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Committee on federal taxation

Comments on proposed regulations under section
6046 of the Internal revenue code regarding
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of foreign corporations, etc. Dec. 1962?

COMMITTEE ON FEDERAL TAXATION

of the

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Comments on Proposed Regulations Under Section 6046 of the Internal Revenue Code Regarding Returns as to Organization or Reorganization of Foreign Corporations, etc.

SECTION

1

1.6046-1(a)(3)

The "special rule" seems to exceed the statutory requirements of Section 6046(a)(1), since that Section only requires a return from an officer or a director of a foreign corporation where more than 5% of the stock is owned by a U.S. person. Moreover, it is unduly harsh to subject an officer or director to a \$1,000 penalty for failure to deny that there is any requirement to file an information return, particularly where there is no statutory authority requiring such information.

2

1.6046-1(b)

Each U.S. person who owns on January 1, 1963 5% or more of the outstanding stock of a foreign corporation is required to file a Revised Form 959 setting forth voluminous information and data which is duplicated under Section 6038 where such foreign corporation is a controlled foreign corporation. For example, under Section 6038 as well as under Section 6046 a controlling U.S. shareholder must file copies of profit and loss statements and balance sheets. To avoid duplication of work by both the Service and taxpayers, U.S. corporate shareholders should be exempt from filing information under this section which is already being filed under Section 6038.

3

1.6046-1(b)

Much of the information required is not ordinarily found in the possession of a 5% shareholder, and he may not be able to obtain it. Almost no foreign country has a requirement or follows the policy of giving shareholders each year detailed financial information. In most countries a profit and loss statement will have about five items in it, and not even gross sales will be disclosed. Unless the 5% shareholder controls the foreign corporation directly or indirectly, he should not be required under a recurring penalty of \$1,000 to furnish data not in his possession.

(Over)

1.6046-1(b)(9)

If this provision is retained, it should be made clear that the term "certified copy" means a copy of the articles and bylaws certified by an officer of the foreign corporation. To require a certificate from a foreign government official would result in substantial stamp taxes and the payment of substantial fees to a notary. There seems little purpose in requiring copies of articles of organization of foreign corporations which were organized many years ago and the requirement could be a substantial burden in many cases. It would be more reasonable to have such a requirement only with respect to foreign corporations organized or reorganized after January 1, 1963.

1.6046-1(b)(10)

The determination of what constitutes a "complete" description of actual business activities is subjective. If the District Director should happen to disagree with the taxpayer regarding the completeness of his description, a \$1,000 penalty will be incurred. The word "complete" should be deleted.

1.6046-1(b)(11)

No essential purpose seems to be served by requiring the submission of financial statements. The Director of International Operations will have been placed on notice of the existence of the ownership of stock of the foreign corporation through the filing of Form 959.

1.6046-1(b)(13)

A subscriber to stock of a corporation is the original subscriber upon organization -- at least that is the meaning in the United States. What purpose will be served by learning the names of subscribers to the stock of a foreign corporation organized, for example, in 1922?

1.6046-1(b)(15)

It will usually be impossible to comply with the requirements of this section in the case of bearer shares. In the case of nominative shares registered in the name of a nominee, it will be unusual if a 5% shareholder, or even the foreign corporation, will know the names of the beneficial owners.

1.6046-1(e)

Provision is made for joint returns, and for the exclusion of information previously furnished by the same shareholder. Exclusion should also be provided where information has been previously furnished by any shareholder or by any officer or director.

1.6046-1(f)(2)

The expanded definition of a reorganization seems too vague to be capable of administration. For example, it would not seem that mere capitalization of a reserve in a capital account should constitute a reorganization, yet that result seems to follow from the proposal.