

# Part III. Administrative, Procedural, and Miscellaneous

## Public Inspection of Form 990–T, Exempt Organization Business Income Tax Return

### Notice 2008–49

#### Section 1. Purpose

This notice modifies Notice 2007–45, 2007–22 I.R.B. 1320, and provides additional interim guidance with respect to the requirement under section 6104 of the Internal Revenue Code (the Code) that section 501(c)(3) organizations make available for public inspection Forms 990–T, *Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))*. This notice reflects the amendments to sections 6104(b) and 6104(d) of the Code contained in section 3(g) of the Tax Technical Corrections Act of 2007, Pub. L. 110–172 (H.R. 4839) (the Act). The amendments are effective for Forms 990–T filed with the Internal Revenue Service (IRS) after August 17, 2006.

#### Section 2. Background

Prior to the enactment of the Pension Protection Act of 2006, Pub. L. 109–280 (the PPA), organizations exempt from Federal income tax under section 501(a) as described in section 501(c) of the Code were required to make available for public inspection and copying only the annual information returns filed by such organizations under section 6033 (Forms 990, 990–EZ, and 990–PF). The public inspection and copying requirement with respect to these returns applies for the three-year period beginning on the last day prescribed for the filing of the returns.

The PPA amended section 6104(d)(1)(A)(ii) to require organizations to make available for public inspection and copying “any annual return filed under section 6011 which relates to any tax imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc., organizations) by such organization, but only if such organization is described in section 501(c)(3).” Thus, for section 501(c)(3) organizations (charities), the PPA extended the public

inspection and copying requirement to Forms 990–T. The PPA was silent regarding whether the public inspection and copying requirement for Forms 990–T applied only for the three-year period beginning on the last day prescribed for the filing of the returns.

The IRS issued Notice 2007–45 on May 29, 2007, to provide interim guidance on the amended section 6104(d) pending the issuance of revised regulations. Notice 2007–45 provides that Forms 990–T filed with the IRS after August 17, 2006, must be made available for public inspection and copying by all charities, regardless of whether the charity is otherwise subject to the disclosure requirements of section 6104. Notice 2007–45 also provides that Forms 990–T must be made available for public inspection and copying in their entirety as filed with the IRS, including all schedules, attachments, and supporting documents.

On December 29, 2007, the President signed the Act. Section 3(g) of the Act revised the language of section 6104(d)(1)(A)(ii) to refer to: “any annual return which is filed under section 6011 by an organization described in section 501(c)(3) and which relates to any tax imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc., organizations).” (Emphasis added.) As revised, section 6104(d)(1)(A)(ii) makes clear that charities must make available for public inspection and copying only those returns and attachments to the return that are both filed under section 6011 and that relate to the imposition of tax on unrelated business income of charitable organizations. Section 3(g) of the Act amended section 6104(d)(2) to require organizations to make Forms 990–T available for public inspection only for the three-year period following the filing of the return. In addition, section 3(g) of the Act provided that the IRS, and not just the organization, is required to make Forms 990–T publicly available pursuant to section 6104(b), and that the IRS must treat Forms 990–T in the same manner as Forms 990. *See* 153 Cong. Rec. S16056–03 (Dec. 19, 2007).

#### Section 3. Modification of Interim Guidance

This notice modifies Notice 2007–45 to incorporate the new provisions from the Act for section 6104(d). Specifically, Section 3 of Notice 2007–45 is hereby modified as follows. The guidelines for making annual returns available for public inspection and copying set forth in Treas. Reg. § 301.6104(d)–1 generally apply except that the definition of “annual information return” in Treas. Reg. § 301.6104(d)–1(b)(4)(i) includes an exact copy of the Form 990–T filed by a charity with the IRS after August 17, 2006, including any schedules, attachments, and supporting documents that relate to the imposition of tax on the unrelated business income of the charitable organization. Schedules, attachments, and supporting documents filed with Form 990–T that do not relate to the imposition of unrelated business income tax are not required to be made available for public inspection and copying. Such schedules and attachments, for example, include Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*, Form 8886, *Reportable Transaction Disclosure Statement*, and Form 8913, *Credit for Federal Telephone Excise Tax Paid* (generally this form was used only for tax year 2006). Further guidance with respect to schedules or attachments that are not required to be made available when attached to Form 990–T will be provided in forms, instructions and other public announcements.

Further, under the amended section 6104(d)(2), charities must make Forms 990–T available for public inspection and copying only for the three-year period beginning on the last day prescribed for filing such return (determined with regard to any extension of time for filing).

