by completing the portion of Form 6765, "Credit for Increasing Research Activities," (or successor form) relating to the election of the ASC, and attaching the completed form to the taxpayer's timely filed (including extensions) original return for the taxable year to which the election applies. An election under section 41(c)(5) may not be made on an amended return. An extension of time to make an election under section 41(c)(5) will not be granted under § 301.9100–3 of this chapter.

(3) *Revocation.* An election under this section may not be revoked except with the consent of the Commissioner. A taxpayer is deemed to have requested, and to have been granted, the consent of the Commissioner to revoke an election under section 41(c)(5) if the taxpayer completes the portion of Form 6765 (or successor form) relating to the credit determined under section 41(a)(1) (the regular credit) or the alternative incremental credit (AIRC) and attaches the completed form to the taxpayer's timely filed (including extensions) original return for the year to which the revocation applies. An election under section 41(c)(5) may not be revoked on an amended return. An extension of time to revoke an election under section 41(c)(5) will not be granted under § 301.9100–3 of this chapter.

(4) *Special rules for controlled groups*—(i) *In general.* In the case of a controlled group of corporations, all the members of which are not included on a single consolidated return, an election (or revocation) must be made by the designated member by satisfying the requirements of paragraphs (b)(2) or (b)(3) of this section (whichever applies), and such election (or revocation) by the designated member shall be binding on all the members of the group for the credit year to which the election (or revocation) relates. If the designated member fails to timely make (or revoke) an election, each member of the group must compute the group credit using the method used to compute the group credit for the immediately preceding credit year.

(ii) *Designated member.* For purposes of this paragraph (b)(4), for any credit year, the term *designated member* means that member of the group that is allocated the greatest amount of the group credit under § 1.41–6(c) based on the amount of credit reported on the taxpayer's timely filed (including extensions) original Federal income tax return (even if that member subsequently is determined not to be the designated member). If the members of a group compute the group credit using different methods (the method described in section 41(a)(1), the AIRC method of section 41(c)(4), or the ASC method of section 41(c)(5)) and at least two members of the group qualify as the designated member, then the term *designated member* means that member that computes the group credit using the method that yields the greatest group credit. For example, A, B, C, and D are members of a controlled group but are not members of a consolidated group. For the 2011 taxable year (the credit year), the group credit using the method described in section 41(a)(1) is $10x. Under this method, A would be allocated $5x of the group credit, which would be the largest share of the group credit under this method. For the credit year, the group credit using the ASC method is $15x. Under the ASC method, C would be allocated $5x of the group credit, which is the largest share of the group credit computed using the ASC method. Because the group credit is greatest using the ASC method and C is allocated the greatest amount of credit under that method, C is the designated member. Therefore, if C makes a section 41(c)(5) election on its timely filed (including extensions) original return for the credit year, that election is binding on all members of the group for the credit year.

(c) *Special rules*—(1) *Qualified research expenses (QREs) required in all years.* Unless a taxpayer has QREs in each of the three taxable years preceding the taxable year for which the credit is being determined, the credit equals that percentage of the QREs for the taxable year provided by section 41(c)(5)(B)(ii).

(2) *Section 41(c)(6) applicability.* QREs for the three taxable years preceding the credit year must be determined on a basis consistent with the definition of QREs for the credit year, without regard to the law in effect for the three taxable years preceding the credit year. This consistency requirement applies even if the period for filing a claim for credit or refund has expired for any of the three taxable years preceding the credit year.

(3) *Short taxable years*—(i) *General rule.* If one or more of the three taxable years preceding the credit year is a short taxable year, then the QREs for such year are deemed to be equal to the QREs actually paid or incurred in that year multiplied by 365 and divided by the number of days in that year. If a credit year is a short taxable year, then the average QREs for the three taxable years preceding the credit year are modified by multiplying that amount by the number of days in the short taxable year and dividing the result by 365.

(ii) *Limited exception.* Returns filed for taxable years ending after December 31, 2006, and before June 9, 2011, and for which the period of limitations has not expired, may be amended to apply the daily calculation for short taxable years provided in paragraph (3)(i) of this section in lieu of the monthly calculation for short taxable years provided in § 1.41–9T(c)(4).

(4) *Controlled groups.* For purposes of computing the group credit under § 1.41–6, a controlled group must apply the rules of this paragraph (c) on an aggregate basis. For example, if the controlled group has QREs in each of the three taxable years preceding the taxable year for which the credit is being determined, the controlled group applies the credit computation provided by section 41(c)(5)(A) rather than section 41(c)(5)(B)(ii).

(d) *Effective/applicability dates.* This section is applicable for taxable years ending after June 9, 2011. For taxable years ending on or before June 9, 2011, see § 1.41–9T as contained in 26 CFR part 1, revised April 1, 2011.

