

most recent draft) contains all the information in the earlier drafts of the document that is material to an understanding of the purported tax treatment or tax structure of the transaction.

(h) *Effective dates.* This section applies to Federal income tax returns filed after February 28, 2000. However, paragraphs (b)(3), (e)(1), and (e)(2)(i) of this section apply to transactions entered into on or after December 29, 2003. All the rules in this section may be relied upon for transactions entered into on or after January 1, 2003, and before December 29, 2003. Otherwise, the rules that apply with respect to transactions entered into before December 29, 2003, are contained in § 1.6011-4 in effect prior to December 29, 2003, (see 26 CFR part 1 revised as of April 1, 2003).

[T.D. 9046, 68 FR 10163, Mar. 4, 2003, as amended by T.D. 9108, 68 FR 75130, Dec. 30, 2003]

§ 1.6011-5T Required use of magnetic media for corporate income tax returns (temporary).

The return of a corporation that is required to be filed on magnetic media under § 301.6011-5T of this chapter must be filed in accordance with Internal Revenue Service revenue procedures, publications, forms, or instructions. (See § 601.601(d)(2) of this chapter).

[T.D. 9175, 70 FR 2014, Jan. 12, 2005]

§ 1.6012-1 Individuals required to make returns of income.

(a) *Individual citizen or resident—(1) In general.* Except as provided in subparagraph (2) of this paragraph, an income tax return must be filed by every individual for each taxable year beginning before January 1, 1973, during which he receives \$600 or more of gross income, and for each taxable year beginning after December 31, 1972, during which he receives \$750 or more of gross income, if such individual is:

(i) A citizen of the United States, whether residing at home or abroad,

(ii) A resident of the United States even though not a citizen thereof, or

(iii) An alien bona fide resident of Puerto Rico during the entire taxable year.

(2) *Special rules.* (i) For taxable years beginning before January 1, 1970, an individual who is described in subpara-

graph (1) of this paragraph and who has attained the age of 65 before the close of his taxable year must file an income tax return only if he receives \$1,200 or more of gross income during his taxable year.

(ii) For taxable years beginning after December 31, 1969, and before January 1, 1973, an individual described in subparagraph (1) of this paragraph (other than an individual referred to in section 142(b)):

(a) Who is not married (as determined by applying section 143(a) and the regulations thereunder) must file an income tax return only if he receives \$1,700 or more of gross income during his taxable year, except that if such an individual has attained the age of 65 before the close of his taxable year an income tax return must be filed by such individual only if he receives \$2,300 or more of gross income during his taxable year.

(b) Who is entitled to make a joint return under section 6013 and the regulations thereunder must file an income tax return only if his gross income received during his taxable year, when combined with the gross income of his spouse received during his taxable year, is \$2,300 or more. However, if such individual or his spouse has attained the age of 65 before the close of the taxable year an income tax return must be filed by such individual only if their combined gross income is \$2,900 or more. If both the individual and his spouse have attained the age of 65 before the close of the taxable year such return must be filed only if their combined gross income is \$3,500 or more. However, this subdivision (ii)(b) shall not apply if the individual and his spouse did not have the same household as their home at the close of their taxable year, if such spouse files a separate return for a taxable year which includes any part of such individual's taxable year, or if any other taxpayer is entitled to an exemption for such individual or his spouse under section 151(e) for such other taxpayer's taxable year beginning in the calendar year in which such individual's taxable year begins. For example, a married student more than half of whose support is furnished by his father must file an income tax return if he receives \$600 or

more of gross income during his taxable year.

(iii) For taxable years beginning after December 31, 1972, an individual described in subparagraph (1) of this paragraph (other than an individual referred to in section 142(b)):

(a) Who is not married (as determined by applying section 143(a) and the regulations thereunder) must file an income tax return only if he receives \$1,750 or more of gross income during his taxable year, except that if such an individual has attained the age of 65 before the close of his taxable year an income tax return must be filed by such individual only if he receives \$2,500 or more of gross income during his taxable year.

(b) Who is entitled to make a joint return under section 6013 and the regulations thereunder must file an income tax return only if his gross income received during his taxable year, when combined with the gross income of his spouse received during his taxable year, is \$2,500 or more. However, if such individual or his spouse has attained the age of 65 before the close of the taxable year an income tax return must be filed by such individual only if their combined gross income is \$3,250 or more. If both the individual and his spouse attain the age of 65 before the close of the taxable year such return must be filed only if their combined gross income is \$4,000 or more. However, this subdivision (iii)(b) shall not apply if the individual and his spouse did not have the same household as their home at the close of their taxable year, if such spouse files a separate return for a taxable year which includes any part of such individual's taxable year, or if any other taxpayer is entitled to an exemption for the taxpayer or his spouse under section 151(e) for such other taxpayer's taxable year beginning in the calendar year in which such individual's taxable year begins. For example, a married student more than half of whose support is furnished by his father must file an income tax return if he receives \$750 or more of gross income during the taxable year.

(iv) For purposes of section 6012(a)(1)(A)(ii) and subdivisions (ii)(b) and (iii)(b) of this subparagraph, an individual and his spouse are considered

to have the same household as their home at the close of a taxable year if the same household constituted the principal place of abode of both the individual and his spouse at the close of such taxable year (or on the date of death, if the individual or his spouse died within the taxable year). The individual and his spouse will be considered to have the same household as their home at the close of the taxable year notwithstanding a temporary absence from the household due to special circumstances, as, for example, in the case of a nonpermanent failure on the part of the individual and his spouse to have a common abode by reason of illness, education, business, vacation, or military service. For example, A, a calendar-year individual under 65 years of age, is married to B, also under 65 years of age, and is a member of the Armed Forces of the United States. During 1970 A is transferred to an overseas base. A and B give up their home, which they had jointly occupied until that time; B moves to the home of her parents for the duration of A's absence. They fully intend to set up a new joint household upon A's return. Neither A nor B must file a return for 1970 if their combined gross income for the year is less than \$2,300 and if no other taxpayer is entitled to a dependency exemption for A or B under section 151(e).

(v) In the case of a short taxable year referred to in section 443(a)(1), an individual described in subparagraph (1) of this paragraph shall file an income tax return if his gross income received during such short taxable year equals or exceeds his own personal exemption allowed by section 151(b) (prorated as provided in section 443(c)) and, when applicable, his additional exemption for age 65 or more allowed by section 151(c)(1) (prorated as provided in section 443(c)).

(vi) For rules relating to returns required to be made by every individual who is liable for one or more qualified State individual income taxes, as defined in section 6362, for a taxable year, see paragraph (b) of § 301.6361-1 of this chapter (Regulations on Procedure and Administration).

(vii) For taxable years beginning after December 31, 1978, an individual

who receives payments during the calendar year in which the taxable year begins under section 3507 (relating to advance payment of earned income credit) must file an income tax return.

(3) *Earned income from without the United States and gain from sale of residence.* For the purpose of determining whether an income tax return must be filed for any taxable year beginning after December 31, 1957, gross income shall be computed without regard to the exclusion provided for in section 911 (relating to earned income from sources without the United States). For the purpose of determining whether an income tax return must be filed for any taxable year ending after December 31, 1963, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to sale of residence by individual who has attained age 65). In the case of an individual claiming an exclusion under section 121, he shall attach Form 2119 to the return required under this paragraph and in the case of an individual claiming an exclusion under section 911, he shall attach Form 2555 to the return required under this paragraph.

