

OCA FILE

11 August 1988
OCA 2689-88

MEMORANDUM FOR: [redacted] L&PLD/OGC
 [redacted], OSD/OGC

FROM: [redacted] Legislation Division
 Office of Congressional Affairs

SUBJECT: Section 6050M of Tax Code and Technical
 Corrections Package (H.R. 4333 and S. 2238)

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1. On 26 July 1988, the Senate Finance Committee approved the technical corrections package concerning the Tax Reform Act of 1986. The full House approved its version on 4 August 1988, but the Senate will not vote on the bill until after the August recess. Attached is a copy of the provision as passed by the House as well as the language found in both the House and Senate reports.

2. Should you have any questions, please telephone me on

[redacted]

[redacted]

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Attachments

OCA, [redacted] (11 August 1988)

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100TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
100-795

MISCELLANEOUS REVENUE ACT OF 1988

REPORT

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

[Including cost estimate of the Congressional Budget Office]



JULY 26, 1988.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1988

87-311

5. Information reporting by brokers (sec. 115(e) of the bill, sec. 1521 of the Reform Act, and sec. 6045 of the Code)

Present Law

Persons doing business as a broker must report on specified types of transactions they effect for customers. Generally, reporting is required on sales of securities, commodities, regulated futures contracts, precious metals, and real estate.

Explanation of Provision

The bill provides that a person shall not be treated as a broker with respect to activities consisting of managing a farm on behalf of another person. This exempts farm managers from the requirement of filing a Form 1099-B with respect to their farm management activities. This information must be filed by these farm managers on a Schedule F, where it is provided in a more useful format. Consequently, filing this information on a Form 1099-B is duplicative. This provision is effective as if included in the Tax Equity and Fiscal Responsibility Act of 1982 (which generally imposed these information reporting requirements).

The bill provides that the person required to provide information returns on real estate transactions (who is generally defined as the person responsible for closing the real estate transaction) is to be called a "real estate reporting person" instead of a "real estate broker."

The bill also makes it unlawful for any real estate reporting person to charge separately any customer for complying with the information reporting requirements with respect to real estate transactions. This provision is effective on the date of enactment of the bill.

6. Information reporting on persons receiving contracts from certain Federal agencies (sec. 115(f) of the bill, sec. 1522 of the Reform Act, and sec. 6050M of the Code)

Present Law

Present law requires that the head of each Federal executive agency file an information return with the IRS indicating the name, address, and taxpayer identification number of each person with which the agency enters into a contract. The agency must also report any additional information required under Treasury regulations. There is no exception from this information reporting in present law for contracts involving national security, confidential law enforcement, or foreign counterintelligence activities.

Explanation of Provision

The bill excepts specified types of contracts from the general information reporting requirements applicable to Federal executive agencies, and subjects those types of contracts to a different form of information reporting.

There are two types of contracts between a Federal executive agency and another person that are subject to these special rules.

kers (sec. 115(e) of the bill, sec. 6045 of the Code)

Present Law

ker must report on specified types of contracts. Generally, reporting is required for contracts involving commodities, regulated futures contracts, and options.

Proposed Provision

shall not be treated as a broker or dealer in the management of a farm on behalf of a farm manager from the requirements with respect to their farm management contracts. This information must be filed by these farm managers. It is provided in a more useful form on a Form 1099-B is effective as if included in the Tax Reform Act of 1982 (which generally imposes reporting requirements).

is required to provide information on contracts (who is generally defined as the person in a real estate transaction) is to be reported as a "real estate contract" instead of a "real estate contract."

is required for any real estate reporting on behalf of a customer for complying with the requirements with respect to real estate contracts on the date of enactment of the Act.

Persons receiving contracts from certain Federal executive agencies (sec. 15(f) of the bill, sec. 1522 of the Code)

Present Law

The head of each Federal executive agency must report to the IRS with the information indicating the identification number of each person who enters into a contract. The agency must also report the information required under Treasury regulations regarding this information reporting in contracts involving national security, confidential informants, and counterintelligence activities.

