

## § 1.6041-2T

## 26 CFR Ch. I (4-1-01 Edition)

See § 1.6049-5(d) for determining whether a payment is made to a foreign person.

[T.D. 7284, 38 FR 20827, Aug. 3, 1973, as amended by T.D. 7580, 43 FR 60159, Dec. 26, 1978; T.D. 8734, 62 FR 53472, Oct. 14, 1997; T.D. 8895, 65 FR 50406, Aug. 18, 2000]

### § 1.6041-2T Return of information as to payments to employees (temporary).

(a)(1) through (4) [Reserved]

(5) *Statement for employees.* An employer that is required under § 1.6041-2(a) to file Form W-2 with respect to an employee is also required under section 6041(d) and 6051 to furnish a written statement to the employee. This written statement must be furnished on Form W-2 in accordance with section 6051 and the regulations.

(b) and (c). For further guidance, see § 1.6041-2(b) and (c).

[T.D. 8942, 66 FR 10193, Feb. 14, 2001]

### § 1.6041-3 Payments for which no return of information is required under section 6041.

Returns of information are not required under section 6041 and §§ 1.6041-1 and 1.6041-2 for payments described in paragraphs (a) through (q) of this section. See § 1.6041-4 for reporting exemptions regarding payments to foreign persons.

(a) Payments of income required to be reported on Forms 1120-S, 941, W-2, and W-3 (however, see § 1.6041-2(a) with respect to Forms W-2 and W-3).

(b) Payments by a broker to his customer (but for reporting requirements as to certain of such payments, see sections 6042, 6045, and 6049 and the regulations thereunder in this part).

(c) Payments of bills for merchandise, telegrams, telephone, freight, storage, and similar charges.

(d) Payments of rent made to real estate agents (but the agent is subject to the requirements of paragraph (a)(1)(ii) and (2)(ii) of § 1.6041-1).

(e) Payments representing earned income for services rendered without the United States made to a citizen of the United States, if it is reasonable to believe that such amounts will be excluded from gross income under the provisions of section 911 and the regulations thereunder.

(f) Compensation and profits paid or distributed by a partnership to the individual partners (but for reporting requirements, see § 1.6031-1).

(g) Payments of commissions to general agents by fire insurance companies or other companies insuring property, except when specifically directed by the Commissioner to be filed.

(h)(1) *In general.* Payments made under reimbursement or other expense allowance arrangements that meet the requirements of section 62(c) of the Code and § 1.62-2, that do not exceed the amount of the expenses substantiated (i.e., amounts which are treated as paid under an accountable plan), and that are received by an employee on or after January 1, 1989, with respect to expenses paid or incurred on or after January 1, 1989.

(2) *Transition rule.* Payments made under reimbursement or other expense allowance arrangements that are received by an employee on or after January 1, 1989, but prior to July 1, 1990, to the extent that the employee is required to account (within the meaning of the term “account” as set forth in § 1.162-17(b)(4) or 1.274-5T(f)(4), whichever is applicable) and does so account to the payor for such expenses, provided the payor has made a reasonable, good faith effort to comply with the requirements of section 62(c). In general, compliance with the provisions of this section, as in effect for payments made under reimbursement or other expense allowance arrangements that were received by an employee before January 1, 1989, with respect to expenses paid or incurred before January 1, 1989, will constitute such reasonable good faith compliance. In no event, however, will reasonable good faith compliance exist if a payor fails to report payments made under an arrangement (other than a per diem or mileage allowance type arrangement) under which an employee is not required to substantiate expenses paid or incurred or is not required to return amounts in excess of the substantiated expenses.

(i) Payments of interest on obligations of the United States, or a State, Territory, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing (but for

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requirements for reporting certain such payments by the United States or any agency or instrumentality thereof, see §§1.1461-1 to 1.1461-3, inclusive).

(j) Payments of interest on corporate bonds (but for reporting requirements as to payments on certain corporate bonds, see §1.6049-5.

(k) Amounts paid as an allowance or reimbursement for traveling or other bona fide ordinary and necessary expenses, including an allowance for meals and lodging or a per diem allowance in lieu of subsistence, to persons in the service of an international organization (without regard to whether there is a requirement to account for such amounts) if-

(1) The organization is designated as an international organization by the President of the United States in Executive Orders issued pursuant to 22 U.S.C. 288, and

(2) The organization has immunity with respect to the inviolability of its archives pursuant to an international agreement having full force and effect in the United States.

(l) A payment to an informer as an award, fee, or reward for information relating to criminal activity, but only if such payment is made by the United States, a State, Territory, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, or, with respect to payments made after December 31, 1987, by an organization that is described in section 501(c)(3) and that makes such payments in furtherance of a charitable purpose to lessen the burdens of government within the meaning of §1.501(c)(3)-1(d)(2).