(4) *Return of income of minor.* A minor is subject to the same requirements and elections for making returns of income as are other individuals. Thus, for example, for a taxable year beginning after December 31, 1972, a return must be made by or for a minor who has an aggregate of \$1,750 of gross income from funds held in trust for him and from his personal services, regardless of the amount of his taxable income. The return of a minor must be made by the minor himself or must be made for him by his guardian or other person charged with the care of the minor's person or property. See paragraph (b)(3) of § 1.6012-3. See § 1.73-1 for inclusion in the minor's gross income of amounts received for his personal services. For the amount of tax which is considered to have been properly assessed against the parent, if not paid by the child, see section 6201(c) and paragraph (c) of § 301.6201-1 of this chapter (Regulations on Procedure and Administration).

(5) *Returns made by agents.* The return of income may be made by an agent if,

by reason of disease or injury, the person liable for the making of the return is unable to make it. The return may also be made by an agent if the taxpayer is unable to make the return by reason of continuous absence from the United States (including Puerto Rico as if a part of the United States) for a period of at least 60 days prior to the date prescribed by law for making the return. In addition, a return may be made by an agent if the taxpayer requests permission, in writing, of the district director for the internal revenue district in which is located the legal residence or principal place of business of the person liable for the making of the return, and such district director determines that good cause exists for permitting the return to be so made. However, assistance in the preparation of the return may be rendered under any circumstances. Whenever a return is made by an agent it must be accompanied by a power of attorney (or copy thereof) authorizing him to represent his principal in making, executing, or filing the return. A form 2848, when properly completed, is sufficient. In addition, where one spouse is physically unable by reason of disease or injury to sign a joint return, the other spouse may, with the oral consent of the one who is incapacitated, sign the incapacitated spouse's name in the proper place on the return followed by the words "By _____ Husband (or Wife)," and by the signature of the signing spouse in his own right, provided that a dated statement signed by the spouse who is signing the return is attached to and made a part of the return stating:

- (i) The name of the return being filed,
- (ii) The taxable year,
- (iii) The reason for the inability of the spouse who is incapacitated to sign the return, and
- (iv) That the spouse who is incapacitated consented to the signing of the return.

The taxpayer and his agent, if any, are responsible for the return as made and incur liability for the penalties provided for erroneous, false, or fraudulent returns.

(6) *Form of return.* Form 1040 is prescribed for general use in making the

return required under this paragraph. Form 1040A is an optional short form which, in accordance with paragraph (a)(7) of this section, may be used by certain taxpayers. A taxpayer otherwise entitled to use Form 1040A as his return for any taxable year may not make his return on such form if he elects not to take the standard deduction provided in section 141, and in such case he must make his return on Form 1040. For taxable years beginning before January 1, 1970, a taxpayer entitled under section 6014 and § 1.6014-1 to elect not to show his tax on his return must, if he desires to exercise such election, make his return on Form 1040A. Form 1040W is an optional short form which, in accordance with paragraph (a)(8) of this section, may be used only with respect to taxable years beginning after December 31, 1958, and ending before December 31, 1961.

(7)(i) *Use of Form 1040A.* Form 1040A may be filed only by those individuals entitled to use such form as provided by and in accordance with the instructions for such form.

(ii) *Computation and payment of tax.* Unless a taxpayer is entitled to elect under section 6014 and § 1.6014-1 not to show the tax on Form 1040A and does so elect, he shall compute and show on his return on Form 1040A the amount of the tax imposed by subtitle A of the Code and shall, without notice and demand therefor, pay any unpaid balance of such tax not later than the date fixed for filing the return.

(iii) *Change of election to use Form 1040A.* A taxpayer who has elected to make his return on Form 1040A may change such election. Such change of election shall be within the time and subject to the conditions prescribed in section 144(b) and § 1.144-2 relating to change of election to take, or not to take the standard deduction.

(8) *Use of Form 1040W for certain taxable years—(i) In general.* An individual may use Form 1040W as his return for any taxable year beginning after December 31, 1958, and ending before December 31, 1961, in which the gross income of the individual, regardless of the amount thereof:

(a) Consists entirely of remuneration for personal services performed as an employee (whether or not such remuneration

constitutes wages as defined in section 3401(a)), dividends, or interest, and

(b) Does not include more than \$200 from dividends and interest.

For purposes of determining whether gross income from dividends and interest exceeds \$200, dividends from domestic corporations are taken into account to the extent that they are includible in gross income. For purposes of this subparagraph, any reference to Form 1040 in §§ 1.4-2, 1.142-1, and 1.144-1 and this section shall also be deemed a reference to Form 1040W.

(ii) *Change of election to use Form 1040W.* A taxpayer who has elected to make his return on Form 1040W may change such election. Such change of election shall be within the time and subject to the conditions prescribed in section 144(b) and § 1.144-2, relating to change of election to take, or not to take, the standard deduction.

(iii) *Joint return of husband and wife on Form 1040W.* A husband and wife, eligible under section 6013 and the regulations thereunder to file a joint return for the taxable year, may, subject to the provisions of this subparagraph, make a joint return on Form 1040W for any taxable year beginning after December 31, 1958, and ending before December 31, 1961, in which the aggregate gross income of the spouses (regardless of amount) consists entirely of remuneration for personal services performed as an employee (whether or not such remuneration constitutes wages as defined in section 3401(a)), dividends, or interest, and does not include more than \$200 from dividends and interest. For purposes of determining whether gross income from sources to which the \$200 limitation applies exceeds such amount in cases where both spouses receive dividends from domestic corporations, the amount of such dividends received by each spouse is taken into account to the extent that such dividends are includible in gross income. See section 116 and §§ 1.116-1 and 1.116-2. If a joint return is made by husband and wife on Form 1040W, the liability for the tax shall be joint and several.

(9) *Items of tax preference.* For a taxable year ending after December 31, 1969, an individual shall attach Form 4625 to the return required by this

paragraph if during the year the individual:

(i) Has items of tax preference (described in section 57) in excess of its minimum tax exemption (determined under § 1.58-1) or

(ii) Uses a net operating loss carry-over from a prior taxable year in which it deferred minimum tax under section 56(b).

(b) *Return of nonresident alien individual*—(1) *Requirement of return*—(i) *In general*. Except as otherwise provided in subparagraph (2) of this paragraph, every nonresident alien individual (other than one treated as a resident under section 6013 (g) or (h)) who is engaged in trade or business in the United States at any time during the taxable year or who has income which is subject to taxation under subtitle A of the Code shall make a return on Form 1040NR. For this purpose it is immaterial that the gross income for the taxable year is less than the minimum amount specified in section 6012(a) for making a return. Thus, a nonresident alien individual who is engaged in a trade or business in the United States at any time during the taxable year is required to file a return on Form 1040NR even though (a) he has no income which is effectively connected with the conduct of a trade or business in the United States, (b) he has no income from sources within the United States, or (c) his income is exempt from income tax by reason of an income tax convention or any section of the Code. However, if the nonresident alien individual has no gross income for the taxable year, he is not required to complete the return schedules but must attach a statement to the return indicating the nature of any exclusions claimed and the amount of such exclusions to the extent such amounts are readily determinable.

(ii) *Treaty income*. If the gross income of a nonresident alien individual includes treaty income, as defined in paragraph (b)(1) of § 1.871-12, a statement shall be attached to the return on Form 1040NR showing with respect to that income:

(a) The amounts of tax withheld,

(b) The names and post office addresses of withholding agents, and

(c) Such other information as may be required by the return form, or by the instructions issued with respect to the form, to show the taxpayer's entitlement to the reduced rate of tax under the tax convention.