Proposed Provision

Reporting on contracts from the general information reporting applicable to Federal executive agencies and contracts to a different form of contract.

Contracts between a Federal executive agency and a person are subject to these special rules.

The first is a contract where either the fact of the existence of the contract or the subject matter of the contract has been classified. This is accomplished by designating and clearly marking or clearly representing, pursuant to the provisions of Federal law or an Executive order,⁹¹ that the contract or the subject matter of the contract requires a specific degree of protection against unauthorized disclosure for reasons of national security. The second type of contract subject to the special rules is a contract involving a confidential law enforcement or foreign counterintelligence activity. In order to be eligible for these special rules, the head of the Federal executive agency (or his designee) must determine in writing that filing the information return generally required of Federal executive agencies would interfere with the effective conduct of a confidential law enforcement or foreign counterintelligence activity. This determination must be made pursuant to regulations issued by the Federal executive agency making the determination. This second type of contract involves primarily undercover operations (including sites for undercover operations) and informants.

These two types of contracts are subject to special information reporting requirements, and are exempted from the general information reporting requirements of section 6050M. The special information reporting requirements are that the IRS must first request that the Federal executive agency acknowledge whether that agency has entered into a contract with a particular person, who must be identified in the IRS request. The Federal executive agency must in response acknowledge whether it has entered into a contract with the specified person. If it has, it must provide to the IRS with respect to that person the information required to be reported under section 6050M. In addition, the agency must provide whatever additional information the agency and the Treasury agree is appropriate. The term "person" has the meaning given in section 7701(a)(1).

It is contemplated that the information provided by Federal executive agencies to the IRS under these special rules might need to be provided only to certain IRS employees, such as those with security clearances. If this is necessary, it is also contemplated that the Federal executive agencies will cooperate with the IRS in expeditiously obtaining clearance for the IRS employees.

This provision is effective as if included in the 1986 Act (i.e., on January 1, 1987).

7. Information reporting on royalties (sec. 115(g) of the bill, sec. 1523 of the Reform Act, and sec. 6676 of the Code)

Present Law

Persons who make payments of royalties aggregating \$10 or more to any person in a calendar year must provide an information report on the royalty payments to the IRS (as well as provide a copy to the payee) (Code sec. 6050N).

⁹¹ Executive Order 12356 is the currently effective Executive order prescribing a uniform system for classifying, declassifying, and safeguarding national security information (47 Federal Register 14874; April 6, 1982).

(A) section 2036(b) relating to the application of section 2511, or

(B) section 2503(a).

(B) Paragraph (1) of section 1442(d) of the 1986 Code is amended by striking out "other than a nontaxable gift".

(C) The amendments made by this paragraph shall apply to transfers after March 31, 1982.

(19) Clause (i) of section 2042(d)(2)(B) of the 1986 Code is amended to read as follows:

"(i) the value of the property involved in such transfer reduced by the sum of—

"(I) any Federal estate tax or state death tax actually recovered from the trust attributable to such property, and

"(II) any charitable deduction allowed under section 2055 or 2522 with respect to such property, and".

(20) Paragraph (2) of section 2651(b) of the 1986 Code is amended by striking out "a spouse of the transferor" and inserting in lieu thereof "a spouse (or former spouse) of the transferor".

(H) AMENDMENTS RELATED TO SECTION 1433 OF THE REFORM ACT.—

(1) Subsection (a) of section 1433 of the Reform Act is amended by striking out "this part" and inserting in lieu thereof "this subtitle".

(2) Paragraph (2) of section 1433(b) of the Reform Act is amended—

(A) by striking out "this part" in the material preceding subparagraph (A) and inserting in lieu thereof "this subtitle",

(B) by inserting before the comma at the end of subparagraph (A) the following: "(or out of income attributable to corpus so added)", and

(C) by inserting "or revocable trust" after "a will" in subparagraph (B).

