

**IRS Provides Additional Guidance
Regarding Single Member Entities**

Brian Wainwright

Under the entity classification regulations, the so-called “check-the-box” rules, single-owner passthrough entities (e.g., limited liability companies (“LLCs”)) are disregarded for federal tax purposes. The assets, liabilities and operations of the single-member LLC are treated as assets, liabilities and operations of its owner, resulting in a sole proprietorship where the owner is an individual, or a branch or division where the owner is a corporation. *Proc. & Admin. Regs. § 301.7701-3.*

In Revenue Rulings 99-5 and 99-6 the Internal Revenue Service (“IRS”) discusses the federal income tax consequences of a single-member, disregarded LLC acquiring a second member and of a two-member LLC becoming a single-member LLC. In addition, in Notice 99-6 the IRS provides two temporary safe harbors regarding employment tax reporting and payment compliance by certain disregarded entities, including single-member LLCs, and invites comment on various aspects of application of the federal employment tax regime to these entities.

Revenue Ruling 99-5

This ruling deals with a single-member LLC owned by A holding only capital assets or property used in a trade or business with no liabilities. The LLC has not elected to be classified as an association taxable as a corporation and so is disregarded for federal tax purposes. In situation 1, A sells 50 percent of his interest in the LLC to B for \$5,000. In situation 2, B contributes \$10,000 to the LLC in exchange for a 50 percent interest; the LLC uses the \$10,000 in its business.

Situation 1

The IRS holding in situation 1 is that, because A is considered to hold directly all of the LLC’s assets, A is treated as selling a 50 percent undivided interest in each of those assets to B for a total of \$5,000. A and B are then treated as contributing their 50 percent undivided interests to the LLC (a new entity for federal tax purposes) in exchange for 50 percent interests in the LLC. A recognizes

gain or loss on the deemed asset sale to B. *I.R.C. § 1001.* Neither A nor B recognizes gain or loss on their deemed asset contribution to the LLC. *I.R.C. § 721.*

A’s basis for its LLC interest is equal to 50 percent of A’s prior basis for all the LLC assets; B’s basis for its LLC interest is \$5,000, the price deemed paid to A by B for B’s 50 percent undivided interest in the LLC assets. *I.R.C. § 722.* Because A’s deemed asset transfer involves only capital assets and property used in a trade or business, A’s holding period for its LLC interest includes A’s holding period for the assets. *I.R.C. 1223(1).* B’s holding period for its LLC interest begins the day after B’s deemed asset purchase from A. *I.R.C. 1223(1); Rev. Rul. 66-7, 1966-1 C.B. 188.*

The “new” LLC’s basis for each asset is the sum of A’s basis for A’s 50 percent undivided interest in that asset and B’s basis for B’s 50 percent undivided interest in that asset. *I.R.C. 723.* The LLC has a split holding period for each asset, since it inherits A’s and B’s respective holding periods for their 50 percent undivided interests in each asset. *I.R.C. 1223(2).*

Situation 2

A “new” LLC is created by B’s contribution of \$10,000 in exchange for a 50 percent LLC interest. A is treated as transferring all the assets held by the “old” LLC to the “new” LLC in exchange for the other 50 percent LLC

<i>Also in this Bulletin</i>	
<i>IRS Proposes Foreign Partnership Reporting Rules</i>	<i>3</i>
<i>Materials Available On-Line</i>	<i>8</i>

Brian Wainwright is a tax partner in the Palo Alto office of Pillsbury Madison & Sutro LLP. This article on developments regarding single member entities can also be found at <http://www.pmstax.com/part/disllc9901.html> on the world wide web as part of the Pillsbury Madison & Suto LLP Tax Page. See “Materials Available On-Line” for links to Revenue Rulings 99-5 and 99-6 and to Notice 99-6. For background on the “check-the-box” regulations, see our December 1996 Partnership Tax Bulletin also available at our Tax Page on the world wide web at <http://www.pmstax.com/part/bull9612.html>.

interest. A recognizes no gain or loss on the deemed asset contribution, has a basis for the LLC interest equal to A's former basis in the "old" LLC assets and has a holding period for the "new" LLC interest which includes the holding period for the "old" LLC assets (again because the "old" LLC held only capital assets and property used in a trade or business). *I.R.C. §§ 721, 722, 1223(1)*. The "new" LLC has a basis in the assets deemed contributed by A equal to A's former basis in those assets and a holding period for those assets which includes A's prior holding period. *I.R.C. §§ 723, 1223(2)*. B recognizes no gain or loss on B's contribution of \$10,000 to the LLC, has a basis of \$10,000 for its LLC interest and a holding period for that interest beginning the day after the contribution. *I.R.C. §§ 721, 722; Rev.Rul. 66-7, 1966-1 C.B. 188*.

