

6045(c), or a nominee, who makes payment of interest for, or collects interest on behalf of, another person, or otherwise acts in a capacity as intermediary between a payor and a payee. For example, a person (other than an issuer of an obligation) who makes payment on an interest coupon of the obligation to another person is a middleman, irrespective of whether such person purchases the coupon for his own account, accepts the coupon as agent for the payee, or otherwise deals with the coupon. The term “middleman” also includes a trustee, including a corporate trustee of a trust where the trust is the payee. See § 1.6049-4(c)(2) providing that the trustee does not have to make an information return on Form 1099 to a beneficiary if the trustee is required to file Form 1041 and furnishes Form K-1 to the beneficiary showing the information required to be shown on the form, including amounts withheld under section 3406. A person shall be considered to be a middleman as to any portion of an interest payment made to such person which portion is actually owned by another person, whether or not the other person’s name is also shown on the information return filed with respect to such interest payment, except that a husband or wife will not be considered as acting in the capacity of a middleman with respect to his or her spouse. A person who, from within the United States, forwards an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States is also a middleman for purposes of this section (but the transfer, although subject to information reporting under this section, does not make the payment subject to backup withholding under section 3406).

(ii) *Example.* The application of the provisions of paragraph (f)(4) of this section may be illustrated by the following example:

*Example.* In January, 1984, Broker B purchases on behalf of its customer, Individual A, and obligation issued by partnership RR in a public offering on that date. Broker B holds the obligation for A throughout 1984. Broker B is required to make an information return showing the amount of original issue discount treated as paid to A under § 1.6049-5(f).

(g) *Time and place for filing a return for the payment of interest—(1) Annual return.* Except as provided in paragraph (g)(2) of this section, the returns required under this section for any calendar year for the payment of interest shall be filed after September 30 of such year, but not before the payor’s final payment to the payee for the year, and on or before February 28 (March 31 if filed electronically) of the following year. Such returns shall be filed with the appropriate Internal Revenue Service Center, the address of which is listed in the instructions for Form 1096. For extensions of time for filing returns under this section, see § 1.6081-1.

(2) *Transactional return.* In the case of a return under paragraph (e) of this section, relating to returns on a transactional basis, such return shall be filed at any time but in no event later than February 28 (March 31 if filed electronically) of the year following the calendar year in which the interest was paid. The return shall be filed with the appropriate Internal Revenue Service Center, the address of which is listed in the instructions for Form 1096. For extensions of time for filing returns under this section, see § 1.6081-1.

(3) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6049(a) and § 1.6049-4(a)(1), see § 301.6721-1 of this chapter (Procedure and Administration Regulations). See § 301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

[T.D. 7881, 48 FR 12968, Mar. 28, 1983, as amended by T.D. 8366, 56 FR 49518, Sept. 30, 1991; T.D. 8664, 61 FR 17573, Apr. 22, 1996; T.D. 8734, 62 FR 53480, Oct. 14, 1997; T.D. 8804, 63 FR 72188, Dec. 31, 1998; T.D. 8856, 64 FR 73412, Dec. 30, 1999; T.D. 8881, 65 FR 32207, 32212, May 22, 2000; T.D. 8895, 65 FR 50407, Aug. 18, 2000; T.D. 9010, 67 FR 48759, July 26, 2002; T.D. 9241, 71 FR 4025, Jan. 24, 2006]

**§ 1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982.**

(a) *Interest subject to reporting requirement.* For purposes of §§ 1.6049-4, 1.6049-6 and this section, except as provided

in paragraph (b) of this section, the term “interest” means:

(1) Interest on an obligation:

(i) In registered form (as defined in § 5f.103-1(c)), or

(ii) Of a type offered to the public. Principles consistent with § 5f.163-1 shall be applied to determine whether an obligation is of a type offered to the public.

(2) Interest on deposits with persons carrying on the banking business. Such term shall include deposits evidenced by time certificates of deposit issued in any amount whether negotiable or non-negotiable. The term “interest” includes payments to a mortgage escrow account and amounts paid with respect to repurchase agreements and banker’s acceptances. Property which the payee receives from the payor as interest (or in lieu of a cash payment of interest) shall be interest for purposes of section 6049. The amount subject to reporting is the fair market value of such property.

(3) Amounts, whether or not designated as interest, paid or credited by mutual savings banks, savings and loan associations, building and loan associations, cooperative banks, homestead associations, credit unions, industrial loan associations or banks, or similar organizations, in respect of deposits, face amount certificates, investment certificates, or withdrawable or repurchasable shares. Thus, even though amounts paid or credited by such organizations with respect to deposits are designated as “dividends”, such amounts are included in the definition of interest for purposes of section 6049. The term “interest” includes payments to a mortgage escrow account and amounts paid with respect to repurchase agreements. Property which the payee receives from the payor as interest (or in lieu of a cash payment of interest) is “interest” for purposes of section 6049. The fair market value of such property is the amount subject to reporting.

(4) Interest on amounts held by insurance companies under an agreement to pay interest thereon. Any increment in value of “advance premiums”, “prepaid premiums”, or “premium deposit funds” which is applied to the payment of premiums due on insurance policies,

or made available for withdrawal by the policyholder, shall be considered interest subject to reporting. Interest that an insurance company pays pursuant to an agreement with the policyholder to a beneficiary because he payment due has been delayed is interest subject to reporting. Interest subject to reporting also includes interest paid by insurance companies with respect to policy “dividend” accumulations (see sections 61 and 451 and the regulations thereunder for rules as to when such interest is considered paid), and interest paid with respect to the proceeds of insurance policies left with the insurer. The so-called “interest element” in the case of annuity or installment payments under life insurance or endowment contracts does not constitute interest for purposes of section 6049.

(5) Interest on deposits with brokers as defined in section 6045(c) and the regulations thereunder. Any payment made in lieu of interest to a person whose obligation has been borrowed in connection with a short sale or other similar transaction is subject to reporting under section 6049. See § 1.6045-2T for reporting requirements with respect to payments in lieu of tax-exempt interest. See § 1.6045-2 for reporting requirements with respect to payments in lieu of tax-exempt interest.

(6) Interest paid on amounts held by investment companies as defined in section 3 of the Investment Company Act (15 U.S.C. section 80-a) and on amounts paid on pooled funds or trusts. The interest to be reported with respect to a widely held fixed investment trust, as defined in § 1.671-5(b)(22), shall be the interest earned on the assets held by the trust. See § 1.671-5 for the reporting rules for widely held fixed investment trusts (as defined under that section).

(b) *Interest excluded from reporting requirement.* The term *interest* or *original issue discount* (OID) does not include—

(1) Interest on any obligation issued by a natural person as defined in § 1.6049-4(f)(2), irrespective of whether such interest is collected on behalf of the holder of the obligation by a middleman.

(2) Interest on any obligation if such interest is exempt from taxation under

section 103(a), relating to certain governmental obligations, or interest which is exempt from taxation under any other provision of law without regard to the identity of the holder. The holder of a tax exempt obligation that is not in registered form must provide written certification to the payor (other than the issuer of the obligation) that the obligation is exempt from taxation. A statement that interest coupons are tax exempt on the envelope or shell commonly used by financial institutions to process such coupons, signed by the payee, will be sufficient for this purpose if the envelope is properly completed (i.e., shows the name, address, and taxpayer identification number of the payee). A payor may rely on such written certification in treating such interest as tax exempt for purposes of section 6049. See § 1.6049-4(d)(8) with respect to the requirement that the issuer of a taxable obligation shall make an information return if such issuer receives an envelope which improperly claims that the interest coupons contained therein are tax exempt.

(3) Interest on amounts held in escrow to guarantee performance on a contract or to provide security. However, interest on amounts held in escrow with a person described in paragraph (a)(2) or (3) of this section is interest subject to reporting under section 6049.

(4) Interest that a governmental unit pays with respect to tax refunds.

