opened by corporations before January 2012 be excepted from reporting. The proposed regulations do not adopt this request as contrary to the statute.

Commentators requested that Form W-9 be updated to facilitate a customer's statement to its broker of its current election to be taxed as an S corporation and that the proposed regulations require brokers to solicit or re-solicit Form W-9 from each existing corporate customer. The IRS is currently considering the requested modification to Form W-9. The proposed regulations do not impose a requirement to solicit or re-solicit Form W-9 from all existing corporate customers because, under §1.6045-1(c)(3)(i)(C), Form W-9 is only one method by which brokers may determine whether a corporate customer is exempt from all reporting beginning in 2012. However, if a broker does not have actual knowledge that a corporate customer is taxed as a C corporation or is otherwise exempt (for example, because it is a bank or organization exempt from tax under section 501(a)), a broker must request a Form W-9 exemption certificate or else must make a return of information for any sales by the corporation of covered securities acquired on or after January 1, 2012. A broker also may be required to backup withhold on gross proceeds paid to the customer.

Commentators requested that brokers be permitted to report other Form 1099 information such as interest and dividends for S corporations because reporting of the sales of securities is done on composite statements containing all such information. The proposed regulations do not address this topic directly because no penalty is imposed for the act of filing a nonrequired return.

### **13. Reporting to Trust Interest Holders in a WHFIT**

Commentators requested that the proposed regulations exempt trustees and middlemen from any requirement to report information under sections 6045(g) to trust interest holders in a widely held fixed investment trust (WHFIT) with respect to both the securities held by a WHFIT and trust interests in a WHFIT because the WHFIT rules in § 1.671-5 already provide a framework for communicating similar information to trust interest holders. These proposed regulations clarify that the sale of a trust interest in a WHFIT by a trust interest holder is required to be reported under section 6045(a). However, to the extent that a trustee or middleman has a requirement to provide information under section 6045(g), the trustee or middleman is deemed to meet those requirements by complying with the WHFIT rules in §1.671-5. The Treasury Department and IRS request additional comments on whether any basis reporting rules are needed in

addition to those provided under §1.671-5 to accommodate trust interest holders in a WHFIT.

#### **14. Due Date for Payee Statements Furnished in a Consolidated Reporting Statement**

Section 6045(b) extends the due date to furnish all of the payee statements required under section 6045 to customers from January 31 to February 15, effective for statements required to be furnished after December 31, 2008. Thus, in addition to Form 1099-B, "Proceeds from Broker and Barter Exchange Transactions," the February 15 due date applies to Form 1099-S, "Proceeds from Real Estate Transactions," and, when reporting payments to attorneys or substitute payments by brokers in lieu of dividends or interest, Form 1099-MISC, "Miscellaneous Income." This February 15 due date also applies to any other statement required to be furnished on or before January 31 of a calendar year if furnished with a statement required under section 6045 in a consolidated reporting statement. The Act did not define consolidated reporting statement but provided that the term would be defined in regulations. See Notice 2009-11 (2009-5 IRB 420), providing that, with respect to reportable items from calendar year 2008, brokers had until February 17, 2009, to report all items that they customarily reported on their annual composite form recipient statements. See § 601.601(d)(2).

The proposed regulations define consolidated reporting statement as a grouping of statements furnished to the same customer or same group of customers on the same date whether or not the statements are furnished with respect to the same or different accounts or transactions. Importantly, the proposed regulations require that the grouping of statements be limited to those furnished to the customer based on the same relationship as the statement furnished under section 6045 (for example, broker, payor, or real estate settlement agent), and not as a result of any other relationship between the parties such as debtor to creditor or employer to employee. Based on this limitation, the following forms may be furnished in a consolidated reporting statement with a statement required under section 6045: Form 1099-DIV, "Dividends and Distributions"; Form 1099-INT, "Interest Income"; Form 1099-MISC, "Miscellaneous Income"; Form 1099-OID, "Original Issue Discount"; Form 1099-PATR, "Taxable Distributions Received From Cooperatives"; Form 1099-Q, "Payments From Qualified Education Programs (Under Sections 529 and 530)"; Form 1099-R, "Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc."; Form 3921, "Exercise of an Incentive Stock Option Under Section 422(b)" (in development); Form 3922, "Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)" (in development); and Form 5498, "IRA Contribution Information." The Treasury Department and IRS request further comments regarding whether any other forms should be included in the definition of consolidated reporting statement.