Revenue Ruling 99-6

This ruling deals with a two-member LLC which is classified as a partnership for federal income tax purposes. The LLC holds no unrealized receivables or substantially appreciated inventory and has no liabilities. In situation 1, one of the members, A, sells all of A's 50 percent interest in the LLC to the other 50 percent member, B, for \$10,000 so that following the sale, the LLC has but one member. In situation 2, the LLC's two members, C and D, sell their respective LLC interests to a third party, E, for \$10,000 each. In both situations, following the transaction the LLC does not elect to be classified as an association taxable as a corporation.

Situation 1

The IRS holds in situation 1 that A recognizes gain or loss on A's sale of the LLC interest. *I.R.C. § 741*. However, in determining B's federal income tax consequences, the IRS treats the transaction as if the LLC had liquidated, distributing a 50 percent undivided interest in each of its assets to A and B, and then B had purchased A's 50 percent undivided interest in those assets for \$10,000. *Edwin E. McCauslen v. Commissioner*, 45 T.C. 588 (1966); *Rev.Rul. 67-65, 1967-1 C.B. 168*. B recognizes gain or loss on the deemed transfer of the 50 percent undivided interest in the LLC assets to B in liquidation of the LLC to the extent required by Internal Revenue Code section 731. B will have a split basis and holding period for each asset because a 50 percent undivided interest in each asset is treated as acquired upon liquidation of the LLC and the other 50 percent undivided interest treated as purchased from A for an aggregate of \$10,000. *I.R.C. §§ 731, 732, 1012; Rev.Rul. 66-7, 1966-1 C.B. 188*.

Situation 2

In situation 2, C and D each recognizes gain or loss on the sale of the LLC interest. Again, in determining E's federal income tax consequences, the LLC is treated as making a liquidating distribution to C and D and E is then treated as purchasing all the LLC assets from C and D. E thus has a basis for those assets equal to the \$20,000 deemed paid and a holding period for those assets beginning the day after the purchase. *I.R.C. § 1012; Rev.Rul. 66-7, 1966-1 C.B. 188*.

Notice 99-6

In Notice 99-6, the IRS first observes that "qualified subchapter S subsidiaries," "qualified REIT subsidiaries" and single-owner pass-through entities are disregarded for all federal tax purposes, including employment taxes. Where a disregarded entity is an "employer" under the federal employment tax rules, its owner must satisfy any reporting and payment obligations under those rules. However, the IRS also notes that many taxpayers have incorrectly interpreted the disregarded entity rules as applying only for federal income tax purposes and that even taxpayers correctly interpreting the rules have encountered difficulty in their application in specific circumstances.

The IRS will temporarily permit taxpayers to satisfy employment tax requirements concerning disregarded entities in one of two ways. First, the owner of the disregarded entity can calculate, report and pay federal employment taxes with respect to employees of the disregarded entity under the owner's name and taxpayer identification number as if those employees were employed directly by the owner. Second, the disregarded entity can separately calculate, report and pay federal employment taxes with respect to its own employees under its own name and taxpayer identification number. The IRS reminds taxpayers utilizing the second method that the disregarded entity's owner remains ultimately responsible for federal employment tax obligations concerning the disregarded entity's employees. An owner of multiple disregarded entities can choose the first method for some of those entities and the second method for others. Further, an owner may switch from the second method to the first method for a succeeding taxable year. However, IRS consent is required to switch from the first method to the second.