(5) Interest on deposits for security, such as deposits posted with a public utility company. However, interest on deposits posted for security with a person described in paragraph (a)(2) or (3) of this section is interest subject to reporting under section 6049.

(6) Amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code (Code) and the regulations under those provisions) paid outside the United States by a non-U.S. payor or a non-U.S. middleman (as defined in paragraph (c)(5) of this section). See paragraph (e) of this section for circumstances in which a payment is considered to be made outside the United States.

(7) Portfolio interest, as defined in § 1.871-14(b)(1), paid with respect to obligations in bearer form described in section 871(h)(2)(A) or 881(c)(2)(A) or with respect to a foreign-targeted registered obligation described in § 1.871-14(e)(2) for which the documentation requirements described in § 1.871-14(e)(3) and (4) have been satisfied (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian or nominee of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor).

(8) Portfolio interest described in § 1.871-14(c)(1)(ii), paid with respect to obligations in registered form described in section 871(h)(2)(B) or 881(c)(2)(B) that is not described in paragraph (b)(7) of this section.

(9) Any amount paid by an international organization described in § 1.6049-4(c)(1)(ii)(G) (or its paying, transfer, or other agent that is not also a payee's agent) with respect to an obligation of which the international organization is the issuer.

(10)(i) Amounts paid outside the United States (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian or nominee or other agent of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor) with respect to an obligation that: Has a face amount or principal amount of not less than \$500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); has a maturity (at issue) of 183 days or less; satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I) and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of § 1.163-5(c)(2)(i)(D)(3)) and is issued in accordance with the procedures of § 1.163-5(c)(2)(i)(D); and has on its face the following statement (or a similar statement having the same effect):

By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder).

(ii) If the obligation is in registered form, it must be registered in the name of an exempt recipient described in §1.6049-4(c)(1)(ii). For purposes of this paragraph (b)(10), a middleman may treat an obligation as described in section 163(f)(2)(B)(i) and (ii)(I) and the regulations under that section if the obligation, or coupons detached therefrom, whichever is presented for payment, contains the statement described in this paragraph (b)(10). The exemption from reporting described in this paragraph (b)(10) shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(11) Amounts paid with respect to an account or deposit with a U.S. or foreign branch of a domestic or foreign corporation or partnership that is paid with respect to an obligation described in either paragraph (b)(11)(i) or (ii) of this section, if the branch is engaged in the commercial banking business; and the interest or OID is paid outside the United States (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that acts as a custodian, nominee, or other agent of the payee, and collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor). The exemption from reporting described in this paragraph (b)(11) shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(i) An obligation is described in this paragraph (b)(11)(i) if it is not in registered form (within the meaning of section 163(f) and the regulations under that section), is described in section 163(f)(2)(B) and issued in accordance with the procedures of §1.163-5(c)(2)(i)(C) or (D), and, in the case of a U.S. branch, is part of a larger single public offering of securities. For purposes of this paragraph (b)(11)(i), a mid-

dleman may treat an obligation as described in section 163(f)(2)(B) if the obligation, and any detachable coupons, contains the statement described in section 163(f)(2)(B)(ii)(II) and the regulations under that section.

(ii)(A) An obligation is described in this paragraph (b)(11)(ii) if it produces income described in section 871(i)(2)(A); has a face amount or principal amount of not less than \$500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I) and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) and is issued in accordance with the procedures of §1.163-5(c)(2)(i) (C) or (D) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of §1.163-5(c)(2)(i)(D)(3)). For purposes of this paragraph (b)(11)(ii), a middleman may treat an obligation as described in sections 163(f)(2)(b) (i) and (ii) and the regulations under that section if the obligation, or any detachable coupon, contains the statement described in paragraph (b)(11)(ii)(b) of this section.

(B) The obligation must have on its face, and on any detachable coupons, the following statement (or a similar statement having the same effect):

By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) and regulations under that section) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) and the regulations under that section).

(C) If the obligation is in registered form, it must be registered in the name of an exempt recipient described in §1.6049-4(c)(1)(ii).

(12) Payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat the payment 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 paragraph (d)(1) of this section or presumed to be made to a foreign payee under

paragraph (d)(2) or (3) of this section. However, such payments may be reportable under § 1.1461-1 (b) and (c). 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 Code. In the event of a conflict between the provisions of § 1.1441-1 and paragraph (d) of this section in determining the foreign status of the payee, the provisions of § 1.1441-1 shall govern for payments of amounts subject to withholding under chapter 3 of the Code and the provisions of paragraph (d) of this section shall govern in other cases. This paragraph (b)(12) does not apply to interest paid to a Canadian nonresident alien individual as provided in § 1.6049-8.

(13) Amounts for the period that the debt obligation with respect to which the interest arises represents an asset blocked as described in § 1.1441-2(e)(3). Payment of such amounts, including interest that is past due and OID on obligations that mature on or before the date that the assets are no longer blocked, is deemed to occur in accordance with the rules of § 1.1441-2(e)(3).

(14) Payments made by a foreign intermediary described in § 1.1441-1(e)(3)(i) of amounts 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 § 1.6049-4 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 § 1.6049-4(c)(1)(ii) to the person from whom the intermediary or U.S. branch

receives the payment, the amount paid by the foreign intermediary or U.S. branch to such person is interest or original issue discount. The exception of this paragraph (b)(14) shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Internal Revenue Code.

(15) Amounts of interest as determined under the provisions of § 1.446-3(g)(4) (dealing with interest in the case of a significant non-periodic payment with respect to a notional principal contract). Such amounts are governed by the provisions of section 6041. See § 1.6041-1(d)(5).

(c) *Applicable rules*—(1) *Documentary evidence for offshore accounts and for possessions accounts*. A payor may rely on documentary evidence described in this paragraph (c)(1) instead of a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) in the case of a payment made outside the United States to an offshore account, in the case of a payment made to a U.S. possessions account or, in the case of a broker proceeds described in § 1.6045-1(c)(2), in the case of a sale effected outside the United States (as defined in § 1.6045-1(g)(3)(iii)(A)). For purposes of this paragraph (c)(1), an *offshore account* means an account maintained at an office or branch of a U.S. or foreign bank or other financial institution at any location outside the United States (*i.e.*, other than in any of the fifty States or the District of Columbia) and outside of possessions of the United States. Thus, for example, an account maintained in a foreign country at a branch of a U.S. bank or of a foreign subsidiary of a U.S. bank is an offshore account. For purposes of this paragraph (c)(1), a *U.S. possessions account* means an account maintained at an office or branch of a U.S. or foreign bank or other financial institution located within a possession of the United States. For the definition of a payment made outside the United States, see paragraph (e) of this section. A payor may rely on documentary evidence if the payor has established procedures to obtain, review, and maintain documentary evidence sufficient to establish the identity of the payee and the status of that person as a foreign person

(including, but not limited to, documentary evidence described in §1.1441-6(c)(3) or (4)); and the payor obtains, reviews, and maintains such documentary evidence in accordance with those procedures. A payor maintains the documents reviewed by retaining the original, certified copy, or a photocopy (or microfiche or similar means of record retention) of the documents reviewed and noting in its records the date on which and by whom the document was received and reviewed. Documentary evidence furnished for the payment of an amount subject to withholding under chapter 3 of the Internal Revenue Code must contain all of the information that is necessary to complete a Form 1042-S for that payment. A payor may also rely on documentary evidence associated with a flow-through withholding certificate for payments treated as made to foreign partners of a nonwithholding foreign partnership, as defined in §1.1441-1(c)(28), the foreign beneficiaries of a foreign simple trust, as defined in §1.1441-1(c)(24), or foreign owners of a foreign grantor trust, as defined in §1.1441-1(c)(26), even though the partnership or trust account is maintained in the United States.