(2) *Exceptions*—(i) *Return not required when tax is fully paid at source*. A nonresident alien individual (other than one treated as a resident under section 6013 (g) or (h)) who at no time during the taxable year is engaged in a trade or business in the United States is not required to make a return for the taxable year if his tax liability for the taxable year is fully satisfied by the withholding of tax at source under chapter 3 of the Code. This subdivision does not apply to a nonresident alien individual who has income for the taxable year which is treated under section 871 (c) or (d) and § 1.871-9 (relating to students or trainees) or § 1.871-10 (relating to real property income) as income which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual, or to a nonresident alien individual making a claim under § 301.6402-3 of this chapter (Procedure and Administration Regulations) for the refund of an overpayment of tax for the taxable year. In addition, this subdivision does not apply to a nonresident alien individual who has income for the taxable year that is treated under section 871(b)(1) as effectively connected with the conduct of a trade or business within the United States by reason of the operation of section 897. For purposes of this subdivision, some of the items of income from sources within the United States upon which the tax liability will not have been fully satisfied by the withholding of tax at source under chapter 3 of the Code are:

(a) Interest upon so-called tax-free covenant bonds upon which, in accordance with section 1451 and § 1.1451-1, a tax of only 2 percent is required to be withheld at the source,

(b) In the case of bonds or other evidences of indebtedness issued after September 28, 1965, amounts described in section 871(a)(1)(C),

(c) Capital gains described in section 871(a)(2) and paragraph (d) of § 1.871-7, and

(d) Accrued interest received in connection with the sale of bonds between interest dates, which, in accordance with paragraph (h) of § 1.1441-4, is not subject to withholding of tax at the source.

(ii) *Return of individual for taxable year of change of U.S. citizenship or residence—(a)* If an alien individual becomes a citizen or resident of the United States during the taxable year and is a citizen or resident of the United States on the last day of such year, he must make a return on Form 1040 for the taxable year. However, a separate schedule is required to be attached to this return to show the income tax computation for the part of the taxable year during which the alien was neither a citizen nor resident of the United States, unless an election under section 6013 (g) or (h) is in effect for the alien. A Form 1040NR, clearly marked “Statement” across the top, may be used as such a separate schedule.

(b) If an individual abandons his U.S. citizenship or residence during the taxable year and is not a citizen or resident of the United States on the last day of such year, he must make a return on Form 1040NR for the taxable year, even if an election under section 6013(g) was in effect for the taxable year preceding the year of abandonment. However, a separate schedule is required to be attached to this return to show the income tax computation for the part of the taxable year during which the individual was a citizen or resident of the United States. A Form 1040, clearly marked “Statement” across the top, may be used as such a separate schedule.

(c) A return is required under this subdivision (ii) only if the individual is otherwise required to make a return for the taxable year.

(iii) *Beneficiaries of estates or trusts.* A nonresident alien individual who is a beneficiary of an estate or trust which is engaged in trade or business in the United States is not required to make a return for the taxable year merely because he is deemed to be engaged in trade or business within the United States under section 875(2). However, such nonresident alien beneficiary will be required to make a return if he oth-

erwise satisfies the conditions of subparagraph (1)(i) of this paragraph for making a return.

(iv) *Certain alien residents of Puerto Rico.* This paragraph does not apply to a nonresident alien individual who is a bona fide resident of Puerto Rico during the taxable year. See section 876 and paragraph (a)(1)(iii) of this section.

(3) *Representative or agent for nonresident alien individual—(i) Cases where power of attorney is not required.* The responsible representative or agent within the United States of a nonresident alien individual shall make on behalf of his nonresident alien principal a return of, and shall pay the tax on, all income coming within his control as representative or agent which is subject to the income tax under subtitle A of the Code. The agency appointment will determine how completely the agent is substituted for the principal for tax purposes. Any person who collects interest or dividends on deposited securities of a nonresident alien individual, executes ownership certificates in connection therewith, or sells such securities under special instructions shall not be deemed merely by reason of such acts to be the responsible representative or agent of the nonresident alien individual. If the responsible representative or agent does not have a specific power of attorney from the nonresident alien individual to file a return in his behalf, the return shall be accompanied by a statement to the effect that the representative or agent does not possess specific power of attorney to file a return for such individual but that the return is being filed in accordance with the provisions of this subdivision.

(ii) *Cases where power of attorney is required.* Whenever a return of income of a nonresident alien individual is made by an agent acting under a duly authorized power of attorney for that purpose, the return shall be accompanied by the power of attorney in proper form, or a copy thereof, specifically authorizing him to represent his principal in making, executing, and filing the income tax return. Form 2848 may be used for this purpose. The agent, as well as the taxpayer, may incur liability for the penalties provided for erroneous, false, or fraudulent

returns. For the requirements regarding signing of returns, see §1.6061-1. The rules of paragraph (e) of §601.504 of this chapter (Statement of Procedural Rules) shall apply under this subparagraph in determining whether a copy of a power of attorney must be certified.

(iii) *Limitation.* A return of income shall be required under this subparagraph only if the nonresident alien individual is otherwise required to make a return in accordance with this paragraph.

(4) *Disallowance of deductions and credits.* For provisions disallowing deductions and credits when a return of income has not been filed by or on behalf of a nonresident alien individual, see section 874(a) and the regulations thereunder.

(5) *Effective date.* This paragraph shall apply for taxable years beginning after December 31, 1966, except that it shall not be applied to require (i) the filing of a return for any taxable year ending before January 1, 1974, which, pursuant to instructions applicable to the return, is not required to be filed or (ii) the amendment of a return for such a taxable year which, pursuant to such instructions, is required to be filed. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.6012-1(b) (Revised as of January 1, 1967).

(c) *Cross reference.* For returns by fiduciaries for individuals, estates, and trusts, see §1.6012-3.

(Sec. 1445 (98 Stat. 655; 26 U.S.C. 1445), sec. 6012 (68A Stat. 732; 26 U.S.C. 6012), and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

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

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1.6012-1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 1.6012-2 Corporations required to make returns of income.

(a) *In general*—(1) *Requirement of return.* Except as provided in paragraphs (e) and (g)(1) of this section with respect to charitable and other organizations having unrelated business income and to certain foreign corporations, respectively, every corporation, as defined in section 7701(a)(3), subject to

taxation under subtitle A of the Code shall make a return of income regardless of whether it has taxable income or regardless of the amount of its gross income.

(2) *Existence of corporation.* A corporation in existence during any portion of a taxable year is required to make a return. If a corporation was not in existence throughout an annual accounting period (either calendar year or fiscal year), the corporation is required to make a return for that fractional part of a year during which it was in existence. A corporation is not in existence after it ceases business and dissolves, retaining no assets, whether or not under State law it may thereafter be treated as continuing as a corporation for certain limited purposes connected with winding up its affairs, such as for the purpose of suing and being sued. If the corporation has valuable claims for which it will bring suit during this period, it has retained assets and therefore continues in existence. A corporation does not go out of existence if it is turned over to receivers or trustees who continue to operate it. If a corporation has received a charter but has never perfected its organization and has transacted no business and has no income from any source, it may upon presentation of the facts to the district director be relieved from the necessity of making a return. In the absence of a proper showing of such facts to the district director, a corporation will be required to make a return.

(3) *Form of return.* The return required of a corporation under this section shall be made on Form 1120 unless the corporation is a type for which a special form is prescribed. The special forms of returns and schedules required of particular types of corporations are set forth in paragraphs (b) to (g), inclusive, of this section.

(b) *Personal holding companies.* A personal holding company, as defined in section 542, including a foreign corporation within the definition of such section, shall attach Schedule PH, Computation of U.S. Personal Holding Company Tax, to the return required by paragraph (a) or (g), as the case may be, of this section.

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

(T.D. 6500)

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Republication of Regulations

All Income Tax Regulations published under Title 26, Part 1, of the Code of Federal Regulations, pursuant to the Internal Revenue Code of 1954 prior to September 1, 1960, are hereby republished for the purpose of making certain editorial changes, including corrections of form, style, and internal references.

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dated return as measured by the difference between their tax liabilities determined on a separate return basis and their tax liabilities (determined without regard to the 2-percent increase provided by section 1503(a) and paragraph (a) of § 1.1502-30) based on their contributions to the consolidated taxable income.

