

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Parts 1 and 602**

[TD 9065]

RIN 1545-BA77

**Section 6038—Returns Required With Respect to Controlled Foreign Partnerships****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulation and removal of temporary regulation.

**SUMMARY:** This document contains a final regulation relating to controlled foreign partnerships. This document requires that the United States partner must follow the filing requirements that are specified in the instructions for Form 8865.

**DATES:** *Effective Date:* This regulation is effective July 1, 2003.

*Applicability Date:* For dates of applicability, see § 1.6038-3(l).

**FOR FURTHER INFORMATION CONTACT:** Tasheaya L. Warren Ellison, (202) 622-3860 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act**

The collection of information contained in this final regulation has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1617.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The burden of complying with the collection of information required to be reported on Form 8865 is reflected in the burden for Form 8865. The estimated number of respondents is 5000. The estimated burden for the 2001 Form 8865 per respondent is 89 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be

retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

On December 23, 2002, final and temporary regulations (T.D. 9033) relating to the information reporting requirements for U.S. persons with interests in controlled foreign partnerships were published in the **Federal Register** (67 FR 78174). The temporary regulation addressed the filing requirements that must be followed for Form 8865 (Return of U.S. Persons With Respect To Certain Foreign Partnerships) if a U.S. person is required to file Form 8865 with respect to a foreign partnership that files Form 1065, U.S. Return of Partnership Income or Form 1065-B, U.S. Return for Electing Large Partnerships. On December 23, 2002, a notice of proposed rulemaking and public hearing (REG-124069-02) was also published in the **Federal Register** (67 FR 78202) with respect to the provisions of the temporary regulation. No written or electronic comments were received in response to the notice of proposed rulemaking. No requests to speak at the public hearing were received, and, accordingly, the hearing was canceled.

**Explanation of Provisions**

This Treasury decision adopts the language of the proposed regulation without change other than to clarify that Treas. Reg. § 1.6038-3(j) as in effect prior to T.D. 9033 (see 26 CFR part 1 revised April 1, 2002) is applicable to tax years of a foreign partnership ending before December 23, 2002. The temporary regulation is removed.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation. It is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the number of small entities that will be required to file the form is not substantial. The number of small entities with interests in foreign partnerships is not substantial; therefore, this regulation will not have

a significant economic impact on a substantial number of small entities. Additionally, this regulation does not increase the reporting burden for U.S. persons with interests in controlled foreign partnerships. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. Comments are requested regarding the impact on small businesses.

**Drafting Information**

The principal author of this regulation is Tasheaya Warren Ellison, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in its development.

**List of Subjects***26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

■ **Par. 2.** Section 1.6038-3, paragraphs (j) and (l) are revised to read as follows:

**§ 1.6038-3 Information returns required of certain United States persons with respect to controlled foreign partnerships (CFPs).**

\* \* \* \* \*

(j) *Overlap with section 6031.* A partner may be required to file Form 8865 under this section and the foreign partnership in which it is a partner may also be required to file a Form 1065 or Form 1065-B under section 6031(e) for the same partnership tax year. For cases where a United States person is a controlling fifty-percent partner or a controlling ten-percent partner with respect to a foreign partnership, and that foreign partnership completes and files Form 1065 or Form 1065-B, the instructions for Form 8865 will specify