(2) *Other applicable rules.* The provisions of §1.1441-1(e)(4)(i) through (ix) (regarding who may sign a certificate, validity period of certificates, retention of certificates, etc.) shall apply (by substituting the term *payor* for the term *withholding agent* and disregarding the fact that the provisions under §1.1441-1(e)(4) only apply to amounts subject to withholding under chapter 3 of the Code) to withholding certificates and documentary evidence furnished for purposes of this section. See §1.1441-1(b)(2)(vii) for provisions dealing reliable association of a payment with documentation.

(3) *Standards of knowledge.* A payor may not rely on a withholding certificate or documentary evidence described in paragraph (c)(1) or (4) of this section if it has actual knowledge or reason to know that any information or certification stated in the certificate or documentary evidence is unreliable. A payor has reason to know that information or certifications are unreliable only if the payor would have rea-

son to know under the provisions of §1.1441-7(b)(2)(ii) and (3) that the information and certifications provided on the certificate or in the documentary evidence are unreliable or, in the case of a Form W-9 (or an acceptable substitute), it cannot reasonably rely on the documentation as set forth in §31.3406(h)-3(e) of this chapter (see the information and certification described in §31.3406(h)-3(e)(2)(i) through (iv) of this chapter that are required in order for a payor reasonably to rely on a Form W-9). The provisions of §1.1441-7(b)(2)(ii) and (3) shall apply for purposes of this paragraph (c)(3) irrespective of the type of income to which §1.1441-7(b)(2)(ii) is otherwise limited. The exemptions from reporting described in paragraphs (b)(10) and (11) of this section shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(4) *Special documentation rules for certain payments.* This paragraph (c)(4) modifies the provisions of paragraph (c)(1) of this section for payments to offshore accounts maintained at a bank or other financial institution of amounts that are not subject to withholding under chapter 3 of the Internal Revenue Code, other than amounts described in paragraph (d)(3)(iii) of this section (dealing with U.S. short-term OID and U.S. bank deposit interest). Amounts are not subject to withholding under chapter 3 of the Internal Revenue Code if they are not included in the definition of amounts subject to withholding under §1.1441-2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds).

(i) *Special rule when non-renewable documentary evidence is customary.* If it is customary in the country in which a branch or office of a bank or other financial institution is located to obtain documentary evidence described in paragraph (c)(1) of this section, but it is not customary for such documentary evidence to be renewed, then a payor may, in lieu of obtaining a withholding certificate, request such documentary evidence for an account maintained at such branch or office. The bank or other financial institution may rely on such documentary evidence to treat a

person as a foreign person without renewing such documentary evidence in accordance with paragraph (c)(2) of this section and § 1.1441-1(e)(4)(ii) if it may rely on the documentary evidence as sufficient to establish the person's foreign status under § 1.1441-7(b)(7) and (8). If, however, the bank or other financial institution may, under § 1.1441-7(b)(8) treat a payee as a foreign person even though it has a residence or mailing address for the payee in the United States, or has standing instructions to pay amounts from its account to an address in the United States or an account maintained in the United States, then the payor shall rely on the documentary evidence only for a period of three full calendar years after the calendar year in which the documentary evidence is provided to the payor or, if earlier, until the payor is aware of a change of circumstances that affects the validity of the documentation as establishing the payee's status as a foreign person.

(ii) *Statement in lieu of documentary evidence.* If under the local laws, regulations, or practices applicable to a type of account or transaction it is not customary to obtain documentary evidence described in paragraph (c)(1) of this section, the bank or other financial institution may, instead of obtaining a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) or documentary evidence described in paragraph (c)(1) of this section, establish a payee's foreign status based on the statement described in this paragraph (4)(ii) (or such substitute statement as the Internal Revenue Service may prescribe) made on an account opening form. The statement shall be valid only if the mailing and residence addresses of the payee are outside the United States and there are no other indicia of U.S. status. If reliance is not permitted because there are indicia of U.S. status then the payor must obtain either documentary evidence described in paragraph (c)(1) of this section or a Form W-8 described in § 1.1441-1(e)(2)(i) to treat the customer as a foreign payee. In such a case, the form or documentary evidence must be renewed every three years in accordance with the renewal procedures set forth in § 1.1441-1(e)(4)(ii)(A) for as long as indi-

cia of U.S. status continue to be present. The statement referred to in this paragraph (c)(4)(i) of this section must appear near the signature line and must read as follows:

By opening this account and signing below, the account owner represents and warrants that he/she/it is not a U.S. person for purposes of U.S. Federal income tax and that he/she/it is not acting for, or on behalf of, a U.S. person. A false statement or misrepresentation of tax status by a U.S. person could lead to penalties under U.S. law. If your tax status changes and you become a U.S. citizen or a resident, you must notify us within 30 days.

(iii) *Continuous validity of declaration of foreign status subject to due diligence by financial institution.* A declaration of foreign status described in paragraph (c)(4)(ii) of this section does not expire unless the bank or financial institution becomes aware of circumstances indicating that the customer may be a U.S. person.

(iv) *Exception for existing accounts.* The rules of paragraphs (c)(4)(i) and (iii) of this section shall apply to accounts opened on or after January 1, 2001. For accounts opened before 2001, a bank or other financial institution may rely on the rules contained in §§ 35a.9999-3(ii) Q&A 34 and 35a.9999-4T Q&A 1 and 5 of this chapter in effect prior to January 1, 2001 (see 26 CFR Parts 30-39 revised as of April 1, 2000).

(5) *U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman.* The terms *payor* and *middleman* have the meanings ascribed to them under § 1.6049-4(a). A *non-U.S. payor* or *non-U.S. middleman* means a payor or middleman other than a U.S. payor or U.S. middleman. The term *U.S. payor* or *U.S. middleman* means—

(i) *Definition.* (A) A person described in section 7701(a)(30) (including a foreign branch or office of such person);

(B) The government of the United States or the government of any State or political subdivision thereof (or any agency or instrumentality of any of the foregoing);

(C) A controlled foreign corporation within the meaning of section 957(a);

(D) A foreign partnership, if at any time during its tax year, one or more

of its partners are U.S. persons (as defined in §1.1441-1(c)(2)) who, in the aggregate hold more than 50 percent of the income or capital interest in the partnership or if, at any time during its tax year, it is engaged in the conduct of a trade or business in the United States;

(E) A foreign person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of its taxable year preceding the collection or payment (or such part of such period as the person has been in existence), was effectively connected with the conduct of trade or business within the United States; or

(F) A U.S. branch of a foreign bank or a foreign insurance company described in §1.1441-1(b)(2)(iv).

(ii) *Reporting by U.S. payors in U.S. possessions.* U.S. payors are not required to report on Form 1099 income that is from sources within a possession of the United States and that is exempt from taxation under section 931, 932, or 933, each of which sections exempts certain income from sources within a possession of the United States paid to a bona fide resident of that possession. For purposes of this paragraph (c)(5)(ii), a U.S. payor may treat the beneficial owner as a bona fide resident of the possession of the United States from which the income is sourced if, prior to payment of the income, the U.S. payor can reliably associate the payment with valid documentation that supports the claim of residence in the possession of the United States from which the income is sourced. This paragraph (c)(5)(ii) shall not apply if the U.S. payor has actual knowledge or reason to know that the documentation is unreliable or incorrect or that the income does not satisfy the requirements for exemption under section 931, 932, or 933. For the rules determining whether income is from sources within a possession of the United States, see section 937(b) and the regulations thereunder.

(6) *Examples.* The following examples illustrate the provisions of paragraphs (b) and (c) of this section:

*Example 1.* FC is a foreign corporation that is not engaged in a trade or business in the United States during the current calendar

year. D, an individual who is a resident and citizen of the United States, holds a registered obligation issued by FC in a public offering. Interest is paid on the obligation within the United States by DC, a U.S. corporation that is the designated paying agent of FC. D does not have an account with DC. Although interest paid on the obligation issued by FC is foreign source, the interest paid by DC to D is considered to be interest for purposes of information reporting under section 6049 because it is paid in the United States.