(4) The tax liability of the group shall be allocated in accord with any other method selected by the group with the approval of the Commissioner.

(b) *Method of election.* The election under section 1552 (a) (1), (2), or (3) shall be made not later than the time prescribed by law for filing the first consolidated return of the group for a taxable year beginning after December 31, 1953, and ending after August 16, 1954 (including extensions thereof). If the group elects to allocate its tax liability in accordance with the method prescribed in section 1552 (a) (1), (2), or (3), a statement shall be attached to the return so stating. Such statement shall be made by the common parent corporation and shall be binding upon all members of the group. In the event that the group desires to allocate its tax liability in accordance with any other method pursuant to section 1552 (a) (4), approval of such method by the Commissioner must be obtained within the time prescribed above. If such approval is not obtained in such time, the group shall allocate in accordance with the method prescribed in section 1552 (a) (1). The request shall state fully the method which the group wishes to apply in apportioning the tax liability. An election once made shall be irrevocable and shall be binding upon the group with respect to the year for which made and for all future years for which a consolidated return is filed or required to be filed unless the Commissioner authorizes a change to another method prior to the time prescribed by law for filing the return for the year in which such change is to be effective.

(c) *Failure to elect.* If a group fails to make an election in accordance with paragraph (b) of this section, the method prescribed under section 1552 (a) (1) shall be applicable and shall be binding upon the group in the same manner as if an election had been made to so allocate.

Procedure and Administration

INFORMATION AND RETURNS

RETURNS AND RECORDS

RECORDS, STATEMENTS, AND SPECIAL RETURNS

§ 1.6001 Statutory provisions; notice or regulations requiring records, statements, and special returns.

SEC. 6001. *Notice or regulations requiring records, statements, and special returns.* Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

§ 1.6001-1 Records.

(a) *In general.* Except as provided in paragraph (b) of this section, any person subject to tax under subtitle A of the Code, or any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.

(b) *Farmers and wage-earners.* Individuals deriving gross income from the business of farming, and individuals whose gross income includes salaries, wages, or similar compensation for personal services rendered, are required with respect to such income to keep such records as will enable the district director to determine the correct amount of income subject to the tax. It is not necessary, however, that with respect to such income individuals keep the books of account or records required by paragraph (a) of this section. For rules with respect to the records to be kept in substantiation of traveling and other business expenses of employees, see § 1.162-17.

(c) *Exempt organizations.* In addition to such permanent books and records as are required by paragraph (a) of this section with respect to the tax imposed by section 511 on unrelated business in-

come of certain exempt organizations, every organization exempt from tax under section 501(a) but required by section 6033 to file an annual return shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts, and disbursements, and such other information as is required by section 6033. See section 6033 and § 1.6033-1.

(d) *Notice by district director requiring returns, statements, or the keeping of records.* The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for tax under subtitle A of the Code.

(e) *Retention of records.* The books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

TAX RETURNS OR STATEMENTS

§ 1.6011 Statutory provisions; general requirement of return, statement, or list.

SEC. 6011. *General requirement of return, statement, or list—*(a) *General rule.* When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(d) *Income, estate, and gift taxes.* For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see sections 6012 to 6019, inclusive.

[Sec. 6011 as amended by sec. 161, Excise Tax Technical Changes Act 1958 (72 Stat. 1305)]

§ 1.6011-1 General requirement of return, statement, or list.

(a) *General rule.* Every person subject to any tax, or required to collect any tax, under subtitle A of the Code, shall make such returns or statements as are required by the regulations in this chap-

ter. The return or statement shall include therein the information required by the applicable regulations or forms.

(b) *Use of prescribed forms.* Copies of the prescribed return forms will so far as possible be furnished taxpayers by district directors. A taxpayer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Taxpayers not supplied with the proper forms should make application therefor to the district director in ample time to have their returns prepared, verified, and filed on or before the due date with the internal revenue office where such returns are required to be filed. Each taxpayer should carefully prepare his return and set forth fully and clearly the information required to be included therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the Code. In the absence of a prescribed form, a statement made by a taxpayer disclosing his gross income and the deductions therefrom may be accepted as a tentative return, and, if filed within the prescribed time, the statement so made will relieve the taxpayer from liability for the addition to tax imposed for the delinquent filing of the return, provided that without unnecessary delay such a tentative return is supplemented by a return made on the proper form.

§ 1.6012 Statutory provisions; persons required to make returns of income.

SEC. 6012. *Persons required to make returns of income—*(a) *General rule.* Returns with respect to income taxes under subtitle A shall be made by the following:

(1) Every individual having for the taxable year a gross income of \$600 or more (except that any individual who has attained the age of 65 before the close of his taxable year shall be required to make a return only if he has for the taxable year a gross income of \$1,200 or more);

(2) Every corporation subject to taxation under subtitle A;

(3) Every estate the gross income of which for the taxable year is \$600 or more;

(4) Every trust having for the taxable year any taxable income, or having gross income of \$600 or over, regardless of the amount of taxable income; and

(5) Every estate or trust of which any beneficiary is a nonresident alien;

except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary or his delegate, nonresident alien indi-

viduals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

(b) *Returns made by fiduciaries and receivers*—(1) *Returns of decedents*. If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.

(2) *Persons under a disability*. If an individual is unable to make a return required under subsection (a) or section 6015 (a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

(3) *Receivers, trustees and assignees for corporations*. In a case where a receiver, trustee in bankruptcy, or assignee, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

(4) *Returns of estates and trusts*. Returns of an estate or a trust shall be made by the fiduciary thereof.

(5) *Joint fiduciaries*. Under such regulations as the Secretary or his delegate may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this paragraph shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(c) *Certain income earned abroad*. For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 911 (relating to earned income from sources without the United States).

(d) *Consolidated returns*. For provisions relating to consolidated returns by affiliated corporations, see chapter 6.

[Sec. 6012 as amended by sec. 72(a), Technical Amendments Act 1958 (72 Stat. 1660)]

§ 1.6012-1 Individuals required to make returns of income.

(a) *Individual citizen or resident*—(1) *In general*. Except as provided in sub-

paragraph (2) of this paragraph, an income tax return must be filed for each taxable year by every individual who receives \$600 or more of gross income during such taxable year and who is—

(i) A citizen of the United States, whether residing at home or abroad,

(ii) A resident of the United States even though not a citizen thereof, or

(iii) An alien bona fide resident of Puerto Rico during the entire taxable year.

Such return must be filed by such individual regardless of his family or marital status.

(2) *Certain exceptions*. (i) In case an individual who is described in subparagraph (1) of this paragraph has attained the age of 65 before the close of his taxable year, an income tax return must be filed by such individual only if he receives \$1,200 or more of gross income during his taxable year.

(ii) In the case of a short taxable year referred to in section 443(a)(1), an individual described in subparagraph (1) of this paragraph shall file an income tax return if his gross income received during such short taxable year equals or exceeds his own personal exemption allowed by section 151(b) (prorated as provided in section 443(c)) and, when applicable, his additional exemption for age 65 or more allowed by section 151(c)(1) (prorated as provided in section 443(c)).

(3) *Earned income from without the United States*. For the purpose of determining whether an income tax return must be filed for any taxable year beginning after December 31, 1957, gross income shall be computed without regard to the exclusion provided for in section 911 (relating to earned income from sources without the United States). In the case of an individual claiming an exclusion under such section, he shall attach Form 2555 to the return required under this paragraph.