The IRS also invites comment on the following federal employment tax issues concerning disregarded entities:

- any increase or decrease in the administrative burden on taxpayers created by a system of filing employment tax returns under the owner's name and taxpayer identification number where employees are actually employed by a state law entity that is disregarded as an entity separate from its owner for federal tax purposes,
- whether different rules should apply to newly formed disregarded entities with no previous employment tax history as opposed to entities in existence prior to the time when they became disregarded,
- different results (both in amount of tax, type of tax and time and method of deposits) that arise from filing as one employer as compared to filing as separate employers,
- appropriate methods for notifying the service center about changes in employment tax obligations when an entity's status as a disregarded entity changes,
- possible issues arising in situations where the owner or the disregarded entity is formed or domiciled in a country other than the United States,
- additional issues relating to employment taxes and disregarded entities including, but not limited to, confusion for employees, employers and state and federal agencies resulting from a single entity reporting structure for employment tax purposes and
- whether any guidance issued should also apply to qualified REIT subsidiaries (as defined in Internal Revenue Code 856(i)).

Finally, the IRS invites comments on certain disregarded entity issues arising outside the employment tax area:

- information reporting on IRS Form 1099s issued by, or with respect to, disregarded entities and their owners and
- issues related to qualified or nonqualified deferred compensation plans, fringe benefit and welfare plans and other compensation arrangements.

IRS Proposes Foreign Partnership Reporting Rules

Brian Wainwright

The Taxpayer Relief Act of 1997 (P.L. 105-34, the "Act") revised the U.S. federal tax information reporting requirements relating to foreign partnerships. The Act clarified that a foreign partnership is generally not required to file a U.S. federal tax information return unless the foreign partnership has gross income either from U.S. sources or effectively connected with the conduct of a U.S. trade or business. Internal Revenue Code sections 6038, 6038B and 6046A, as revised by the Act, essentially shift the burden of U.S. tax reporting from foreign partnerships to their U.S. partners. On September 9, 1998, the Internal Revenue Service ("IRS") proposed regulations (Income Tax Regulations sections 1.6038-3, 1.6038B-2 and 1.6046A-1) implementing the revised reporting requirements imposed by the Act. In addition, in the October 9, 1998 Internal Revenue Bulletin, the IRS published drafts of revised Form 8865 and its instructions

which will ultimately be used to comply with the revised reporting obligations.

General Definitions

For purposes of the revised reporting requirements, a person is deemed to be in control of a partnership (a "controlling partner") if the person owns, directly or

Brian Wainwright is a tax partner in the Palo Alto office of Pillsbury Madison & Sutro LLP. This article on foreign partnership information reporting can also be found in our January 1999 International Tax Bulletin and on the world wide web as part of the Pillsbury Madison & Suto LLP Tax Page at <http://www.pmstax.com/part/partrept9901.html>. See "Materials Available On-Line" for links to the proposed regulations and draft Form 8865 and instructions.

indirectly, more than a 50-percent interest in the partnership.¹ A 50-percent interest in a partnership is an interest equal to 50 percent of the capital interest, 50 percent of the profits interest or an interest to which 50 percent of partnership losses or deductions are allocated.² A 10-percent interest in a partnership is an interest equal to 10 percent of the capital interest, 10 percent of the profits interest, or an interest to which 10 percent of partnership losses or deductions are allocated.³ For purposes of these determinations, the constructive ownership rules of Internal Revenue Code section 267(c) (other than section 267(c)(3)) apply taking into account the fact that by their terms these rules deal with the constructive ownership of corporate stock not partnership interests;⁴ the applicable constructive ownership rules generally provide for family and proportional entity attribution. Since reporting requirements for a particular taxable year depend on partners' interests for that year,⁵ special income and loss allocations (e.g., minimum gain chargebacks, qualified income offsets and loss allocation limitation rules) can cause a particular partner's reporting obligations to change from year to year.