*Example 2.* The facts are the same as in *Example 1* except that D is a nonresident alien individual who has furnished DC with a Form W-8 in accordance with the provisions of §1.1441-1(e)(1)(ii). By reason of paragraph (b)(12) of this section, the payment of interest by DC to D is not considered to be a payment of interest for purposes of information reporting under section 6049. Therefore, DC is not required to make an information return under section 6049.

*Example 3.* The facts are the same as in *Example 2* except that the obligation of FC is held in a custodial account for D by FB, a foreign branch of a U.S. financial institution. By reason of paragraph (c)(5) of this section, FB is considered to be a U.S. middleman. Therefore, FB is required to make an information return unless FB may treat D as a beneficial owner that is a foreign person in accordance with the provisions of §1.1441-1(e)(1)(ii).

*Example 4.* The facts are the same as in *Example 3* except that the FC obligation is held for D by NC, in a custodial account at NC's foreign branch. NC is a foreign corporation that is a non-U.S. middleman described in paragraph (c)(5) of this section. Under paragraph (b)(6) of this section, the payment by NC to D is not considered to be a payment of interest for purposes of section 6049. Therefore, NC is not required to make an information return under section 6049 with respect to the payment.

(d) *Determination of status as U.S. or foreign payee and applicable presumptions in the absence of documentation—(1) Identifying the payee.* The provisions of §§1.1441-1(b)(2), 1.1441-5(c)(1), (e)(2) and (3) shall apply (by applying the term *payor* instead of the term *withholding agent*) to identify the payee for purposes of this section (and other sections of the regulations under this chapter to which this paragraph (d)(1) applies), except to the extent provided in this paragraph (d)(1) in the case of a payment of amounts that are not subject to withholding under chapter 3 of the Internal Revenue Code. Amounts are not subject to withholding under



chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under § 1.1441-2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds). The exceptions to the application of § 1.1441-1(b)(2) to amounts that are not subject to withholding under chapter 3 of the Code are as follows:

(i) The provisions of § 1.1441-1(b)(2)(ii), dealing with payments to a U.S. agent of a foreign person, shall not apply. Thus, a payment to a U.S. agent of a foreign person is treated as a payment to a U.S. payee.

(ii) Payments to U.S. branches of certain banks or insurance companies described in § 1.1441-1(b)(2)(iv) shall be treated as payments to a foreign payee, irrespective of the fact that the U.S. branch may have arranged with the payor to be treated as a U.S. person for payments of amounts subject to withholding and irrespective of the fact that the branch is treated as a U.S. payor for purposes of paragraph (c)(5) of this section.

(2) *Presumptions of U.S. or foreign status in the absence of documentation*—(i) *In general.* Except as otherwise provided in this paragraph (d)(2)(i), for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(2) applies), the provisions of § 1.1441-1(b)(3)(i) through (ix) and § 1.1441-5(d) and (e)(6) shall apply (by applying the term *payor* instead of the term *withholding agent*) to determine the classification (e.g., individual, corporation, partnership, trust), status (i.e., a U.S. or a foreign person), and other relevant characteristics (e.g., beneficial owner or intermediary) of a payee if a payment cannot be reliably associated with valid documentation under § 1.1441-1(b)(2)(vii) irrespective of whether the payments are subject to withholding under chapter 3 of the Internal Revenue Code. The provisions of § 1.1441-1(b)(3)(iii)(D) and (vii)(B) shall not apply, however, to payments to amounts that are not subject to withholding. The rules of § 1.1441-1(b)(2)(vii) shall apply for purposes of determining when a payment can reliably be associated with documentation, by applying the term *payor* instead of the term

*withholding agent.* For this purpose, the documentary evidence or statement described in paragraph (c)(4) of this section can be treated as documentation with which a payment can be associated.

(ii) *Grace period in the case of indicia of a foreign payee.* When the conditions of this paragraph (d)(2)(ii) are satisfied, the 30-day grace period provisions under section 3406(e) shall not apply and the provisions of this paragraph (d)(2)(ii) shall apply instead. A payor that, at any time during the grace period described in this paragraph (d)(2)(ii), credits an account with payments described in § 1.1441-6(c)(2) (or credits an account with broker proceeds from securities described in § 1.1441-6(c)(2)), that are reportable under sections 6042, 6045, 6049, or 6050N may, instead of treating the account as owned by a U.S. person and applying backup withholding under section 3406, if applicable, choose to treat the account as owned by a foreign person if, at the beginning of the grace period, the address that the payor has in its records for the account holder is in a foreign country, the payor has been furnished the information contained in a withholding certificate described in § 1.1441-1(e) (2)(i) or (3)(i) (by way of a facsimile copy of the certificate or other non-qualified electronic transmission of the information required to be stated on the certificate), or the payor holds a withholding certificate that is no longer reliable other than because the validity period as described in § 1.1441-1(e)(4)(ii)(A) has expired. In the case of a newly opened account, the grace period begins on the date that the payor first credits the account.

In the case of an existing account for which the payor holds a Form W-8 or documentary evidence of foreign status, the grace period begins on the date that the payor first credits the account after the existing documentation held with regard to the account can no longer be relied upon (other than because the validity period described in § 1.1441-1(e)(4)(ii)(A) has expired). A new account shall be treated as an existing account if the account holder already holds an account at the branch location at which the new account is

opened. It shall also be treated as an existing account if an account is held at another branch location if the institution maintains a coordinated account information system described in §1.1441-1(e)(4)(ix). The grace period terminates on the earlier of the close of the 90th day from the date on which the grace period begins or the date that the documentation is provided. The grace period also terminates when the remaining balance in the account (due to withdrawals or otherwise) is equal to or less than 31 percent of the total amounts credited since the beginning of the grace period that would be subject to backup withholding if the provisions of this paragraph (d)(2)(ii) did not apply. At the end of the grace period, the payor shall treat the amounts credited to the account during the grace period as paid to a U.S. or foreign payee depending upon whether documentation has been furnished and the nature of any such documentation furnished upon which the payor may rely to treat the account as owned by a U.S. or foreign payee. If the documentation has not been received on or before the date of expiration of the grace period, the payor may also apply the presumptions described in this paragraph (d) to amounts credited to the account after the date on which the grace period expires (until such time as the payor can reliably associate the documentation with amounts credited). See §31.6413(a)-3(a)(1)(iv) of this chapter for treating backup withheld amounts under section 3406 as erroneously withheld when the documentation establishing foreign status is furnished prior to the end of the calendar year in which backup withholding occurs. If the provisions of this paragraph (d)(2)(ii) apply, the provisions of §31.3406(d)-3 of this chapter shall not apply. For purposes of this paragraph (d)(2)(ii), an account holder's reinvestment of gross proceeds of a sale into other instruments constitutes a withdrawal and a non-qualified electronic transmission of information on a withholding certificate is a transmission that is not in accordance with the provisions of §1.1441-1(e)(4)(iv). See §1.1092(d)-1 for a definition of the term *actively traded* for purposes of this paragraph (d)(2)(ii).

(iii) *Joint owners.* Amounts paid to accounts held jointly for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (b) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor cannot reliably associate the payment either with a Form W-9 furnished by one of the joint owners in the manner required in §§31.3406(d)-1 through 31.3406(d)-5 of this chapter, or with documentation described in paragraph (b)(12) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (d)(2)(iii), the grace period described in paragraph (d)(2)(ii) of this section shall apply only if each payee qualifies for such grace period.

(3) *Payments to foreign intermediaries or flow-through entities—(i) Payments of amounts subject to withholding under chapter 3 of the Internal Revenue Code.* In the case of payments of amounts that the payor may treat as made to a foreign intermediary or flow-through entity in accordance with §§1.1441-1(b)(3)(ii)(C) and (b)(3)(v)(A), 1.1441-5(c) or (e) and that are subject to withholding under §1.1441-2(a), the provisions of §§1.1441-1(b)(2)(v) and 1.1441-5(c)(1), (e)(2), and (3) shall apply (by applying the term *payor* instead of the term *withholding agent*) to identify the payee. If a payment of an amount subject to withholding cannot be reliably associated with valid documentation from a payee in accordance with §1.1441-1(b)(2)(vii) the presumption rules of §1.1441-1(b)(3)(v) and §1.1441-5(d) and (e)(6) shall apply to determine the payee's status for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(3) applies).

