

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

[TD 9065]

RIN 1545-BA77

**Section 6038—Returns Required With Respect to Controlled Foreign Partnerships****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulation and removal of temporary regulation.

**SUMMARY:** This document contains a final regulation relating to controlled foreign partnerships. This document requires that the United States partner must follow the filing requirements that are specified in the instructions for Form 8865.

**DATES:** *Effective Date:* This regulation is effective July 1, 2003.

*Applicability Date:* For dates of applicability, see § 1.6038-3(l).

**FOR FURTHER INFORMATION CONTACT:** Tasheaya L. Warren Ellison, (202) 622-3860 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act**

The collection of information contained in this final regulation has been 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 1545-1617.

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.

The burden of complying with the collection of information required to be reported on Form 8865 is reflected in the burden for Form 8865. The estimated number of respondents is 5000. The estimated burden for the 2001 Form 8865 per respondent is 89 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP Washington, DC 20224, and 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.

Books or records relating to a collection of information must be

retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

On December 23, 2002, final and temporary regulations (T.D. 9033) relating to the information reporting requirements for U.S. persons with interests in controlled foreign partnerships were published in the **Federal Register** (67 FR 78174). The temporary regulation addressed the filing requirements that must be followed for Form 8865 (Return of U.S. Persons With Respect To Certain Foreign Partnerships) if a U.S. person is required to file Form 8865 with respect to a foreign partnership that files Form 1065, U.S. Return of Partnership Income or Form 1065-B, U.S. Return for Electing Large Partnerships. On December 23, 2002, a notice of proposed rulemaking and public hearing (REG-124069-02) was also published in the **Federal Register** (67 FR 78202) with respect to the provisions of the temporary regulation. No written or electronic comments were received in response to the notice of proposed rulemaking. No requests to speak at the public hearing were received, and, accordingly, the hearing was canceled.

**Explanation of Provisions**

This Treasury decision adopts the language of the proposed regulation without change other than to clarify that Treas. Reg. § 1.6038-3(j) as in effect prior to T.D. 9033 (see 26 CFR part 1 revised April 1, 2002) is applicable to tax years of a foreign partnership ending before December 23, 2002. The temporary regulation is removed.

**Special Analyses**

It has been determined that this Treasury decision 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 this regulation. It is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the number of small entities that will be required to file the form is not substantial. The number of small entities with interests in foreign partnerships is not substantial; therefore, this regulation will not have

a significant economic impact on a substantial number of small entities. Additionally, this regulation does not increase the reporting burden for U.S. persons with interests in controlled foreign partnerships. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. Comments are requested regarding the impact on small businesses.

**Drafting Information**

The principal author of this regulation is Tasheaya Warren Ellison, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in its development.

**List of Subjects***26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR parts 1 and 602 are 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 1.6038-3, paragraphs (j) and (l) are revised to read as follows:

**§ 1.6038-3 Information returns required of certain United States persons with respect to controlled foreign partnerships (CFPs).**

\* \* \* \* \*

(j) *Overlap with section 6031.* A partner may be required to file Form 8865 under this section and the foreign partnership in which it is a partner may also be required to file a Form 1065 or Form 1065-B under section 6031(e) for the same partnership tax year. For cases where a United States person is a controlling fifty-percent partner or a controlling ten-percent partner with respect to a foreign partnership, and that foreign partnership completes and files Form 1065 or Form 1065-B, the instructions for Form 8865 will specify

the filing requirements that address this overlap in reporting obligations.

\* \* \* \* \*

(1) *Effective date.* Except as otherwise provided, this section shall apply for tax years of a foreign partnership ending on or after December 31, 2000. For tax years of a foreign partnership ending before December 23, 2002, *see* § 1.6038-3(j) in effect prior to the amendments made by T.D. 9033 (see 26 CFR part 1 revised April 1, 2002).

**§ 1.6038-3T [Removed]**

■ **Par. 3.** Section 1.6038-3T is removed.

**PART 602—OMB CONTROL NUMBERS UNDER PAPERWORK REDUCTION ACT**

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

**§ 602.101 [Amended]**

■ **Par. 5.** In § 602.101, paragraph (b) is amended by removing the entry “§ 1.6038-3T”. \* \* \* 1545-1617” from the table.

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

Approved: June 23, 2003.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury.*

[FR Doc. 03-16600 Filed 6-30-03; 8:45 am]

BILLING CODE 4830-01-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD01-03-053]

RIN 1625-AA97

**Safety Zone; Hudson River Swim, Ulster Landing, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the annual Hudson Valley Triathlon swim located on the Hudson River. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the affected waterway.

**DATES:** This rule is effective from 7:30 a.m. to 9 a.m. on Sunday, July 13, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the

docket are part of docket CGD01-03-053 and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, NY 10305 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York (718) 354-4012.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the date the Applications for Approval of Marine Event were received, there was insufficient time to draft and publish an NPRM. An annual safety zone has been published for the Hudson Valley Triathlon swim on the Hudson River in 33 CFR 165.170 effective on the first Sunday after July 4th. The date for this year's event has been moved to the second Sunday after July 4th. The zone will only be enforced for 1½ hours; and recreational vessels can still transit to the east of the zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterway and protect the swimmers and maritime public from the hazards associated with 400 swimmers competing in a confined area of the Hudson River.

**Background and Purpose**

The Coast Guard has received an application to hold a triathlon swim on the waters of the Hudson River. This rule establishes a safety zone in all waters of the Hudson River, in the vicinity of Ulster Landing, bound by the following points, (NAD 1983): 42°00'03.7" N 073°56'43.1" W; thence to 41°59'52.4" N 073°56'33.9" W; thence to 42°00'14.8" N 073°56'25.0" W; thence to 42°00'05.4" N 073°56'41.9" W; thence along the shoreline to the point of origin. The safety zone will be enforced from 7:30 a.m. until 9 a.m. on Sunday, July 13, 2003. The safety zone prevents vessels from transiting a portion of the Hudson River and Barrytown Reach and is needed to protect swimmers and boaters from the hazards associated with

400 swimmers competing in a confined area of the Hudson River. Recreational vessels can still transit to the east of the zone during the event and will not be precluded from mooring at or getting underway from piers in the vicinity of the zone. Commercial vessels will be precluded from transiting the area because the safety zone encompasses about 800 yards of Barrytown Reach and there is no viable alternative route. Public notifications will be made prior to the event via the Local Notice to Mariners, Marine Information and electronic mail Broadcasts, and on the Internet at <http://www.harborops.com>.

This safety zone covers the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all swimmers and vessels.

**Discussion of Rule**

This rule establishes a temporary safety zone for the Hudson Valley Triathlon swim. The safety zone will be in effect for 1½ hours. Recreational vessels can still transit to the east of the zone during the event and will not be precluded from mooring at or getting underway from piers in the vicinity of the zone. Commercial vessels will be precluded from transiting the area because the safety zone encompasses about 800 yards of Barrytown Reach and there is no viable alternative route.

**Regulatory Evaluation**

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This finding is based on: the minimal time that vessels will be restricted from the zone; it is an annual, local event; recreational vessels may still transit to the east of the zone during the event and will not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone; the zone is only in effect for 1½ hours; the event occurs early on a Sunday morning, which historically is a time when there is less commercial traffic transiting the area; and the event has been held for 6 years in succession and is therefore anticipated annually. The Coast Guard has received no written comments or complaints regarding the event being held in this location. Advance notifications will be made to the local maritime community by the