

Service for such records and provide translations of such documents within 30 days of a request for translations of specific documents; or

(ii) Move the original documents (or duplicates) requested to the United States within 60 days of the request of the Service for such records; provide the Service with an index to the requested records, the name and address of a custodian located within the United States having control over the records, and the address where the records are located within 60 days of the Service's request for the records; and continue to maintain the records within the United States throughout the period of retention described in paragraph (g) of this section. For summons procedures with respect to records that have been moved to the United States, see sections 6038A(e), 7602, 7603, and 7604.

With respect to any material profit and loss statements required to be created (either under paragraph (c) of this section or under an agreement with the District Director), unless otherwise specified, "120 days" shall be substituted for "60 days" in this paragraph (f)(2), and labels and text with respect to such statements must be in the English language.

(3) *Prior taxable years.* The non-U.S. maintenance requirements described in paragraph (f)(2) of this section apply to records located outside the United States that were in existence on or after March 20, 1990, without regard to the taxable year to which such records relate.

(4) *Scheduled production for high volume or other reasons.* Upon a written request, for good cause shown, the District Director may grant an extension of the time for the production or translation of the requested documents. Such requests should be made within 30 days of the request for records by the Service. If an extension is needed because of the volume of records requested or the amount of translation requested, the District Director may allow production or translation to be scheduled over a period of time so that not all records need be produced or translated at the same time.

(5) *Required U.S. maintenance.* The District Director (with the concurrence

of the Assistant Commissioner (International)), may require, for cause, the maintenance within the United States of any records specified in paragraph (f)(1) of this section. Such a requirement will be imposed only if there exists a clear pattern of failure to maintain or timely produce the required records. The assessment of a monetary penalty under section 6038A(d) and §1.6038A-4 for failure to maintain records is not necessarily sufficient to require the maintenance of records within the United States.

(g) *Period of retention.* Records required to be maintained by section 6038A(a) and this section shall be kept as long as they may be relevant or material to determining the correct tax treatment of any transaction between the reporting corporation and a related party, but in no case less than the applicable statute of limitations on assessment and collection with respect to the taxable year in which the transaction or item to which the records relate affects the U.S. tax liability of the reporting corporation. See section 6001 and the regulations thereunder.

(h) *Application of record maintenance rules to banks and other financial institutions.* [Reserved]

(i) *Effective dates.* For effective dates for this section, see §1.6038A-1(n).

[T.D. 8353, 56 FR 28065, June 19, 1991; T.D. 8353, 56 FR 41792, Aug. 23, 1991, as amended by T.D. 8611, 60 FR 41015, Aug. 11, 1995; T.D. 9278, 71 FR 44518, Aug. 4, 2006]

§ 1.6038A-3T Record maintenance (temporary).

(a)(1) through (3) *Examples 1 through 3* [Reserved]. For further guidance, see §1.6038A-3(a)(1) through (3) *Examples 1 through 3*.

Example 4. S, a U.S. reporting corporation, provides computer consulting services for its foreign parent, X. Based on the application of section 482 and the regulations, it is determined that the cost of services plus method, as described in §1.482-9T(e), will provide the most reliable measure of an arm's length result, based on the facts and circumstances of the controlled transaction between S and X. S is required to maintain records to permit verification upon audit of the comparable transactional costs (as described in §1.482-9T(e)(2)(iii)) used to calculate the arm's length price. Based on the facts and circumstances, if it is determined that X's

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records are relevant to determine the correct U.S. tax treatment of the controlled transaction between S and X, the record maintenance requirements under section 6038A(a) and this section will be applicable to the records of X.

(b)(1) through (h) [Reserved]. For further guidance, see § 1.6038A-3T(b)(1) through (h).

(i) *Effective date*—(1) *In general.* This provision is generally applicable for taxable years beginning after December 31, 2006.

(2) *Election to apply regulation to earlier taxable years.* A person may elect to apply the provisions of this section to earlier taxable years in accordance with the rules set forth in § 1.482-9T(n)(2).

(3) *Expiration date.* The applicability of this section expires on or before July 31, 2009.

[T.D. 9278, 71 FR 44518, Aug. 4, 2006]

§ 1.6038A-4 Monetary penalty.

(a) *Imposition of monetary penalty*—(1) *In general.* If a reporting corporation fails to furnish the information described in § 1.6038A-2 within the time and manner prescribed in § 1.6038A-2 (d) and (e), fails to maintain or cause another to maintain records as required by § 1.6038A-3, or (in the case of records maintained outside the United States) fails to meet the non-U.S. record maintenance requirements within the applicable time prescribed in § 1.6038A-3(f), a penalty of \$10,000 shall be assessed for each taxable year with respect to which such failure occurs. Such a penalty may be imposed by the District Director or the Director of the Internal Revenue Service Center where the Form 5472 is filed. The filing of a substantially incomplete Form 5472 constitutes a failure to file Form 5472. Where, however, the information described in § 1.6038A-2 (b)(3) through (5) is not required to be reported, a Form 5472 filed without such information is not a substantially incomplete Form 5472.

(2) *Liability for certain partnership transactions.* A reporting corporation to which transactions engaged in by a partnership are attributed under § 1.6038A-1(e)(2) is subject to the rules of this section to the extent failures

occur with respect to the partnership transactions so attributed.

(3) *Calculation of monetary penalty.* If a reporting corporation fails to maintain records as required by § 1.6038A-3 of transactions with multiple related parties, the monetary penalty may be assessed for each failure to maintain records with respect to each related party. The monetary penalty, however, shall be imposed on a reporting corporation only once for a taxable year with respect to each related party for a failure to furnish the information required on Form 5472, for a failure to maintain or cause another to maintain records, or for a failure to comply with the non-U.S. maintenance requirements described in § 1.6038A-3(f). An additional penalty for another failure may be imposed, however, under the rules of paragraph (d)(2) of this section. Thus, unless such failures continue after notification as described in paragraph (d) of this section, the maximum penalty under this paragraph with respect to each related party for all such failures in a taxable year is \$10,000. The members of a group of corporations filing a consolidated return are jointly and severally liable for any monetary penalty that may be imposed under this section.

(b) *Reasonable cause*—(1) *In general.* Certain failures may be excused for reasonable cause, including not timely filing Form 5472, not maintaining or causing another to maintain records as required by § 1.6038A-3, and not complying with the non-U.S. maintenance requirements described in § 1.6038A-3(f). If an affirmative showing is made that the taxpayer acted in good faith and there is reasonable cause for a failure that results in the assessment of the monetary penalty, the period during which reasonable cause exists shall be treated as beginning on the day reasonable cause is established and ending not earlier than the last day on which reasonable cause existed for any such failure. Additionally, the beginning of the 90-day period after mailing of a notice by the District Director or the Director of an Internal Revenue Service Center of a failure described in paragraph (d) of this section shall be treated as not earlier than the last day on which reasonable cause existed.