(ii) *Payments of amounts not subject to withholding under chapter 3 of the Internal Revenue Code.* Except as provided in paragraph (d)(3)(iii) of this section, amounts that are not subject to withholding under chapter 3 of the Internal Revenue Code that the payor may treat as paid to a foreign intermediary or flow-through entity shall be treated as made to an exempt recipient described

in § 1.6049-4(c) except to the extent that the payor has actual knowledge that any person for whom the intermediary or flow-through entity is collecting the payment is a U.S. person who is not an exempt recipient. In the case of such actual knowledge, the payor shall treat the payment that it knows is allocable to such U.S. person as a payment to a U.S. payee who is not an exempt recipient and has actual knowledge of the amount allocable to such a person.

(iii) *Special rule for payments of certain short-term original issue discount and bank deposit interest*—(A) *General rule.* A payment of U.S. source deposit interest described in section 871(i)(2)(A) or 881(d)(3) or interest or original issue discount on the redemption of an obligation with a maturity from the date of issue of 183 days or less (short-term OID) described in section 871(g)(1)(B) or 881(e) that the payor may treat as paid to a foreign intermediary or flow-through entity in accordance with the provisions of § 1.1441-1(b)(3)(ii)(C), (v)(A), § 1.1441-5(d) or (e), shall be treated as paid to an undocumented U.S. payee that is not an exempt recipient under paragraph § 1.6049-4(c) unless the payor has documentation from the payees of the payment and the payment is allocated to foreign payees, as a group, and to each U.S. non-exempt recipient payee. See § 1.1441-1(e)(3)(iv)(C)(2).

(B) *Payee may be an intermediary.* If a payment is made to a person described in § 1.6049-4(c)(1)(ii) that has not provided an intermediary withholding certificate under § 1.1441-1(e)(3)(i) but the payor knows or has reason to know that the payee may be an intermediary, the payor must apply the rules of paragraph (d)(3)(iii)(A) of this section. A payor has reason to know that such a person may be an intermediary if that person has provided documentation as an intermediary for another account with the same payor.

(iv) *Short-term deposits and repurchase transactions.* The provisions of paragraph (d)(3)(ii) of this section and not paragraph (d)(3)(iii) of this section shall apply to deposits with banks and other financial institutions that remain on deposit for a period of two weeks or less, to amounts of original issue discount arising from a sale and repurchase transaction that is com-

pleted within a period of two weeks or less, or to amounts described in paragraphs (b)(7), (10) and (11) of this section (relating to certain obligations issued in bearer form).

(4) *Examples.* The rules of paragraphs (d)(1) through (3) of this section are illustrated by the following examples:

*Example 1.* (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP pays interest from sources within the United States to an account maintained in the United States by X. The interest is not deposit interest described in sections 871(i)(2)(A) or 881(d). USP does not have a withholding certificate from X as defined in § 1.1441-1(c)(16). Moreover, USP cannot treat X as an exempt recipient, as defined in § 1.6049-4(c)(1)(ii), without documentation and there is no indication that X is an individual, trust, or estate.

(ii) *Analysis.* The U.S. source interest is an amount subject to withholding as defined in § 1.1441-2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of §§ 1.1441-1(b)(2) and 1.1441-5(c) and (e) to determine the payee of the interest. Under § 1.1441-1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441-5 apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441-1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. Under § 1.1441-1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441-1(b)(3)(iii) and 1.1441-5(d) to determine whether X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441-1(b)(3)(iii) and 1.1441-5(d)(2), X is presumed to be a U.S. partnership in absence of any indicia of foreign partnership status. The U.S. source interest paid to X is reportable under section 6049 on Form 1099 and the interest is subject to backup withholding under section 3406 because X has not provided its TIN on a valid Form W-9.

*Example 2.* (i) *Facts.* The facts are the same as in *Example 1*, except that the interest paid by USP is from sources outside the United States.

(ii) *Analysis.* Interest from sources outside the United States is not an amount subject to withholding, as defined in § 1.1441-2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of §§ 1.1441-1(b)(2) and 1.1441-5(c) and (e) to determine the payee. Under § 1.1441-1(b)(2)(i), X, the person to whom the payment is made, is considered

to be the payee, unless X is determined to be a flow-through entity, in which case the rules of §1.1441-5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of §1.1441-1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. These rules apply irrespective of whether the payment is an amount subject to withholding. Under §1.1441-1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§1.1441-1(b)(3)(iii) and 1.1441-5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Under §§1.1441-1(b)(3)(iii) and 1.1441-5(d)(2), X is presumed to be a U.S. partnership in absence of any indicia of foreign partnership status. The foreign source interest is a payment subject to reporting on Form 1099 under §1.6049-5(a). Further, because X is a non-exempt recipient that has failed to provide its TIN on a valid Form W-9, the foreign source interest is subject to backup withholding under section 3406.

*Example 3.* (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP makes a payment of U.S. source interest outside the United States to an offshore account of X. See paragraphs (c)(1) for a definition of offshore account and (e) for a payment outside the United States. USP does not have a withholding certificate from X as defined in §1.1441-1(c)(16) nor does it have documentary evidence as described in §1.1441-1(e)(1)(ii)(A)(2) and 1.6049-5(c)(1).

(ii) *Analysis.* The interest is an amount subject to withholding as defined in §1.1441-2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of §1.1441-1(b)(2) and §1.1441-5(c) and (e) to determine the payee. Under §1.1441-1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of §1.1441-5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of §1.1441-1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. Under §1.1441-1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§1.1441-1(b)(3)(iii) and 1.1441-5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Under §§1.1441-1(b)(3)(iii)(D) and 1.1441-5(d)(2), X is presumed to be a foreign partnership. Therefore, under paragraph (d)(1) of this section and §1.1441-5(c)(1)(i)(E), the payees of the in-

terest are presumed to be the partners of X. Under §1.1441-5(d)(3), the partners are presumed to be undocumented foreign persons. Therefore, USP must withhold 30 percent of the interest payment under §1.1441-1(b)(1) and report the payment on Form 1042-S in accordance with §1.1461-1(c).

*Example 4.* (i) *Facts.* The facts are the same as in *Example 3*, except that the interest is paid by F, a non-U.S. payor.

(ii) *Analysis.* The analysis and result are the same as in *Example 3*. F is a withholding agent under §1.1441-7 and its status as a non-U.S. payor under paragraph (c)(5) of this section is irrelevant.

*Example 5.* (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP makes a payment outside the United States of interest from sources outside the United States to an offshore account of X. USP does not have a withholding certificate from X as defined in §1.1441-1(c)(16) nor does it have documentary evidence as described in §§1.1441-1(e)(1)(ii)(A)(2) and 1.6049-5(c)(1). USP does not have actual knowledge of an employer identification number for X. X does not appear to be an individual, trust, or estate and cannot be treated as an exempt recipient, as defined in §1.6049-4(c)(1)(ii) in the absence of documentation.

(ii) *Analysis.* The interest is not an amount subject to withholding as defined in §1.1441-2(a). Under paragraph (d)(1) of this section, USP must apply the rules of §§1.1441-1(b)(2) and 1.1441-5(c) and (e) to determine the payee of the interest. Under §1.1441-1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of §1.1441-5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, §1.1441-1(b)(3)(ii) applies to determine X's classification as an individual, trust, estate, corporation or partnership. Under §1.1441-1(b)(3)(ii)(B), X is treated as a partnership, since it does not appear to be an individual, trust, or estate and cannot be treated as an exempt recipient without documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§1.1441-1(b)(3)(iii) and 1.1441-5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Paragraph (d)(2)(i) also states that the presumptions of foreign status for payments made to offshore accounts contained in §§1.1441-1(b)(3)(iii)(D) and 1.1441-5(d)(2) do not apply to amounts that are not subject to withholding. Therefore, under §§1.1441-1(b)(3)(iii) and 1.1441-5(d)(2), X is presumed to be a U.S. partnership because it does not have actual knowledge that X's employer identification number begins with the digits "98." Therefore, USP must treat X as a U.S. person that is not an exempt recipient and report the payment on Form 1099 under section 6049. Under §1.3406(g)-1(e) of this chapter, however, USP

is not required to backup withhold on the payment unless it has actual knowledge that X is a U.S. person that is not an exempt recipient.

