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American Institute of Certified Public Accountants. Committee on Federal Taxation

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COMMITTEE ON FEDERAL TAXATION
of the
AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Comments on Proposed Regulations Under Section 318 and 6038 of the Internal Revenue Code Regarding Information With Respect to Certain Foreign Corporations

SECTION 1

1.6038-2(f)(10) Information requested in Proposed Regulations Sections 1.6038-2(f)(10) and (11) should be related to and reported in conformity with generally accepted accounting principles. This requirement will accord with the requirement in Proposed Regulation Section 1.6038-2(g) and will provide a more appropriate point of reference for reporting the required information. In any event, it should be recognized that the "distribution" mentioned in Proposed Regulation Section 1.6038-2(f)(10) assumes a "cash basis" of reporting and may not accord with information reflected in the financial statements of a corporation.

Presently, the Proposed Regulations require reporting of transactions on a basis which may not bear any relationship to the accounting principles which are observed in a corporation's accounting records.

The summary of financial transactions called for in Proposed Regulations 1.6038-2(f)(11) seems to require a cash method of accounting. This will impose a substantial burden on taxpayers to convert accrual basis accounts into cash basis accounts.

SECTION 2

1.6038-2(f)(10) The requirements for reporting earnings and profits will involve taxpayers generally in more burdensome reporting procedures for reporting information which may not be needed. Section 6038 both before and after amendment requires that a taxpayer furnish the accumulated profits of such foreign corporation, as defined in Section 902(c). It would appear that the definition in Section 902(c) refers to the corporation's profits as reflected in its books of account as determined under accepted accounting procedures. Under the prior regulations for Section 6038 and as shown on Form 2952 in use for the past two years, taxpayers were asked to furnish gross receipts, net profits before taxes and foreign (Over)
income taxes. Such information should satisfy the needs of the Internal Revenue Service.

In any event, information regarding current earnings and profits, etc. should not be required until definitions or guidelines are developed by the Secretary, or his delegate under the provision of Section 12 of the Revenue Act of 1962. The determination of current earnings and profits without benefit of any definitions or guidelines will impose unreasonable burdens on taxpayers and cast doubt on the usefulness of the information from the Service's point of view.

1.6038-2(k)

It is proposed that where two or more persons are required to furnish information with respect to the same foreign corporation for the same period, such persons may in lieu of filing several returns jointly execute and file one return. The joint execution of returns under this section seems unnecessary and time consuming, and it is suggested that in lieu of joint execution one person be permitted to file all of the necessary information and furnish a statement to other persons evidencing compliance which can be attached to such other persons' tax returns. (See Regs. Sec. 1.6033-1(a)(3) relating to pension information.)

1.6038-2(k)

The last sentence should be revised to permit identification of the return with which the information was filed by stating "the place of filing and the annual accounting period for such return." The requirement as to "time of filing" is impractical since in many cases the information may not be ascertainable.

1.6038-2(1)(5)(ii) The term "income" should be defined to be net income after taxes.