

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also Part I, § 6011; 1.6011-4.)

Rev. Proc. 2004-45

SECTION 1. PURPOSE

This revenue procedure provides alternative disclosure procedures that are deemed to satisfy a taxpayer's disclosure obligations under § 1.6011-4 of the Income Tax Regulations for transactions with a significant book-tax difference under § 1.6011-4(b)(6). Taxpayers also may continue to follow the disclosure procedures provided in § 1.6011-4 for disclosing transactions described in § 1.6011-4(b)(6).

SECTION 2. BACKGROUND

.01 Section 1.6011-4 requires a taxpayer who participates in a reportable transaction to disclose the transaction in accordance with the procedures provided in § 1.6011-4. Under § 1.6011-4(b), there are six categories of reportable transactions. One category of reportable transactions is a transaction with a significant book-tax difference. A transaction with a significant book-tax difference is defined in § 1.6011-4(b)(6) as a transaction where the amount for tax purposes of any item or items of income, gain, expense, or loss from the transaction differs by more than \$10 million on a gross basis from the amount of the item or items for book purposes in any taxable year. For purposes of § 1.6011-4(b)(6), the amount of an item for book purposes is determined by applying U.S. generally accepted accounting principles for worldwide income.

.02 Section 1.6011-4(b)(6)(ii) provides that the following taxpayers must disclose transactions with a significant book-tax difference: (1) reporting companies under the Securities Exchange Act of 1934 (15 U.S.C. 78a) and related business entities; and (2) business entities that have \$250 million or more in gross assets for book purposes at the end of any financial accounting period that ends with or within the entity's taxable year in which the transaction occurs.

.03 On July 7, 2004, the Treasury Department and Internal Revenue Service released a draft of the final version of Schedule M-3, Net Income (Loss) Reconciliation For Corporations With Total Assets of \$10 Million or More. In general, for taxable years ending on or after December 31, 2004, any corporation (or U.S. consolidated tax group) required to file Form 1120, U.S. Corporation Income Tax Return, that reports total assets at the end of the corporation's (or U.S. consolidated tax group's) taxable year that equal or exceed \$10 million on Schedule L of Form 1120 is required to complete and file Schedule M-3.

SECTION 3. SCOPE

This revenue procedure applies to a taxpayer that is required to disclose reportable transactions under § 1.6011-4 with respect to transactions described in § 1.6011-4(b)(6).

SECTION 4. APPLICATION

.01 Corporation required to complete Schedule M-3 for a taxable year ending on or after December 31, 2004. For a taxable year ending on or after December 31, 2004, a corporation required to file Schedule M-3 that completes and files Schedule M-3 (in accordance with the instructions to the form, including draft instructions until such instructions are finalized) with the corporation's timely-filed original tax return (including extensions) for the taxable year is deemed to satisfy the disclosure requirements of § 1.6011-4 with respect to transactions described in § 1.6011-4(b)(6) for that taxable year.

.02 Taxpayer not required to complete Schedule M-3 for a taxable year ending on or after December 31, 2004. A taxpayer that is required to disclose reportable transactions under § 1.6011-4 with respect to transactions described in § 1.6011-4(b)(6), but is not required to complete Schedule M-3, for a taxable year ending on or after December 31, 2004, will continue to be subject to the disclosure requirements of § 1.6011-4. However, the taxpayer is deemed to satisfy the disclosure requirements of § 1.6011-4 with respect to transactions described in § 1.6011-4(b)(6) for a taxable year ending on or after December 31, 2004, if the taxpayer complies with the alternative disclosure procedures described in section 4.04 of this revenue procedure for that taxable year.

.03 Alternative disclosure procedures for a taxable year ending before December 31, 2004, for transactions entered into on or after January 1, 2003. For a taxable year ending before December 31, 2004, a taxpayer required to disclose reportable transactions under § 1.6011-4 with respect to transactions described in § 1.6011-4(b)(6) that were entered into on or after February 28, 2003, is deemed to satisfy the disclosure requirements of § 1.6011-4 with respect to those transactions if the taxpayer complies with the alternative disclosure procedures described in section 4.04 of this revenue procedure. These rules also may be relied upon for taxable years ending before December 31, 2004, with respect to transactions entered into on or after January 1, 2003, and before February 28, 2003, that are subject to disclosure under § 1.6011-4 or § 1.6011-4T with respect to transactions described in § 1.6011-4(b)(6) or § 1.6011-4T(b)(6), respectively.

.04 Alternative disclosure procedures for transactions with a significant book-tax difference.

