

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 9113]

RIN 1545-BD02

**Electronic Filing of Duplicate Forms 5472**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations providing that a Form 5472 that is timely filed electronically is treated as satisfying the requirement timely to file a duplicate Form 5472 with the Internal Revenue Service Center in Philadelphia, Pennsylvania. This action is necessary to clarify how the duplicate filing requirements for Form 5472 apply when a reporting corporation electronically files its income tax return (including any attachments such as Form 5472). This document affects corporations subject to the reporting requirements in sections 6038A and 6038C that file Form 5472 electronically. 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 February 9, 2004.

*Applicability Date:* For the dates of applicability, see §§ 1.6038A-2(h) and 1.6038A-2T(h).

**FOR FURTHER INFORMATION CONTACT:** Edward R. Barret, (202) 435-5265 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

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

8353 was published in the **Federal Register** on August 23, 1991, at 56 FR 41792.

The 1991 final regulations under section 6038A contain guidance at §§ 1.6038A-1 and 1.6038A-2 regarding the information reporting requirements under sections 6038A and 6038C. Section 1.6038A-2(a)(1) generally requires a reporting corporation to file a separate annual information return on Form 5472 with respect to each related party with which the reporting corporation has had a reportable transaction during the taxable year. Section 1.6038A-1(c)(1) defines a reporting corporation as either a domestic corporation that is 25-percent foreign-owned or a foreign corporation engaged in a trade or business within the United States at any time during a taxable year. Section 1.6038A-2(d) provides that Form 5472 shall be filed with the reporting corporation's income tax return for the taxable year by the due date of that return. A duplicate Form 5472 shall be filed at the same time with the Internal Revenue Service Center in Philadelphia, Pennsylvania (the Philadelphia Service Center). Section 1.6038A-2(e) provides that even if the reporting corporation's income tax return is not timely filed, Form 5472 (with a duplicate to the Philadelphia Service Center) nonetheless is required to be timely filed at the service center where the return is due, with a copy of Form 5472 to be attached to the income tax return when ultimately filed. However, neither § 1.6038A-2(d) nor § 1.6038A-2(e) directly addresses the duplicate filing requirements for Form 5472 when a reporting corporation electronically files its income tax return (including any attachments such as Form 5472).

**Explanation of Provisions**

To clarify how the duplicate filing requirements for Form 5472 apply when a reporting corporation electronically files its income tax return (including any attachments such as Form 5472), the temporary regulations amend § 1.6038A-2(d) to provide that a Form 5472 that is timely filed electronically is treated as satisfying the requirement timely to file a duplicate Form 5472 with the Philadelphia Service Center. Accordingly, the filing of a copy of such timely filed electronic Form 5472 with the Philadelphia Service Center will not be required.

The temporary regulations do not amend the requirement of § 1.6038A-2(e) that Form 5472 be timely filed (with a duplicate to the Philadelphia Service Center) even if the income tax return of the reporting corporation is not timely

filed. As a transitional matter, for the filing season for taxable year 2003 returns it is anticipated that electronic filing of Form 5472 will be possible only as an attachment to an electronically filed income tax return; electronic filing of Form 5472 separately rather than as an attachment to an electronically filed income tax return will not be technically possible. Accordingly, if a reporting corporation's income tax return is filed after its due date (including extensions), regardless of whether that return is filed electronically, § 1.6038A-2(e) requires the reporting corporation timely to file Form 5472 on paper (with a copy to the Philadelphia Service Center) at the service center where the income tax return is due. In subsequent filing seasons, it is anticipated that electronic filing technology will allow separate electronic filing of Form 5472. The Treasury Department and the IRS intend that the guidance contained in the amendment to § 1.6038A-2(d) in these temporary regulations would apply to any such separate electronic filing of Form 5472. Accordingly, a Form 5472 that is timely and separately filed electronically would be treated as satisfying the requirement timely to file a duplicate Form 5472 with the Philadelphia Service Center.

Similarly, an electronic attachment of a copy of Form 5472 to an income tax return that is not timely filed satisfies the requirement of the second sentence of § 1.6038A-2(e).