Reporting with Respect to Certain Foreign Partnerships

Controlling U.S. Partners

Every U.S. person who controls a foreign partnership is required under Internal Revenue Code section 6038 to file Form 8865 for that partnership.⁶ The proposed regulations require a controlling partner to provide the following information:

- The name, address and employer identification number, if any, of the foreign partnership,
- The nature of the partnership's business and the principal place where conducted,
- The date of organization and country under the laws of which the partnership was organized,
- A balance sheet showing assets, liabilities and capital of the partnership as of the end of the partnership's annual accounting period,
- A summary of the outstanding ownership interests in the partnership,
- A summary showing the total amount of transactions between the partnership and the controlling partner and any other partnership or corporation controlled by that partner or by any U.S. person owning at the time of the transaction at least a 10-percent interest in the controlled partnership,

- The amount of the foreign taxes of the partnership paid or accrued,
- A statement of the partners' distributive share of income, gain, losses, deductions and credits and
- A statement of income, gains, losses, deductions and credits allocated to each U.S. person holding at least a 10-percent interest in the foreign partnership.⁷

The draft Form 8865 and instructions make it clear that the statement of partners' distributive share is a classification of amounts allocated to all partners;⁸ amounts allocated to specific partners are required only for 10-percent or greater U.S. partners.⁹

If there is more than one U.S. controlling partner for the same foreign partnership for the same annual accounting period, only one of the U.S. controlling partners need file Form 8865 as long as the Form 8865 actually filed contains all the information that would have been included had multiple Forms 8865 been filed; however, a U.S. partner in control by virtue of being allocated losses and deductions can be the filing partner only if no U.S. partner has a greater than 50 percent interest in capital or profits.¹⁰ The U.S. controlling partners not filing Form 8865 must nonetheless include a statement (a "Substitute Statement") with their federal income tax returns:

- indicating that the Form 8865 filing requirement has or will be satisfied,
- identifying the person required to file Form 8865 and
- identifying the IRS Service Center where the Form 8865 is required to be filed.¹¹

¹ *Prop. Income Tax Regs.* § 1.6038-3(b)(1).

² *Prop. Income Tax Regs.* § 1.6038-3(b)(2).

³ *Prop. Income Tax Regs.* § 1.6038-3(b)(3).

⁴ *Prop. Income Tax Regs.* § 1.6038-3(b)(4).

⁵ *Prop. Income Tax Regs.* § 1.6038-3(b)(5).

⁶ *Prop. Income Tax Regs.* § 1.6038-3(a)(1).

⁷ *Prop. Income Tax Regs.* § 1.6038-3(f).

⁸ *Form 8865 (Oct. 10, 1998 draft), Schedules C-1, C-2.*

⁹ *Form 8865 (Oct. 10, 1998 draft), Schedules G-1, G-2.*

¹⁰ *Prop. Income Tax Regs.* § 1.6038-3(c)(1).

¹¹ *Prop. Income Tax Regs.* §§ 1.6038-3(c)(1), 1.6038-3(c)(3).

10-Percent U.S. Partners

Each U.S. person holding a 10-percent or greater interest in a foreign partnership controlled by U.S. persons holding at least a 10-percent interest must also file Form 8865; however, no Form 8865 is required if there is a U.S. controlling partner of the foreign partnership.¹² The draft instructions to Form 8865 indicate that a 10-percent U.S. partner need provide only the following information:

- The name, address and employer identification number, if any, of the foreign partnership,
- The nature of the partnership's business and the principal place where conducted,
- The date of organization and country under the laws of which the partnership was organized and
- A summary showing the total amount of transactions between the partnership and the 10-percent U.S. partner and any other partnership or corporation controlled by that partner.

General Provisions

A separate Form 8865 is required for each controlled foreign partnership.¹³ A U.S. controlling or 10-percent partner files Form 8865 with the partner's federal income tax return for the taxable year with or within which the annual accounting period of the foreign partnership covered by Form 8865 ends.¹⁴ The draft instructions to Form 8865 require a copy of the form to be filed with the Internal Revenue Service Center in Philadelphia. Form 8865 is to be completed in English with all amounts shown in U.S. dollars and an indication of any exchange rates used.¹⁵ A U.S. person otherwise required to file Form 8865 need not file if:

- The U.S. person does not directly own any interest in the foreign partnership,
- The U.S. person is otherwise required to file solely by reason of the attribution rules,
- The U.S. person from whom ownership is attributed files all the required information and
- The excused U.S. person files a Substitute Statement.¹⁶

Penalties

Two sets of penalties apply to U.S. controlling and 10-percent partners failing properly to file Form 8865.