(4) *Return of income of minor*. A minor is subject to the same requirements and elections for making returns of income as are other individuals. Thus, a return of income must be made by or for a minor who has a total of \$600 of gross income, regardless of the amount of his taxable income. For example, a return must be made by or for a minor who has an aggregate of \$600 gross income from funds held in trust

for him and from his personal services. The return of a minor must be made by the minor himself or must be made for him by his guardian or other person charged with the care of the minor's person or property. See paragraph (b)(3) of § 1.6012-3. See § 1.73-1 for inclusion in the minor's gross income of amounts received for his personal services. For the amount of tax which is considered to have been properly assessed against the parent, if not paid by the child, see section 6201(c) and paragraph (c) of § 301.6201-1 of this chapter (Regulations on Procedure and Administration).

(5) *Returns made by agents*. The return of income may be made by an agent if the person liable for the making of the return is unable to make it by reason of illness or continuous absence from the United States for a period of at least 60 days before the date prescribed by law for making the return. However, assistance in the preparation of the return may be rendered under any circumstances. Whenever a return is made by an agent it shall be accompanied by the prescribed power of attorney, Form 935, except that an agent holding a valid and subsisting general power of attorney authorizing him to represent his principal in making, executing, and filing the income return, may submit a certified copy thereof in lieu of the authorization on Form 935. The agent, as well as the taxpayer, may incur liability for the penalties provided for erroneous, false, or fraudulent returns. For a return of an agent for a nonresident alien individual, see paragraph (b)(6) of this section. For the requirements regarding signing of returns, see § 1.6061-1.

(6) *Form of return*. Form 1040 is prescribed for general use in making the return required under this paragraph. Form 1040A and Form 1040W are optional short forms which, in accordance with subparagraphs (7) and (8), respectively, of this paragraph, may be used by certain taxpayers. A taxpayer entitled to use Form 1040W in making his return for a taxable year may nevertheless use Form 1040 as his return for such year. A taxpayer otherwise entitled to use Form 1040A as his return for any taxable year may not make his return on such form if he elects not to take the standard deduction provided in section

141, and in such case he must make his return on Form 1040 or Form 1040W. However, a taxpayer entitled under section 6014 and § 1.6014-1 to elect not to show the tax on his return must, if he desires to exercise such election, make his return on Form 1040A.

(7) *Use of Form 1040A by certain taxpayers with gross income less than \$10,000*—(i) *In general*. Subject to the limitations set forth in subdivisions (ii), (iii), (iv), and (v) of this subparagraph, and in accordance with Form 1040A and the instructions provided with respect to such form, an individual may use Form 1040A as his return for any taxable year in which the gross income of the individual—

(a) Is less than \$10,000,

(b) Consists entirely of remuneration for personal services performed as an employee, dividends, or interest, and

(c) Does not include more than \$200 from dividends, interest, and remuneration for personal services other than wages, as defined in section 3401(a).

For purposes of determining whether gross income from dividends, interest, and remuneration other than wages, as defined in section 3401(a), exceeds \$200, dividends from domestic corporations are taken into account to the extent that they are includible in gross income.

(ii) *Restrictions on use of Form 1040A*. Form 1040A shall not be used by an individual—

(a) Who elects to itemize his deductions;

(b) Whose spouse makes a separate return on Form 1040 or Form 1040W and elects to itemize deductions;

(c) Who is a nonresident alien individual;

(d) Who is a citizen of the United States entitled to the benefits of section 931 (relating to income from sources within possessions of the United States);

(e) Who makes a return under section 443(a)(1) for a period of less than 12 months on account of a change in his accounting period;

(f) Who makes a return on a fiscal year basis;

(g) Who makes a return by use of a method of accounting other than the cash receipts and disbursements method;

(h) Who claims that amounts included in the statement of wages under section 6051 are excluded under section 105 (d);

(d) Who claims any of the deductions referred to in section 62, for example, the deductions for travel or transportation expense;

(f) Who claims a deduction for an exemption upon a multiple support agreement under section 152(c); or

(k) Who claims credit for payment of estimated income tax or for an overpayment of income tax for the previous taxable year.

(iii) *Credits not allowable.* When Form 1040A is used, the following credits shall not be allowed:

(a) The credit provided by section 32 for tax withheld at source under subchapter B, chapter 3 of the Code;

(b) The credit provided by section 33 for taxes imposed by foreign countries and possessions of the United States;

(c) The credit provided by section 34 for dividends received;

(d) The credit provided by section 35 for partially tax-exempt interest; and

(e) The credit provided by section 37 for retirement income.

(iv) *Status benefits not allowable.* The status of a taxpayer as head of household as defined in section 1(b)(2), or as a surviving spouse, as defined in section 2(b), shall not be considered in determining the tax liability of a taxpayer filing Form 1040A.

(v) *Use after due date not permitted.* Form 1040A shall not be used unless it is filed on or before the date prescribed in section 6072(a) for the filing of the return.

(vi) *Computation and payment of tax.* Unless a taxpayer is entitled to elect under section 6014 and § 1.6014-1 not to show the tax on Form 1040A and does so elect, he shall compute and show on his return on Form 1040A the amount of the tax imposed by subtitle A of the Code and shall, without notice and demand therefor, pay any unpaid balance of such tax not later than the date fixed for filing the return.

(8) *Use of Form 1040W by certain taxpayers irrespective of amount of gross income.* In accordance with Form 1040W and the instructions provided with respect to such form, an individual may use Form 1040W as his return for any taxable year beginning after December 31, 1958, in which the gross income of the individual, regardless of the amount thereof—

(i) Consists entirely of remuneration for personal services performed as an employee (whether or not such remuneration constitutes wages as defined in section 3401(a)), dividends, or interest, and

(ii) Does not include more than \$200 from dividends and interest.

For purposes of determining whether gross income from dividends and interest exceeds \$200, dividends from domestic corporations are taken into account to the extent that they are includible in gross income.

(9) *Change of election to use Form 1040A or Form 1040W.* A taxpayer who has elected to make his return on Form 1040A or Form 1040W may change such election. Such change of election shall be within the time and subject to the conditions prescribed in section 144(b) and § 1.144-2, relating to change of election to take, or not to take, the standard deduction.

(10) *Joint return of husband and wife on Form 1040A or Form 1040W.* A husband and wife, eligible under section 6013 and the regulations thereunder to file a joint return for the taxable year, may, subject to the provisions of subparagraphs (7) and (8) of this paragraph, make a joint return—

(i) On Form 1040A for any such year in which the aggregate gross income of the spouses is less than \$10,000, consists entirely of remuneration for services performed as an employee, dividends, or interest, and does not include more than \$200 from dividends, interest, and remuneration other than wages as defined in section 3401(a); or

(ii) On Form 1040W for any such taxable year beginning after December 31, 1958, in which the aggregate gross income of the spouses (regardless of amount) consists entirely of remuneration for personal services performed as an employee (whether or not such remuneration constitutes wages as defined in section 3401(a)), dividends, or interest, and does not include more than \$200 from dividends and interest.

For purposes of determining whether gross income from sources to which the \$200 limitation applies exceeds such amount in cases where both spouses receive dividends from domestic corporations, the amount of such dividends received by each spouse is taken into

account to the extent that such dividends are includible in gross income. See section 116 and §§ 1.116-1 and 1.116-2. If a joint return is made by husband and wife on Form 1040A or Form 1040W, the liability for the tax shall be joint and several.

(b) *Returns of nonresident alien individuals—(1) Individuals in class 1 (no United States business and gross income of not more than \$15,400)—(i) Return not required.* If the tax liability of a nonresident alien individual within class 1, as described in paragraph (a) (1) of § 1.871-7, is fully satisfied at the source, a return of income is not required.

(ii) *Return required.* A nonresident alien individual within class 1 shall make or have made a return on Form 1040NB with respect to that portion of his income described in paragraph (b) (2) of § 1.871-7 upon which the tax has not been fully satisfied at the source, including such income upon which the tax is limited by tax convention. A return shall be made in such instance even though the individual's gross income from sources within the United States for the taxable year is less than \$600.

