

# **Internal Revenue Service Code**

Code Section 6039D — Returns and Records with Respect to Certain Fringe Benefit Plans.

IRC, 2002-CODE-VOL, **SEC. 6039D. RETURNS AND RECORDS WITH RESPECT TO CERTAIN FRINGE BENEFIT PLANS.**

**SEC. 6039D. RETURNS AND RECORDS WITH RESPECT TO CERTAIN FRINGE BENEFIT PLANS.**

**6039D(a)** IN GENERAL.—

Every employer maintaining a specified fringe benefit plan during any year beginning after December 31, 1984, for any portion of which the applicable exclusion applies, shall file a return (at such time and in such manner as the Secretary shall by regulations prescribe) with respect to such plan showing for such year—

**6039D(a)(1)** the number of employees of the employer,

**6039D(a)(2)** the number of employees of the employer eligible to participate under the plan,

**6039D(a)(3)** the number of employees participating under the plan,

**6039D(a)(4)** the total cost of the plan during the year, and

**6039D(a)(5)** the name, address, and taxpayer identification number of the employer and the type of business in which the employer is engaged, and

**6039D(a)(6)** the number of highly compensated employees among the employees described in paragraphs (1), (2), and (3).

**6039D(b)** RECORDKEEPING REQUIREMENT.—

Each employer maintaining a specified fringe benefit plan during any year shall keep such records as may be necessary for purposes of determining whether the requirements of the applicable exclusion are met.

**6039D(c)** ADDITIONAL INFORMATION WHEN REQUIRED BY THE SECRETARY.—

Any employer—

**6039D(c)(1)** who maintains a specified fringe benefit plan during any year for which a return is required under subsection (a), and

**6039D(c)(2)** who is required by the Secretary to file an additional return for such year,

shall file such additional return. Such additional return shall be filed at such time and in such manner as the Secretary shall prescribe and shall contain such information as the Secretary shall prescribe. The Secretary may require returns under this subsection only from a representative group of employers.

**6039D(d)** DEFINITIONS AND SPECIAL RULES.—

For purposes of this section—

**6039D(d)(1)** SPECIFIED FRINGE BENEFIT PLAN.—The term “specified fringe benefit plan” means any plan under [section 79](#), [LK:S105 105](#), [LK:S106 106](#), [LK:S120 120](#), [LK:S125 125](#), [LK:S127 127](#), 129, or 137.

**6039D(d)(2)** APPLICABLE EXCLUSION.—The term “applicable exclusion” means, with respect to any specified fringe benefit plan, the section specified under paragraph (1) under which benefits under such plan are excludable from gross income.

**6039D(d)(3) SPECIAL RULE FOR MULTIEMPLOYER PLANS.**—In the case of a multiemployer plan, the plan shall be required to provide any information required by this section which the Secretary determines, on the basis of the agreement between the plan and employer, is held by the plan (and not the employer).

IRC-HIST, 2002-CODE-VOL, Sec. 6039D, RETURNS AND RECORDS WITH RESPECT TO CERTAIN FRINGE BENEFIT PLANS., —History notes applicable to entire section

**SEC. 6039D RETURNS AND RECORDS WITH RESPECT TO CERTAIN FRINGE BENEFIT PLANS.**—History notes applicable to entire section

November 3, 1989, (1989) **P.L. 101-136, §528 provides:**

SEC. 528. No monies appropriated by this Act may be used to implement or enforce section 1151 of the Tax Reform Act of 1986 or the amendments made by such section.

Tax Reform Act of 1986, October 22, 1986, (1986) **P.L. 99-514, §1879(d)(2):**

**Act Sec. 1879(d)(2)** repealed the Code Sec. 6039D added by section I of P.L. 98-612. Prior to repeal, the Code Sec. 6039D added by P.L. 98-612 read as follows:

**SEC. 6039D. RETURNS AND RECORDS WITH RESPECT TO CERTAIN FRINGE BENEFIT PLANS.**

(a) **IN GENERAL.**—Every employer maintaining a specified fringe benefit plan during any year beginning after December 31, 1984, for any portion of which the applicable exclusion applies, shall file a return (at such time and in such manner as the Secretary shall by regulations prescribe) with respect to such plan showing for such year—

- (1) the number of employees of the employer,
- (2) the number of employees of the employer eligible to participate under the plan,
- (3) the number of employees participating under the plan,
- (4) the total cost of the plan during the year, and

(5) the name, address, and taxpayer identification number of the employer and the type of business in which the employer is engaged.

