

paragraph (B) or the reporting corporation is not able to provide the records requested in the summons, the Secretary may apply the rules of paragraph (3) with respect to any transaction or item to which the records relate.

(3) Applicable rules

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

(4) Judicial proceedings

The provisions of section 6038A(e)(4) shall apply with respect to any summons referred to in paragraph (2)(A); except that subparagraph (D) of such section shall be applied by substituting "transaction or item" for "transaction".

(e) Definitions

For purposes of this section, the terms "related party", "foreign person", and "records" have the respective meanings given to such terms by section 6038A(c).

(Added Pub. L. 101-508, title XI, §11315(a), Nov. 5, 1990, 104 Stat. 1388-456.)

EFFECTIVE DATE

Section applicable to (1) any requirement to furnish information under this section if the time for furnishing such information is after Nov. 5, 1990, (2) any requirement under subsec. (a) of this section to maintain records which were in existence on or after Mar. 20, 1990, (3) any requirement to authorize a corporation to act as a limited agent under subsec. (d)(1) of this section if the time for authorizing such action is after Nov. 5, 1990, and (4) any summons issued after Nov. 5, 1990, without regard to when the taxable year (to which the information, records, authorization, or summons relates) began, see section 11315(c) of Pub. L. 101-508, set out as an Effective Date of 1990 Amendment note under section 6038A of this title.

§ 6038D. Information with respect to foreign financial assets

(a) In general

Any individual who, during any taxable year, holds any interest in a specified foreign financial asset shall attach to such person's return of tax imposed by subtitle A for such taxable year the information described in subsection (c) with respect to each such asset if the aggregate value of all such assets exceeds \$50,000 (or such higher dollar amount as the Secretary may prescribe).

(b) Specified foreign financial assets

For purposes of this section, the term "specified foreign financial asset" means—

(1) any financial account (as defined in section 1471(d)(2)) maintained by a foreign financial institution (as defined in section 1471(d)(4)), and

(2) any of the following assets which are not held in an account maintained by a financial institution (as defined in section 1471(d)(5))—

(A) any stock or security issued by a person other than a United States person,

(B) any financial instrument or contract held for investment that has an issuer or counterparty which is other than a United States person, and

(C) any interest in a foreign entity (as defined in section 1473).

(c) Required information

The information described in this subsection with respect to any asset is:

(1) In the case of any account, the name and address of the financial institution in which such account is maintained and the number of such account.

(2) In the case of any stock or security, the name and address of the issuer and such information as is necessary to identify the class or issue of which such stock or security is a part.

(3) In the case of any other instrument, contract, or interest—

(A) such information as is necessary to identify such instrument, contract, or interest, and

(B) the names and addresses of all issuers and counterparties with respect to such instrument, contract, or interest.

(4) The maximum value of the asset during the taxable year.

(d) Penalty for failure to disclose

(1) In general

If any individual fails to furnish the information described in subsection (c) with respect to any taxable year at the time and in the manner described in subsection (a), such person shall pay a penalty of \$10,000.

(2) Increase in penalty where failure continues after notification

If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the individual, such individual shall pay a penalty (in addition to the penalties under paragraph (1)) of \$10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period. The penalty imposed under this paragraph with respect to any failure shall not exceed \$50,000.

(e) Presumption that value of specified foreign financial assets exceeds dollar threshold

If—

(1) the Secretary determines that an individual has an interest in one or more specified foreign financial assets, and

(2) such individual does not provide sufficient information to demonstrate the aggregate value of such assets,

then the aggregate value of such assets shall be treated as being in excess of \$50,000 (or such higher dollar amount as the Secretary prescribes for purposes of subsection (a)) for purposes of assessing the penalties imposed under this section.

(f) Application to certain entities

To the extent provided by the Secretary in regulations or other guidance, the provisions of this section shall apply to any domestic entity

which is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets, in the same manner as if such entity were an individual.

(g) Reasonable cause exception

No penalty shall be imposed by this section on any failure which is shown to be due to reasonable cause and not due to willful neglect. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the required information is not reasonable cause.