(3)(A) Subsection (b) of section 1433 of the Reform Act is amended by striking out paragraph (3) and inserting in lieu thereof the following new paragraph:

"(3) TREATMENT OF CERTAIN TRANSFERS TO GRANDCHILDREN.—

"(A) IN GENERAL.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the term 'direct skip' shall not include any transfer before January 1, 1990, from a transferor to a grandchild of the transferor to the extent the aggregate transfers from such transferor to such grandchild do not exceed \$2,000,000.

"(B) TREATMENT OF TRANSFERS IN TRUST.—For purposes of subparagraph (A), a transfer in trust for the benefit of a grandchild shall be treated as a transfer to such grandchild if (and only if)—

"(i) during the life of the grandchild, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such grandchild,

"(ii) the assets of the trust will be includable in the gross estate of the grandchild if the grandchild dies before the trust is terminated, and

"(iii) all of the income of the trust for periods after the grandchild has attained age 21 will be distributed to (or for the benefit of) such grandchild not less frequently than annually.

"(C) COORDINATION WITH SECTION 2653(A) OF THE 1986 CODE.—In the case of any transfer which would be a generation-skipping transfer but for subparagraph (A), the rules of section 2653(a) of the Internal Revenue Code of 1986 shall apply as if such transfer were a generation-skipping transfer.

"(D) COORDINATION WITH TAXABLE TERMINATIONS AND TAXABLE DISTRIBUTIONS.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the terms 'taxable termination' and 'taxable distribution' shall not include any transfer which would be a direct skip but for subparagraph (A).

"(E) AMENDMENTS RELATED TO SECTION 1442(D) OF THE REFORM ACT.—The amendments made by this section shall have the same respective meanings as when used in chapter 13 of the Internal Revenue Code of 1986, except that section 2036(b) of such Code shall not apply in determining whether an individual is a grandchild of the transferor."

(B) Clause (iii) of section 1443(b)(3)(B) of the Reform Act as amended by subparagraph (A) shall apply only to transfers after June 18, 1987.

(I) Subsection (d) of section 1433 of the Reform Act is amended—

(A) by striking out "shall be treated as a direct skip" and inserting in lieu thereof "shall be treated as a direct skip to such grandchild",

(B) by striking out "would be a direct skip" in subparagraph (B) and inserting in lieu thereof "would be a direct skip to a grandchild", and

(C) by adding at the end thereof the following new sentence: "Unless the grandchild otherwise directs by will, the estate of such grandchild shall be entitled to recover from the person receiving the property on the death of the grandchild any increase in Federal estate tax on the estate of the grandchild by reason of the preceding sentence."

SEC. 115. AMENDMENTS RELATED TO TITLE XV OF THE REFORM ACT.

(U) AMENDMENT RELATED TO SECTION 1501 OF THE REFORM ACT.—Subparagraph (B) of section 6724(d)(2) of the 1986 Code is amended by striking out "6031(b)" and inserting in lieu thereof "6031(b) or (c)".

(V) AMENDMENTS RELATED TO SECTION 1503 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 6013(b)(5) of the 1986 Code is amended to read as follows:

"(A) COORDINATION WITH SECTION 6653.—For purposes of section 6653, where the sum of the amounts shown as tax on the separate returns of each spouse is less than the amount shown as tax on the joint return made under this subsection—

"(i) such sum shall be treated as the amount shown on the joint return,

"(ii) any negligence (or disregard of rules or regulations) on either separate return shall be treated as negligence (or such disregard) on the joint return, and

"(iii) any fraud on either separate return shall be treated as fraud on the joint return."

(2)(A) Paragraph (1) of section 6653(a) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to negligence (or disregard of rules or regulations), there shall be added to the tax an amount equal to 5 percent of the underpayment."

(B) Paragraph (1) of section 6653(b) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud."

(C) Paragraph (2) of section 6601(e) of the 1986 Code is amended by striking out "6659" each place it appears and inserting in lieu thereof "6653, 6659".

(3) Subsection (g) of section 6653 of the 1986 Code is amended by adding at the end thereof the following new sentence: "If any penalty is imposed under subsection (a) by reason of the preceding sentence, only the portion of the underpayment which is attributable to the failure described in the preceding sentence shall be taken into account in determining the amount of the penalty under subsection (a)."

