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**Department of the Treasury – Internal Revenue Service  
Form 4564 – Information Document Request (IDR) – Attachment  
Mandatory Tax Shelter IDR**

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To: **[Insert Name of Taxpayer]**

Tax Year(s):

IDR Request Number:

Date of Request:

Response Date:

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### **Purpose of this IDR**

The Internal Revenue Service has identified certain transactions as "listed transactions" for purposes of §1.6011-4(b)(2) of the Income Tax Regulations. The Service considers transactions that are the same as or substantially similar to listed transactions to be tax avoidance transactions. Provided below (beginning on page 3) is a summary of the listed transactions as of the date of this IDR.

The purpose of this IDR is to determine whether **[Insert Name of Taxpayer]** (the taxpayer) has directly or indirectly participated in transactions that are the same as or substantially similar to any listed transaction. Please list each transaction that is the same as or is substantially similar to a listed transaction in which the taxpayer directly or indirectly participated, and that affects the taxpayer's Federal income tax liability for any year under examination. The rules of §1.6011-4 of the Regulations apply to determine whether a taxpayer has directly or indirectly participated in a transaction, and whether a transaction is the same as or substantially similar to a listed transaction.

### **Definition of Key Terms**

**Participation** – A taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under §1.6011-4(b)(2). A taxpayer also has participated in a listed transaction if the taxpayer knows or has reason to know that the taxpayer's tax benefits are derived directly or indirectly from tax consequences or a tax strategy, described in published guidance that lists a transaction under §1.6011-4(b)(2). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. §1.6011-4(c)(3)(i)(A).

**Substantially Similar** – The term substantially similar includes any transaction that is expected to obtain the same or similar tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. §1.6011-4(c)(4).

**Business Taxpayer** – The term business taxpayer refers to corporations, S corporations, partnerships, limited partnerships, limited liability companies, disregarded entities, and trusts.

**Corporate Taxpayer** – The term corporate taxpayer extends to all business entities that are includible in a consolidated group, as well as to all other entities over which the corporate parent exercises legal or effective control.

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Non-identical Copies – The term non-identical copies as used in the Mandatory IDR refers to all copies of the same document, including those with comments, notes, handwriting, strikethroughs, etc.

**Description of Documents Requested**

For each transaction identified, please provide full and complete documents and provide non-identical copies of all items requested. Please also note and explain any deviations between the original documents and the copies.

Please provide the following items:

1. A detailed description of the transaction, including all material facts.
2. A description of the taxpayer's tax treatment of the transaction, including the tax benefits claimed on the taxpayer's tax return. In describing the tax treatment, please identify all tax provision, rules, conventions or mechanics that affect, give rise to, or result in the claimed tax benefits.
3. All contracts and other transactional documents, including agreements, instruments, and schedules. If such information is too voluminous, then, in the alternative, please provide an index that lists and describes all such contracts and transactional documents.
4. Information identifying the dollar amounts involved in the transaction. Business taxpayers should identify all general ledger accounts that are affected by the transaction, and also should trace all identified items and amounts to the line items on their tax returns.
5. Complete copies of all documents and other materials, including legal opinions and correspondence, provided by any party that promoted, solicited, or recommended the taxpayer's participation in the transaction.
6. Business taxpayers should provide copies of internal documents that were used in the decision making process. For corporate taxpayers, those documents should include information presented to the board of directors, audit committee, finance committee, compensation committee, growth committee, and/or any other special or ad hoc committee(s), as applicable.
7. Business taxpayers should provide complete and un-redacted meeting minutes. For corporate taxpayers, those minutes should include minutes of the board of directors, audit committee, finance committee, compensation committee, growth committee, and/or any other special or ad hoc committee(s) that are related, directly or indirectly, to the decision making process for the transaction.
8. All legal, accounting, financial, tax and economic opinions and related correspondence secured by or on behalf of the taxpayer in connection with the transaction.
9. A list of all known participants in the transaction, including a description of their roles and responsibilities.
10. The names and addresses of all known parties that promoted, solicited, or recommended the taxpayer's participation in the transaction and to whom the taxpayer paid fees, compensation or other remuneration in connection with the taxpayer's decision to participate in the transaction.