(h) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provide appropriate exceptions from the application of this section in the case of—

- (1) classes of assets identified by the Secretary, including any assets with respect to which the Secretary determines that disclosure under this section would be duplicative of other disclosures,
- (2) nonresident aliens, and
- (3) bona fide residents of any possession of the United States.

(Added Pub. L. 111-147, title V, §511(a), Mar. 18, 2010, 124 Stat. 109.)

EFFECTIVE DATE

Pub. L. 111-147, title V, §511(c), Mar. 18, 2010, 124 Stat. 110, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after the date of the enactment of this Act [Mar. 18, 2010]."

§ 6039. Returns required in connection with certain options

(a) Requirement of reporting

Every corporation—

- (1) which in any calendar year transfers to any person a share of stock pursuant to such person's exercise of an incentive stock option, or
- (2) which in any calendar year records (or has by its agent recorded) a transfer of the legal title of a share of stock acquired by the transferor pursuant to his exercise of an option described in section 423(c) (relating to special rule where option price is between 85 percent and 100 percent of value of stock),

shall, for such calendar year, make a return at such time and in such manner, and setting forth such information, as the Secretary may by regulations prescribe.

(b) Statements to be furnished to persons with respect to whom information is reported

Every corporation making a return under subsection (a) shall furnish to each person whose name is set forth in such return a written statement setting forth such information as the Secretary may by regulations prescribe. The written statement required under the preceding sentence shall be furnished to such person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

(c) Special rules

For purposes of this section—

(1) Treatment by employer to be determinative

Any option which the corporation treats as an incentive stock option or an option granted under an employee stock purchase plan shall be deemed to be such an option.

(2) Subsection (a)(2) applies only to first transfer described therein

A statement is required by reason of a transfer described in subsection (a)(2) of a share only with respect to the first transfer of such share by the person who exercised the option.

(3) Identification of stock

Any corporation which transfers any share of stock pursuant to the exercise of any option described in subsection (a)(2) shall identify such stock in a manner adequate to carry out the purposes of this section.

(d) Cross references

For definition of—

- (1) the term "incentive stock option", see section 422(b), and
- (2) the term "employee stock purchase plan"¹ see section 423(b).

(Added Pub. L. 88-272, title II, §221(b)(1), Feb. 26, 1964, 78 Stat. 73; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-167, §7(a), Dec. 29, 1979, 93 Stat. 1276; Pub. L. 97-34, title II, §251(b)(5), Aug. 13, 1981, 95 Stat. 259; Pub. L. 101-508, title XI, §11801(c)(9)(J), Nov. 5, 1990, 104 Stat. 1388-526; Pub. L. 105-206, title VI, §6023(20), July 22, 1998, 112 Stat. 825; Pub. L. 109-432, div. A, title IV, §403(a), (b), (c)(3), (4), Dec. 20, 2006, 120 Stat. 2954, 2955.)

PRIOR PROVISIONS

A prior section 6039 was renumbered section 6040 of this title.

AMENDMENTS

2006—Pub. L. 109-432, §403(c)(3), substituted "Returns" for "Information" in section catchline.

Subsec. (a). Pub. L. 109-432, §403(a), (c)(4), substituted "Requirement of reporting" for "Furnishing of information" in heading and amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: "shall (on or before January 31 of the following calendar year) furnish to such person a written statement in such manner and setting forth such information as the Secretary may by regulations prescribe."

Subsecs. (b) to (d). Pub. L. 109-432, §403(b), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1998—Subsec. (a)(1). Pub. L. 105-206 inserted "to any person" after "transfers".

1990—Subsec. (a)(1), (2). Pub. L. 101-508, §11801(c)(9)(J)(i), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

"(1) which in any calendar year transfers a share of stock to any person pursuant to such person's exercise of a qualified stock option, an incentive stock option, or a restricted stock option, or

"(2) which in any calendar year records (or has by its agent recorded) a transfer of the legal title of a share of stock—

"(A) acquired by the transfer or pursuant to his exercise of an option described in section 423(c) (relat-

¹ So in original. Probably should be followed by a comma.