(4) This section shall apply to transfers made after December 31, 1988.

(C) AMENDMENT RELATED TO SECTION 1504 OF THE REFORM ACT.—The repeal made by section 8002(c) of the Omnibus Budget Reconciliation Act of 1986 shall take effect as if the Tax Reform Act of 1986 had been enacted on the day before the date of the enactment of the Omnibus Budget Reconciliation Act of 1986.

(D) AMENDMENTS RELATED TO SECTION 1511 OF THE REFORM ACT.—Section 6623 of the 1986 Code is amended—

(1) by striking out "short-term Federal rate" each place it appears in subsections (a) and (b)(1) and inserting in lieu thereof "Federal short-term rate", and

(2) by striking out "SHORT-TERM FEDERAL RATE" in the heading of subsection (b) and inserting in lieu thereof "FEDERAL SHORT-TERM RATE".

(E) AMENDMENTS RELATED TO SECTION 1521 OF THE REFORM ACT.—

(1)(A) Paragraph (1) of section 6045(c) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"A person shall not be treated as a broker with respect to activities consisting of managing a farm on behalf of another person."

(B) The amendment made by subparagraph (A) shall take effect as if included in the amendments made by section 311(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982.

(2)(A) Subsection (e) of section 6045 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) PROHIBITION OF SEPARATE CHARGE FOR FILING RETURN.—It shall be unlawful for any real estate reporting person to separately charge any customer for complying with any requirement of paragraph (1)."

(B) The amendment made by subparagraph (A) shall take effect on the date of the enactment of this Act.

(3) Subsection (e) of section 6045 of the 1986 Code is amended—

(A) by striking out "real estate broker" each place it appears in the text and inserting in lieu thereof "real estate reporting person", and

(B) by striking out "REAL ESTATE BROKER" in the heading of paragraph (2) and inserting in lieu thereof "REAL ESTATE REPORTING PERSON".

(F) AMENDMENT RELATED TO SECTION 1622 OF THE REFORM ACT.—Section 6050M of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) EXCEPTION FOR CERTAIN CLASSIFIED OR CONFIDENTIAL CONTRACTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), this section shall not apply in the case of a contract described in paragraph (3).

"(2) REPORTING REQUIREMENT.—Each Federal executive agency which has entered into a contract described in paragraph (3) shall, upon a request of the Secretary which identifies a particular person, acknowledge whether such person has entered into such a contract with such agency and, if so, provide to the Secretary—

"(A) the information required under this section with respect to such person, and

"(B) such other information with respect to such person which the Secretary and the head of such Federal executive agency agree is appropriate.

"(3) DESCRIPTION OF CONTRACT.—For purposes of this subsection, a contract between a Federal executive agency and another person is described in this paragraph if—

August 5, 1988

(A) the fact of the existence of such conduct or the detailed matter of such conduct has been designated and clearly marked or clearly represented, pursuant to the provisions of Federal law or an Executive order, as requiring a specific degree of protection against unauthorized disclosure for reasons of national security, or

(B) the head of such Federal executive agency for his designee pursuant to regulations issued by such agency determines, in writing, that filing the required return under this section would interfere with the effective conduct of a confidential law enforcement or foreign counterintelligence activity."

(g) AMENDMENTS RELATED TO SECTION 1523 OF THE REFORM ACT.—Section 6676 of the 1986 Code is amended—

(1) by striking out "6049, or 6050N" in subsection (a)(3) and inserting in lieu thereof "or 6049",

(2) by striking out "6049, or 6050N" in subsection (b)(1)(A) and inserting in lieu thereof "or 6049", and

(3) by striking out "DIVIDENDS, AND ROYALTIES" in the heading for subsection (b) and inserting in lieu thereof "AND DIVIDEND".