(b) **RECORDKEEPING REQUIREMENT.**—Each employer maintaining a specified fringe benefit plan during any year shall keep such records as may be necessary for purposes of determining whether the requirements of the applicable exclusion are met.

(c) **ADDITIONAL INFORMATION WHEN REQUIRED BY THE SECRETARY.**—Any employer—

- (1) who maintains a specified fringe benefit plan during any year for which a return is required under subsection (a), and
- (2) who is required by the Secretary to file an additional return for such year,

shall file such additional return. Such additional return shall be filed at such time and in such manner as the Secretary shall prescribe and shall contain such information as the Secretary shall prescribe.

(d) **DEFINITIONS.**—For purposes of this section—

(1) **SPECIFIED FRINGE BENEFIT PLAN.**—The term “specified fringe benefit plan” means—

- (A) any qualified group legal services plan (as defined in section 120), and

(B) any cafeteria plan (as defined in section 125).

(2) APPLICABLE EXCLUSION.—The term “applicable exclusion” means—

(A) section 120, in the case of a qualified group legal services plan, and

(B) section 125, in the case of a cafeteria plan.

**The above amendment is effective as if included in the provision of P.L. 98-369 to which such amendment relates.**

October 31, 1984, (1984) **P.L. 98-612, §1(b)(1):**

Amended Subpart A of part III of subchapter A of chapter 6I by adding Code Sec. 6039D, above. [Note: P.L. 98-611 added a Code Sec. 6039D earlier, the text of which was identical with the exception of subsection (d). A technical correction will, therefore, need to be made.]

October 31, 1984, (1984) **P.L. 98-611, §1(d)(1):**

Amended Subpart A of part III of subchapter A of chapter 6I by adding Code Sec. 6039D, above. [Note: P.L. 98-612 also added a Code Sec. 6039D, the text of which is identical with the exception of subsection (d).]

IRC-HIST, 2002-CODE-VOL, Sec. 6039D, RETURNS AND RECORDS WITH RESPECT TO CERTAIN FRINGE BENEFIT PLANS., Subsec. (d), DEFINITIONS AND SPECIAL RULES.—

**SEC. 6039D RETURNS AND RECORDS WITH RESPECT TO CERTAIN FRINGE BENEFIT PLANS.** (d) DEFINITIONS AND SPECIAL RULES.—

Taxpayer Relief Act of 1997, August 5, 1997, (1997) **P.L. 105-34, §1601(h)(2)(D)(iii):**

Act Sec. 1601(h)(2)(D)(iii) amended Code Sec. 6039D(d)(1) by striking “or 129” and inserting “129, or 137”.

**The above amendment is effective as if included in the provision of the Small Business Job Protection Act of 1996 (P.L. 104-188) to which it relates [effective for tax years beginning after December 31, 1996.—CCH.].**

Omnibus Budget Reconciliation Act of 1990, November 5, 1990, (1990) **P.L. 101-508, §11704(a)(24):**

Act Sec. 11704(a)(24) amended Code Sec. 6039D(d)(3) by striking all that follows “plan (and not” and inserting “the employer.” Prior to amendment, all that followed “plan (and not” in Code Sec. 6039D(d)(3) read as follows: “the employer”.

**The above amendment is effective on November 5, 1990.**

Technical and Miscellaneous Revenue Act of 1988, November 10, 1988, (1988) **P.L. 100-647, §3021(a)(15)(A)(i)-(ii):**

Act Sec. 3021(a)(15)(A)(i)-(ii) amended Code Sec. 6039D(d) by adding at the end thereof a new paragraph (3) to read as above, and by inserting “AND SPECIAL RULES” after “DEFINITIONS” in the heading thereof.