(m) On and after September 9, 1968, payments by a person carrying on the banking business of interest on a deposit evidenced by a negotiable time certificate of deposit (but for reporting requirements as to payments made after December 31, 1962, of interest on certain deposits, see sec. 6049 and the regulations thereunder in this part).

(n) Payments made to principals by persons carrying on the banking business, and by persons which are mutual savings banks, cooperative banks, building and loan associations, home-  
stead associations, credit unions, or

similar organizations chartered and supervised by Federal or State law, of funds collected when acting in the capacity of collection agents. This exception does not apply to collection of items on a regular and continuing basis under a so-called escrow, trust, custody, or investment advisory agreement. However, returns of information are not required unless payment is of the type with respect to which such returns would otherwise be required under section 6041 if the payer were engaged in a trade or business; nor are returns of information required on payments pursuant to a trust with respect to which Form 1041 is required to be filed by the trustee. The exception from reporting set forth in this paragraph shall apply until such time as the Commissioner determines that it is feasible for such persons to report the payments, and this paragraph is amended accordingly to require such reporting.

(o) Payments to individuals as scholarships or fellowship grants within the meaning of section 117(b)(1), whether or not "qualified scholarships" as described in section 117(b). This exception does not apply to any amount of a scholarship or fellowship grant that represents payment for services within the meaning of section 117(c). Instead, these amounts are required to be reported as wages on Form W-2. See §1.1461-1(c) for applicable reporting requirements for amounts paid to foreign persons.

(p) Per diem of certain alien trainees described under section 1441(c)(6).

(q) Payments made to the following persons:

(1) A corporation described in §1.6049-4(c)(1)(ii)(A), except a corporation engaged in providing medical and health care services or engaged in the billing and collecting of payments in respect to the providing of medical and health care services. However, no reporting is required where payment is made to a hospital or extended care facility described in section 501(c)(3) which is exempt from taxation under section 501(a) or to a hospital or extended care facility owned and operated by the United States, a State, the District of Columbia, a possession of the United

States, or a political subdivision, agency or instrumentality of any of the foregoing. For reporting requirements as to payments by cooperatives, and to certain other payments, see sections 6042, 6044, and 6049 and the regulations thereunder in this part.

(2) An organization exempt from taxation under section 501(a), as described in § 1.6049-4(c)(1)(ii)(B)(I), or an individual retirement plan, as described in § 1.6049-4(c)(1)(ii)(C).

(3) The United States, as described in § 1.6049-4(c)(1)(ii)(D).

(4) A State, the District of Columbia, a possession of the United States, or any political subdivision of any of the foregoing, as described in § 1.6049-4(c)(1)(ii)(E).

(5) A foreign government or political subdivision of a foreign government, as described in § 1.6049-4(c)(1)(ii)(F).

(6) An international organization, as described in § 1.6049-4(c)(1)(ii)(G).

(7) A foreign central bank of issue, as described in § 1.6049-4(c)(1)(ii)(H) and the Bank for International Settlements.

(8) Any wholly owned agency or instrumentality of any person described in paragraph (q) (2), (3), (4), (5), (6), or (7) of this section.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.6041-3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

**§ 1.6041-4 Foreign-related items and other exceptions.**

(a) *Exempted foreign-related items*—(1) Returns of information are not required for payments that a payor can, prior to payment, associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049-5(d)(1) or presumed to be made to a foreign payee under § 1.6049-5(d)(2), (3), (4), or (5). However, such payments may be reportable under § 1.1461-1(b) and (c). For purposes of this paragraph (a)(1), the provisions in § 1.6049-5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply.

See § 1.1441-1(b)(3)(iii)(B) and (C) for special payee rules regarding scholarships, grants, pensions, annuities, etc. The provisions of § 1.1441-1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code and the regulations under that chapter.

(2) Returns of information are not required for payments of amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code and the regulations under those provisions) made by a non-U.S. payor or non-U.S. middleman outside the United States. For a definition of non-U.S. payor and non-U.S. middleman, see § 1.6049-5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see § 1.6049-5(e).

(3) Returns of information are not required for amounts paid by a foreign intermediary described in § 1.1441-1(c)(13) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in § 1.1441-1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in § 1.1441-1(b)(2)(iv) (other than a U.S. branch that is treated as a U.S. person) that are associated with a valid withholding certificate described in § 1.1441-1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under § 1.6041-1 and were not so reported. For example, if a foreign intermediary or U.S. branch described in § 1.1441-1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under § 1.6041-3(q) to the person from whom the intermediary or U.S. branch receives the payment, the foreign intermediary or U.S. branch must report the payment on an information return. The exception of this paragraph (a)(3) shall not apply to a qualified intermediary that assumes reporting