(h) AMENDMENTS RELATED TO SECTION 1542 OF THE REFORM ACT.—Subsection (h) of section 6154 of the 1986 Code (as in effect before its repeal by the Revenue Act of 1987) is amended—

(1) by striking out "subject to the tax imposed by section 4940" in paragraph (1),

(2) by amending paragraph (2) to read as follows:

"(2) any tax imposed by section 511, and any tax imposed by section 1 or 4940 on a private foundation, shall be treated as a tax imposed by section 11, and", and

(3) by adding at the end thereof the following new sentence:

"In the case of an organization described in paragraph (1), subsection (c) of section 6655 shall be applied by substituting '5th month' for 'third month' and subsection (d)(3)(A) of section 6655 shall be applied by substituting '2 months' for '3 months' in clause (i), by substituting '4 months' for '5 months' in clause (ii), by substituting '7 months' for '8 months' in clause (iii), and by substituting '10 months' for '11 months' in clause (iv)."

(i) AMENDMENT RELATED TO SECTION 1551 OF THE REFORM ACT.—Clause (iii) of section 7430(c)(2)(A) of the 1986 Code is amended to read as follows:

"(iii) meets the requirements of the 1st sentence of section 2412(d)(1)(B) of title 28, United States Code (as in effect on October 22, 1986) and meets the requirements of section 2412(d)(2)(B) of such title 28 (as so in effect)."

(j) PROVISION RELATED TO SECTION 1556 OF THE REFORM ACT.—To the extent the salary recommendations submitted by the President on January 5, 1987, are inconsistent with the provisions of section 7443A(d)(1) of the 1986 Code, such recommendations shall not be effective for any period.

(k) AMENDMENT RELATED TO SECTION 1557 OF THE REFORM ACT.—

(1) Subsection (d) of section 7447 of the 1986 Code is amended by adding at the end thereof the following new sentence: "In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, any period during which such individual performs services under subsection (c) on a substantially full-time basis shall be treated as a period during which he has served as a judge."

(2) The amendment made by paragraph (1) shall apply for purposes of determining the amount of retired pay for months beginning after the date of the enactment of this Act regardless of when the services under

section 1511(a) of the 1986 Code were performed.

(l) AMENDMENTS RELATED TO SECTION 1641 OF THE REFORM ACT.—

(1) Subsection (b)(2) of section 7609 of the 1986 Code is amended—

(A) by inserting "or the summoned party's response to a summons described in subsection (b)" after "the summons described in subsection (c).", and

(B) by striking out "The summons is issued other" and inserting in lieu thereof "the summons is issued".

(2) Subsection (4) of section 7609 of the 1986 Code is amended—

(A) by striking out "the third-party record-keeper" in paragraph (4) and inserting in lieu thereof "the summoned party", and

(B) by inserting "AND SUMMONED PARTY" after "RECORDEE" in the subsection heading.

(3) The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(m) AMENDMENT RELATED TO SECTION 1562 OF THE REFORM ACT.—Subsection (d) of section 6212 of the 1986 Code is amended by adding at the end thereof the following new sentence: "Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding."

(n) AMENDMENT RELATED TO SECTION 1563 OF THE REFORM ACT.—Subparagraph (B) of section 6404(e)(1) of the 1986 Code is amended—

(1) by inserting "error or" before "delay", and

(2) by inserting "erroneous or" before "dilatory".

(o) AMENDMENT RELATED TO SECTION 1565 OF THE REFORM ACT.—Effective with respect to levies made after December 31, 1988, paragraph (10) of section 6334(a) of the 1986 Code is amended—

(1) in subparagraph (A)—

(A) by striking out "IV" and inserting in lieu thereof "III, IV, V", and

(B) by adding "or" at the end thereof,

(2) in subparagraph (C) by striking out "21," and inserting in lieu thereof "13, 21, 23," and

(3) by striking out subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

(p) AMENDMENT RELATED TO SECTION 1581 OF THE REFORM ACT.—Subsection (c) of section 1581 of the Reform Act is amended by adding at the end thereof the following new sentence:

"The preceding sentence shall not apply if its application would result in an increase in the number of withholding allowances for the employee."

(q) GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.—

(1) Subsection (a) of section 6011 of the 1986 Code is amended by striking out "for the collection thereof" and inserting in lieu thereof "with respect to the collection thereof".

(2) The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(r) CERTAIN REFUNDABLE CREDITS TO BE ASSESSED UNDER DEFICIENCY PROCEDURES.—

(1) Subsection (a) of section 6203 of the 1986 Code is amended by striking out paragraph (4).

(2) Paragraph (4) of section 6211(b) is amended to read as follows:

"(4) For purposes of subsection (a)—

"(A) any excess of the sum of the credits allowable under sections 32 and 34 over the tax imposed by subtitle A (determined without regard to such credits), and

(B) any excess of the sum of such credits as shown by the taxpayer on his return over the amount shown as the tax by the taxpayer on such return (determined without regard to such credits),

shall be taken into account as negative amounts of tax."

(3) Subsection (h) of section 6213 of the 1986 Code is amended by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(4) The amendments made by this subsection shall apply to notices of deficiencies mailed after the date of the enactment of this Act.

SEC. 116. AMENDMENTS RELATED TO TITLE XVI OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 1603 OF THE REFORM ACT.—

(1)(A) Subparagraph (A) of section 501(c)(25) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For purposes of clause (iii), the term 'real property' shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest."

(B) The amendment made by subparagraph (A) shall apply with respect to property acquired by the organization after June 10, 1987, except that such amendment shall not apply to any property acquired after June 10, 1987, pursuant to a binding written contract in effect on June 10, 1987, and at all times thereafter before such acquisition.

(2) Subparagraph (D) of section 501(c)(25) of the 1986 Code is amended by striking out so much of such subparagraph as precedes clause (i) and inserting in lieu thereof the following:

"(D) A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries—"

(3)(A) Paragraph (25) of section 501(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(E)(i) For purposes of this title—

"(I) a corporation which is a qualified subsidiary shall not be treated as a separate corporation, and

"(II) all assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the corporation or trust described in subparagraph (A).

"(ii) For purposes of this subparagraph, the term 'qualified subsidiary' means any corporation if, at all times during the period such corporation was in existence, 100 percent of the stock of such corporation is held by the corporation or trust described in subparagraph (A).

"(iii) For purposes of this subtitle, if any corporation which was a qualified subsidiary ceases to meet the requirements of clause (ii), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the corporation or trust described in subparagraph (A) in exchange for its stock."

(B) Subparagraph (C) of section 501(c)(25) of the 1986 Code is amended by inserting "or" at the end of clause (iii), by striking out "or" at the end of clause (iv) and inserting in lieu thereof a period, and by striking out clause (v).

(4) Paragraph (25) of section 501(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(F) For purposes of subparagraph (A), the term 'real property' includes any personal property which is leased under, or in connection with, a lease of real property, but

Calendar No. 861

100TH Congress
2d Session

SENATE

REPORT
100-445

TECHNICAL CORRECTIONS ACT OF 1988

R E P O R T
OF THE
COMMITTEE ON FINANCE
UNITED STATES SENATE

TO ACCOMPANY

S. 2238

[Including cost estimate of the Congressional Budget Office]



AUGUST 3 (legislative day, AUGUST 1), 1988.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

87-618

WASHINGTON : 1988

87-618 0 - 88 1

ity relates. The bill also improves the provisions with the provision permitting a corporation to file a separate return (Code section 1361) to apply to returns the due date for which (with regard to extensions) is after December 31. A negligence penalty for failure to include an amount on an information return by reinstating that the penalty is restricted to the amount of tax attributable to the failure to

understatement of tax liability (sec. 1504 of the Reform Act)

Present Law

substantially understates income tax for any penalty (Code sec. 6661). The Tax Reform Act of 1986, Congress considered the Tax Reform Act of 1986, Congress considered the Tax Reform Act of 1986 (P.L. 99-509). The penalty to 25 percent of the underpayment assessed after the date of enactment of the Omnibus Budget Reconciliation Act, Reconciliation Act was enacted one day before the Tax Reform Act of 1986.⁹⁵

Explanation of Provision

increase in the substantial understatement made by the Omnibus Budget Reconciliation Act of 1986 before the date of enactment of the Omnibus Act of 1986.

sec. 115(d) of the bill, sec. 1511 of the Code)

Present Law

taxpayers pay to the Treasury on underpayment point higher than the interest on taxpayers on overpayments of tax.