(1) In general. A taxpayer described in section 4.02 or section 4.03 of this revenue procedure is deemed to satisfy the disclosure requirements of § 1.6011-4 with respect to transactions described in § 1.6011-4(b)(6) if the taxpayer discloses on a Schedule M-3 each item of income, gain, loss, deduction, or credit for which the difference between the amount included in the taxpayer's financial statement net income (loss) for the taxable year and the amount included in taxable income for the taxable year ("difference") is greater than \$10 million. The taxpayer must separately state and adequately disclose, on the applicable line of Column B and Column C of Part II and Part III of Schedule M-3, each difference that is greater than \$10 million. The Schedule M-3 must be completed (and filed in accordance with section 4.04(2) of this revenue procedure) as if the taxpayer were a corporation required to complete and file Schedule M-3 for that taxable year. For purposes of this section 4.04(1), the rules applicable to a corporation (or U.S. consolidated tax group) required to complete and file Schedule M-3 (for example, guidance provided in the form of instructions to Schedule M-3 (including draft instructions until such instructions are finalized)) will apply, including rules for determining: (i) an item of income, gain, loss, deduction, or credit; (ii) how to separately state and adequately disclose a difference; (iii) whether an item(s) can be combined with another item(s); (iv) the classification of a difference as temporary or permanent; and (v) the information required to be provided for items of partnerships and flow-through entities.

For purposes of this section 4.04(1), the taxpayer's financial statement net income (loss) is the financial statement net income (loss) of the taxpayer if the taxpayer were a corporation required to complete Schedule M-3 (that is, the amount that would be reported on line 11, Part I of Schedule M-3). In addition, in the case of a member of a group of affiliated corporations filing a U.S. consolidated tax return, whether an item of difference exceeds \$10 million is based on the separate activity of that group member, and is not based on the consolidated activity of the U.S. consolidated tax group.

(2) Time and manner for complying with the alternative disclosure procedures of section 4.04(1). The Schedule M-3 required under section 4.04(1) of this revenue procedure, and any supporting statements, must be attached to the taxpayer's timely filed original tax return (including extensions). The taxpayer must include its name and identification number on the top of Page 1 of Schedule M-3 and also must include the following statement on the top of Page 1 of Schedule M-3: "Alternative disclosure under Rev. Proc. 2004-45 for transactions with a significant book-tax difference under § 1.6011-4(b)(6)." In addition, the taxpayer must send a copy of the Schedule M-3 required under section 4.04(1) of this revenue procedure, and any supporting statements, to the Office of Tax Shelter Analysis, Internal Revenue Service LM:PFTG:OTSA, Large & Mid-Size Business Division, 1111 Constitution Ave., NW, Washington, DC 20224, on or before the due date for the taxpayer's timely filed original tax return (including extensions). If a taxpayer does not have a difference in excess of \$10 million as determined under section 4.04(1) of this revenue procedure, the taxpayer is not required to file a Schedule M-3 otherwise required by this revenue procedure and

the taxpayer also is not required to file Form 8886, Reportable Transaction Disclosure Statement, otherwise required by § 1.6011-4, with respect to transactions described in § 1.6011-4(b)(6).

(3) Use of draft final version of Schedule M-3. For purposes of complying with the alternative disclosure procedures described in section 4.04(1) and (2) of this revenue procedure, a taxpayer must use the most recent draft version of Schedule M-3 (and any guidance provided in the form of instructions to Schedule M-3, including draft instructions) referred to in section 2.03 of this revenue procedure until Schedule M-3 is released in final form.

.05 Effect on other disclosure obligations. This revenue procedure does not affect any of a taxpayer's disclosure obligations under §§ 1.6011-4, 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, or 56.6011-4 with respect to a transaction described in one or more of §§ 1.6011-4(b)(2), (b)(3), (b)(4), (b)(5), or (b)(7), even if the transaction also is described under § 1.6011-4(b)(6).

.06 The Service and the Treasury will continue to evaluate whether the disclosure requirements described in this revenue procedure and Schedule M-3 provide the Service and Treasury adequate information regarding significant book-tax differences.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective July 7, 2004.

SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1894.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in section 4. The information will be used to determine if taxpayers have complied with the disclosure requirements in § 1.6011-4. This information collection is voluntary. Taxpayers may choose this alternate procedure of disclosing instead of disclosing the information on Form 8886.

The likely respondents are business or other for-profit institutions. The estimated total annual reporting burden associated with this alternative method of compliance is

zero. This is because the burden is already accounted for under control number 1545-1685 which applies to the regulations under § 1.6011-4.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Tara P. Volungis of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Ms. Volungis at (202) 622-3070 (not a toll-free number). For information regarding Schedule M-3, contact Diane Litecky at (732) 452-8134 (not a toll-free number).