

Section 6049.—Returns Regarding Payments of Interest

26 CFR 1.6049-4: Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

T.D. 8664

**DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1, 31 and 602**

Information Reporting and Backup Withholding

Agency: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide rules

regarding the reporting on Form 1042-S of certain bank deposit interest paid with respect to a United States bank account to an individual who is a nonresident alien of the United States and a resident of Canada. The IRS has determined that information concerning those deposits would be of significant use in furthering its compliance efforts, which include exchange of tax information with Canada.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Teresa Burrige Hughes, (202) 622-3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-0096. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent/recordkeeper is approximately .10 hour, depending on individual circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington DC 20224, and the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final regulations to be added to the Income Tax Regulations (26 CFR part 1) under section 6049 of the Internal Revenue Code (Code). The final regulations provide rules regarding reporting on Form 1042-S of certain bank deposit interest paid with respect to a United States bank account to a nonresident alien individual who is a resident of Canada.

Proposed regulations on this subject were set forth, at §§1.6049-5(e)(2), 1.6049-6(e)(6), and 31.3406(a)-3(b)(1), in a notice of proposed rulemaking published in the Federal Register (53 FR 5991) on February 29, 1988 [INTL-52-86 (1988-1 C.B. 892)]. The IRS received comments on the proposed regulations and held a public hearing on June 15, 1989. Having considered the comments and the statements made at the hearing, the IRS and the Treasury Department adopt the proposed regulations as modified by this Treasury decision.

Explanation of Provisions

A. Reporting of payments to Canadians

This Treasury decision requires reporting on a Form 1042-S of certain interest paid on deposits maintained at a bank's office within the United States when paid to a nonresident alien individual who is a resident of Canada. However, interest on certain bearer certificates of deposit targeted to foreign persons is excepted from the reporting requirement if the interest is paid outside the United States. This final regulation makes an exception to the current rule, based on §1.6049-5(b), that certain interest amounts paid to non-U.S. persons is not subject to reporting if a statement certifying non-U.S. status is furnished to the payor or middleman on a Form W-8 (Certificate of Foreign Status), as described in §1.6049-5(b)(2)(iv). However, although bank deposit interest paid to Canadians is made subject to reporting under this final regulation, backup withholding under section 3406 is not required. Further, in response to suggestions from commentators that segregating interest amounts on the basis of residence would be burdensome, this final regulation allows payors volun-

tarily to report on a Form 1042-S payments to all foreign persons receiving bank deposit interest without segregating on the basis of residency.

The payor determines whether a payee is a Canadian resident based on the address in the country of permanent residence required to be provided on the Form W-8. However, if the payor has actual knowledge that the payee is a U.S. person, Form 1099 reporting provisions apply.

See proposed regulations published elsewhere in this issue of the Federal Register regarding proposed changes to the notice of proposed rulemaking published in the Federal Register on February 29, 1988.

B. Comments on Canadian reporting provisions

Commentors stated that imposing information reporting with respect to deposits of nonresident aliens may undercut the competitiveness of U.S. banks. The IRS and Treasury considered these comments but, in light of our obligations under the United States-Canada income tax treaty and the reporting by Canadian banks of U.S. depositor interest to Canadian tax authorities, have decided to finalize these proposed regulations.

In response to comments that the reporting requirement be delayed, or at least that a transition period be allowed, because of the time required to identify Canadian account holders and to modify processing systems for reporting purposes, the new reporting requirement will be phased in over a three-year period, starting with payments made on or after January 1, 1997. On or after that date, payors will identify Canadian account holders as Forms W-8 are received from new depositors or renewed by existing depositors. Upon identifying account holders as Canadians, payors must begin reporting bank deposit interest paid to those persons.

Commentors also requested that the IRS develop and permit Form 1042-S reporting on magnetic diskette, as is allowed for Form 1099 filings; permit the Form 1042-S to be the transmittal document for the Form 1042-S filing; and allow financial institutions to file separate tapes or diskettes for each area of the bank, rather than bank-wide. These filing changes have previously been made by the IRS and require no further action.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Teresa Burridge Hughes, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805

Sections 1.6049–4 also issued under 26 U.S.C. 6049(a), (b), (c), and (d).

Section 1.6049–5 also issued under 26 U.S.C. 6049(a), (b), (c), and (d).

Par. 2. Section 1.6049–4 is amended by:

1. Removing the reference “(b)(3)” and adding “(b)(3) and (b)(5)” in its place in the first sentence of paragraphs (b)(1) and (b)(2) introductory text.

2. Revising the first sentence of paragraphs (b)(3) and (b)(4).

3. Adding paragraph (b)(5).

4. Removing the authority citation at the end of the section.

The revisions and addition read as follows:

§1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

(b)

(3) Except as provided in paragraph (b)(5) of this section, every person acting as a middleman (as defined in paragraph (f)(4) of this section) shall make an information return on Forms 1096 and 1099 for the calendar year.

(4) Except as provided in paragraph (b)(5) of this section, every person carrying on the banking business who makes payments of interest to another person (whether or not aggregating \$10 or more) during a calendar year with respect to a certificate of deposit issued in bearer form shall make an information return on Forms 1096 and 1099. * * *

(5) *Interest payments to Canadian nonresident alien individuals*—(i) *General rule.* In the case of interest paid to a Canadian nonresident alien individual (as described in §1.6049–8(a)), the payor or middleman shall make an information return on Form 1042–S for the calendar year in which the interest is paid. The payor or middleman shall prepare and transmit Form 1042–S at the time and in the manner prescribed by section 1461 and the regulations under that section and by the form and its accompanying instructions. See §1.6049–6(e)(4) for furnishing a copy of the Form 1042–S to the payee. To determine whether an information return is required for original issue discount, see §§1.6049–5(c) and 1.6049–8(a).