*Example 6.* (i) *Facts.* The facts are the same as in *Example 5*, except that the interest is paid by F, a non-U.S. payor, as defined under paragraph (c)(5) of this section.

(ii) *Analysis.* The analysis is the same as under *Example 5*. However, because F is a non-U.S. payor paying foreign source interest outside the United States, paragraph (b)(6) of this section exempts the payment from reporting under section 6049.

*Example 7.* (i) *Facts.* USP, a U.S. payor as defined in paragraph (c)(5) of this section, makes a payment of U.S. source interest to NQI, a foreign corporation and a nonqualified intermediary as defined in §1.1441-1(c)(14). The interest is not deposit interest as defined in sections 871(i)(2)(A) and 881(d). The interest is paid inside the United States to an account maintained in the United States. NQI has provided USP with a nonqualified intermediary withholding certificate, as described in §1.1441-1(e)(3)(iii), but has not attached any documentation from the persons on whose behalf it acts or a withholding statement as described in §1.1441-1(e)(3)(iv).

(ii) *Analysis.* U.S. source interest is an amount subject to withholding under §1.1441-2(a). USP may treat the payment as made to a foreign intermediary under §1.1441-1(b)(3)(v)(A) because USP has received a nonqualified intermediary withholding certificate from NQI. Under paragraph (d)(3)(i) of this section, USP must apply §1.1441-1(b)(2)(v) to determine the payees of the payment. Under §1.1441-1(b)(2)(v)(A), USP must treat the persons on whose behalf NQI is acting as the payees. Paragraph (d)(3)(i) of this section also requires USP to apply the presumption rules of §1.1441-1(b)(3)(v) if it cannot reliably associate the payment with valid documentation from a payee. See §1.1441-1(b)(2)(vii). Under §1.1441-1(b)(3)(v)(B), the interest is treated as paid to an unknown foreign payee because it cannot be reliably associated with documentation under §1.1441-1(b)(2)(vii). Therefore, the payment is not subject to reporting on Form 1099 under paragraph (b)(12) of this section because the payment is presumed made to a foreign person. The payment is subject to withholding, however, under §1.1441-1(b) at a rate of 30 percent and is subject to reporting on Form 1042-S under §1.1461-1(c).

*Example 8.* (i) *Facts.* The facts are the same as in *Example 7*, except that the interest is paid outside the United States, as defined in paragraph (e) of this section to an offshore account, as defined in paragraph (c)(1) of this section.

(ii) *Analysis.* The analysis and results are the same as in *Example 7*. The rules of §1.1441-1(b)(3)(v) apply irrespective of where

the account is maintained or the payment made.

*Example 9.* (i) *Facts.* The facts are the same as in *Example 8*, except that the interest is paid by F, a non-U.S. payor, as defined in paragraph (c)(5) of this section.

(ii) *Analysis.* The analysis and results are the same as in *Example 7*.

*Example 10.* (i) USP, a U.S. payor as defined in paragraph (c)(5) of this section, makes a payment of foreign source interest to NQI, a foreign corporation and a nonqualified intermediary as defined in §1.1441-1(c)(14). NQI has provided USP with a nonqualified intermediary withholding certificate, as described in §1.1441-1(e)(3)(iii), but has not attached any documentation from the persons on whose behalf it acts or a withholding statement as described in §1.1441-1(e)(3)(iv).

(ii) *Analysis.* Foreign source interest is not an amount subject to withholding under chapter 3 of the Internal Revenue Code. See §1.1441-2(a). Under paragraph (d)(3)(ii)(A) of this section, amounts that are not subject to withholding under chapter 3 of the Internal Revenue Code that a payor may treat as paid to a foreign intermediary are treated as made to an exempt recipient described in §1.6049-4(c). Therefore, the foreign source interest is not subject to reporting on Form 1099.

*Example 11.* (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP pays U.S. source original issue discount from the redemption of an obligation described in section 871(g)(1)(B) to NQI, a foreign corporation that is a nonqualified intermediary as defined in §1.1441-1(c)(14). The redemption proceeds are paid to an account NQI has with USP in the United States. NQI provides a nonqualified intermediary withholding certificate as described in §1.1441-1(e)(3)(iii) but does not attach any payee documentation or a withholding statement described in §1.1441-1(e)(3)(iv).

(ii) *Analysis.* Under paragraph (d)(3)(ii)(A) of this section, USP must treat the payment as made to an undocumented U.S. payee that is not an exempt recipient and report the payment on Form 1099. Further, because the payment is made inside the United States, the exception to backup withholding for offshore accounts contained in §31.3406(g)-1(e) of this chapter does not apply and the payment is subject to backup withholding.

*Example 12.* (i) *Facts.* P, a payor, makes a payment to NQI of U.S. source interest on debt obligations issued prior to July 18, 1984. Therefore, the interest does not qualify as portfolio interest under section 871(h) or 881(d). NQI is a nonqualified foreign intermediary, as defined in §1.1441-1(c)(14), and has furnished P a valid nonqualified intermediary withholding certificate described in §1.1441-1(e)(3)(iii) to which it has attached a valid Form W-9 for A, and two valid beneficial owner Forms W-8, one for B and one

for C. A is not an exempt recipient under §1.6049-4(c). NQI furnishes a withholding statement, described in §1.1441-1(e)(3)(iv), in which it allocates 20 percent of the U.S. source interest to A, but does not allocate the remaining 80 percent of the interest between B and C. B's withholding certificate indicates that B is a foreign pension fund, exempt from U.S. tax under the U.S. income tax treaty with Country T. C's withholding certificate indicates that C is a foreign corporation not entitled to a reduced rate of withholding.

(i) *Analysis.* Under paragraph (d)(3)(i) of this section, P applies the rules of §1.1441-1(b)(2)(v) to determine the payees of the interest. Under that section, the payees are the persons on whose behalf NQI acts—A, B and C. Because P can reliably associate 20 percent of the payment with valid documentation provided by A, P must treat 20 percent of the interest as paid to A, a U.S. person not exempt from reporting, and report the payment on Form 1099. P cannot reliably associate the remaining 80 percent of the payment with valid documentation under §1.1441-1(b)(2)(vii) and, therefore, under paragraph (d)(3)(i) of this section must apply the presumption rules of §1.1441-1(b)(3)(v). Under that section, the interest is presumed paid to an unknown foreign payee. Under paragraph (b)(12) of this section, P is not required to report the interest presumed paid to a foreign person on Form 1099. Under §1.1441-1(b), 80 percent of the interest is subject to 30 percent withholding, however, and the interest is reportable on Form 1042-S under §1.1461-1(c).

*Example 13.* (i) *Facts.* The facts are the same as in *Example 12*, except that P can reliably associate 30 percent of the payment of interest to B, but cannot reliably associate the remaining 70 percent with A or C.

(ii) *Analysis.* Under paragraph (d)(3)(i) of this section, P applies the rules of §1.1441-1(b)(2)(v) to determine the payees of the interest. Under that section, the payees are the persons on whose behalf NQI acts—A, B and C. Because P can reliably associate 30 percent of the payment with B, a foreign pensions fund exempt from withholding under an income tax treaty, P may treat that payment as paid to B and not subject to reporting on Form 1099 under paragraph (b)(12) of this section. P cannot reliably associate the remaining 70 percent of the payment with valid documentation under §1.1441-1(b)(2)(vii) and, therefore, under paragraph (d)(3)(i) of this section must apply the presumption rules of §1.1441-1(b)(3)(v). Under that section, the interest is presumed paid to an unknown foreign payee. Under paragraph (b)(12) of this section, P is not required to report the interest presumed paid to a foreign person on Form 1099. Under §1.1441-1(b), 80 percent of the interest is subject to 30 percent withholding, however, and the interest

is reportable on Form 1042-S under §1.1461-1(c).