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11. Business taxpayers should provide the name(s) and job title(s) of the officers and other employees of the taxpayer who are familiar with the transaction and who may be available to meet with representatives of the Service within two weeks of the date of this IDR.
12. For each document withheld because of a claim of privilege, if any, please provide the following information:
  - a. The name and title of the author;
  - b. The date of the document;
  - c. The names, titles, and addresses of all recipients of the documents, including persons to whom the document was made available to some time after it was created (e.g., the taxpayer's independent auditor);
  - d. The subject matter of the document;
  - e. The privilege claimed;
  - f. The engagement letter or other agreements pursuant to which the item was created, prepared, or assembled by any person other than an employee of the taxpayer;
  - g. The portions of the document for which there is no claim of privilege; and
  - h. For any opinion or memoranda described in item 8 above, the conclusions reached in the opinion or memorandum.

**Summary of listed transactions**

1. Rev. Rul. 90-105, 1990-2 C.B. 69 (transactions in which taxpayers claim deductions for contributions to a qualified cash or deferred arrangement or matching contributions to a defined contribution plan where the contributions are attributable to compensation earned by plan participants after the end of the taxable year (identified as "listed transactions" on February 28, 2000)). See also Rev. Rul. 2002-46, 2002-29 I.R.B. 117 (result is the same, and transactions are substantially similar, even though the contributions are designated as satisfying a liability established before the end of the taxable year), modified by Rev. Rul. 2002-73, 2002-45 I.R.B. 805;
2. Notice 95-34, 1995-1 C.B. 309 (certain trust arrangements purported to qualify as multiple employer welfare benefit funds exempt from the limits of §§ 419 and 419A of the Internal Revenue Code (identified as "listed transactions" on February 28, 2000)). See also § 1.419A (f) (6)-1 of the Income Tax Regulations (10 or more employer plans);
3. Transactions substantially similar to those at issue in *ASA Investering's Partnership v. Commissioner*, 201 F.3d 505 (D.C. Cir. 2000), and *ACM Partnership v. Commissioner*, 157 F.3d 231 (3d Cir. 1998) (transactions involving contingent installment sales of securities by partnerships in order to accelerate and allocate income to a tax-indifferent partner, such as a tax-exempt entity or foreign person, and to allocate later losses to another partner (identified as "listed transactions" on February 28, 2000));
4. Treas. Reg. § 1.643(a)-8 (transactions involving distributions described in § 1.643(a)-8 from charitable remainder trusts (identified as "listed transactions" on February 28, 2000));