**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 also has 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 to the cross-reference 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, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

**Drafting Information**

The principal author of these regulations is Edward Barret, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury

Department participated in their 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-2 is amended by revising paragraph (d) to read as follows:

#### § 1.6038A-2 Requirement of return.

\* \* \* \* \*

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

\* \* \* \* \*

■ **Par. 3.** 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 and place for filing returns.* A Form 5472 required under this section shall be filed with the reporting corporation's income tax return for the taxable year by the due date (including extensions) of that return. A duplicate Form 5472 (including any attachments and schedules) shall be filed at the same time with the Internal Revenue Service Center, Philadelphia, PA 19255. A Form 5472 that is timely filed electronically satisfies the duplicate filing requirement.

(e) Through (g) [Reserved]. For further guidance, see § 1.6038A-2(e) through (g).

(h) *Effective date.* (1) This section applies for taxable years ending on or after January 1, 2003. For taxable years ending prior to January 1, 2003, see § 1.6038A-2(d) in effect prior to January 1, 2003 (see 26 CFR part 1 revised as of April 1, 2002).

(2) The applicability of this section expires on or before February 6, 2007.

**Mark E. Matthews,**  
Deputy Commissioner for Services and Enforcement.

Approved: January 28, 2004.

**Pamela F. Olson,**  
Assistant Secretary of the Treasury.  
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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[M183-03; FRL-7617-7]

#### Approval and Promulgation of State Implementation Plans; Michigan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving a revision to Michigan's definition of volatile organic compound (VOC). EPA's approval will revise Michigan's State Implementation Plan (SIP) for ozone. The Michigan Department of Environmental Quality (MDEQ) submitted this SIP revision on April 25, 2003. On September 2, 2003, the EPA proposed approval of this SIP revision and published a direct final approval as well. EPA received adverse comments on the proposed rulemaking, and therefore withdrew the direct final rulemaking on October 31, 2003.

**DATES:** This final rule is effective March 10, 2004.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Kathleen D'Agostino at (312) 886-1767 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886-1767. E-Mail Address: [dagostino.kathleen@epa.gov](mailto:dagostino.kathleen@epa.gov).

**SUPPLEMENTARY INFORMATION:** The **SUPPLEMENTARY INFORMATION** is organized in the following order:

- I. What Action Is EPA Taking Today?
- II. What Public Comments Were Received and What Is EPA's Response?
- III. Statutory and Executive Order Reviews.

#### I. What Action Is EPA Taking Today?

EPA is approving a revision to Michigan's definition of VOC. Michigan's revised definition of the term volatile organic compound is "any compound of carbon or mixture of compounds of carbon that participates in photochemical reactions, excluding the following materials, all of which have been determined by the United States Environmental Protection Agency

to have negligible photochemical reactivity: \* \* \*". The definition goes on to list the exempt compounds. When test methods measure exempt compounds, *i.e.* any of those contained in the list of excluded compounds, Michigan's definition allows for their exclusion providing that two specific criteria are met: (1) The exempt compounds must be accurately quantified and (2) MDNR must approve the exclusion.

EPA's approval of the new definition of VOC will revise Michigan's SIP for ozone.

#### II. What Public Comments Were Received and What Is EPA's Response?

We received one adverse comment on our proposed approval of Michigan's revised definition of VOC. Below, we have paraphrased the comment and responded to it.

*Comment:* I assume ozone and VOC standards are being made more lax and for that reason I oppose this proposal. Polluted air from Michigan is transported east and negatively impacts the health of citizens of the eastern United States. Michigan power plants must be required to clean the air.

*Response:* Ozone and VOC standards are not being made more lax. The definition of VOC currently in Michigan's SIP for ozone was approved in 1992. It met EPA's approval criteria, but had a more complicated structure, with divisions based on vapor pressure. In 1998, Michigan submitted a revised definition of VOC that we believe would have relaxed ozone standards. We proposed to disapprove this revision on June 10, 1999. After we published this proposed disapproval in the **Federal Register**, Michigan withdrew that version of the definition and revised it, modeling its definition after the federal definition at 40 CFR 51.100(s).

Since the 1992 approval, EPA has issued rules listing additional compounds as non-photochemically reactive. Michigan has included these compounds as exempt in the revised definition. This does not relax Michigan's definition of VOC because compounds which are not photochemically reactive, by their nature, do not contribute to the formation of ozone.

EPA recognizes that the transport of ozone and its precursors, particularly oxides of nitrogen (NO<sub>x</sub>), is a significant problem that must be addressed if all areas in the country are to attain the national ambient air quality standards for ozone. This is why EPA issued the Ozone Transport Rulemaking on October 27, 1998. In that rule, EPA limits NO<sub>x</sub> emissions by assigning states