(iii) *Items upon which tax not fully satisfied.* Some of the items of income from sources within the United States upon which the tax liability will not have been fully satisfied at the source are—

(a) Interest upon so-called tax-free covenant bonds upon which, in accordance with § 1.1451-1, a tax of only 2 percent is required to be withheld at the source;

(b) Capital gains described in paragraph (b) (4) of § 1.871-7, which are not subject to withholding under § 1.1441-1;

(c) Accrued interest received in connection with the sale of bonds between interest dates, which, in accordance with paragraph (a) (2) of § 1.1441-4, is not subject to withholding; and

(d) Dividends from foreign corporations which are not subject to withholding under paragraph (b) (2) of § 1.1441-3 but do constitute income from sources within the United States under paragraph (a) (2) of § 1.861-3.

(iv) *Claim for refund.* Notwithstanding the provisions of subdivisions (i) and (ii) of this subparagraph, a nonresident alien individual within class 1 shall include on Form 1040NB his entire income

described in paragraph (b) of § 1.871-7, whether or not the tax has been fully satisfied at the source upon a portion thereof, if a claim for the refund of an overpayment of tax is made in accordance with section 6402 and the regulations thereunder. However, if the overpayment to be refunded consists solely of tax deemed to have been paid under section 852(b)(3)(D), relating to undistributed capital gains of a regulated investment company, it is not necessary to include on the Form 1040NB the entire income described in paragraph (b) of § 1.871-7.

(2) *Individuals in class 2 (no United States business and gross income of more than \$15,400).* Even though the tax has been fully satisfied at the source, every nonresident alien individual within class 2, as described in paragraph (a) (2) of § 1.871-7, shall make or have made a return on Form 1040NB of all his income described in paragraph (c) of § 1.871-7, including such income upon which the tax is limited by tax convention. However, if the gross income of an individual within class 2 consists of treaty income only, as defined in paragraph (e) of § 1.871-7, or if the non-treaty income does not exceed \$15,400 in the aggregate, the return shall be made on Form 1040NB in the manner and to the extent otherwise required in subparagraph (1) of this paragraph. See paragraph (e) (2) of § 1.871-7.

(3) *Individuals in class 3 (United States business).* Every nonresident alien individual within class 3, as described in paragraph (a) (3) of § 1.871-7, shall make or have made a return on Form 1040B of all his income described in paragraph (d) of § 1.871-7, including such income upon which the tax is limited by tax convention, even though his gross income from sources within the United States for the taxable year is less than \$600. No exception is made to this requirement in the case of such an individual who is a resident of Canada or Mexico. However, if the gross income of a nonresident alien individual within class 3 consists of treaty income only and the tax is determined by applying the limited rates applicable under the convention, then the return shall be made on Form 1040NB in the manner and to the extent otherwise required by subparagraph (1) of this paragraph. See para-

graph (e) (3) and (5) of § 1.871-7. When used for this purpose, Form 1040NB shall be appropriately marked in accordance with the instructions issued with respect to the return.

(4) *Treaty income.* If the gross income of a nonresident alien individual to which this paragraph applies includes income on which the tax is limited by tax convention, see paragraph (e) of § 1.871-7.

(5) *Claims for refund*—(i) *Forms to use.* In the case of any overpayment of income tax by a nonresident alien individual to which this paragraph applies, claim for refund may be made in accordance with section 6402 and the regulations thereunder.

(ii) *Tax withheld at source.* If an overpayment has resulted from the withholding of tax at source under chapter 3 of the Code, statements shall be attached to the claim for refund showing accurately (a) the amounts of tax withheld, with the names and post office addresses of withholding agents and, (b) if applicable, facts sufficient to show that, at the time when the income was derived, the taxpayer was entitled to the benefit of a reduced rate of, or exemption from, tax with respect to that income under the provisions of a tax convention to which the United States is a party. For an illustration of the statements to be furnished when claiming the benefit of a reduced rate or exemption under a tax convention, see 26 CFR (1939) 7.710 (Treasury Decision 6030, approved July 10, 1953); § 501.11 of this chapter (Treasury Decision 6108, approved October 13, 1954); and § 502.10 of this chapter (Treasury Decision 6109, approved October 13, 1954). For the refund to the withholding agent of an overpayment of the tax under chapter 3 of the Code, see § 1.1464-1.

(6) *Representative or agent for nonresident alien individuals*—(i) *In general.* The responsible representative or agent within the United States of a nonresident alien individual shall make in behalf of his nonresident alien principal a return of, and shall pay the tax on, all income from sources within the United States coming within his control as representative or agent. The agency appointment will determine how completely the agent is substituted for the principal for tax purposes. Any person

who collects interest or dividends on deposited securities of a nonresident alien individual, executes ownership certificates in connection therewith, or sells such securities under special instructions shall not be deemed merely by reason of such acts to be the responsible representative or agent of the nonresident alien individual.

(ii) *Income to be returned.* A return of income shall be required under this subparagraph only if the nonresident alien individual is otherwise required to make a return in accordance with this paragraph. The provisions of this paragraph shall apply in determining the form of return to be used and the income to be returned.

(c) *Cross reference.* For returns by fiduciaries for individuals, estates, and trusts, see § 1.6012-3.

§ 1.6012-2 Corporations required to make returns of income.

(a) *In general*—(1) *Requirement of return.* Except as provided in paragraphs (e) and (g) (1) of this section with respect to charitable and other organizations having unrelated business income and to certain foreign corporations, respectively, every corporation, as defined in section 7701(a) (3), subject to taxation under subtitle A of the Code shall make a return of income regardless of whether it has taxable income or regardless of the amount of its gross income.

(2) *Existence of corporation.* A corporation in existence during any portion of a taxable year is required to make a return. If a corporation was not in existence throughout an annual accounting period (either calendar year or fiscal year), the corporation is required to make a return for that fractional part of a year during which it was in existence. A corporation is not in existence after it ceases business and dissolves, retaining no assets, whether or not under State law it may thereafter be treated as continuing as a corporation for certain limited purposes connected with winding up its affairs, such as for the purpose of suing and being sued. If the corporation has valuable claims for which it will bring suit during this period, it has retained assets and therefore continues in existence. A corporation does not go out of existence if it is turned

over to receivers or trustees who continue to operate it. If a corporation has received a charter but has never perfected its organization and has transacted no business and has no income from any source, it may upon presentation of the facts to the district director be relieved from the necessity of making a return. In the absence of a proper showing of such facts to the district director, a corporation will be required to make a return.

(3) *Form of return.* The return required of a corporation under this section shall be made on Form 1120 unless the corporation is of a type for which a special form is prescribed. The special forms of returns and schedules required of particular types of corporations are set forth in paragraphs (b) to (g), inclusive, of this section.

(b) *Personal holding companies.* A personal holding company, as defined in section 542, including a foreign corporation within the definition of such section, shall attach Schedule PH, Computation of U.S. Personal Holding Company Tax, to the return required by paragraph (a) or (g), as the case may be, of this section.

(c) *Insurance companies*—(1) *Life insurance companies.* A life insurance company subject to tax under section 802 or 811 shall make a return on Form 1120L. There shall be filed with the return (i) a copy of the annual statement, the form of which has been approved by the National Association of Insurance Commissioners, which is filed by the company for the year covered by such return with the insurance departments of States, Territories, and the District of Columbia, and which shows the reserves used by the company in computing the taxable income reported on its return, and (ii) copies of Schedule A (real estate) and Schedule D (bonds and stocks) of such annual statement.

(2) *Mutual insurance companies.* A mutual insurance company (other than a life or marine insurance company and other than a fire insurance company subject to the tax imposed by section 831; or an interinsurer or reciprocal underwriter subject to tax under section 821 shall make a return on Form 1120M. See paragraph (a) (3) of § 1.821-1. There shall be filed with the return (i) a copy of the annual statement, the form of which has been approved by the National

Association of Insurance Commissioners, which is filed by the company for the year covered by such return with the insurance departments of States, Territories, and the District of Columbia, and (ii) copies of Schedule A (real estate) and Schedule D (bonds and stocks) of such annual statement.