First, a \$10,000 penalty applies for each annual accounting period for each foreign partnership for which a failure occurs.¹⁷ If the failure to file Form 8865 continues for more than 90 days after notice from the IRS to the U.S. person of the failure to file, an additional \$10,000 penalty is imposed for each succeeding 30-day period (or portion thereof) during which the failure continues;¹⁸ this additional penalty is limited to a maximum of \$50,000 for any one annual accounting period for any one foreign partnership.¹⁹

Secondly, any U.S. controlling or 10-percent partner failing to file Form 8865 will suffer a 10 percent reduction in the amount which can be treated as foreign taxes paid or deemed paid for the partner's taxable year the return for which was required to include Form 8865; this penalty does not, however affect foreign tax credit carryovers to that taxable year arising from other years.²⁰ If the failure to file Form 8865 continues for more than 90 days after notice from the IRS to the U.S. person of the failure to file, there is an additional foreign tax reduction of 5 percent for each succeeding 3-month period (or portion thereof) during which the failure continues.²¹ This additional foreign tax reduction is limited to the greater of \$10,000 or the foreign partnership's income for the annual accounting period with respect to which the failure to file occurs.²² In addition, the entire foreign tax reduction, including the initial 10 percent reduction, is decreased (but not below zero) by the amount of penalty under the first set of penalties imposed with respect to the same failure to file.²³

¹² *Prop. Income Tax Regs.* § 1.6038-3(a)(2).

¹³ *Prop. Income Tax Regs.* § 1.6038-3(a)(3).

¹⁴ *Prop. Income Tax Regs.* §§ 1.6038-3(e), 1.6038-3(h).

¹⁵ *Prop. Income Tax Regs.* § 1.6038-3(g).

¹⁶ *Prop. Income Tax Regs.* §§ 1.6038-3(c)(1), 1.6038-3(c)(3).

¹⁷ *Prop. Income Tax Regs.* § 1.6038-3(j)(1)(i).

¹⁸ *Prop. Income Tax Regs.* § 1.6038-3(j)(1)(ii).

¹⁹ *Prop. Income Tax Regs.* § 1.6038-3(j)(1)(iii).

²⁰ *Prop. Income Tax Regs.* § 1.6038-3(j)(2)(i).

²¹ *Prop. Income Tax Regs.* § 1.6038-3(j)(2)(ii).

²² *Prop. Income Tax Regs.* § 1.6038-3(j)(2)(iii).

²³ *Prop. Income Tax Regs.* § 1.6038-3(j)(2)(iv).

Effective Dates

The Form 8865 filing requirements for controlling and 10-percent U.S. partners will apply to annual accounting periods of foreign partnerships beginning on or after the date final regulations are promulgated.²⁴ Thus, for calendar year foreign partnerships and U.S. partners the requirements can apply, at the earliest, to federal income tax returns for the year 2000.

Transfers to Foreign Partnerships*In General*

A U.S. person making a transfer to a foreign partnership in a contribution described in Internal Revenue Code section 721 is required under Internal Revenue Code section 6038B to file Form 8865 with that person's federal income tax return for the taxable year which includes the date of transfer if:

- The U.S. person holds immediately after the transfer directly or indirectly at least a 10-percent interest in the foreign partnership or
- The value of the property transferred by the U.S. person or any related person to the foreign partnership or a related partnership within the 12-month period ending on the date of transfer exceeds \$100,000.²⁵

If the U.S. transferor is also required to file Form 8865 for the period during which the transfer occurs as a controlling or 10-percent partner, then the transfer is to be reported on Form 8865 filed for the foreign partnership's annual accounting period, rather than for the transferor's taxable year.²⁶ As with the controlling and 10-percent partner rules, a transferor otherwise required to file Form 8865 by virtue of a transfer of property to a foreign partnership need not file the form if:

- The U.S. person does not directly own any interest in the foreign partnership,
- The U.S. person is otherwise required to file solely by reason of the attribution rules,
- The U.S. person from whom ownership is attributed files all the required information and
- The excused U.S. person files a Substitute Statement.²⁷

The information required to be provided on Form 8865 includes:

- The name, address and U.S. taxpayer identification number of the U.S. person filing the form,
- The name, U.S. taxpayer identification number (if any) and address of the transferee foreign partnership and the type of entity and country under the laws of which the partnership was created or organized,
- A general description of the transfer, including its date, and of any larger transaction of which the transfer forms a part,
- The names and addresses of the other partners in the foreign partnership, unless the transfer is solely of cash and the transferor holds less than a 10-percent interest in the foreign partnership immediately after the transfer,
- A description of the partnership interest received by the U.S. transferor, including a change in an existing interest,
- A separate description of each item of contributed property which is either intangible property or appreciated property subject to the built-in gain allocation rules of Internal Revenue Code section 704(c) (except to the extent those allocation rules permit aggregation of separate properties) and
- A description of other contributed property aggregated by the following categories: (i) inventory, (ii) other tangible property used in a trade or business, (iii) cash, (iv) stock, notes payable and receivable and other securities and (v) other property.²⁸

If a U.S. person was required to report the contribution to a foreign partnership of appreciated property, the U.S. person, if still a partner, must report on

²⁴ *Prop. Income Tax Regs.* § 1.6038-3(k).

²⁵ *Prop. Income Tax Regs.* § 1.6038B-2(a)(1).

²⁶ *Prop. Income Tax Regs.* § 1.6038B-2(a)(4).

²⁷ *Prop. Income Tax Regs.* § 1.6038B-2(b).

²⁸ *Prop. Income Tax Regs.* § 1.6038B-2(c).

another Form 8865 any disposition of that property by the foreign partnership.²⁹ The information to be reported on Form 8865 includes:

- The date and manner of disposition,
- The gain and depreciation recapture amount, if any, realized by the partnership and
- Any such amounts allocated to the U.S. partner.³⁰

If a foreign partnership disposes of the contributed built-in gain property in a nonrecognition transaction, receiving substitute basis property in exchange, the U.S. partner contributing the original property, if still a partner, must report on Form 8865 the disposition of the substitute basis property.³¹

Penalties

If a U.S. person fails to file an accurate and timely Form 8865 with respect to any transfer of property required to be reported, the U.S. person is subject to a penalty equal to 10 percent of the value of the transferred property (up to a maximum of \$100,000 except for failures due to intentional disregard) and is required to recognize gain on the transfer (reduced by any subsequent gain recognized by the transferor with respect to the transferred property).³²

Effective Dates

The reporting rules for contributions to foreign partnerships apply for transfers on or after January 1, 1998; however, for transfers occurring prior to the date the proposed regulations are finalized, Form 8865 will be considered timely if filed with the transferor's federal income tax return for the first taxable year beginning after that date.³³ For transfers after August 5, 1997 (the effective date of the relevant provisions of the Act) and before January 1, 1998, transferors can rely on either Notice 98-17³⁴ or the final regulations.³⁵

Reports of "Reportable Events"

In General

If a "reportable event" occurs with respect to the interest of a U.S. person in a foreign partnership, the U.S. person is required under Internal Revenue Code section 6046A to file Form 8865 with the person's federal income tax return for the taxable year during which the reportable event occurs.³⁶ As with the filing requirements regarding

contributions, if the U.S. person is also required to file as a controlling or 10-percent partner, then the Form 8865 is filed for the foreign partnership's annual accounting period, rather than the partner's taxable year.³⁷ In addition, if the reportable event occurs within 90 days of the end of the U.S. partner's taxable year, Form 8865 may be filed with the partner's federal income tax return for the succeeding taxable year.³⁸

A "reportable event" means:

- An acquisition by a U.S. person of at least a 10-percent interest in a foreign partnership,
- A disposition by a U.S. person of at least a 10-percent interest in a foreign partnership or
- A change in a U.S. person's proportionate interest in a foreign partnership equivalent to at least a 10-percent interest.³⁹ However, no reporting is required under Internal Revenue Code section 6046A regarding the acquisition of an interest if the acquisition occurs as a result of a contribution of property required to be reported under Internal Revenue Code section 6038B.⁴⁰

The information required to be reported on Form 8865 includes,

- The name, address and U.S. taxpayer identification number of the U.S. person filing the return,
- The name, address and U.S. taxpayer identification number, if any, of the foreign partnership,

²⁹ *Prop. Income Tax Regs.* § 1.6038B-2(a)(2)(i).

³⁰ *Prop. Income Tax Regs.* § 1.6038B-2(d).