§ 1.41–9T [Removed]

■ **Par. 9.** Section 1.41–9T is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: June 2, 2011

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–14407 Filed 6–9–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9529]

RIN 1545–BK01

Requirements for Taxpayers Filing Form 5472

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that remove the duplicate filing requirement for Form 5472, "Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business." The temporary regulations affect certain 25-percent foreign-owned domestic corporations and certain foreign corporations that are engaged in a trade or business in the United States that are required to file Form 5472. The text of the temporary

regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective June 10, 2011.

Applicability Dates: For dates of applicability, see §§ 1.6038A–1T(n) and 1.6038A–2(h).

FOR FURTHER INFORMATION CONTACT: Gregory A. Spring, (202) 435–5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 6038A of the Internal Revenue Code (Code) generally requires information reporting by a 25-percent foreign-owned domestic corporation with respect to certain transactions between such corporation and certain related parties. Similarly, section 6038C generally requires a foreign corporation engaged in a trade or business within the United States at any time during the taxable year to report the information described in section 6038A with respect to certain transactions between such corporation and certain related parties.

On June 19, 1991, the Treasury Department and the IRS published in the **Federal Register** (56 FR 28056) final regulations (TD 8353, 1991–2 CB 402) under section 6038A (1991 final regulations). A correction to TD 8353 was published in the **Federal Register** (56 FR 41792) on August 23, 1991. The 1991 final regulations contained guidance under a number of provisions including §§ 1.6038A–1 and 1.6038A–2 regarding information reporting requirements under sections 6038A and 6038C. Section 1.6038A–1(c)(1) defines a reporting corporation as: (i) A domestic corporation that is 25-percent foreign-owned; (ii) a foreign corporation that is 25-percent foreign-owned and engaged in trade or business within the United States; or (iii) (after November 4, 1990) a foreign corporation engaged in a trade or business within the United States at any time during a taxable year. Section 1.6038A–2(a)(1) generally requires a reporting corporation to file a separate annual information return on Form 5472, "Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business," with respect to each related party with which the reporting corporation has had any reportable transaction during the taxable year. Section 1.6038A–2(d) requires a reporting corporation to file Form 5472 with its income tax return for the taxable year by the due date of that return. Section 1.6038A–2(d) also requires a reporting corporation to file a duplicate Form 5472 with the Internal Revenue Service Center in Philadelphia, PA (duplicate filing requirement). Section 1.6038A–2(e) provides that if a reporting corporation's income tax return is not timely filed, Form 5472 nonetheless is required to be filed (with a duplicate to the Internal Revenue Service Center in Philadelphia, PA) at the service center where the return is due (untimely filed return provision). When the income tax return is ultimately filed, a copy of Form 5472 must be attached to the return.

On February 9, 2004, the Treasury Department and the IRS published in the **Federal Register** (69 FR 5931) final regulations and temporary regulations (2004 temporary regulations) (TD 9113, 2004–1 CB 524) under section 6038A regarding the duplicate filing requirement. The text of the 2004 temporary regulations also served as the text of proposed regulations (REG–167217–03, 2004–1 CB 540) set forth in the proposed rules section of the same issue of the **Federal Register** (69 FR 5940–01) (2004 proposed regulations). The 2004 temporary regulations provided that the duplicate filing requirement of § 1.6038A–2(d) is satisfied if Form 5472 is timely filed electronically (electronic filing provision). The 2004 temporary regulations did not add a conforming electronic filing provision to § 1.6038A–2(e) (containing the untimely filed return provision) because the electronic filing of Form 5472 other than as an attachment to an electronically filed income tax return was not technically possible at the time the 2004 temporary regulations were published. However, the preamble to the 2004 temporary regulations states that the Treasury Department and the IRS intend that a Form 5472 that is timely and separately filed electronically, once technically possible, would be treated as satisfying the duplicate filing requirement of § 1.6038A–2(e).

On September 15, 2004, the Treasury Department and the IRS published in the **Federal Register** (69 FR 55499–02) final regulations (TD 9161, 2004–2 CB 704) that adopted the 2004 proposed regulations without change (2004 final regulations). As part of the 2004 final regulations, § 1.6038A–1(n)(2) (providing effective dates) was also amended to indicate that the electronic filing provision applies for taxable years ending on or after January 1, 2003. TD 9161 also removed the text of the 2004 temporary regulations.

Explanation of Provisions

As a result of advances in electronic processing and data collection in the IRS, the duplicate filing requirement contained in § 1.6038A–2(d) is no longer necessary. Upon the effective date of these temporary regulations, the duplicate filing of Form 5472 will no longer be required regardless of whether the reporting corporation files a paper or an electronic income tax return. The temporary regulations implement this change by removing from § 1.6038A–2(d), the duplicate filing requirement and the electronic filing provision.