(3) *Other insurance companies.* Every insurance company (other than a life or mutual insurance company), every mutual marine insurance company, and every mutual fire insurance company, subject to tax under section 831, and every mutual savings bank conducting a life insurance business and subject to tax under section 594, shall make a return on Form 1120. See paragraph (c) of § 1.831-1. There shall be filed with the return a copy of the annual statement, the form of which has been approved by the National Association of Insurance Commissioners, which contains the underwriting and investment exhibit for the year covered by such return.

(4) *Foreign insurance companies.* The provisions of subparagraphs (1), (2), and (3) of this paragraph concerning the returns and statements of insurance companies subject to tax under section 802 or 811, section 821, and section 831, respectively, are applicable to foreign insurance companies subject to tax under such sections, except that the copy of the annual statement, the form of which has been approved by the National Association of Insurance Commissioners, required to be submitted with the return shall, in the case of a foreign insurance company, be a copy of the statement relating to the United States business of such company.

(d) *Affiliated groups.* For the forms to be used by affiliated corporations filing a consolidated return, see § 1.1502-12.

(e) *Charitable and other organizations with unrelated business income.* Every organization, described in section 501 (c) (2), (3), (5), and (6), which is otherwise exempt from tax under section 501 (a), and which is subject to the tax imposed on unrelated business taxable income by section 511 (a) (1), shall make a return on Form 990-T for each taxable year if it has gross income, included in computing unrelated business taxable income for such taxable year, of \$1,000 or more. A return on Form 990-T shall also be made for each taxable year by

every governmental college or university and by every corporation wholly owned by such a college or university, which is subject to the tax on unrelated business taxable income and which has gross income, included in computing unrelated business taxable income for such taxable year, of \$1,000 or more. The filing of a return of unrelated business income does not relieve the organization of the duty of filing other required returns.

(f) *Farmers' cooperatives.* Farmers' cooperative organizations described in section 521 are required to make a return of income whether or not such organizations are, under section 522, subject to the taxes imposed by section 11 or section 1201. The return shall be made on Form 990-C.

(g) *Returns by foreign corporations—*

(1) *Nonresident foreign corporations—*(i) *In general.* A nonresident foreign corporation is not required to make a return of income if the tax liability of the corporation is fully satisfied at the source. A nonresident foreign corporation shall, however, make or have made a return on Form 1120NB with respect to that portion of its income described in § 1.881-2 upon which the tax has not been fully satisfied at the source, including such income upon which the tax is limited by tax convention. The tax liability of a nonresident foreign corporation is not fully satisfied at the source in any case where, if it were not for the allowance of deductions to such corporation, it would be liable for tax. For example, the tax liability of a nonresident foreign corporation which is a personal holding company (as defined in section 542) is not fully satisfied at the source if such corporation would be liable for the personal holding company tax imposed by section 541 if it were not for the fact that it may be allowed a deduction for dividends paid (as defined in section 561). See section 545, relating to the definition of undistributed personal holding company income, and section 882 (c) (1), relating to allowance of deductions only if a return is filed.

(ii) *Claim for refund.* Notwithstanding the provisions of subdivision (i) of this subparagraph, a nonresident foreign corporation shall include on Form 1120NB its entire income described in § 1.881-2, whether or not the tax has been fully satisfied at the source upon

a portion thereof, if a claim for refund of an overpayment of tax is made in accordance with section 6402 and the regulations thereunder. However, if the overpayment to be refunded consists solely of tax deemed to have been paid under section 852(b) (3) (D), relating to undistributed capital gains of a regulated investment company, it is not necessary to include on the Form 1120NB the entire income described in § 1.881-2.

(2) *Resident foreign corporations.* Every resident foreign corporation shall make or have made a return on Form 1120 of all its income described in § 1.882-1, including such income upon which the tax is limited by tax convention.

(3) *Treaty income.* If the gross income of a foreign corporation includes income upon which the tax is limited by tax convention, see paragraph (f) of § 1.881-2 in the case of a nonresident foreign corporation, or paragraph (a) (7) of § 1.882-1 in the case of a resident foreign corporation.

(4) *Returns by agent.* If at the time the return is filed a foreign corporation has no office or place of business within the United States but has an agent in the United States, the return required by this paragraph shall be made by the agent. See section 882 (d).

(5) *Claims for refund—*(i) *Form to use.* In the case of any overpayment of income tax by a foreign corporation to which this paragraph applies, claim for refund shall be made in accordance with section 6402 and the regulations thereunder.

(ii) *Tax withheld at source.* If an overpayment has resulted from the withholding of tax at source under chapter 3 of the Code, statements shall be attached to the claim for refund showing the same information as is required by paragraph (b) (5) of § 1.6012-1 in the case of a claim for refund by a nonresident alien individual.

(6) *Special return forms.* For provisions relating to—

(i) Returns of foreign corporations which are personal holding companies as defined in section 542, see paragraph (b) of this section;

(ii) Returns of foreign insurance companies subject to tax under section 802 or 811, section 821, or section 831, see paragraph (c) of this section; and

(iii) Returns with respect to the tax imposed by section 511 upon unrelated business income described in section 512, see paragraph (e) of this section.

(h) *Other provisions.* For returns by fiduciaries for corporations, see § 1.6012-3. For information returns by corporations contemplating dissolution or liquidation and for information returns by corporations of distributions in liquidation, see §§ 1.6043-1 and 1.6043-2, respectively. For information returns by corporations relating to corporate dividends, earnings, and profits, see § 1.6042-1. For returns as to formation or reorganization of foreign corporations, see § 1.6046-1. For information returns of officers, directors, and shareholders of foreign personal holding companies, as defined in section 552, see §§ 1.6035-1 and 1.6035-2.

§ 1.6012-3 Returns by fiduciaries.

(a) *For estates and trusts—*(1) *In general.* Every fiduciary, or at least one of joint fiduciaries, must make a return of income on Form 1041—

(i) For each estate for which he acts if the gross income of such estate for the taxable year is \$600 or more;

(ii) For each trust for which he acts, except a trust exempt under section 501 (a), if such trust has for the taxable year any taxable income, or has for the taxable year gross income of \$600 or more regardless of the amount of taxable income; and

(iii) For each estate and each trust for which he acts, except a trust exempt under section 501 (a), regardless of the amount of income for the taxable year, if any beneficiary of such estate or trust is a nonresident alien.

(2) *Gross income of \$5,000 or more.* In cases in which the gross income of the estate or trust is \$5,000 or over for any taxable year, a copy of the will or trust instrument, accompanied by a written declaration of the fiduciary under the penalties of perjury that it is a true and complete copy, must be filed with the fiduciary return of the estate or trust, together with a statement by the fiduciary indicating the provisions of the will or trust instrument which, in his opinion, determine the extent to which the income of the estate or trust is taxable to the estate or trust, the beneficiaries, or the grantor, respectively. If, however, a copy of the will or trust

instrument, and statement relating to the provisions of the will or trust instrument, have once been filed, they need not again be filed if the fiduciary return contains a statement showing when and where they were filed. If the trust instrument is amended in any way after such copies have been filed, a copy of the amendment must be filed by the fiduciary with the return for the taxable year in which the amendment was made. The fiduciary must also file with such amendment a statement indicating the effect, if any, in his opinion, of the amendment on the extent to which the income of the estate or trust is taxable to the estate or trust, the beneficiaries, or the grantor, respectively.

(3) *Domiciliary and ancillary representatives.* In the case of an estate required to file a return under subparagraph (1) of this paragraph, having both domiciliary and ancillary representatives, the domiciliary and ancillary representatives must each file a return on Form 1041. The domiciliary representative is required to include in the return rendered by him as such domiciliary representative the entire income of the estate. The return of the ancillary representative shall be filed with the district director for his internal revenue district and shall show the name and address of the domiciliary representative, the amount of gross income received by the ancillary representative, and the deductions to be claimed against such income, including any amount of income properly paid or credited by the ancillary representative to any legatee, heir, or other beneficiary. If the ancillary representative for the estate of a nonresident alien is a citizen or resident of the United States, and the domiciliary representative is a nonresident alien, such ancillary representative is required to render the return otherwise required of the domiciliary representative.

(4) *Two or more trusts.* A trustee of two or more trusts must make a separate return for each trust, even though such trusts were created by the same grantor for the same beneficiary or beneficiaries.

(5) *Trusts with unrelated business income.* Every fiduciary for a trust, described in section 501 (c) (3), or section 401 (a), which is otherwise exempt from tax under section 501 (a), and which is subject to the tax imposed on unrelated business taxable income by section 511

(b) (1), shall make a return on Form 990-T for each taxable year if the trust has gross income, included in computing unrelated business taxable income for such taxable year, of \$1,000 or more. The filing of a return of unrelated business income does not relieve the fiduciary of such trust from the duty of filing other required returns.

(b) *For other persons*—(1) *Decedents.* The executor or administrator of the estate of a decedent, or other person charged with the property of a decedent, shall make the return of income required in respect of such decedent. For the decedent's taxable year which ends with the date of his death, the return shall cover the period during which he was alive. For the filing of returns of income for citizens and alien residents of the United States, and alien residents of Puerto Rico, see paragraph (a) of § 1.6012-1. For the filing of a joint return after death of spouse, see paragraph (d) of § 1.6013-1.

(2) *Nonresident alien individuals*—(i) *In general.* Except as otherwise provided in paragraph (b) (6) of § 1.6012-1, a resident or domestic fiduciary or other person charged with the care of the person or property of a nonresident alien individual shall make a return for that individual and pay the tax. However, if the nonresident alien individual has appointed a person in the United States to act as his agent for the purpose of making a return of income, the fiduciary or other person charged with the care of the person or property of that individual shall not be required to make a return and pay the tax in accordance with this subparagraph. In such case, if the fiduciary is required to file Form 1041 for an estate or trust of which the nonresident alien individual is a beneficiary, the fiduciary shall attach a copy of the agency appointment to his return on Form 1041.

(ii) *Income to be returned.* A return of income shall be required under this subparagraph only if the nonresident alien individual is otherwise required to make a return in accordance with paragraph (b) of § 1.6012-1. The provisions of that paragraph shall apply in determining the form of return to be used and the income to be returned.

(iii) *Allowance of deductions and credits.* The nonresident alien individual shall receive the benefit of the deduc-

tions and credits allowed to him with respect to the income tax only if, pursuant to section 874, the return so filed in accordance with this subparagraph constitutes a true and accurate return of the taxpayer's total income received from all sources within the United States and required to be returned in accordance with paragraph (b) of § 1.6012-1. However, this subdivision shall not be construed to deny the credits provided by sections 31 and 32 for tax withheld at the source.

(iv) *Alien resident of Puerto Rico.* This subparagraph shall not apply to the return of a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year. See § 1.876-1.

(v) *Cross reference.* For requirements of withholding of tax at source on nonresident aliens and of returns with respect to such withheld taxes, see §§ 1.1441-1 to 1.1441-5 and §§ 1.1461-1 to 1.1461-3, respectively.

(3) *Persons under a disability.* A fiduciary acting as the guardian of a minor, or as the guardian or committee of an insane person, must make the return of income required in respect of such person unless, in the case of a minor, the minor himself makes the return or causes it to be made.

(4) *Corporations.* A receiver, trustee in dissolution, trustee in bankruptcy, or assignee, who, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns. Such return shall be filed whether or not the receiver, trustee, or assignee is operating the property or business of the corporation. A receiver in charge of only a small part of the property of a corporation, such as a receiver in mortgage foreclosure proceedings involving merely a small portion of its property, need not make the return of income. See also § 1.6041-1, relating to information at source, and § 1.6042-1, relating to returns regarding corporate dividends, earnings, and profits.

(5) *Individuals in receivership.* A receiver who stands in the place of an individual must make the return of in-

come required in respect of such individual. A receiver of only part of the property of an individual need not file a return, and the individual must make his own return.

(c) *Joint fiduciaries.* In the case of joint fiduciaries, a return is required to be made by only one of such fiduciaries. A return made by one of joint fiduciaries shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(d) *Other provisions.* For the definition of the term "fiduciary", see section 7701(a) (6) and the regulations thereunder. For information returns required to be made by fiduciaries under section 6041, see § 1.6041-1. As to further duties and liabilities of fiduciaries, see section 6903 and § 301.6903-1 of this chapter (Regulations on Procedure and Administration).

§ 1.6012-4 Miscellaneous returns.

For returns by regulated investment companies of tax on undistributed capital gain designated for special treatment under section 852(b) (3) (D), see § 1.852-9. For returns with respect to tax withheld from nonresident aliens and foreign corporations, and on tax-free covenant bonds, see §§ 1.1461-1 to 1.1461-3, inclusive. For returns of tax on transfers to avoid income tax, see § 1.1494-1. For the requirement of an annual report by persons completing a Government contract, see 26 CFR (1939) 17.16 (Treasury Decision 4906, approved June 23, 1939), and 26 CFR (1939) 16.15 (Treasury Decision 4909, approved June 28, 1939), as made applicable to section 1471 of the 1954 Code by Treasury Decision 6091, approved August 16, 1954 (19 F.R. 5167, C.B. 1954-2, 47).

§ 1.6013 Statutory provisions; joint returns of income tax by husband and wife.

SEC. 6013. *Joint returns of income tax by husband and wife*—(a) *Joint returns.* A husband and wife may make a single return jointly of income taxes under subtitle A, even though one of the spouses has neither gross income nor deductions, except as provided below:

(1) No joint return shall be made if either the husband or wife at any time during the taxable year is a nonresident alien;

(2) No joint return shall be made if the husband and wife have different taxable years; except that if such taxable years begin on the same day and end on different days because of the death of either or both, then the joint return may be made with respect to the taxable year of each. The above exception shall not apply if the surviving spouse remarries before the close of his taxable year, nor if the taxable year of either spouse is a fractional part of a year under section 443(a) (1);

(3) In the case of death of one spouse or both spouses the joint return with respect to the decedent may be made only by his executor or administrator; except that in the case of the death of one spouse the joint return may be made by the surviving spouse with respect to both himself and the decedent if no return for the taxable year has been made by the decedent, no executor or administrator has been appointed, and no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse. If an executor or administrator of the decedent is appointed after the making of the joint return by the surviving spouse, the executor or administrator may disaffirm such joint return by making, within 1 year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

(b) *Joint return after filing separate return*—(1) *In general.* Except as provided in paragraph (2), if an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse under subsection (a) and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may nevertheless make a joint return for such taxable year. A joint return filed by the husband and wife under this subsection shall constitute the return of the husband and wife for such taxable year, and all payments, credits, refunds, or other repayments made or allowed with respect to the separate return of either spouse for such taxable year shall be taken into account in determining the extent to which the tax based upon the joint return has been paid. If a joint return is made under this subsection, any election (other than the election to file a separate return) made by either spouse in his separate return for such taxable year with respect to the treatment of any income, deduction, or credit of such spouse shall not be changed in the making of the joint return where such election would have been irrevocable if the joint return had not been made. If a joint return is made under this subsection after the death of either spouse, such return with respect to the decedent can be made only by his executor or administrator.

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