(ii) *Effective date.* Paragraph (b)(5)(i) of this section shall be effective for payments made after December 31, 1996 with respect to a Form W–8 (Certificate of Foreign Status) furnished to the payor or middleman after that date.

Par. 3. Section 1.6049–5 is amended by:

1. Revising the introductory text of paragraph (b)(1).

2. Revising the last sentence in paragraph (c).

3. Removing authority citation at the end of the section.

The revisions read as follows:

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

(b) (1) Subject to the provisions of §1.6049–8, the term *interest* does not include:

(c) 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).

Par. 4. Section 1.6049–6 is amended by:

1. Redesignating paragraph (e)(4) as paragraph (e)(5).

2. Adding new paragraph (e)(4).

The addition reads as follows:

§1.6049–6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

(e)

(4) *Special rule for amounts described in §1.6049–8(a) paid after December 31, 1996.* In the case of amounts described in §1.6049–8(a) (relating to payments of interest to Canadian nonresident alien individuals) paid after December 31, 1996, any person who makes a Form 1042–S under section 6049(a) and §1.6049–4(b)(5) shall furnish a statement to the recipient. The statement shall include a copy of the Form 1042–S required to be prepared pursuant to §1.6049–4(b)(5) and a statement to the effect that the information on the Form is being furnished to the United States Internal Revenue Service and may be furnished to Canada.

Par. 5. Section 1.6049–8 is added to read as follows:

§1.6049–8 Interest and original issue discount paid to residents of Canada.

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

section, the term *interest* means interest paid to a Canadian nonresident alien individual after December 31, 1996, where the interest is described in section 871(i)(2)(A) with respect to a deposit maintained at an office within the United States. For purposes of the regulations under section 6049, a Canadian nonresident alien individual is an individual who resides in Canada and is not a United States citizen. The payor or middleman may rely upon the permanent residence address (as defined in section 1441 and the regulations under that section) as stated on the Form W-8 (described in section 6049 and the regulations under that section) in order to determine whether the payment is made to a Canadian nonresident alien individual. Amounts described in this paragraph (a) are not subject to backup withholding under section 3406. See §31.3406(g)-1(d) of this chapter.

(b) *Interest excluded from reporting requirement.* The term *interest* does not include an amount that is paid by the issuer or its agent outside the United States with respect to an obligation that is described in paragraph (b)(1) or (2) of this section.

(1)(i) The obligation is not in registered form (within the meaning of section 163(f) and the regulations thereunder); is part of a larger single public offering of securities; and is described in section 163(f)(2)(B).

(ii) Unless it has actual knowledge to the contrary, a middleman may treat an obligation as if it is described in section 163(f)(2)(B) if the obligation or coupon therefrom, whichever is presented for payment, contains the statement described in section 163(f)(2)(B)-(ii)(II) and the regulations thereunder.

(2)(i) The obligation has a face or principal amount of not less than \$500,000, and satisfies the requirements described in paragraphs (b)(2)(i)(A), (B), and (C) of this section.

(A) The obligation satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I) and the regulations thereunder (as if it were 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)(D)).

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

(C) The obligation has on its face and on any detachable coupons the following statement (or a similar statement having the same effect): “By accepting this obligation or coupon, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in the regulations under section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in the regulations under section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder).”

(ii) Unless the middleman has actual knowledge to the contrary, it may treat an obligation as satisfying the requirements of sections 163(f)(2)(B)(i) and (ii)(I) and the regulations thereunder if the obligation or a coupon therefrom, whichever is presented for payment, contains the statement in paragraph (b)(2)(i)(C) of this section.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 6. The authority for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805

Par. 7. Section 31.3406(g)-1 is amended by adding paragraph (d) to read as follows:

§31.3406(g)-1 Exception for payments to certain payees and certain other payments.

(d) *Reportable payments made to Canadian nonresident alien individuals.* A payment of interest made to a Canadian nonresident alien individual under §1.6049-8(a) of this chapter is not subject to withholding under section 3406.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. Section 602.101, paragraph (c) is amended by removing the entry “§31.3406(a)-1 – §31.3406(i)-1” and adding entries to the table in numerical order to read as follows:

§602.101 OMB Control numbers.

(c)	CFR part or section where identified and described	Current OMB control number
	1.6049-6	1545-0096
	31.3406(a)-1	1545-0112
	31.3406(a)-2	1545-0112
	31.3406(a)-3	1545-0112
	31.3406(a)-4	1545-0112
	31.3406(b)(2)-1	1545-0112
	31.3406(b)(2)-2	1545-0112
	31.3406(b)(2)-3	1545-0112
	31.3406(b)(2)-4	1545-0112
	31.3406(b)(2)-5	1545-0112
	31.3406(b)(3)-1	1545-0112
	31.3406(b)(3)-2	1545-0112
	31.3406(b)(3)-3	1545-0112
	31.3406(b)(3)-4	1545-0112
	31.3406(b)(4)-1	1545-0112
	31.3406(c)-1	1545-0112
	31.3406(d)-1	1545-0112
	31.3406(d)-2	1545-0112
	31.3406(d)-3	1545-0112
	31.3406(d)-4	1545-0112
	31.3406(e)-1	1545-0112
	31.3406(f)-1	1545-0112
	31.3406(g)-1	1545-0096
		1545-0112
	31.3406(g)-2	1545-0112
	31.3406(g)-3	1545-0112
	31.3406(h)-1	1545-0112
	31.3406(h)-2	1545-0112
	31.3406(h)-3	1545-0112
	31.3406(i)-1	1545-0112

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved March 27, 1996.

Leslie Samuels,
Assistant Secretary of the Treasury.

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