*Example 14.* (i) *Facts.* The facts are the same as in *Example 12*, except that P also makes a payment of foreign source interest to NQI.

(ii) *Analysis.* Under paragraph (d)(3)(ii)(A), P may treat the foreign source interest as paid to an exempt recipient as defined in §1.6049-4(c) and not subject to reporting on Form 1099 even though some or all of the foreign source interest may in fact be owned by A, the U.S. person that is not exempt from reporting.

(e) *Determination of whether amounts are considered paid outside the United States—(1) In general.* For purposes of section 6049 and this section, an amount is considered to be paid by a payor or middleman outside the United States if the payor or middleman completes the acts necessary to effect payment outside the United States. See paragraphs (e)(2), (3), and (4) of this section for further clarification of where amounts are considered paid. A payment shall not be considered to be made within the United States for purposes of section 6049 merely by reason of the fact that it is made on a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account. However, without regard to the location of the account from which the amount is drawn, an amount that is described in paragraph (e)(1) (i) or (ii) of this section and paid by transfer to an account maintained by the payee in the United States or by mail to a United States address is not considered to be paid outside the United States.

(i) An amount is described in this paragraph (e)(1)(i) if it is paid by an issuer or the paying agent of the issuer and the obligation is either—

(A) Issued by a U.S. payor, as defined in paragraph (c)(5) of this section;

(B) Registered under the Securities Act of 1933 (15 U.S.C. 77a); or

(C) Listed on an exchange that is registered as a national securities exchange in the United States or included in an interdealer quotation system in the United States.

(ii) An amount is described in this paragraph (e)(1)(ii) if it is paid by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian, nominee, or other agent of a

payee, collects the amount for or on behalf of the payee.

(2) *Amounts paid with respect to deposits or accounts with banks and other financial institutions.* Notwithstanding paragraph (e)(1) of this section, an amount paid by a bank or other financial institution with respect to a deposit or with respect to an account with the institution is considered paid at the branch or office at which the amount is credited unless the amount is collected by the financial institution as the agent of the payee. However, an amount will not be considered to be paid at the branch or office where the amount is considered to be credited unless the branch or office is a permanent place of business that is regularly maintained, occupied, and used to carry on a banking or similar financial business; the business is conducted by at least one employee of the branch or office who is regularly in attendance at such place of business during normal business hours; and the branch or office receives deposits and engages in one or more of the other activities described in § 1.864-4(c)(5)(i). In addition, an amount paid by a bank or other financial institution with respect to a deposit or an account with the institution is not considered paid at a branch or office outside the United States if the customer has transmitted instructions to an agent, branch, or office of the institution from inside the United States by mail, telephone, electronic transmission, or otherwise concerning the deposit or account (unless the transmission from the United States has taken place in isolated and infrequent circumstances).

(3) *Coupon bonds and discount obligations in bearer form.* Notwithstanding paragraph (e)(1) of this section, an amount paid with respect to a bond with coupons attached (including a certificate of deposit with detachable interest coupons) or a discount obligation that is not in registered form (within the meaning of section 163(f) and the regulations thereunder) is considered to be paid where the coupon or the discount obligation is presented to the payor or its paying agent for payment. However, without regard to where the coupon or discount obligation is presented for payment, an

amount paid with respect to either a bond with coupons attached or a discount obligation by transfer to an account maintained by the payee in the United States or by mail to the United States is considered paid in the United States if the payment is described in paragraphs (e)(3) (i) and (ii) of this section.

(i) The amount is paid by an issuer or the paying agent of the issuer and the obligation is either—

(A) Issued by a U.S. payor, as defined in paragraph (c)(5) of this section;

(B) Registered under the Securities Act of 1933 (15 U.S.C. 77a); or

(C) Listed on an exchange that is registered as a national securities exchange in the United States or included in an interdealer quotation system in the United States.

(ii) The amount is paid by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian, nominee, or other agent of payee, collects the amount for or on behalf of the payee.

(4) *Foreign-targeted registered obligations.* Notwithstanding paragraph (e)(1) of this section, where the payor is the issuer or the issuer's agent, an amount is considered paid outside the United States with respect to a foreign-targeted registered obligation, as described in § 1.871-14(e)(2), if either the amount is paid by transfer to an account maintained by the registered owner outside the United States, or by mail to an address of the registered owner outside the United States, or by credit to an international account. For purposes of this paragraph (e)(4), the term *international account* means the book-entry account of a financial institution (within the meaning of section 871(h)(4)(B)) or of an international financial organization with the Federal Reserve Bank of New York for which the Federal Reserve Bank of New York maintains records that specifically identify an international financial organization or a financial institution (within the meaning of section 871(h)(4)(B)) as either a non-United States person or a foreign branch of a United States person as registered owner. An international financial organization is a central bank or monetary authority of a foreign government or a

public international organization of which the United States is a member to the extent that such central bank, authority, or organization holds obligations solely for its own account and is exempt from tax under section 892 or 895.

(5) *Examples.* The application of the provisions of this paragraph (e) are illustrated by the following examples:

*Example 1.* FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in paragraph (c)(5) of this section. A holds FC coupon bonds that are not in registered form under section 163(f) and the regulations thereunder, that were issued by FC in a public offering outside the United States, that are not registered under the Securities Act of 1933 (15 U.S.C. 77a), and that are neither listed on an exchange that is registered as a national securities exchange in the United States nor included in an interdealer quotation system. DC, a U.S. corporation that is engaged in a commercial banking business, is the designated fiscal agent for FC. FB, a foreign branch of DC, is the designated paying agent with respect to the bonds issued by FC. A does not have an account with FB. A presents a coupon from a FC bond for payment to FB at its office outside the United States. FB pays A with a check drawn against a bank account maintained in the United States. For purposes of section 6049, the place of payment of interest on the FC bond by FB to A is considered to be outside the United States under paragraph (e)(3) of this section.

*Example 2.* The facts are the same as in *Example 1* except that A presents the coupon to FB at its office outside the United States with instructions to transfer funds in payment to a bank account maintained by A in the United States. FB transfers the funds in accordance with A's instructions. Even though the amount is credited to an account in the United States, the place of payment of interest on the FC bonds is considered to be outside the United States under paragraph (e)(3) of this section because the coupon is presented for payment outside the United States; because FC is a foreign person that is not a U.S. payor or U.S. middleman, as defined in paragraph (d)(1) of this section; because FB is not acting as A's agent; and because the obligation is not registered under the Securities Act of 1933 (15 U.S.C. 77a), listed on a securities exchange that is registered as a national securities exchange in the United States, or included in an interdealer quotation system.

*Example 3.* FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in paragraph (d)(1) of this section. B, a United States citizen, holds a bond issued by FC in registered form under section 163(f)

and the regulations thereunder and registered under the Securities Act of 1933 (15 U.S.C. 77a). The bond is not a foreign-targeted registered obligation as defined in §1.871-14(e)(2). DB, a United States branch of a foreign corporation engaged in the commercial banking business, is the registrar of the bonds issued by FC. DB supplies FC with a list of the holders of the FC bonds. Interest on the FC bonds is paid to B and other bondholders by checks prepared by FC at its principal office outside the United States, and B's check is mailed from there to his designated address in the United States. The bond is described in paragraph (e)(1)(i)(B) of this section. The place of payment to B by FC of the interest on the FC bonds is considered to be inside the United States under paragraph (e)(1) of this section.

*Example 4.* The facts are the same as in *Example 3* except that the checks are prepared and mailed in the United States by DC, a U.S. corporation engaged in the commercial banking business that is the designated paying agent with respect to the bonds issued by FC, and B's check is mailed to his designated address outside the United States. For purposes of section 6049, the place of payment by DC of the interest on the FC bonds is considered to be within the United States under paragraph (e)(1) of this section.

*Example 5.* Individual C deposits funds in an account with FB, a foreign country X branch of DB, a U.S. corporation engaged in the commercial banking business. FB maintains an office and employees in foreign country X, accepts deposits, and conducts one or more of the other activities listed in §1.864-4(c)(5)(i). The terms of C's deposit provide that it will be payable in six months with accrued interest. On the day that the interest is credited to C's account with FB, C telephones DB from inside the United States and asks DB to direct FB to transfer the funds in his account with FB to an account C maintains in the United States with DB. Transmissions from the United States concerning this account have taken place in isolated and infrequent circumstances. Under paragraph (e)(2) of this section, FB is considered to have paid the interest on C's deposit outside the United States.

*Example 6.* The facts are the same as in *Example 5* except that C has placed his deposit with FB for an indefinite period of time. Interest will be credited to C's account daily. C has instructed FB to wire the interest at 90-day intervals to C's account with DB within the United States. FB is considered to have paid the interest credited to A's account within the United States under paragraph (e)(2) of this section because the regular crediting of the account disqualifies the transmission from being isolated or infrequent.



*Example 7.* DC, a U.S. corporation engaged in the commercial banking business, maintains FB, a branch in foreign country X. FB has an office and employees in foreign country X, accepts deposits, and engages in one or more of the other activities listed in § 1.864-4(c)(5)(i). D, a United States citizen, purchases a certificate of deposit issued in 1980 by FB. The certificate of deposit has a maturity of 20 years and has detachable interest coupons payable at six-month intervals. D presents some of the coupons at the U.S. office of DC and receives payment in cash. Because the coupon is presented to DC for payment within the United States, DC is considered to have made the payment within the United States under paragraph (e)(3) of this section.

*Example 8.* FB is recognized by both foreign country X and by the Federal Reserve Bank as a foreign country X branch of DC, a U.S. corporation engaged in the commercial banking business. A local foreign country X bank serves as FB's resident agent in Country X. FB maintains no physical office or employees in foreign country X. All the records, accounts, and transactions of FB are handled at the United States office of DC. E deposits funds in an amount maintained with FB. Interest earned on the deposit is periodically credited to E's account with FB by employees of DC. For purposes of section 6049, the place of payment of the interest on E's deposit with FB is considered to be within the United States by reason of paragraphs (e)(1) and (2) of this section.

*Example 9.* DC is a U.S. corporation. A holds bonds that were issued by DC in registered form under section 163(f) and the regulations thereunder and that are foreign-targeted registered obligations as defined in § 1.871-14(e)(2). DB, a commercial banking business, is the registrar of bonds issued by DC. Interest on the DC bonds is paid to A and other bondholders by check prepared by DB at its principal office inside the United States and mailed from there to A's address outside the United States. The check is drawn on a United States account maintained by DC with DB within the United States. The place of payment to A by DB of the interest on the DC bonds is considered to be outside the United States under paragraph (e)(4) of this section.

(f) *Original issue discount treated as payment of interest.* In determining whether an obligation is one which was issued at a discount and the amount of discount which is includible in income of the holder, a payor (other than the issuer of the obligation) may rely on the Internal Revenue Service's publication of publicly traded original issue discount obligations. In the case of an obligation as to which there is during

any calendar year an amount of original issue discount includible in the gross income of any holder (as determined under sections 1232 and 1232A and the regulations thereunder), the issuer of the obligation or a middleman (as defined in § 1.6049-4(f)(4)) shall be treated as having paid to such holder during such calendar year an amount of interest equal to the amount of original issue discount so includible without regard to any reduction by reason of a purchase allowance under sections 1232(a)(2)(C)(ii), 1232A (a)(6) or (b)(4) or a purchase at a premium under 1232A(c)(4)(A) or paragraph (d)(2) of § 1.1232-3. Thus, the determination of the amount of original issue discount includible in the gross income of any holder with respect to any obligation shall be determined as if any holder of the obligation were the original holder. In the case of (1) an obligation to which section 1232A does not apply (for example, a short-term government obligation as defined in section 1232(a)(3)) and (2) an obligation issued on or before December 31, 1982, in bearer form, the amount of original issue discount includible in gross income shall be treated as if paid in the calendar year in which the date of maturity occurs or in which the date of redemption occurs if redemption occurs before maturity. The amount subject to reporting on an obligation issued in bearer form with a maturity at the date of issue of more than 1 year (a long term obligation) is the amount of original issue discount includible in the gross income of the holder during the calendar year of maturity or redemption if redemption occurs before maturity. The amount of original issue discount subject to reporting on a long term obligation shall not be reduced to reflect any purchase allowance. Discount on short term government obligations as defined in section 1232(a)(3), such as Treasury bills, and discount on other obligations with a maturity at the date of issue of not more than 1 year (a short term obligation), including commercial paper, when paid at maturity or redemption if redemption occurs before maturity, shall constitute a payment of interest for purposes of section 6049. In general, the amount subject to reporting on short term obligations is the difference

between the stated redemption price at maturity and the original issue price. The procedure set forth in section 3455(b)(2)(B) and § 1.3455(b)-1(b)(3) for establishing the price at which a holder purchased an obligation subsequent to the date of original issue shall apply for purposes of section 6049. Original issue discount on an obligation (including an obligation with a maturity of not more than 6 months from the date of original issue) held by a nonresident alien individual or foreign corporation is interest described in paragraph (b)(1)(vi) (A) or (B) of this section and, therefore is not interest subject to reporting under section 6049 unless it is described in § 1.6049-8(a) (relating to bank deposit interest paid to a Canadian nonresident alien individual).

(g) *Effective date*—(1) *General rule*. The provisions of paragraphs (b)(6) through (15), (c), (d), and (e) of this section apply to payments made after December 31, 2000.

(2) *Transition rules*. The validity of a withholding certificate (namely, Form W-8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such a withholding certificate remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a payor may choose not to take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore,

may require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

[T.D. 7881, 48 FR 12972, Mar. 28, 1983, as amended by T.D. 7987, 49 FR 42719, Oct. 24, 1984; T.D. 8029, 50 FR 23680, June 5, 1985; T.D. 8664, 61 FR 17573, Apr. 22, 1996; T.D. 8734, 62 FR 53483, Oct. 14, 1997; T.D. 8804, 63 FR 72186, 72188, Dec. 31, 1998; T.D. 8856, 64 FR 73411, 73412, Dec. 30, 1999; T.D. 8881, 65 FR 32207, May 22, 2000; 66 FR 18189, Apr. 6, 2001; T.D. 9241, 71 FR 4025, Jan. 24, 2006; T.D. 9253, 71 FR 13007, Mar. 14, 2006]

**§ 1.6049-5T Reporting by brokers of interest and original issue discount on and after January 1, 1986 (temporary).**

For purposes of § 1.6049-5 (c), relating to original issue discount treated as interest subject to reporting, on and after January 1, 1986, a payor who is a broker or middleman holding as a nominee—

(a) A bank certificate of deposit (without regard to whether the broker or middleman sold the certificate of deposit to the owner), or

(b) Any other original issue discount debt instrument that is specified by the Commissioner,

must determine whether that obligation is one that was issued at a discount and the amount of discount that is includible in the income of the owner. However, before January 1, 1987, reporting is required only with respect to certificates of deposit (or any such other obligations) held by a broker or middleman as a nominee on or after June 1, 1986, that were sold by the broker or middleman (whether for the broker's account or as an agent of the issuer) to the owner. The preceding two sentences do not apply to certificates of deposit (or any such other obligations) held on or after January 1, 1986, but disposed of before June 1, 1986; reporting requirements with respect to