IRS Releases Final Regulations Concerning the Manner of Filing Form 5472


The final regulations adopt, without substantive change, the proposed regulations published in the Federal Register by the Department of the Treasury and the IRS in a notice of proposed rulemaking, REG-114942-14, on June 6, 2014. Consistent with the proposed regulations, the final regulations remove a provision for timely filing Form 5472 separately from an income tax return that is untimely filed. As a result, Form 5472 would be required to be filed in all cases only with the filer’s income tax return for the tax year by the due date (including extensions) of that return.

Under the prior version of the section 6038A regulations, if the taxpayer filed Form 5472 separately before the due date for its income tax return, and then subsequently attached Form 5472 to its untimely tax return, the taxpayer could avoid a late-filing penalty under IRC § 6038A (“untimely return provision”). The final regulations bring the 5472 regulations into conformity with similar international reporting obligations. For example, Form 5471, “Information Return of US Persons With Respect to Certain Foreign Corporations,” and Form 8865, “Return of US Persons With Respect to Certain Foreign Partnerships,” must be filed with the filer’s income tax return for the tax year by the due date (including extensions) of the return, and there is no provision equivalent to the untimely filed return provision that would require or permit separate filing of those forms.

In declining to adopt a comment that would have retained the Form 5472 untimely filed return provision and made conforming changes to the regulations for Form 5471 and Form 8865, Return of US Persons With Respect to Certain Foreign Partnerships, the Department of the Treasury and the IRS reasoned that they “have determined that tax administration is generally more efficient when forms (for example, Form 5471, Form 5472, and Form 8865) are filed with the filer’s timely filed income tax return.” The final regulations are effective on December 24, 2014.

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