**The above amendment applies to years beginning after 1984.**

Tax Reform Act of 1986, October 22, 1986, (1986) **P.L. 99-514, §1151(h)(1):**

**Act Sec. 1151(h)(1)** amended Code Sec. 6039D(d) to read as above. Prior to amendment Code Sec. 6039D(d) read as follows:

(d) DEFINITIONS.—For purposes of this section—

(1) SPECIAL FRINGE BENEFIT PLAN.—The term “specified fringe benefit plan” means—

(A) any qualified group legal services plan (as defined in section 120),

(B) any cafeteria plan (as defined in section 125), and

(C) any educational assistance plan (as defined in section 127).

(2) APPLICABLE EXCLUSION.—The term “applicable exclusion” means—

(A) section 120 in the case of a qualified group legal services plan,

(B) section 125 in the case of a cafeteria plan, and

(C) section 127 in the case of an educational assistance plan.

Tax Reform Act of 1986, October 22, 1986, (1986) P.L. 99-514, §1879(d)(1):

**Act Sec. 1879(d)(1)** amended Code Sec. 6039D(d) (added by section 1 of P.L. 98-611) to read as above. Prior to amendment, Code Sec. 6039D(d) read as follows:

(d) DEFINITIONS.—For purposes of this section—

(1) SPECIFIED FRINGE BENEFIT PLAN.—The term “specified fringe benefit plan” means—

(A) any cafeteria plan (as defined in section 125), and

(B) any educational assistance program (as defined in section 127).

(2) APPLICABLE EXCLUSION.—The term “applicable exclusion” means—

(A) section 125, in the case of a cafeteria plan, and

(B) section 127, in the case of an educational assistance program.

**The above amendment is effective as if included in the provision of P.L. 98-369 to which such amendment relates.**

IRC-HIST, 2002-CODE-VOL, Sec. 6039D, RETURNS AND RECORDS WITH RESPECT TO CERTAIN FRINGE BENEFIT PLANS., Subsec. (a), IN GENERAL.—

**SEC. 6039D RETURNS AND RECORDS WITH RESPECT TO CERTAIN FRINGE BENEFIT PLANS.** (a) IN GENERAL.—

Tax Reform Act of 1986, October 22, 1986, (1986) P.L. 99-514, §1151(h)(2):

**Act Sec. 1151(h)(2)** amended Code Sec. 6039D(a) by striking out “and” at the end of paragraph (4), by striking out the period at the end of paragraph (5) and inserting in lieu thereof “, and” and by inserting after paragraph (5) new paragraph (6) to read as above.

IRC-HIST, 2002-CODE-VOL, Sec. 6039D, RETURNS AND RECORDS WITH RESPECT TO CERTAIN FRINGE BENEFIT PLANS., Subsec. (c), ADDITIONAL INFORMATION WHEN REQUIRED BY THE SECRETARY.—

**SEC. 6039D RETURNS AND RECORDS WITH RESPECT TO CERTAIN FRINGE BENEFIT PLANS.** (c) ADDITIONAL INFORMATION WHEN REQUIRED BY THE SECRETARY.—

Tax Reform Act of 1986, October 22, 1986, (1986) P.L. 99-514, §1151(h)(3):

**Act Sec. 1151(h)(3)** amended Code Sec. 6039D(c) by adding at the end thereof a new sentence to read as above.

**For the effective dates of the above amendments, see Act Sec. 1151(k)(1), below. For special rules and an exception, see the text of Act Sec. 1151(k)(2)-(4) reproduced under the amendment notes for Code Sec. 89.**

**Act Sec. 1151(k)(1) provides:**

(k) EFFECTIVE DATES.—

(l) IN GENERAL.—The amendments made by this section shall apply to years beginning after the later of—

(A) December 31, 1987, or

(B) the earlier of—

(i) the date which is 3 months after the date on which the Secretary of the Treasury or his delegate issues such regulations as are necessary to carry out the provisions of section 89 of the Internal Revenue Code of 1986 (as added by this section), or

(ii) December 31, 1988.

Notwithstanding the preceding sentence, the amendments made by subsections (e)(1) and (i)(3)(C) shall, to the extent they relate to section 162(i)(2) and 162(k) of the Internal Revenue Code of 1986, apply to years beginning after 1986.