As a conforming amendment, the temporary regulations also remove the duplicate filing requirement from the untimely filed return provision of § 1.6038A–2(e). In addition, the temporary regulations remove the reference in § 1.6038A–2(e) to "at the service center where the return is due" in order to avoid any implication that the untimely filed return provision can only be satisfied by filing a paper Form 5472. However, while the Treasury Department and the IRS intend that a timely filed electronic Form 5472 would be treated as satisfying the untimely filed return provision, there are currently no procedures for electronically filing Form 5472 independent of an electronically filed income tax return. Thus, a reporting corporation that does not timely file an income tax return must still timely file a paper Form 5472 in order to satisfy the untimely filed return provision. If the IRS institutes procedures for the separate electronic filing of Form 5472, reporting corporations will no longer be required to file a paper Form 5472 when filing the Form 5472 separate from an income tax return.

Lastly, the temporary regulations amend the effective date provisions of § 1.6038A–1(n) to provide that the amendments to § 1.6038A–2(d) and (e) apply for taxable years ending on or after June 10, 2011.

The text of the temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

Special Analyses

It has been determined that this temporary regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C chapter 6) refer to the Special Analyses section of the preamble of the cross-referenced notice of proposed rulemaking published in

the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Gregory A. Spring, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6038A–1 is amended by revising paragraph (n)(2) to read as follows:

§ 1.6038A–1 General requirements and definitions.

* * * * *

(n) * * *

(2) [Reserved]. For further guidance, see § 1.6038A–1T(n)(2).

* * * * *

■ **Par. 3.** Section 1.6038A–1T is added to read as follows:

§ 1.6038A–1T General requirements and definitions (temporary).

(a) through (n)(1) [Reserved]. For further guidance see § 1.6038A–1(a) through (n)(1).

(2) *Section 1.6038A–2.* Section 1.6038A–2 (relating to the requirement to file Form 5472) generally applies for taxable years beginning after July 10, 1989. However, § 1.6038A–2 as it applies to reporting corporations whose sole trade or business in the United States is a banking, financing, or similar business as defined in § 1.864–4(c)(5)(i) applies for taxable years beginning after December 10, 1990. Section 1.6038A–2(d) and (e) apply for taxable years ending on or after June 10, 2011. For taxable years ending prior to June 10, 2011, see § 1.6038A–2(d) and (e) as contained in 26 CFR part 1 revised as of September 15, 2004.

(n)(3) through (n)(6) [Reserved]. For further guidance see § 1.6038A–1(n)(3) through (6).

■ **Par. 4.** Section 1.6038A–2 is amended by revising paragraphs (d) and (e) to read as follows:

§ 1.6038A–2 Requirement of return.

* * * * *

(d) [Reserved]. For further guidance, see § 1.6038A–2T(d).

(e) [Reserved]. For further guidance, see § 1.6038A–2T(e).

* * * * *

■ **Par. 5.** Section 1.6038A–2T is added to read as follows:

§ 1.6038A–2T Requirement of return (temporary).

(a) through (c) [Reserved]. For further guidance, see § 1.6038A–2(a) through (c).

(d) *Time for filing returns.* A Form 5472 required under this section must be filed with the reporting corporation's income tax return for the taxable year by the due date (including extensions) of that return.

(e) *Untimely filed return.* If the reporting corporation's income tax return is untimely filed, Form 5472 nonetheless must be timely filed. When the reporting corporation's income tax return is ultimately filed, a copy of Form 5472 must be attached.

(f) through (h) [Reserved]. For further guidance, see § 1.6038A–2(f) through (h).

Approved: May 2, 2011.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Emily S. McMahon,

Acting Assistant Secretary for the Treasury (Tax Policy).

[FR Doc. 2011–14468 Filed 6–9–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 18 and 21

RIN 2900–AI36

Spouse and Surviving Spouse; Technical Amendment

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correcting amendments.

SUMMARY: The Department of Veterans Affairs published a document on February 6, 1997, amending 38 CFR part 3 by removing § 3.51. At that time, we failed to remove all the cross-references to 38 CFR 3.51 in other parts of 38 CFR. This document corrects that error by removing those cross-references.

DATES: *Effective Date:* June 10, 2011.

FOR FURTHER INFORMATION CONTACT: Molly McCann, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–4902. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 6, 1997 (62 FR 5528), VA amended 38 CFR part 3 to eliminate gender-specific language. As part of that amendment, VA removed 38 CFR 3.51. At that time, we failed to remove all the cross-references to 38 CFR 3.51 in other parts of 38 CFR. As § 3.51 has been removed, any cross-references to it are obsolete and should have been eliminated. This document corrects those sections which refer to 38 CFR 3.51 by removing the cross-reference. These nonsubstantive technical corrections are made for clarity and accuracy. With this action, VA is amending 38 CFR part 18, Subpart E, Appendix B and 38 CFR 21.260(d), which contain cross-references to 38 CFR 3.51.

Administrative Procedure Act

This action is a technical correction to cross-references in two regulations. Accordingly, it is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

List of Subjects

38 CFR Part 18

Administrative practice and procedure, Aged, Authority delegations, Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Grant programs, Handicapped, Investigations.

38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses,