

[4830-1-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-102988-11]

RIN 1545-BK05

Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to reporting by brokers for transactions related to debt instruments and options. The proposed regulations reflect changes in the law made by the Energy Improvement and Extension Act of 2008 (the Act) that require brokers when reporting the sale of securities to the IRS to include the customer's adjusted basis in the sold securities and to classify any gain or loss as long-term or short-term. The proposed regulations also implement the Act's requirement that a broker report gross proceeds from a sale or closing transaction with respect to certain options. In addition, this document contains proposed regulations that implement reporting requirements for a transfer of a debt instrument or an option to another broker and for an organizational action that affects the basis of a debt instrument or option. This document also provides for a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL**

REGISTER]. Outlines of topics to be discussed at the public hearing scheduled for Friday, March 16, 2012, must be received by Friday, February 24, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-102988-11), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-102988-11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-102988-11). The public hearing will be held in the Auditorium, beginning at 10:00 a.m. at the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela Lew of the Office of Associate Chief Counsel (Financial Institutions and Products) at (202) 622-3950; concerning submissions of comments, the public hearing, and/or to be placed on the building access list to attend the public hearing, Richard Hurst at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking relating to the furnishing of information in connection with the transfer

of securities was previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2186. Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information is in §§ 1.6045-1(c)(3)(xi)(C) and 1.6045A-1 of these proposed regulations and is an increase in the total annual burden from the burden in the current regulations to reflect the addition of debt instruments and options to the definition of covered securities. The collection of information is necessary to allow brokers that effect sales of transferred covered securities to determine and report the adjusted basis of the securities and whether any gain or loss with respect to the securities is long-term or short-term in compliance with section 6045(g) of the Internal Revenue Code. The collection of information is required to comply with the provisions of section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343 (122 Stat. 3765, 3854 (2008)). The likely respondents are brokers of securities and issuers, transfer agents, and professional custodians of securities that do not effect sales.

Estimated total annual reporting burden is 450,000 hours.

Estimated average annual burden per respondent is 15 hours.

Estimated average burden per response is 4 minutes.

Estimated number of respondents is 30,000.

Estimated total frequency of responses is 7 million.

The burden for the collection of information contained in the proposed amendments to §1.6045-1 will be reflected in the burden on Form 1099-B, "Proceeds from Broker and Barter Exchange Transactions," when revised to request the additional information in the regulation. The burden for the collection of information contained in the proposed amendments to §1.6045B-1 will be reflected in the burden on Form 8937, "Report of Organizational Actions Affecting

Basis of Securities,” when revised to request the additional information in the regulation.

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

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to information reporting by brokers and others as required by section 6045 of the Internal Revenue Code (Code). This section was amended by section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343 (122 Stat. 3765, 3854 (2008)) (the Act) to require the reporting of adjusted basis for a covered security and whether any gain or loss upon the sale of the security is long-term or short-term. The Act also requires the reporting of gross proceeds for an option that is a covered security. In addition, the Act added section 6045A to the Code, which requires certain information to be reported in connection with a transfer of a covered security to another broker, and section 6045B, which requires an issuer of a specified security to file a return relating to certain actions that affect the basis of the security. Final regulations under these provisions relating to stock were published in the **Federal Register** on October 18, 2010, in TD 9504. The proposed regulations in this document address reporting by brokers under §1.6045-1 for debt instruments and options. This document also contains

proposed amendments to the Income Tax Regulations under sections 6045A and 6045B for debt instruments and options.

Section 6045(g)(1) requires every broker that is required to file a return with the IRS under section 6045(a) showing the gross proceeds from the sale of a covered security to include in the return the customer's adjusted basis in the security and whether any gain or loss with respect to the security is long-term or short-term. Under section 6045(g)(3), a note, bond, debenture, or other evidence of indebtedness acquired on or after January 1, 2013, is a security subject to the information reporting rules in section 6045(g)(1). Section 6045(h) provides rules for reporting certain information, including gross proceeds, with respect to the sale, exercise, lapse, or other closing transaction with respect to an option on a specified security granted or acquired on or after January 1, 2013.

Explanation of the Provisions

In general, these regulations would amend §§1.6045-1, 1.6045A-1, and 1.6045B-1 to require additional information reporting by a broker for a debt instrument acquired on or after January 1, 2013. The proposed regulations also require information reporting for an option granted or acquired on or after January 1, 2013. Many of the changes are technical provisions needed to incorporate debt instruments and options into the rules established for stock in the final regulations published in TD 9504. As a result of these changes, the general rules of §1.6045-1 that currently apply to stock also will apply to a debt instrument or an option that is a covered security, including the wash sale and short sale provisions. In addition, the general rules of §1.6045A-1 relating to

transfer statement requirements and §1.6045B-1 relating to issuer statement requirements will apply to a debt instrument or an option. Certain substantive changes were also needed to accommodate debt instruments and options. Certain other changes were made that will affect all specified securities, including stock. The significant substantive changes to the regulations are described in this preamble.

A. Section 1.6045-1

1. Options

Under section 6045(h), for any sale or other closing transaction with respect to an option that is a covered security, a broker is required to report gross proceeds, adjusted basis, and whether any gain or loss is short-term or long-term.

For purposes of §1.6045-1, certain options have been added to the definition of a security, specified security, and covered security. In general, an option on one or more specified securities, including an index of such securities or financial attributes of such securities, that is granted or acquired on or after January 1, 2013, will be a covered security. For example, as indicated by the Joint Committee on Taxation, the proposed regulations would apply to an option on the S&P 500 Index. See General Explanation of Tax Legislation Enacted in the 110th Congress, JCS-1-09 at 366.

An exception to the general rules described in proposed §1.6045-1(m) for reporting basis for an option is provided for a compensation-related option. The proposed rules retain the existing rules for a compensation-related option, but

make those rules applicable to all compensation-related options, and not just those granted or acquired before January 1, 2013. Under the regulations, if a customer exercises a compensation-related option, a broker is permitted, but not required, to adjust basis of the acquired stock for any amounts included as compensation income. Instructions to the Form 1040 (Schedule D) and other IRS forms and publications will be amended to remind a taxpayer that a reconciliation of basis may be required if the sale reported on a Form 1099-B is a sale of stock acquired through a stock grant or the exercise of a compensatory option. The IRS is exploring the possibility of adding an indicator on the Form 1099-B to denote a sale of compensation-related stock.

The definitions for the terms closing transaction and sale have been updated to be consistent with sections 1234 and 1234A and to accommodate the reporting of options granted or acquired on or after January 1, 2013. In particular, the cancellation, lapse, expiration, or other termination of an option will be a closing transaction, as will a cash settlement.

For an option that is a covered security, reporting requirements will depend on whether or not the option was physically settled. If an option is physically settled, the premium paid or received, as the case may be, will be used by the broker for the asset purchaser to adjust the basis of the purchased asset and by the broker for the asset seller to adjust reported proceeds. Publication 550, Investment Income and Expenses, contains a detailed explanation of the appropriate tax treatment of the exercise or lapse of an option. If an option that is a covered security is sold or is part of a closing transaction

that does not entail physical settlement, a broker is required to report gross proceeds and whether the gain or loss is long-term or short-term. It should be noted that if a customer sells any option prior to expiration, including an option acquired prior to January 1, 2013, the regulations currently in effect already require a broker to report the gross proceeds from that sale except in cases in which an option is closed by offset.

If a customer receives a warrant or stock right in a section 305(a) distribution, a broker must determine the basis of the warrant or stock right by applying the rules described in sections 305 and 307.

2. Debt instruments

Under section 6045(g), upon the sale of a debt instrument that is a covered security, a broker is required to report the adjusted basis of the debt instrument and whether any gain or loss is short-term or long-term. Pursuant to section 6045(g), the proposed regulations amend §1.6045-1 to include a debt instrument in the definition of a specified security and a debt instrument acquired for cash in an account on or after January 1, 2013, in the definition of a covered security.

For purposes of §1.6045-1, the proposed regulations define a debt instrument to include any instrument described in §1.1275-1(d) and any instrument or position that is treated as a debt instrument under a specific provision of the Internal Revenue Code. This definition of a debt instrument applies whenever the term debt instrument, bond, debt obligation, or obligation is used anywhere in §1.6045-1. Under the proposed regulations, solely for

purposes of §1.6045-1, a security classified as debt by the issuer is treated as a debt instrument. If the issuer has not classified the security, however, the security is not treated as a debt instrument unless the broker knows that the security is reasonably classified as debt under general Federal tax principles or that the instrument or position is treated as a debt instrument under a specific provision of the Internal Revenue Code.

Due to the difficulties in implementing a broker's reporting obligations under section 6045(g) that would arise with respect to debt instruments described in section 1272(a)(6) (debt instruments with principal subject to acceleration) that are acquired on or after January 1, 2013, the proposed regulations provide that a debt instrument described in section 1272(a)(6) is not a covered security.

If a debt instrument is acquired on or after January 1, 2013, a broker will be required to determine and account for original issue discount ("OID"), bond premium, acquisition premium, market discount, and principal payments to determine the adjusted basis of the debt instrument and whether any gain or loss upon the sale of the debt instrument is short-term or long-term. Further, a broker will be required to report the amount of any market discount that has accrued as of the date of a sale or transfer of a debt instrument.

Under §1.6045-1(d)(6)(i) of the existing final regulations, a broker is not required to consider elections occurring outside the account. Consistent with this rule, a broker generally is required to calculate amounts relating to OID, bond premium, acquisition premium, and market discount by assuming that the

customer has not made any elections with respect to the debt instrument. The proposed regulations, however, provide two exceptions to this general rule: 1) a broker must assume that a customer has elected to use the constant interest rate method under section 1276(b)(2) to determine the amount of accrued market discount; and 2) a broker must assume that the customer has elected under section 171 to amortize bond premium on a taxable debt instrument.

Both of these elections have the effect of minimizing the customer's ordinary income inclusion when compared with the alternatives available under the existing rules. It is also expected that prescribing which elections are to be ignored and which elections are assumed to be made will standardize, and therefore simplify, the information reporting required with respect to OID, bond premium, acquisition premium, and market discount.

The Treasury Department and the IRS recognize that the section 171 election assumption is inconsistent with the rule under section 6049 providing that a payor is not permitted to take premium into account for purposes of reporting a holder's interest or OID income on Form 1099-INT or 1099-OID each year. However, because the Treasury Department and the IRS believe that most holders will make a section 171 election to treat the premium as an offset to ordinary income rather than as a capital loss, the Treasury Department and the IRS believe that the section 171 election assumption will result in fewer instances in which a customer will need to reconcile the reported adjusted basis number to the proper number.

In general, the proposed regulations will result in the following outcomes for a debt instrument:

a. If a debt instrument is sold prior to maturity, a broker will report any accrued market discount as of the sale date based on a constant interest rate.

b. Except as provided in c below, a broker must determine a customer's basis in a debt instrument by computing any OID, bond premium, or acquisition premium using the default method described in the relevant provisions of the Code or regulations. A broker also must adjust the basis for any principal payments received.

c. If a taxable debt instrument has bond premium, a broker must assume a customer has elected current amortization when computing the amount of the customer's basis.

A broker generally must use a consistent accrual period to determine the accruals of discount or premium on a debt instrument. If a debt instrument has both OID and market discount, the accrual period used for the OID computation must be used for the market discount computation. In all other situations, a broker must use the shorter of an annual accrual period or a period that matches the frequency of regular coupon or principal payments.

The rules in §1.6045-1(n) only apply for purposes of a broker's reporting obligation under section 6045. A customer can use any method or make any election permitted under the relevant provisions of the Code and regulations and is not bound by the assumptions that the broker uses to satisfy the broker's reporting obligations under section 6045. For example, even though a broker will

compute and report any accrued market discount on a debt instrument by assuming that a customer made the constant yield election under section 1276(b)(2), the customer can determine the amount of accrued market discount using ratable accrual as described in section 1276(b)(1).

Notwithstanding the information reported by a broker, a customer is still required to comply with all relevant provisions of the Code and regulations. For example, if a customer sells a debt instrument at a loss in one account with Broker A and reacquires a substantially identical debt instrument in a different account with Broker B within 30 days of the loss transaction, Broker A is not required to apply the wash sale rules under section 1091 when reporting the sale. However, the customer is required to properly apply the rules of section 1091 to defer some or all of the loss and must make appropriate basis adjustments.

If a customer uses an assumption or method different from the assumption or method used by the broker to determine a debt instrument's adjusted basis or other information for purposes of the Form 1099-B sent to the customer, the customer must reconcile the amount reported on the Form 1099-B to the amount reported on the customer's tax return.

3. Changes affecting all specified securities (including stock)

Under §1.6045-1(d)(5) of the final regulations relating to stock, a broker may choose to report gross proceeds from the sale of a security as the entire proceeds from the sale or as the proceeds reduced by the commissions and transfer taxes related to the sale. Commenters requested that the regulations

remove this choice in order to standardize broker reporting on Form 1099-B and taxpayer reporting on Form 1040. The proposed regulations adopt this request and require brokers to reduce reported gross proceeds by commissions and transfer taxes related to a sale.

Under §1.6045-1(d)(6) of the final regulations relating to stock, a broker currently must adjust basis reported for an organizational action taken by an issuer of a security during the period the broker has custody of the security. For a transferred security, the regulations exclude adjustments for organizational actions taken on the transfer settlement date. The proposed regulations amend this exclusion to clarify that the exclusion applies only to the broker receiving custody of a transferred security. The proposed regulations require that a broker transferring a security reflect all necessary adjustments for organizational actions taken through and on the transfer settlement date when completing a transfer statement.

B. Section 1.6045A-1

If a specified security is transferred between brokers, the transferring broker must provide the receiving broker with certain information related to the transferred security that will enable the receiving broker to properly report under section 6045. The existing regulations under §1.6045A-1(b)(1) list information that must be reported for a transfer of any specified security. The proposed regulations under §1.6045A-1 modify this existing list by adding information about whether the security was acquired through an equity-based compensation arrangement.

Because debt instruments and options are being added to the definition of specified security under proposed changes to §1.6045-1(a)(14), the information required to be provided for stock under §1.6045A-1(b)(1) also will be required to be provided for debt instruments and options. Further, additional data specific to the transfer of a debt instrument or an option is required to be provided. This additional data falls into two broad categories: 1) data that adequately identifies the instrument; and 2) data that is specific to the particular customer, particularly trade date and price or premium.

This additional information is required to enable a broker that receives a debt instrument pursuant to a transfer to compute OID, market discount, bond premium, or acquisition premium. The description of the payment terms may be done in any manner that fully describes the debt instrument. The information can be in the form of a table of payments, or may be a description of the payment terms. The use of a single identifier, such as a CUSIP number, that can be used by the transferee broker to identify the security and its related payment terms is also an acceptable means of providing the additional information to the transferee broker.

For an option, a transfer statement must include the date the option was granted or acquired, the amount of the premium, and whether the premium was paid or received. The data also must include any other information required to describe fully the option. This information may be a description of the relevant terms, or it may be an identifier, such as a CUSIP or Options Clearing

Corporation number or code that can be used by the transferee broker to identify the security and its related terms.

C. §1.6045B-1

Under §1.6045B-1, if the issuer of a specified security takes an organizational action that affects the basis of the security, the issuer must file an issuer return. A commenter asked for clarification about how this rule applies to option writers, because an organizational action usually is initiated by the issuer of the security underlying an option. The proposed regulations amend §1.6045B-1 to provide rules for certain option writers if there is an organizational action. If the organizational action results in an option writer replacing the original option contract with a different number of option contracts, the option writer must prepare an issuer return as required by §1.6045B-1.

Proposed Effective/Applicability Dates

These regulations are proposed to take effect when published in the **Federal Register** as final regulations. In general, the regulations regarding reporting of basis and whether any gain or loss on a sale is long-term or short-term under section 6045(g) are proposed to apply to debt instruments acquired on or after January 1, 2013. The regulations regarding reporting of gross proceeds, basis, and whether any gain or loss on a sale is long-term or short-term under section 6045(h) are proposed to apply to options granted or acquired on or after January 1, 2013.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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) does not apply to this regulation.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities, because any effect on small entities by the rules proposed in this document flows directly from section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343 (122 Stat. 3765, 3854 (2008)).

Section 403(a) of the Act modifies section 6045 to require that brokers report the adjusted basis of the securities and whether any gain or loss with respect to the securities is long-term or short-term when reporting the sale of a covered security. The Act also requires gross proceeds reporting for options. It is anticipated that these statutory requirements will fall only on financial services firms with annual receipts greater than \$7 million and, therefore, on no small entities. Further, in implementing the statutory requirements, the regulation proposes to limit reporting to information required under the Act.

Section 403(c) of the Act added section 6045A, which requires applicable persons to furnish a transfer statement in connection with the transfer of custody

of a covered security. The proposed modifications to §1.6045A-1 effectuate the Act by giving the broker who receives the transfer statement the information necessary to determine and report adjusted basis and whether any gain or loss with respect to a debt instrument or option is long-term or short-term as required by section 6045 when the security is subsequently sold. Consequently, the regulation does not add to the impact on small entities imposed by the statutory scheme. Instead, it limits the information to be reported to only those items necessary to effectuate the statutory scheme.

Section 403(d) of the Act added section 6045B, which requires issuer reporting by all issuers of specified securities regardless of size and even when the securities are not publicly traded. The proposed modifications to §1.6045B-1 limit reporting to the additional information for options necessary to meet the Act's requirements. Additionally, the regulation, as modified, retains the rule that permits an issuer to report each action publicly instead of filing a return and furnishing each nominee or holder a statement about the action. The regulation therefore does not add to the statutory impact on small entities but instead eases this impact to the extent the statute permits.

Therefore, because this regulation will not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required. The Treasury Department and IRS request comments on the accuracy of this statement. 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.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. The IRS and Treasury Department further request comments about suggested changes or improvements to sections of §1.6045-1 that are not specifically affected by the proposed regulation. The IRS and Treasury Department also request comments on the accuracy of the certification that the regulation in this document will not have a significant economic impact on a substantial number of small entities. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Friday, March 16, 2012, beginning at 10 a.m. in the IRS Auditorium, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter through the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic

comments by **[INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]** and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by Friday, February 24, 2012. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Pamela Lew, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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 1.6045-1 is amended by:

1. Revising paragraphs (a)(3)(v) and (a)(3)(vi) and adding paragraph (a)(3)(vii).

2. Revising paragraphs (a)(8) and (a)(9).
3. Revising paragraphs (a)(14) and (a)(15)(i)(A).
4. Redesignating paragraph (a)(15)(i)(C) as paragraph (a)(15)(i)(E) and adding new paragraphs (a)(15)(i)(C) and (a)(15)(i)(D).
5. Revising newly redesignated paragraph (a)(15)(i)(E).
6. Adding a new sentence to the end of paragraph (a)(15)(ii).
7. Adding a new paragraph (a)(15)(iv)(E).
8. Adding a new paragraph (a)(17).
9. Revising paragraph (c)(3)(x) and the first two sentences in paragraph (c)(3)(xi)(C).
10. Revising the last sentence of paragraph (c)(4) Example 9 (i).
11. Adding a sentence at the end of paragraph (d)(2)(i) and revising paragraph (d)(2)(ii).
12. Revising paragraphs (d)(3), (d)(5), (d)(6)(i), and (d)(6)(ii)(A).
13. Revising the heading for paragraph (d)(6)(ii)(B).
14. Revising the sixth and seventh sentences and removing the last sentence in paragraph (d)(6)(vii) Example 4.
15. Adding paragraphs (m) and (n).

The additions and revisions read as follows:

§1.6045-1 Returns of information of brokers and barter exchanges.

(a) * * *

(3) * * *

(v) An interest in or right to purchase any of the foregoing in connection with the issuance thereof from the issuer or an agent of the issuer or from an underwriter that purchases any of the foregoing from the issuer;

(vi) An interest in a security described in paragraph (a)(3)(i) or (iv) (but not including executory contracts that require delivery of such type of security); or

(vii) An option described in paragraph (m)(1) of this section.

* * * * *

(8) The term closing transaction means any cancellation, lapse, expiration, settlement, abandonment, or other termination of a right or an obligation under a forward contract, a regulated futures contract, or an option.

(9) The term sale means any disposition of securities, commodities, options, regulated futures contracts, or forward contracts, and includes redemptions of stock, retirements of debt instruments, and enterings into short sales, but only to the extent any of these actions are conducted for cash. In the case of an option, a regulated futures contract, or a forward contract, a sale includes any closing transaction. When a closing transaction in a regulated futures contract involves making or taking delivery, the profit or loss on the contract is a sale and the delivery is a separate sale. When a closing transaction in a forward contract involves making or taking delivery, the delivery is a sale without separating the profit or loss on the contract from the profit or loss on the delivery, except that taking delivery for United States dollars is not a sale. The term sale does not include entering into a contract that requires delivery of

personal property or an interest therein, the initial grant or purchase of an option, or the exercise of a call option for physical delivery. For purposes of this section only, a constructive sale under section 1259 and a mark to fair market value under section 475 or 1296 are not sales.

* * * * *

(14) The term specified security means:

(i) Any share of stock (or any interest treated as stock, including, for example, an American Depositary Receipt) in an entity organized as, or treated for Federal tax purposes as, a corporation, either foreign or domestic (Solely for purposes of this paragraph (a)(14)(i), a security classified as stock by the issuer is treated as stock. If the issuer has not classified the security, the security is not treated as stock unless the broker knows that the security is reasonably classified as stock under general Federal tax principles.);

(ii) Any debt instrument described in paragraph (a)(17) of this section; or

(iii) Any option described in paragraph (m)(1) of this section.

(15) * * *

(i) * * *

(A) A specified security described in paragraph (a)(14)(i) of this section acquired for cash in an account on or after January 1, 2011, except stock for which the average basis method is available under §1.1012-1(e).

* * * * *

(C) A debt instrument described in paragraph (a)(14)(ii) of this section acquired for cash in an account on or after January 1, 2013.

(D) An option described in paragraph (a)(14)(iii) of this section granted or acquired for cash in an account on or after January 1, 2013.

(E) A specified security transferred to an account if the broker or other custodian of the account receives a transfer statement (as described in §1.6045A-1) reporting the security as a covered security.

(ii) * * * Acquiring a security in an account includes a security that represents a liability (for example, granting an option).

* * * * *

(iv) * * *

(E) A debt instrument that is described in paragraph (n)(2)(ii) of this section.

* * * * *

(17) For purposes of this section, the terms debt instrument, bond, debt obligation, and obligation mean a debt instrument as defined in §1.1275-1(d) and any instrument or position that is treated as a debt instrument under a specific provision of the Internal Revenue Code (for example, a regular interest in a REMIC as defined in section 860G(a)(1) and §1.860G-1). Solely for purposes of this section, a security classified as debt by the issuer is treated as debt. If the issuer has not classified the security, the security is not treated as debt unless the broker knows that the security is reasonably classified as debt under general

Federal tax principles or that the instrument or position is treated as a debt instrument under a specific provision of the Internal Revenue Code.

* * * * *

(c) * * *

(3) * * *

(x) Certain retirements. No return of information is required from an issuer or its agent with respect to the retirement of book entry or registered form debt instruments issued before January 1, 2013, as to which the relevant books and records indicate that no interim transfers have occurred.

(xi) * * *

(C) Short sale obligation transferred to another account. If a short sale obligation is satisfied by delivery of a security transferred into a customer's account accompanied by a transfer statement (as described in §1.6045A-1(b)(7)) indicating that the security was borrowed, the broker receiving custody of the security may not file a return of information under this section. The receiving broker must furnish a statement to the transferor that reports the amount of gross proceeds received from the short sale, the date of the sale, the quantity of shares, units, or amounts sold, and the Committee on Uniform Security Identification Procedures (CUSIP) number of the sold security (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter). * * *

* * * * *

(4) * * *

Example 9. ***

(i) * * * N indicates on the transfer statement that the transferred stock was borrowed in accordance with §1.6045A-1(b)(7).

* * * * *

(d) * * *

(2) * * *

(i) * * * See paragraph (m) of this section for additional rules related to options and paragraph (n) of this section for additional rules related to debt instruments.

(ii) Specific identification of securities. Except as provided in §1.1012-1(e)(7)(ii), for securities described in paragraph (a)(14)(i) of this section sold on or after January 1, 2011, or securities described in paragraphs (a)(14)(ii) and (a)(14)(iii) of this section sold on or after January 1, 2013, a broker must report a sale of less than the entire position in an account of a specified security that was acquired on different dates or at different prices consistently with a customer's adequate and timely identification of the security to be sold. See §1.1012-1(c). If the customer does not provide an adequate and timely identification for the sale, the broker must first report the sale of securities in the account for which the broker does not know the acquisition or purchase date followed by the earliest securities purchased or acquired, whether covered securities or noncovered securities.

* * * * *

(3) Sales between interest payment dates. For each sale of a debt instrument prior to maturity with respect to which a broker is required to make a return of information under this section, a broker must show separately on Form 1099 the amount of accrued and unpaid interest as of the sale date that must be reported by the customer as interest income under §1.61-7(d) (but not the amount of any market discount on a noncovered security or original issue discount). Such interest information must be shown in the manner and at the time required by Form 1099 and section 6049.

* * * * *

(5) Gross proceeds. For purposes of this section, gross proceeds on a sale are the total amount paid to the customer or credited to the customer's account as a result of the sale reduced by the amount of any stated interest reported under paragraph (d)(3) of this section and increased by any amount not paid or credited by reason of repayment of margin loans. In the case of a closing transaction that results in a loss, gross proceeds are the amount debited from the customer's account. For sales before January 1, 2013, a broker may, but is not required to, reduce gross proceeds by the amount of commissions and transfer taxes, provided the treatment chosen is consistent with the books of the broker. For sales on or after January 1, 2013, a broker must reduce gross proceeds by the amount of commissions and transfer taxes related to the sale of the security. For securities sold pursuant to the exercise of an option granted or acquired before January 1, 2013, a broker may, but is not required to, take the option premiums into account in determining the gross proceeds of the securities sold,

provided the treatment chosen is consistent with the books of the broker. For securities sold pursuant to the exercise of an option granted or acquired on or after January 1, 2013, see paragraph (m) of this section. A broker must report the gross proceeds of identical stock (within the meaning of §1.1012-1(e)(4)) by averaging the proceeds of each share if the stock is sold at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the customer that reports an aggregate total price or an average price per share. However, a broker may not average the proceeds if the customer notifies the broker in writing of an intent to determine the proceeds of the stock by the actual proceeds per share and the broker receives the notification by January 15 of the calendar year following the year of the sale. A broker may extend the January 15 deadline but not beyond the due date for filing the return required under this section.

