

a related party to the reporting corporation, and” for “foreign corporation which is a member of the same controlled group as the reporting corporation.”

Subsec. (b)(4). Pub. L. 99-514, §1245(b)(3), added par. (4).

Subsec. (c)(2). Pub. L. 99-514, §1245(b)(4), amended par. (2) generally. Prior to amendment, par. (2), controlled group, read as follows: “The term ‘controlled group’ means any controlled group of corporations within the meaning of section 1563(a); except that—

“(A) ‘at least 50 percent’ shall be substituted—

“(i) for ‘at least 80 percent’ each place it appears in section 1563(a)(1), and

“(ii) for ‘more than 50 percent’ each place it appears in section 1563(a)(2)(B), and

“(B) the determination shall be made without regard to subsections (a)(4), (b)(2)(C), and (e)(3)(C) of section 1563.”

1984—Subsec. (c)(1). Pub. L. 98-369 substituted section “6038(e)(1)” for “6038(d)(1)”.

1983—Subsec. (c)(2)(B). Pub. L. 97-448 inserted “, (b)(2)(C),” after “(a)(4)”.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to base erosion payments (as defined in section 59A(d) of this title) paid or accrued in taxable years beginning after Dec. 31, 2017, see section 14401(e) of Pub. L. 115-97, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(c)(5) of Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11315(c), Nov. 5, 1990, 104 Stat. 1388-457, provided that: “The amendments made by this section [enacting section 6038C of this title and amending this section] shall apply to—

“(1) any requirement to furnish information under section 6038C(a) of the Internal Revenue Code of 1986 (as added by this section) if the time for furnishing such information under such section is after the date of the enactment of this Act [Nov. 5, 1990],

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

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

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

without regard to when the taxable year (to which the information, records, authorization, or summons relates) began.”

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, §7403(e), Dec. 19, 1989, 103 Stat. 2361, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after July 10, 1989.”

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XII, §1245(c), Oct. 22, 1986, 100 Stat. 2581, provided that: “The amendments made by this section [amending this section and section 6038 of this title] shall apply to taxable years beginning after December 31, 1986.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Respon-

sibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 311(d) of Pub. L. 97-448, set out as a note under section 31 of this title.

EFFECTIVE DATE

Pub. L. 97-248, title III, §339(c), Sept. 3, 1982, 96 Stat. 633, provided that: “The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1982.”

APPLICABILITY OF 1989 AMENDMENT

Pub. L. 101-508, title XI, §11314, Nov. 5, 1990, 104 Stat. 1388-455, provided that:

“(a) GENERAL RULE.—The amendments made by section 7403 of the Revenue Reconciliation Act of 1989 [Pub. L. 101-239, amending this section] shall apply to—

“(1) any requirement to furnish information under section 6038A(a) of the Internal Revenue Code of 1986 (as amended by such section 7403) if the time for furnishing such information under such section is after the date of the enactment of this Act [Nov. 5, 1990],

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

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

“(4) any summons issued after such date of enactment, without regard to when the taxable year (to which the information, records, authorization, or summons relates) began. Such amendments shall also apply in any case to which they would apply without regard to this section.

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

§ 6038B. Notice of certain transfers to foreign persons

(a) In general

Each United States person who—

(1) transfers property to—

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

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

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

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

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

(1) Exceptions

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

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

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

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

(2) Special rule

If by reason of an adjustment under section 482 or otherwise, a contribution described in subsection (a)(1) is deemed to have been made, such contribution shall be treated for purposes of this section as having been made not earlier than the date specified by the Secretary.

(c) Penalty for failure to furnish information

(1) In general

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

(2) Reasonable cause exception

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

(3) Limit on penalty

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

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

AMENDMENTS

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

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

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

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

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

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

EFFECTIVE DATE OF 2005 AMENDMENT

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

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE

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

ELECTION OF RETROACTIVE EFFECT

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

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

(a) Requirement

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

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

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

(b) Required information

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