³¹ *Prop. Income Tax Regs.* § 1.6038B-2(a)(2)(ii).

³² *Prop. Income Tax Regs.* § 1.6038B-2(h).

³³ *Prop. Income Tax Regs.* § 1.6038B-2(j)(1).

³⁴ 1998-11 I.R.B. 6.

³⁵ *Prop. Income Tax Regs.* § 1.6038B-2(j)(2).

³⁶ *Prop. Income Tax Regs.* §§ 1.6046A-1(a), 1.6046A-1(d).

³⁷ *Prop. Income Tax Regs.* § 1.6046A-1(d)(2)(i).

³⁸ *Prop. Income Tax Regs.* § 1.6046A-1(d)(2)(ii).

³⁹ *Prop. Income Tax Regs.* § 1.6046A-1(b)(1)(i).

⁴⁰ *Prop. Income Tax Regs.* § 1.6046A-1(b)(1)(ii).

- The name of the country under the laws of which the partnership was organized and the date of formation,
- For each reportable event, the date of the event, the type of event (acquisition, disposition or change in partnership interest) and the U.S. person's percentage interest before and after the event and
- For an acquisition, disposition or change affecting the U.S. person's interest in partnership capital, profits, losses or deductions, the fair market value of the interest acquired, disposed of or changed.⁴¹

As with the controlling and 10-percent partner and contribution rules, a transferor otherwise required to file Form 8865 by virtue of an acquisition or disposition of or change in a foreign partnership interest need not file the form if:

- The U.S. person does not directly own any interest in the foreign partnership,
- The U.S. person is otherwise required to file solely by reason of the attribution rules,

- The U.S. person from whom ownership is attributed files all the required information and
- The excused U.S. person files a Substitute Statement.⁴²

Effective Dates

The new reporting rules apply to reportable events occurring on or after January 1, 1998.⁴³ However, for reportable events occurring before the proposed regulations are finalized, Form 8865 may be filed with the U.S. person's federal income tax return for the taxable year following the taxable year during which the reportable event occurs.⁴⁴

⁴¹ *Prop. Income Tax Regs.* § 1.6046A-1(c).

⁴² *Prop. Income Tax Regs.* § 1.6046A-1(e).

⁴³ *Prop. Income Tax Regs.* § 1.6046A-1(j)(1).

⁴⁴ *Prop. Income Tax Regs.* § 1.6046A-1(j)(2).

Materials Available On-Line

You can use the links below to download or view (with Acrobat Reader 3.0 or an Acrobat 3.0-enabled web browser) the listed materials. Alternatively, those materials can be obtained via ftp in the indicated directory at ftp.pms.tax.com (file names and sizes are indicated in the list below).

Single Member Entities

[Revenue Ruling 99-5](#), 1999-6 I.R.B. 8 (February 8, 1999) [part/rr995.pdf, 27K]

[Revenue Ruling 99-6](#), 1999-6 I.R.B. 6 (February 8, 1999) [part/rr996.pdf, 33K]

[Notice 99-6](#), 1999-3 I.R.B. 12 (January 12, 1999) [part/n996.pdf, 28K]

[December 1996 Partnership Tax Bulletin, Internal Revenue Service Adopts "Check-the-Box" Classification Regulations](#) [part/bull9612.pdf, 45K]

Foreign Partnerships

[Notice of Proposed Rulemaking, 26 C.F.R. 1.6038-3](#), 63 F.R. 48144 (September 9, 1998) [part/preg6038-9809.pdf, 37K]

[Notice of Proposed Rulemaking, 26 C.F.R. 1.6038B-2](#), 63 F.R. 48148 (September 9, 1998) [part/preg6038B-9809.pdf, 50K]

[Notice of Proposed Rulemaking, 26 C.F.R. 1.6046A-1](#), 63 F.R. 48154 (September 9, 1998) [part/preg6046A-9809.pdf, 32K]

[IRS Form 8865, Information Return of U.S. Persons with Respect to Certain Foreign Partnerships](#), 1998-43 I.R.B. 11 (October 9, 1998 draft) [part/f8865-9810.pdf, 474K].

[Instructions to IRS Form 8865](#), 1998-43 I.R.B. 20 (October 9, 1998 draft) [part/i8865-9810.pdf, 1,351K]