(6) Adjusted basis--(i) In general. For purposes of this section, the adjusted basis of a security is determined from the initial basis under paragraph (d)(6)(ii) of this section as of the date the security is acquired in an account, increased by the commissions and transfer taxes related to its sale to the extent not accounted for in gross proceeds as described in paragraph (d)(5) of this section. A broker is not required to consider transactions, elections, or events occurring outside the account except for an organizational action taken by an issuer during the period the broker holds custody of the security (not including the settlement date that the broker received a transferred security) reported on an issuer statement (as described in §1.6045B-1) furnished or deemed furnished

to the broker. For rules related to the adjusted basis of a debt instrument, see paragraph (n) of this section.

(ii) Initial basis--(A) Cost basis. For a security acquired for cash, the initial basis generally is the total amount of cash paid by the customer or credited against the customer's account for the security, increased by the commissions and transfer taxes related to its acquisition. A broker may, but is not required to, take option premiums into account in determining the initial basis of securities purchased or acquired pursuant to the exercise of an option granted or acquired before January 1, 2013. For rules related to options granted or acquired on or after January 1, 2013, see paragraph (m) of this section. A broker may, but is not required to, increase initial basis for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangements. A broker must report the basis of identical stock (within the meaning of §1.1012-1(e)(4)) by averaging the basis of each share if the stock is purchased at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the customer that reports an aggregate total price or an average price per share. However, a broker may not average the basis if the customer timely notifies the broker in writing of an intent to determine the basis of the stock by the actual cost per share in accordance with §1.1012-1(c)(1)(ii).

(B) Basis of transferred securities * * *

* * * * *

(vii) * * *

Example 4. * * * Under paragraph (d)(6)(ii)(A) of this section, C is permitted, but not required, to determine adjusted basis from the amount R pays under the terms of the option. Under paragraph (d)(6)(ii)(A) of this section, C is permitted, but not required, to adjust basis for any amount R must include as wage income with respect to the October 2, 2013, stock purchase.

* * * * *

(m) Additional rules for option transactions--(1) Scope. This paragraph (m) applies to the following types of options granted or acquired on or after January 1, 2013:

(i) An option on one or more specified securities. For purposes of this paragraph (m), the phrase one or more specified securities includes an index substantially all the components of which are specified securities, and the term option includes a warrant or a stock right.

(ii) An option on financial attributes of specified securities, such as interest rates or dividend yields.

(2) Physically settled option. If a covered security is acquired or disposed of pursuant to the exercise of an option that was granted or acquired in the same account as the covered security, a broker must adjust the basis of the acquired asset or the gross proceeds amount as appropriate to account for any premium related to the option.

(3) Rules for an option that is not physically settled. For purposes of paragraph (d) of this section, for an option that is not physically settled and is sold (as defined in paragraph (a)(9) of this section), the following rules apply:

(i) Gross proceeds. A broker must increase gross proceeds for all payments received on the option and decrease gross proceeds for all payments paid on the option.

(ii) Long-term or short-term gain or loss. For purposes of paragraph (d)(7) of this section, when determining if any gain or loss is long-term or short-term within the meaning of section 1222, a broker must apply the rules described in sections 1234 and 1234A.

(4) Rules for warrants and stock rights. For a right to acquire stock (including a warrant) received in the same account as the underlying equity in a distribution that is described in section 305(a), a broker must determine basis in the option in accordance with the rules described in sections 305 and 307. Upon exercise or sale of a warrant or stock right, a broker must account for the warrant or stock right as if it were purchased and must treat as premium paid any basis allocated to the warrant or stock right.

(5) Example. The following example illustrates the rules in this paragraph (m):

Example. (i) On January 15, 2013, C, an individual, sells a 2-year exchange-traded option on 100 shares of Company X through Broker D. C receives a premium for the option of \$100 and pays no commission. In C's hands, Company X stock is a capital asset. On December 16, 2013, C pays \$110 to close out the option.

(ii) D is required to report information about the closing transaction because the option is on a covered security as described in paragraph (a)(15)(i)(D) of this section and was part of a closing transaction described in paragraph (a)(8) of this section. D will report as gross proceeds the net of the \$100 received as option premium minus the \$110 C paid to close out the option, for a total of -\$10. Under the rules of section 1234(b)(1) and paragraph (d)(2) of

this section, D will also report that the loss on the closing transaction is a short-term loss.

(6) Multiple options documented in a single contract. If more than one option described in paragraph (m)(1) of this section is documented in a single contract, a broker must separately report the required information for each option as that option is sold.

(n) Reporting for bond transactions--(1) In general. For purposes of paragraph (d) of this section, this paragraph (n) provides rules for brokers to determine and report information for a debt instrument.

(2) Scope--(i) In general. Except as provided in paragraph (n)(2)(ii) of this section, this paragraph (n) applies to a debt instrument that is a covered security under paragraph (a)(15)(i)(C) of this section.

(ii) Excluded debt instruments. A debt instrument subject to section 1272(a)(6) (certain interests in or mortgages held by a REMIC, certain other debt instruments with payments subject to acceleration, and pools of debt instruments the yield on which may be affected by prepayments) is not a covered security.

(3) Reporting of accrued market discount. In addition to the information required to be reported under paragraph (d) of this section, if a debt instrument is subject to the market discount rules in sections 1276 through 1278, a broker also must report the amount of market discount that has accrued on the debt instrument as of the date of the sale. A broker must compute the accruals of market discount by assuming that the customer elected to use the constant interest rate method under section 1276(b)(2) for the taxable year in which the

customer acquired the debt instrument. See paragraph (n)(5) of this section to determine the accrual period to be used to compute the accruals of market discount.

(4) Adjusted basis. For purposes of this section, a broker must use the rules in this paragraph (n)(4) to determine the adjusted basis of a debt instrument. To the extent the rules in this paragraph (n)(4) are inconsistent with the rules in paragraph (d)(6) of this section, the rules in this paragraph (n)(4) control.

(i) Original issue discount. If a debt instrument is subject to the original issue discount rules in sections 1271 through 1275 and section 6049, a broker must increase a customer's basis in the debt instrument by the amount of original issue discount reported to the customer under section 6049 for each year the debt instrument is held by the customer in the account. If the debt instrument is not subject to section 6049 or is a tax-exempt debt instrument subject to section 1288, the broker must increase the customer's basis in the debt instrument by the amount of original issue discount that accrued on the debt instrument while held by the customer in the account. To determine this amount, the broker must use the accrual period required under paragraph (n)(5) of this section.

(ii) Bond premium. If a debt instrument is subject to the bond premium rules in section 171, a broker must decrease a customer's basis in the debt instrument by the amount of bond premium allocable to the period the debt instrument is held by the customer in the account. In the case of a taxable debt instrument, a broker must compute any basis adjustment for bond premium by

assuming that the customer elected to amortize bond premium under section 171 (c) for the taxable year in which the customer acquired the debt instrument and that such election remained in effect for all subsequent years.

(iii) Acquisition premium. If a debt instrument is acquired at an acquisition premium (as determined under §1.1272-2(b)(3)), a broker must decrease the customer's basis in the debt instrument by the amount of acquisition premium that is taken into account each year to reduce the amount of the original issue discount that is otherwise includible in the customer's income for that year. See §1.1272-2(b)(4) to determine the amount of the acquisition premium taken into account each year.

(iv) Principal and certain other payments. A broker must decrease the customer's basis by the amount of any payment made to the customer during the period the debt instrument is held in the account, other than a payment of qualified stated interest as defined in §1.1273-1(c).

(5) Accrual period. If a debt instrument is subject both to the original issue discount and the market discount rules, a broker must use the same accrual period that is used to determine the original issue discount reported to the customer under section 6049 to compute accruals of market discount. In any other situation, a broker must use an annual accrual period or, if there are scheduled payments of principal or interest at regular intervals of one year or less over the entire term of the debt instrument, a broker must use an accrual period equal in length to this interval. For example, if a debt instrument provides

for semiannual payments of interest over the entire term of the debt instrument, the broker should use a semiannual accrual period.

(6) Broker assumptions not controlling for customer. The rules in this paragraph (n) only apply for purposes of a broker's reporting obligation under section 6045. A customer is not bound by the assumptions that the broker uses to satisfy the broker's reporting obligations under section 6045.

* * * * *

Par. 3. Section 1.6045A-1 is amended by:

1. Revising paragraphs (b)(1) introductory text and (b)(1)(v).
2. Redesignating paragraphs (b)(2) through (b)(9) as paragraphs (b)(5) through (b)(12) respectively.
3. Redesignating paragraph (b)(1)(viii) as paragraph (b)(2).
4. Revising the introductory text to the examples in newly redesignated paragraph (b)(2).
5. Revising newly redesignated paragraph (b)(5).
6. Revising the first and last sentences of newly redesignated paragraph (b)(6).
7. Revising newly redesignated paragraph (b)(8)(ii).
8. Revising the first sentence of newly redesignated paragraph (b)(9)(ii).
9. Revising the introductory text to the examples in newly redesignated paragraph (b)(9)(iii), the fifth sentence of paragraph (b)(9)(iii) Example 1, and the second sentence of paragraph (b)(9)(iii) Example 2.
10. Revising the last sentence of newly redesignated paragraph (b)(10).

11. Adding new paragraphs (b)(1)(viii), (b)(3) and (b)(4).
12. Revising paragraph (d).

The additions and revisions read as follows:

§1.6045A-1 Statements of information required in connection with transfers of securities.

* * * * *

(b) Information required--(1) In general. For all specified securities, each transfer statement must include the information described in this paragraph (b)(1).

* * * * *

(v) Security identifiers. The Committee on Uniform Security Identification Procedures (CUSIP) number of the security transferred (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter), quantity of shares, units, or amounts, and classification of the security (such as stock).

* * * * *

(viii) Relationship to a compensation arrangement. Whether the security was received in connection with the exercise of a compensatory option or the vesting or exercise of any other equity-based compensation arrangement and whether basis has been adjusted for any compensation income.

(2) Examples. The following examples illustrate the rules of paragraph (b)(1) of this section:

* * * * *

(3) Additional information required for a transfer of a debt instrument. In addition to the information required in paragraph (b)(1) of this section, for a transfer of a debt instrument that is a covered security, the following additional information is required:

- (i) A description of the payment terms;
- (ii) The issue price of the debt instrument;
- (iii) The issue date of the debt instrument;
- (iv) The adjusted issue price of the debt instrument as of the transfer date;
- (v) The customer's initial basis in the debt instrument;
- (vi) The yield used to compute any accruals of original issue discount, bond premium, and/or market discount;
- (vii) Any market discount that has accrued as of the transfer date (as determined under §1.6045-1(n)); and
- (viii) Any bond premium that has been amortized as of the transfer date (as determined under §1.6045-1(n)).

(4) Additional information required for option transfers. In addition to the information required in paragraph (b)(1) of this section, for a transfer of an option that is a covered security, the following additional information is required:

- (i) The date of grant or acquisition of the option;

(ii) The amount of premium paid or received; and

(iii) Any other information required to fully describe the option.

(5) Format of identification. An applicable person furnishing a transfer statement and a broker receiving the transfer statement may agree to combine the information required in paragraphs (b)(1), (b)(3), and (b)(4) of this section in any format or to use a code in place of one or more required items. For example, a transferor and a receiving broker may agree to use a single code to represent the broker instead of the broker's name, address, and telephone number, or may use a security symbol or other identification number or scheme instead of the security identifier required by paragraphs (b)(1), (b)(3), and (b)(4) of this section.

(6) Transfers of noncovered securities. The information described in paragraphs (b)(1)(vii), (b)(8), and (b)(9) of this section is not required for a transfer of a noncovered security if the transfer statement identifies the security as a noncovered security. * * * For purposes of this paragraph (b)(6), a transferor must treat a security for which a broker makes a single-account election described in §1.1012-1(e)(11)(i) as a covered security.

(8) * * *

(ii) Transfers of shares to satisfy a cash legacy. If a security is transferred from a decedent or a decedent's estate to satisfy a cash legacy, paragraph (b)(1) of this section applies and paragraph (b)(8)(i) of this section does not apply.

* * * * *

(9) * * *

(ii) Subsequent transfers of gifts by the same customer. If a transferor transfers to a different account of the same customer a security that a prior transfer statement reported as a gifted security, the transferor must include on the transfer statement the information described in paragraph (b)(9)(i) of this section for the date of the gift to the customer. * * *

(iii) Examples. The following examples illustrate the rules of this paragraph (b)(9):

Example 1. * * * Under paragraph (b)(9)(i) of this section, S must provide a transfer statement to T that identifies the securities as gifted securities and indicates X's adjusted basis and original acquisition date. * * *

Example 2. * * * Under paragraph (b)(9)(ii) of this section, T must provide a transfer statement to U that identifies the securities as gifted securities and indicates X's adjusted basis and original acquisition date of the stock. * * *

(10) * * * If the customer does not provide an adequate and timely identification for the transfer, a transferor must first report the transfer of any securities in the account for which the transferor does not know the acquisition or purchase date followed by the earliest securities purchased or acquired, whether covered securities or noncovered securities.

* * * * *

(d) Effective/applicability dates. This section applies to:

(1) A transfer on or after January 1, 2011, of stock other than stock in a regulated investment company within the meaning of §1.1012-1(e)(5);

(2) A transfer of stock in a regulated investment company on or after January 1, 2012; and

(3) A transfer of a debt instrument or an option on or after January 1, 2013.

Par. 4. Section 1.6045B-1 is amended by redesignating paragraph (h) as paragraph (j), adding new paragraphs (h) and (i), and revising newly-designated paragraph (j) to read as follows:

§1.6045B-1 Returns relating to actions affecting basis of securities.

* * * * *

(h) Rule for options--(1) In general. For an option granted or acquired on or after January 1, 2013, if the original contract is replaced by a different number of option contracts, the option writer is the issuer of the option for purposes of section 6045B and the option writer must prepare an issuer return.

(2) Example. The following example illustrates the rule of paragraph (h)(1) of this section:

Example. On January 15, 2013, F, an individual, purchases a one-year exchange-traded call option on 100 shares of Company X stock, with a strike price of \$110. The call option is cleared through Clearinghouse G. Company X undertakes a 2-for-1 stock split as of April 1, 2013. Due to the stock split, the terms of F's option are altered, resulting in two option contracts, each on 100 shares of Company X stock with a strike price of \$55. All other terms of F's option remain the same. Under paragraph (h)(1) of this section, Clearinghouse G is required to prepare an issuer report to F.

(i) [Reserved]

(j) Effective/applicability dates. This section applies to--

(1) Organizational actions occurring on or after January 1, 2011, that affect the basis of specified securities within the meaning of §1.6045-1(a)(14)(i) other than stock in a regulated investment company within the meaning of §1.1012-1(e)(5);

(2) Organizational actions occurring on or after January 1, 2012, that affect stock in a regulated investment company;

(3) Organizational actions occurring on or after January 1, 2013, that affect debt instruments described in §1.6045-1(a)(14)(ii), and

(4) Actions occurring on or after January 1, 2013, that affect options described in §1.6045-1(a)(14)(iii).

Steven T. Miller

Deputy Commissioner for Services and Enforcement.

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