For statements filed by brokers with respect to sales, the proposed regulations acknowledge that a customer may not sell securities in an account in every year and, thus, may not receive Form 1099-B every year. The proposed regulations provide that a broker may treat any customer as receiving a required statement under section 6045 if the customer has an account for which a statement would be required to be furnished under section 6045 had a sale occurred during the year.

#### **15. Reporting Required in Connection With Transfers of Securities**

Under new section 6045A, a broker and any other person specified in Treasury regulations (applicable person) that transfers to a broker a security that is a covered security in the hands of the applicable person must furnish to the receiving broker a

written statement for purposes of enabling the receiving broker to satisfy the reporting requirements of section 6045(g). Section 6045A(c) provides that, unless the Secretary provides otherwise, the statement required by this rule must be furnished to the receiving broker not later than fifteen days after the transfer of the covered security.

#### **a. Transfer Reporting Generally**

The proposed regulations create a presumption that every transfer of custody effected by an applicable person to a broker or other professional custodian of any share of stock in a corporation on or after January 1, 2011, that is not a sale is a transfer of a covered security subject to reporting. Thus, the proposed regulations provide that a transfer statement must be furnished for every such transfer. This duty applies even if the security transferred is a noncovered security or is treated as a noncovered security because it was excepted from all reporting under section 6045 (for example, because the customer was an exempt recipient) at the time of its acquisition. In either situation, the transfer statement is not required to include any other required information provided that the transfer statement indicates that the security transferred is a noncovered security. This presumption that all transferred securities are covered securities and the requirement to provide a transfer statement for noncovered or excepted securities solely for the purpose of establishing that the security is a noncovered or excepted security will reduce uncertainty for receiving brokers and custodians. The person initiating the transfer of custody is permitted, but not required, to provide other information about the noncovered or excepted security.

The proposed regulations place the duty to furnish the transfer statement on the person effecting the transfer of custody if the person is an applicable person. Under the proposed regulations, an applicable person is a broker within the meaning of §1.6045-1(a)(1), 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.

Under the proposed regulations, an applicable person has a duty to furnish a transfer statement if that person effects the transfer of custody of the securities. For securities held by direct registration with the issuer, including certificated shares, the person effecting the transfer is the issuer or its transfer agent. For securities held in street name, the person effecting the transfer is the broker or other firm carrying the securities.

Although the person responsible for providing a transfer statement will often be a broker or other applicable person that effects sales, the proposed regulations also impose this duty on issuers, transfer agents, professional custodians, and other applicable persons that may not effect sales. For these applicable persons, this duty is limited to a duty to receive the statement when receiving custody of transferred securities and then to retransmit the information on the statement when transferring custody of those securities to a broker (or, if no statement is received, to furnish a statement that the securities are noncovered securities). The proposed regulations regarding transfer statements do not impose a duty on those that do not effect sales to update basis in response to adjustments announced by issuers under section 6045B or to compute basis by average cost under section 1012. These computations apply only to basis reporting at the time of sale under section 6045 and, thus, apply only to brokers effecting sales. The Treasury Department and IRS request further comments regarding the scope of the transfer statement requirement.

Because the transfer statement is not filed with the IRS, no official form or format will be required. Instead, the proposed regulations specify the information required on the statement. At the request of commentators, the proposed regulations permit flexibility in the format and method by which the information is furnished pursuant to agreement of the parties. The Treasury Department and IRS request further comments about the form and format for the transfer statement and any substitutes thereto.

Under the proposed regulations, the transfer statement must identify the applicable person furnishing the statement, the broker receiving the statement, the owner or owners transferring the securities, and, if different, the owner or owners of the securities after any transfer other than a sale, such as a transfer of gifted or inherited securities. The transfer statement must also identify the securities being transferred and information about the transfer such as the date the transfer was initiated and the settlement date of the transfer (if known when reporting).

Under the proposed regulations, a transfer statement must include the total adjusted basis of the securities, the original date of acquisition, and the date for determining whether any gain or loss with respect to the security would be long-term or short-term at the time of sale. The transfer statement must also indicate the extent to which the reported basis amount has been adjusted to reflect any corporate actions that affect the basis of the security by reporting the number from the issuer statement required under section 6045B (discussed later in this preamble) of the most recent corporate action that is reflected on the transfer statement. Additionally, if the average basis method is used to determine basis, the proposed regulations permit reporting an original acquisition date of "VARIOUS" for securities owned at least five years.

Commentators suggested that additional information items be required on the statement such as the original purchase amount, the reason why the securities are (or are treated as) noncovered securities (if applicable), and the basis method used by the taxpayer immediately prior to the transfer. The proposed regulations do not require this additional information on the statement because the proposed regulations do not require this information to be reported on Form 1099-B. Additional information may be communicated with the statement, even if not required.