Explanation of Provision

cross-references to the provisions uti-

Reconciliation Act of 1986.

Act of 1986 was enacted on October 21, 1986; the Tax Reform Act of 1986.

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Persons doing business as a broker must report on specified types of transactions they effect for customers. Generally, reporting is required on sales of securities, commodities, regulated futures contracts, precious metals, and real estate.

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The bill provides that a person shall not be treated as a broker with respect to activities consisting of managing a farm on behalf of another person. This exempts farm managers from the requirement of filing a Form 1099-B with respect to their farm management activities. This information must be filed by these farm managers on a Schedule F, where it is provided in a more useful format. Consequently, filing this information on a Form 1099-B is duplicative. This provision is effective as if included in the Tax Equity and Fiscal Responsibility Act of 1982 (which generally imposed these information reporting requirements).

The bill provides that the person required to provide information returns on real estate transactions (who is generally defined as the person responsible for closing the real estate transaction) is to be called a "real estate reporting person" instead of a "real estate broker."

The bill also makes it unlawful for any real estate reporting person to charge separately any customer for complying with the information reporting requirements with respect to real estate transactions. This provision is effective on the date of enactment of the bill.

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The bill excepts specified types of contracts from the general information reporting requirements applicable to Federal executive agencies, and subjects those types of contracts to a different form of information reporting.

There are two types of contracts between a Federal executive agency and another person that are subject to these special rules.

The first is a contract where either the fact of the existence of the contract or the subject matter of the contract has been classified. This is accomplished by designating and clearly marking or clearly representing, pursuant to the provisions of Federal law or an Executive order,⁹⁶ that the contract or the subject matter of the contract requires a specific degree of protection against unauthorized disclosure for reasons of national security. The second type of contract subject to the special rules is a contract involving a confidential law enforcement or foreign counterintelligence activity. In order to be eligible for these special rules, the head of the Federal executive agency (or his designee) must determine in writing that filing the information return generally required of Federal executive agencies would interfere with the effective conduct of a confidential law enforcement or foreign counterintelligence activity. This determination must be made pursuant to regulations issued by the Federal executive agency making the determination. This second type of contract involves primarily undercover operations (including sites for undercover operations) and informants.

These two types of contracts are subject to special information reporting requirements, and are exempted from the general information reporting requirements of section 6050M. The special information reporting requirements are that the IRS must first request that the Federal executive agency acknowledge whether that agency has entered into a contract with a particular person, who must be identified in the IRS request. The Federal executive agency must in response acknowledge whether it has entered into a contract with the specified person. If it has, it must provide to the IRS with respect to that person the information required to be reported under section 6050M. In addition, the agency must provide whatever additional information the agency and the Treasury agree is appropriate. The term "person" has the meaning given in section 7701(a)(1).

It is contemplated that the information provided by Federal executive agencies to the IRS under these special rules might need to be provided only to certain IRS employees, such as those with security clearances. If this is necessary, it is also contemplated that the Federal executive agencies will cooperate with the IRS in expeditiously obtaining clearance for the IRS employees.

This provision is effective as if included in the 1986 Act (i.e., on January 1, 1987).

7. Information reporting on royalties (sec. 115(g) of the bill, sec. 1523 of the Reform Act, and sec. 6676 of the Code)

Present Law

Persons who make payments of royalties aggregating \$10 or more to any person in a calendar year must provide an information report on the royalty payments to the IRS (as well as provide a copy to the payee) (Code sec. 6050N).

⁹⁶ Executive Order 12356 is the currently effective Executive order prescribing a uniform system for classifying, declassifying, and safeguarding national security information (47 Federal Register 14874; April 6, 1982).