The IRS is now required to make Forms 990–T of section 501(c)(3) organizations publicly available pursuant to section 6104(b). The procedures for requesting public inspection or copying of Forms 990–T are set forth in Announcement 2008–21.

All remaining provisions of Notice 2007–45 shall continue in full force and effect.

## Section 4. Request for Comments

The IRS and the Treasury Department invite comments on implementation of the public inspection requirement of section 6104(d)(1)(A)(ii), including comments with respect to those schedules or attachments that should not be available for public inspection when attached to Form 990-T. Comments should refer to Notice 2008-49 and be submitted to:

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2008-49)  
Room 5203  
P. O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, DC 20224  
Attn: CC:PA:LPD:PR  
(Notice 2008-49)

Alternatively, taxpayers may submit comments electronically to *notice.comments@irs.counsel.treas.gov*. Please include "Notice 2008-49" in the subject line of any electronic communications.

All comments will be available for public inspection and copying.

## Section 6. Drafting Information

The principal author of this notice is Melinda Williams of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this notice, contact Ms. Williams at 202-283-9467 (not a toll-free call).

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

*(Also: Part I, §§ 6011, 6111, 6112; 1.6011-4, 301.6111-3, 301.6112-1.)*

## Rev. Proc. 2008-20

### SECTION 1. PURPOSE

This revenue procedure provides guidance relating to the obligation of material

advisors to prepare and maintain lists with respect to reportable transactions under § 6112 of the Internal Revenue Code. In particular, this revenue procedure allows material advisors to use a form available on the Internal Revenue Service website for the purpose of maintaining the itemized statement component of the list under § 6112. See § 301.6112-1(b)(3)(i) of the Procedure and Administration Regulations. The form is not required to be used by a material advisor in order for that material advisor to comply with the requirements of § 301.6112-1, but is offered as an option for maintaining the list.

### SECTION 2. BACKGROUND

Section 6112, as amended by the American Jobs Creation Act of 2004, P.L. 108-357, 188 Stat. 1418, requires that each material advisor with respect to any reportable transaction shall maintain (in such manner as the Secretary may by regulations prescribe) a list identifying each person with respect to whom the advisor acted as a material advisor with respect to the transaction and containing other information as the Secretary may by regulations require. Under § 301.6112-1(a), material advisors are required to prepare and maintain a list as described in the regulations and are required to furnish the list to the IRS upon written request by the IRS. For reportable transactions for which a material advisor makes a tax statement on or after August 3, 2007 (and transactions of interest entered into by a taxpayer on or after November 2, 2006, with respect to which a material advisor makes a tax statement on or after November 2, 2006), the list must include three components: an itemized statement, a detailed description of the transaction, and copies of certain documents. Section 301.6112-1(b)(3). If any component of the list is not in a form that enables the IRS to determine without undue delay or difficulty the required information, the material advisor will not be considered to have complied with the list maintenance provisions in § 6112 and § 301.6112-1. Section 301.6112-1(e)(1). Section 6708(a) provides that if any person who is required to maintain a list fails to make the list available to the IRS within 20 business days after the date of the written request, the person shall pay a penalty of

\$10,000 for each day of the failure after the expiration of the 20th business day.

Section 301.6112-1(b)(1) states that the Commissioner in his discretion may provide in published guidance a form or method for maintaining and/or furnishing the list. The IRS has received requests to provide an optional format for the itemized statement component of the list. Consequently, under the authority of the regulations, this revenue procedure allows material advisors to use the form published on the IRS website for the purpose of maintaining the itemized statement. The form should simplify the method of list maintenance with respect to the itemized statement and reduce the burden on material advisors trying to comply with the regulations.

### SECTION 3. SCOPE

This revenue procedure applies to material advisors who are required to maintain lists under § 6112.

### SECTION 4. APPLICATION

.01 *In general.* Each material advisor, with respect to any reportable transaction, is required to prepare and maintain separate lists for each reportable transaction. For reportable transactions for which a material advisor makes a tax statement on or after August 3, 2007 (and transactions of interest entered into by a taxpayer on or after November 2, 2006, with respect to which a material advisor makes a tax statement on or after November 2, 2006), each list must include three components: an itemized statement, a detailed description of the transaction, and copies of certain documents. Section 301.6112-1(b)(3). The list must be furnished to the IRS upon written request in a form that enables the IRS to determine without undue delay or difficulty the information required in § 301.6112-1(b). In order to be in a position to timely produce the list required to be maintained under § 301.6112-1, the list should be maintained and updated on an ongoing basis, rather than compiled after the IRS makes a written request for the list. Because the list must be furnished to the IRS in a form that enables the IRS to determine without undue delay or difficulty the information required, the list should be organized in a manner in which the three