If an applicable person furnishing a transfer statement later receives a statement for an earlier transfer that reports that the transferred securities are covered securities and includes information inconsistent with the subsequent transfer statement, the proposed regulations require that a corrected statement be furnished to correct the inconsistent information within fifteen days following the receipt of the prior transfer statement.

## **b. Reporting Required in Connection With Transfers of Gifted and Inherited Securities**

Under section 6045(g)(3)(A)(ii), a covered security includes stock or indebtedness acquired on or after the applicable date if the security is transferred from an account in which the security was a covered security (but only if the receiving broker or other professional custodian receives a transfer statement). Therefore, under the proposed regulations, gifted and inherited securities that were covered securities in the account of the donor or decedent remain covered securities when transferred to the recipient's account and accompanied by a transfer statement.

Under the proposed regulations, when covered securities are transferred from a decedent, the transfer statement must indicate that the securities are inherited. The transfer statement must also report the date of death as the acquisition date and must

report adjusted basis in accordance with the instructions and valuations provided by an authorized representative of the estate. The proposed regulations require that the selling broker take these basis adjustments into account in reporting adjusted basis upon the subsequent sale or other disposition of these securities.

When covered securities are transferred to a different owner as a gift, the proposed regulations require the statement to indicate that the transfer consists of gifted securities and to state the adjusted basis of the securities in the hands of the donor and the donor's original acquisition date of the securities. The transfer statement must also report the date of the gift (if known when furnishing the statement) and the fair market value of the gift on that date (if known or readily ascertainable). Upon the subsequent sale or other disposition of these securities, the selling broker must apply the relevant basis rules for gifts when reporting adjusted basis.

Commentators opposed subjecting transfers of gifted and inherited securities to the requirements of transfer reporting because the substantive rules governing basis computation for these securities are complex. The proposed rules do not exclude transfers of gifted and inherited securities, however, because these transfers fall within the plain language of the statute. The proposed regulations provide workable rules to minimize complexity.

Issuers and transfer agents commented that they often do not know the reason for the transfer of shares from one owner to another. The proposed regulations provide that, if the request to transfer ownership between different people is silent as to the reason for the transfer, the transfer should generally be treated as a gift.

Commentators expressed concern regarding gifted and inherited securities about the potential burden to value privately traded securities or other securities for which fair market value is not easily determined. For inherited securities, the proposed regulations allow the applicable person effecting the transfer to rely on the authorized estate representative to provide the instructions and valuations necessary to report correct basis for any transferred securities. If the applicable person effecting the transfer does not receive instructions and valuations from the authorized estate representative, the applicable person must request this information from the authorized estate representative before preparing the transfer statement. If this information is not provided before the transfer statement is prepared, then the transfer statement must indicate that the transfer consists of an inherited security but must report the security as a noncovered security. If this information is provided after the transfer statement is sent, the applicable person effecting the transfer must send a corrected transfer statement.

For gifted securities, the proposed regulations only require the applicable person effecting the gift transfer to report the date of the gift if known at the time the transfer statement is prepared and the fair market value of the securities on the date of the gift if known or readily ascertainable at that time. However, the proposed regulations provide that, if the gifted securities are subsequently transferred to a different account of the same owner, the applicable person must include the date of the gift on the subsequent transfer statement and, if known or readily ascertainable at the time the subsequent transfer statement is prepared, the fair market value of the securities as of the date of the gift. The proposed regulations provide a special reporting rule for brokers that applies on the sale of a gifted security when the security's adjusted basis depends upon its fair market value as of the date of the gift but the transfer statement received by the selling broker does not report this amount and this amount is not readily ascertainable by the broker. Under these circumstances, the proposed regulations provide that the broker must report adjusted basis equal to the gross proceeds from the sale.

### **c. Reporting Required in Connection With Transfers of Borrowed Securities**

To facilitate the correct reporting of short sales involving transfers of borrowed securities, the proposed regulations require the transfer statement to indicate that the transferred securities are borrowed and provide instructions on how the receiving broker can provide information to the applicable person effecting the transfer about any short position potentially being closed by the transfer or other sale of the securities. This information is required to alert the receiving broker that, if the transferred securities are used to satisfy a short sale obligation, the short sale remains open and should not be reported as closed to the IRS or to the customer.

### **16. Reporting by Issuers of Actions Affecting Basis of Securities**

If an organizational action (such as a stock split or a merger or acquisition) by an issuer affects the basis of a specified security, new section 6045B requires the issuer to file a return with the IRS and furnish to each nominee (or to each certificate holder if there is no nominee) a written statement regarding the action. The return filing and information statement requirements may be waived under section 6045B(e) if the issuer makes the information about the action publicly available, in the form and manner determined by the Secretary.

The proposed 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. The proposed regulations also require the issuer to assign and report a sequential number determined separately by security for each information report the issuer files.

The proposed regulations require a domestic or foreign issuer to furnish a written statement to each holder of record that is not an exempt recipient as defined in §1.6045B-1(b)(5) as of the record date of the corporate action and all subsequent holders of record through the date the issuer furnishes the statement. The Treasury Department and IRS request comments as to the extent to which foreign issuers will be able to comply with such a reporting requirement, and whether it may be appropriate to limit foreign issuers' reporting requirements (such as, for example, limiting foreign issuers' reporting requirements to securities that are traded on a securities exchange in the United States).

If the security is held in the name of someone other than the holder of record on the books of the issuer, the proposed 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. 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. The proposed regulations permit an issuer to furnish to its holders and nominees a copy of the return that it files with the IRS.

The proposed regulations provide that both the return filing and information statement requirements under section 6045B 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. Under the proposed regulations, 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.

Commentators have questioned how issuers could report the effect on basis within 45 days of a corporate action when the effect may not be determinable until the conclusion of other events such as the end of the issuer's fiscal year. Any request to extend the due date was not adopted as inconsistent with the 45-day statutory due date. The proposed regulations provide that an issuer may make reasonable assumptions about facts that cannot be determined prior to 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 proposed regulations, it is expected that an issuer will treat a payment that may be a dividend consistently with its treatment of the payment under section 6042(b)(3) and §1.6042-3(c).

Some commentators suggested that the IRS establish a central repository on its website for posting information statements from issuers that wish to report publicly in lieu of filing returns. This suggestion was not adopted in the proposed regulations due to IRS resource and system constraints. The Treasury Department and IRS request comments on the definition of public reporting including rules about retaining the returns on the website and alternatives other than the use of a central repository.

Commentators requested that the proposed regulations except actions by S corporations from reporting under section 6045B because adjustments are specific to the shareholder and are reported on Schedule K-1 (Form 1120S), "Shareholder's Share of Income, Deductions, Credits, etc." The proposed regulations do not except reporting by S corporations, but deem an S corporation to satisfy the requirements under section 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.

## **17. Penalty Provisions**

The current regulations impose penalties on brokers for failing to file or furnish complete and correct returns and statements after the sale of a security. The proposed regulations expand the list of required statements and returns filed with the IRS in §301.6721-1 and the list of required statements furnished to payees in § 301.6722-1 to include the new penalties associated with the new transfer statements and issuer statements. The proposed regulations also update the full list of returns and statements included in section 6724(d).

Commentators expressed concern that the IRS would assert penalties against a broker for reporting an incorrect adjusted basis or incorrectly reporting whether any gain or loss on a sale is long-term or short-term after relying on incorrect information provided by others. Under the proposed regulations, brokers generally must adjust basis reported for covered securities to reflect: (1) Information received on any transfer statement under section 6045A; and (2) information reported by the issuer under section 6045B regarding the effect on basis of any organizational actions. The proposed regulations provide that any failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause with respect to the penalties under sections 6721 and 6722.

The proposed regulations permit, but do not require, a broker to adjust the reported basis in accordance with information that is not reflected on a transfer statement or issuer statement, including any information the broker has about securities held by the same customer in other accounts with the broker. The proposed regulations deem that a broker that takes into account information received from a customer or third party other than information reflected on a transfer statement or issuer statement relies upon such

information in good faith in accordance with existing rules found in §301.6724-1(c)(6) if the broker neither knows nor has reason to know that the information is incorrect.

## **Proposed Effective and Applicability Dates**

These regulations are proposed to take effect when published in the Federal Register as final regulations except as follows. The regulations regarding reporting basis and whether any gain or loss on a sale is long-term or short-term under section 6045(g) are proposed to apply to: (1) Any share of stock other than RIC stock or DRP stock acquired on or after January 1, 2011; and (2) any share of RIC stock or DRP stock acquired on or after January 1, 2012. The regulations regarding the determination of basis under section 1012 are proposed to apply for taxable years beginning after the date the regulations are published as final regulations in the Federal Register. However, the rules in §1.1012-1(e)(1)(i), in part, apply to stock acquired on or after January 1, 2011, the rules in §1.1012-1(e)(2) and (e)(9), in part, apply to stock acquired on or after January 1, 2012, and the rules in §1.1012-1(e)(7)(i), in part, and in §1.1012-1(e)(10), in part, apply to sales, exchanges, or other dispositions of stock on or after January 1, 2012.

The regulations regarding transfer statement reporting under section 6045A are proposed to apply to: (1) Transfers of stock other than RIC stock or DRP stock that occur on or after January 1, 2011; and (2) transfers of RIC stock or DRP stock that occur on or after January 1, 2012. The regulations regarding issuer reporting under section 6045B are proposed to apply to: (1) Organizational actions affecting basis of stock other than RIC stock that occur on or after January 1, 2011; and (2) organizational actions affecting basis of RIC stock that occur on or after January 1, 2012. The regulations regarding the timing for reporting short sales of securities under section 6045 and for collecting backup withholding in connection with short sales under section 3406 are proposed to apply to short sales opened on or after the date the final regulations are published in the Federal Register but no earlier than January 1, 2010.

## **Effect on Other Documents**

Rev. Rul. 67-436 will be obsoleted as of the date these regulations are published as final regulations in the Federal Register.

## **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities, because any effect on small entities by the rules proposed in this document flows directly from section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343 (122 Stat. 3765, 3854 (2008)).

Section 403(a) of the Act modifies section 6045 to require that brokers report the adjusted basis of the securities and whether any gain or loss with respect to the securities is long-term or short-term when reporting the sale of a covered security. It is anticipated that this statutory requirement will fall only on financial services firms with annual receipts greater than \$7 million and, therefore, on no small entities. Further, in

implementing the statutory requirement, the regulation proposes to limit reporting to the information described in the Act: Adjusted basis and whether any gain or loss with respect to the securities is long-term or short-term.

Section 403(c) of the Act adds new section 6045A, which requires applicable persons to furnish a transfer statement in connection with the transfer of custody of a covered security. In implementing this statutory requirement, the regulation proposes to define applicable person to include brokers, professional custodians of securities, and issuers of securities. This definition effectuates the Act by giving the broker who receives the transfer statement the information necessary to determine and report adjusted basis and whether any gain or loss with respect to the security is long-term or short-term as required by section 6045 when the security is subsequently sold. Consequently, the regulation does not add to the impact on small entities imposed by the statutory scheme. Instead, it limits reporting to only these necessary entities. It also limits the information to be reported to only those items necessary to effectuate the statutory scheme.

Section 403(d) of the Act adds new section 6045B, which requires issuer reporting by all issuers of specified securities regardless of size and even when the securities are not publicly traded. In implementing this statutory requirement, the regulation proposes to limit reporting to those items necessary to meet the Act's requirements. Additionally, the regulation proposes to mitigate the burden imposed by the Act by providing rules to permit issuers to report each action publicly as permitted by the Act instead of filing a return and furnishing each nominee or holder a statement about the action. The regulation therefore does not add to the statutory impact on small entities but instead eases this impact to the extent the statute permits.

Therefore, because this regulation will not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required. The Treasury Department and IRS request comments on the accuracy of this statement. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. The Treasury Department and IRS request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 17, 2010, beginning at 10 a.m., in the auditorium of the IRS New Carrollton Federal Building, 5000 Ellin Road, Lanham, Maryland 20706. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the FOR FURTHER INFORMATION CONTACT section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by February 8, 2010 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by February 8, 2010. A period of ten minutes will be allotted to each person for making comments. An agenda showing the

scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

## **Drafting Information**

The principal authors of these proposed regulations are Edward C. Schwartz, Amy J. Pfalzgraf, and William L. Candler, Office of Associate Chief Counsel (Income Tax and Accounting), and Stephen Schaeffer, Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and the Treasury Department participated in their development.

## **List of Subjects**

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

## **Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 31, and 301 are proposed to be amended as follows:

### **1. INCOME TAXES**

PAR. 1 The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

26 U.S.C. 7805 \*\*\*

Section 1.6045A-1 also issued under 26 U.S.C. 6045A(a), (b), (c).

Section 1.6045B-1 also issued under 26 U.S.C. 6045B(a), (c), (e). \*\*\*

### **31. EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE**

PAR. 15 The authority citation for part 31 continues to read in part as follows:

26 U.S.C. 7805 \*\*\*

## **301. PROCEDURE AND ADMINISTRATION**

PAR. 18 The authority citation for part 301 continues to read in part as follows:

26 U.S.C. 7805 \*\*\*

Steven T. Miller,

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E9-29855 Filed 12-16-09; 8:45 am]

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