

[JOINT COMMITTEE PRINT]

**GENERAL EXPLANATION OF  
TAX LEGISLATION  
ENACTED IN THE 110TH CONGRESS**

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PREPARED BY THE STAFF  
OF THE  
JOINT COMMITTEE ON TAXATION



March 2009

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U.S. GOVERNMENT PRINTING OFFICE

46-159

WASHINGTON : 2009

JCS-1-09

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amples of FOGEI assets<sup>514</sup> and FORI assets,<sup>515</sup> and further provides that assets that support both FOGEI and FORI may be allocated by any reasonable method.

#### *Explanation of Provision*

Under the provision, the scope of the present-law FOGEI rules is expanded to apply to all foreign income from production and other activity related to the sale of oil and gas product (i.e., the sum of FORI and FOGEI as classified under present law). Thus, amounts claimed as taxes paid on such amount of (combined) foreign oil and gas income are creditable in a given taxable year (if they otherwise so qualify) only to the extent they do not exceed the product of the highest marginal U.S. tax rate on corporations (in the case of corporations) multiplied by such combined foreign oil and gas income for such taxable year. As under the present-law FOGEI rules, excess foreign taxes may be carried back to the immediately preceding taxable year and carried forward 10 taxable years and credited (not deducted) to the extent that the taxpayer otherwise has excess limitation with regard to combined foreign oil and gas income in a carryover year. Under a transition rule, pre-2009 credits carried forward to post-2008 years will continue to be governed by present law for purposes of determining the amount of carryforward credits eligible to be claimed in a post-2008 year;<sup>516</sup> similarly, solely for purposes of determining whether excess credits generated in 2009 and carried back can be claimed to offset 2008 tax liability, the new rules will be deemed to apply in determining overall (combined FOGEI-FORI) limitation for the carryback year.

The provision repeals the present-law section 907(b) FORI limitation.

#### *Effective Date*

The provision is effective for taxable years beginning after December 31, 2008.

### **C. Broker Reporting of Customer's Basis in Securities Transactions (sec. 403 of the Act and sec. 6045 and new secs. 6045A and 6045B of the Code)**

#### *Present Law*

##### *In general*

Gain or loss generally is recognized for Federal income tax purposes on realization of that gain or loss (for example, through the

<sup>514</sup> Examples of FOGEI assets include wells, wellheads, and pumping equipment; slug catchers, separators, treaters, emulsion breakers and stock tanks needed to obtain marketable crude (for oil production); primary separation and dehydration equipment needed to arrive at a gaseous stream in which hydrocarbons may be recovered (for gas production); lines interconnecting the above; the infrastructure-type equipment to provide for the operation of the above; and structures to physically support the above (such as offshore platforms).

<sup>515</sup> Examples of FORI assets include lines that carry natural gas beyond the primary separator and dehydration equipment and towards its sales point, and compressors needed to transport through these lines; lines that carry marketable crude oil from the premises, as well as pumps needed to transport crude oil through these lines; and assets used to process crude oil and natural gas.

<sup>516</sup> A technical correction may be necessary so that the statute reflects this intent.

sale of property giving rise to the gain or loss). The taxpayer's gain or loss on a disposition of property is the difference between the amount realized and the adjusted basis.<sup>517</sup>

To compute adjusted basis, a taxpayer must first determine the property's unadjusted or original basis and then make adjustments prescribed by the Code.<sup>518</sup> The original basis of property is its cost, except as otherwise prescribed by the Code (for example, in the case of property acquired by gift or bequest or in a tax-free exchange). Once determined, the taxpayer's original basis generally is adjusted downward to take account of depreciation or amortization, and generally is adjusted upward to reflect income and gain inclusions or capital outlays with respect to the property.

### ***Basis computation rules***

If a taxpayer has acquired stock in a corporation on different dates or at different prices and sells or transfers some of the shares of that stock, and the lot from which the stock is sold or transferred is not adequately identified, the shares deemed sold are the earliest acquired shares (the "first-in-first-out rule").<sup>519</sup> If a taxpayer makes an adequate identification of shares of stock that it sells, the shares of stock treated as sold are the shares that have been identified.<sup>520</sup> A taxpayer who owns shares in a regulated investment company ("RIC") generally is permitted to elect, in lieu of the specific identification or first-in-first-out methods, to determine the basis of RIC shares sold under one of two average-cost-basis methods described in Treasury regulations.<sup>521</sup>

### ***Information reporting***

Present law imposes information reporting requirements on participants in certain transactions. Under these requirements, information is generally reported to the IRS and furnished to taxpayers. These requirements are intended to assist taxpayers in preparing their income tax returns and to help the IRS determine whether taxpayers' tax returns are correct and complete. For example, every person engaged in a trade or business generally is required to file information returns for each calendar year for payments of \$600 or more made in the course of the payor's trade or business.<sup>522</sup>

Section 6045(a) requires brokers to file with the IRS annual information returns showing the gross proceeds realized by customers from various sale transactions. The Secretary is authorized to require brokers to report additional information related to customers.<sup>523</sup> Brokers are required to furnish to every customer information statements with the same gross proceeds information that is included in the returns filed with the IRS for that customer.<sup>524</sup> These information statements are required to be furnished by January 31 of the year following the calendar year for which the return under section 6045(a) is required to be filed.<sup>525</sup>

<sup>517</sup> Sec. 1001.

<sup>518</sup> Sec. 1016.

<sup>519</sup> Treas. Reg. sec. 1.1012-1(c)(1).

<sup>520</sup> Treas. Reg. sec. 1.1012-1(c).

<sup>521</sup> Treas. Reg. sec. 1.1012-1(e).

<sup>522</sup> Sec. 6041(a).

<sup>523</sup> Sec. 6045(a).

<sup>524</sup> Sec. 6045(b).

<sup>525</sup> *Id.*

A person who is required to file information returns but who fails to do so by the due date for the returns, includes on the returns incorrect information, or files incomplete returns generally is subject to a penalty of \$50 for each return with respect to which such a failure occurs, up to a maximum of \$250,000 in any calendar year.<sup>526</sup> Similar penalties, with a \$100,000 calendar year maximum, apply to failures to furnish correct information statements to recipients of payments for which information reporting is required.<sup>527</sup>

Present law does not require broker information reporting with respect to a customer's basis in property but does impose an obligation to keep records, as described below.

#### ***Basis recordkeeping requirements***

Taxpayers are required to "keep such records \* \* \* as the Secretary may from time to time prescribe."<sup>528</sup> Treasury regulations impose recordkeeping requirements on any person required to file information returns.<sup>529</sup>

Treasury regulations provide that donors and donees should keep records that are relevant in determining a donee's basis in property.<sup>530</sup> IRS Publication 552 states that a taxpayer should keep basis records for property until the period of limitations expires for the year in which the taxpayer disposes of the property.

#### ***Explanation of Provision***

##### ***In general***

Under the provision, every broker that is required to file a return under section 6045(a) reporting the gross proceeds from the sale of a covered security must include in the return (1) the customer's adjusted basis in the security and (2) whether any gain or loss with respect to the security is long-term or short-term (within the meaning of section 1222).

##### ***Covered securities***

A covered security is any specified security acquired on or after the applicable date if the security was (1) acquired through a transaction in the account in which the security is held or (2) was transferred to that account from an account in which the security was a covered security, but only if the transferee broker received a statement under section 6045A (described below) with respect to the transfer. Under this rule, certain securities acquired by gift or inheritance are not covered securities.

A specified security is any share of stock in a corporation (including stock of a regulated investment company); any note, bond, debenture, or other evidence of indebtedness; any commodity or a contract or a derivative with respect to the commodity if the Secretary determines that adjusted basis reporting is appropriate; and any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate.

<sup>526</sup> Sec. 6721.

<sup>527</sup> Sec. 6722.

<sup>528</sup> Sec. 6001.

<sup>529</sup> Treas. Reg. sec. 1.6001-1(a).

<sup>530</sup> Treas. Reg. sec. 1.1015-1(g).

For stock in a corporation (other than stock for which an average basis method is permissible under section 1012), the applicable date is January 1, 2011. For any stock for which an average basis method is permissible under section 1012, the applicable date is January 1, 2012. Consequently, the applicable date for certain stock acquired through a dividend reinvestment plan (for which stock additional rules are described below) and for stock in a regulated investment company is January 1, 2012. A regulated investment company is permitted to elect to treat as a covered security any stock in the company acquired before January 1, 2012. This election is described below. For any specified security other than stock in a corporation or stock for which an average basis method is permitted, the applicable date is January 1, 2013, or a later date determined by the Secretary.

#### ***Computation of adjusted basis***

The customer's adjusted basis required to be reported to the IRS is determined under the following rules. The adjusted basis of any security other than stock for which an average basis method is permissible under section 1012 is determined under the first-in, first-out method unless the customer notifies the broker by means of making an adequate identification (under the rules of section 1012 for specific identification) of the stock sold or transferred. The adjusted basis of stock for which an average basis method is permissible under section 1012 is determined in accordance with the broker's default method under section 1012 (that is, the first-in, first-out method, the average cost method, or the specific identification method) unless the customer notifies the broker that the customer elects another permitted method. This notification is made separately for each account in which stock for which the average cost method is permissible is held and, once made, applies to all stock held in that account. As a result of this rule, a broker's basis computation method used for stock held in one account with that broker may differ from the basis computation method used for stock held in another account with that broker.

For any sale, exchange, or other disposition of a specified security after the applicable date (defined previously), the provision modifies section 1012 so that the conventions prescribed by regulations under that section for determining adjusted basis (the first-in, first-out, specific identification, and average basis conventions) apply on an account-by-account basis. Under this rule, for example, if a customer holds shares of the same specified security in accounts with different brokers, each broker makes its adjusted basis determinations by reference only to the shares held in the account with that broker, and only shares in the account from which the sale is made may be identified as the shares sold. Unless the election described next applies, any stock for which an average basis method is permissible under section 1012 (that is, stock in a regulated investment company) which is acquired before January 1, 2012 is treated as a separate account from any such stock acquired on or after that date. A consequence of this rule is that if adjusted basis is being determined using an average basis method, average basis is computed without regard to any stock acquired before January 1, 2012. A regulated investment company, however, may elect

(at the time and in the form and manner prescribed by the Secretary), on a stockholder-by-stockholder basis, to treat as covered securities all stock in the company held by the stockholder without regard to when the stock was acquired. When this election applies, the average basis of a customer's regulated investment company stock is determined by taking into account shares of stock acquired before, on, and after January 1, 2012. A similar election is allowed for any broker holding stock in a regulated investment company as a nominee of the beneficial owner of the stock.

If stock is acquired on or after January 1, 2011 in connection with a dividend reinvestment plan, the basis of that stock is determined under one of the basis computation methods permissible for stock in a regulated investment company. Accordingly, an average cost method may be used for determining the basis of stock acquired under a dividend reinvestment plan. In determining basis under this rule, the account-by-account rules described previously, including the election available to regulated investment companies, apply. The special rule for stock acquired through a dividend reinvestment plan, however, applies only while the stock is held as part of the plan. If stock to which this rule applies is transferred to another account, the stock will have a cost basis in that other account equal to its basis in the dividend reinvestment plan immediately before the transfer (with any proper adjustment for charges incurred in connection with the transfer). After the transfer, however, the transferee broker may use the otherwise applicable convention (that is, the first-in, first-out method or the specific identification method) for determining which shares are sold when a sale is made of some but not all shares of a particular security. It is expected that when stock acquired through a dividend reinvestment plan is transferred to another account, the broker executing the transfer will provide information necessary in applying an allowable convention for determining which shares are sold. Accordingly, the transferor broker will be expected to state that shares transferred have a long-term holding period or, for shares that have a short-term holding period, the dates on which the shares were acquired.

A dividend reinvestment plan is any arrangement under which dividends on stock are reinvested in stock identical to the stock with respect to which the dividends are paid. Stock is treated as acquired in connection with a dividend reinvestment plan if the stock is acquired pursuant to the plan or if the dividends paid on the stock are subject to the plan.

#### ***Exception for wash sales***

Unless the Secretary provides otherwise, a customer's adjusted basis in a covered security generally is determined without taking into account the effect on basis of the wash sale rules of section 1091. If, however, the acquisition and sale transactions resulting in a wash sale under section 1091 occur in the same account and are in identical securities, adjusted basis is determined by taking into account the effect of the wash sale rules. Securities are identical for this purpose only if they have the same Committee on Uniform Security Identification Procedures number.

***Special rules for short sales***

The provision provides that in the case of a short sale, gross proceeds and basis reporting under section 6045 generally is required in the year in which the short sale is closed (rather than, as under the present law rule for gross proceeds reporting, the year in which the short sale is entered into).

***Reporting requirements for options***

The provision generally eliminates the present-law regulatory exception from section 6045(a) reporting for certain options. If a covered security is acquired or disposed of by reason of the exercise of an option that was granted or acquired in the same account as the covered security, the amount of the premium received or paid with respect to the acquisition of the option is treated as an adjustment to the gross proceeds from the subsequent sale of the covered security or as an adjustment to the customer's adjusted basis in that security. Gross proceeds and basis reporting also is required when there is a lapse of, or a closing transaction with respect to, an option on a specified security or an exercise of a cash-settled option. Reporting is required for the calendar year that includes the date of the lapse, closing transaction, or exercise. For example, if a taxpayer acquires for \$5 a cash settlement stock option with a strike price of \$100 and settles the option when the stock trades at \$120, a broker through which the acquisition and cash settlement are executed is required to report gross proceeds of \$20 from the cash settlement and a basis in the option of \$5. For purposes of the reporting requirement for closing transactions, a closing transaction includes a mark-to-market under section 1256. It is intended that a specified security for purposes of the reporting rules described in this paragraph includes a stock index such as the S&P 500. The reporting rules related to options transactions apply only to options granted or acquired on or after January 1, 2013.

***Treatment of S corporations***

The provision provides that for purposes of section 6045, an S corporation (other than a financial institution) is treated in the same manner as a partnership. This rule applies to any sale of a covered security acquired by an S corporation (other than a financial institution) after December 31, 2011. When this rule takes effect, brokers generally will be required to report gross proceeds and basis information to customers that are S corporations.

***Time for providing statements to customers***

The provision changes to February 15 the present-law January 31 deadline for furnishing certain information statements to customers. The statements to which the new February 15 deadline applies are (1) statements showing gross proceeds (under section 6045(b)) or substitute payments (under section 6045(d)) and (2) statements with respect to reportable items (including, but not limited to, interest, dividends, and royalties) that are furnished with consolidated reporting statements (as defined in regulations). The term "consolidated reporting statement" is intended to refer to annual account information statements that brokerage firms customarily provide to their customers and that include tax-related infor-

mation. It is intended that the February 15 deadline for consolidated reporting statements apply in the same manner to statements furnished for any account or accounts, taxable and retirement, held by a customer with a mutual fund or other broker.

***Broker-to-broker and issuer reporting***

Every broker (as defined in section 6045(c)(1)), and any other person specified in Treasury regulations, that transfers to a broker (as defined in section 6045(c)(1)) a security that is a covered security when held by that broker or other person must, under new section 6045A, furnish to the transferee broker a written statement that allows the transferee broker to satisfy the provision's basis and holding period reporting requirements. The Secretary may provide regulations that prescribe the content of this statement and the manner in which it must be furnished. It is contemplated that the Secretary will permit this broker-to-broker reporting requirement to be satisfied electronically rather than by paper. Unless the Secretary provides otherwise, the statement required by this rule must be furnished not later than 15 days after the date of the transfer of the covered security.

Present law penalties for failure to furnish correct payee statements apply to failures to furnish correct statements in connection with the transfer of covered securities.

New section 6045B requires, according to forms or regulations prescribed by the Secretary, any issuer of a specified security to file a return setting forth a description of any organizational action (such as a stock split or a merger or acquisition) that affects the basis of the specified security, the quantitative effect on the basis of that specified security, and any other information required by the Secretary. This return must be filed within 45 days after the date of the organizational action or, if earlier, by January 15 of the year following the calendar year during which the action occurred. Every person required to file this return for a specified security also must furnish, according to forms or regulations prescribed by the Secretary, to the nominee with respect to that security (or to a certificate holder if there is no nominee) a written statement showing the name, address, and phone number of the information contact of the person required to file the return, the information required to be included on the return with respect to the security, and any other information required by the Secretary. This statement must be furnished to the nominee or certificate holder on or before January 15 of the year following the calendar year in which the organizational action took place. No return or information statement is required to be provided under new section 6045B for any action with respect to a specified security if the action occurs before the applicable date (as defined previously) for that security.

The Secretary may waive the return filing and information statement requirements if the person to which the requirements apply makes publicly available, in the form and manner determined by the Secretary, the name, address, phone number, and email address of the information contact of that person, and the information about the organizational action and its effect on basis otherwise required to be included in the return.



The present-law penalties for failure to file correct information returns apply to failures to file correct returns in connection with organizational actions. Similarly, the present-law penalties for failure to furnish correct payee statements apply to a failure under new section 6045B to furnish correct statements to nominees or holders or to provide required publicly-available information in lieu of returns and written statements.

#### ***Effective Date***

The provision generally takes effect on January 1, 2011. The change to February 15 of the present-law January 31 deadline for furnishing certain information statements to customers applies to statements required to be furnished after December 31, 2008.

### **D. One-Year Extension of Additional 0.2 Percent FUTA Surtax (sec. 404 of the Act and sec. 3301 of the Code)**

#### ***Present Law***

The Federal Unemployment Tax Act (“FUTA”) imposes a 6.2 percent gross tax rate on the first \$7,000 paid annually by covered employers to each employee (sec. 3301). Employers in States with programs approved by the Federal Government and with no delinquent Federal loans may credit 5.4 percentage points against the 6.2 percent tax rate, making the minimum, net Federal unemployment tax rate 0.8 percent (sec. 3302). Since all States have approved programs, the minimum Federal tax rate of 0.8 percent (sec. 3302) that generally applies. This Federal revenue finances administration of the unemployment system, half of the Federal-State extended benefits program, and a Federal account for State loans. The States use the revenue from the 5.4 percent credit to finance their regular State programs and half of the Federal-State extended benefits program.

In 1976, Congress passed a temporary surtax of 0.2 percent of taxable wages to be added to the permanent FUTA tax rate. Thus, the current 0.8 percent FUTA tax rate has two components: a permanent tax rate of 0.6 percent, and a temporary surtax rate of 0.2 percent. The temporary surtax was subsequently extended through 2008.

#### ***Explanation of Provision***

The Act extends the temporary surtax rate (for one year) through December 31, 2009.

#### ***Effective Date***

The provision is effective for wages paid after December 31, 2008.