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5. Notice 99-59, 1999-2 C.B. 761 (transactions involving the distribution of encumbered property in which taxpayers claim tax losses for capital outlays that they have in fact recovered (identified as “listed transactions” on February 28, 2000)). See also Treas. Reg. § 1.301-1(g);
6. Treas. Reg. § 1.7701(l)-3 (transactions involving fast-pay arrangements as defined in § 1.7701(l)-3(b) (identified as “listed transactions” on February 28, 2000));
7. Rev. Rul. 2000-12, 2000-1 C.B. 744 (certain transactions involving the acquisition of two debt instruments the values of which are expected to change significantly at about the same time in opposite directions (identified as “listed transactions” on February 28, 2000));
8. Notice 2000-44, 2000-2 C.B. 255 (transactions generating losses resulting from artificially inflating the basis of partnership interests (identified as “listed transactions” on August 11, 2000)). See also § 1.752-6T of the temporary Income Tax Regulations and §§ 1.752-1(a) and 1.752-7 of the proposed Income Tax Regulations;
9. Notice 2000-60, 2000-2 C.B. 568 (transactions involving the purchase of a parent corporation's stock by a subsidiary, a subsequent transfer of the purchased parent stock from the subsidiary to the parent's employees, and the eventual liquidation or sale of the subsidiary (identified as “listed transactions” on November 16, 2000));
10. Notice 2000-61, 2000-2 C.B. 569 (transactions purporting to apply § 935 to Guamanian trusts (identified as “listed transactions” on November 21, 2000));
11. Notice 2001-16, 2001-1 C.B. 730, clarified by Notice 2008-111, 2008-51 I.R.B. 1 (transactions involving the use of an intermediary to sell the assets of a corporation (identified as “listed transactions” on January 18, 2001));
12. Notice 2001-17, 2001-1 C.B. 730 (transactions involving a loss on the sale of stock acquired in a purported § 351 transfer of a high basis asset to a corporation and the corporation's assumption of a liability that the transferor has not yet taken into account for federal income tax purposes (identified as “listed transactions” on January 18, 2001));
13. Notice 2001-45, 2001-2 C.B. 129 (certain redemptions of stock in transactions not subject to U.S. tax in which the basis of the redeemed stock is purported to shift to a U.S. taxpayer (identified as “listed transactions” on July 26, 2001));
14. Notice 2002-21, 2002-1 C.B. 730 (transactions involving the use of a loan assumption agreement to inflate basis in assets acquired from another party to claim losses (identified as “listed transactions” on March 18, 2002));
15. Notice 2002-35, 2002-1 C.B. 992 (transactions involving the use of a notional principal contract to claim current deductions for periodic payments made by a taxpayer while disregarding the accrual of a right to receive offsetting payments in the future (identified as “listed transactions” on May 6, 2002));
16. Notice 2002-50, 2002-2 C.B. 98 (transactions involving the use of a straddle, a tiered partnership structure, a transitory partner, and the absence of a § 754 election to claim a permanent non-economic loss (identified as “listed transactions” on June 25, 2002)); Notice 2002-65, 2002-2 C.B. 690 (transactions involving the use of a straddle, an S corporation or a partnership, and one or more transitory shareholders or partners to claim a loss while deferring an offsetting gain are substantially similar to transactions

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described in Notice 2002-50); and Notice 2003-54, 2003-33 I.R.B. 363 (transactions involving the use of economically offsetting positions, one or more tax indifferent parties, and the common trust fund accounting rules of § 584 to allow a taxpayer to claim a non-economic loss are substantially similar to transactions described in Notice 2002-50 and Notice 2002-65);

17. Rev. Rul. 2002-69, 2002-2 C.B. 760, modifying and superseding Rev. Rul. 99-14, 1999-1 C.B. 835 (transactions in which a taxpayer purports to lease property and then purports to immediately sublease it back to the lessor (that is, lease-in/lease-out or LILO transactions) (identified as "listed transactions" on February 28, 2000));
18. Rev. Rul. 2003-6, 2003-3 I.R.B. 286 (certain arrangements involving the transfer of employee stock ownership plans (ESOPs) that hold stock in an S corporation for the purpose of claiming eligibility for the delayed effective date of § 409(p) (identified as "listed transactions" on December 17, 2002));
19. Notice 2003-22, 2003-18 I.R.B. 851 (certain arrangements involving leasing companies that have been used to avoid or evade federal income and employment taxes (identified as "listed transactions" on April 4, 2003));
20. Notice 2003-24, 2003-18 I.R.B. 853 (certain arrangements that purportedly qualify as collectively-bargained welfare benefit funds excepted from the account limits of §§ 419 and 419A (identified as "listed transactions" on April 11, 2003));
21. Notice 2003-47, 2003-30 I.R.B. 132 (transactions involving compensatory stock options and related persons to avoid or evade federal income and employment taxes (identified as "listed transactions" on July 1, 2003));
22. Notice 2003-55, 2003-34 I.R.B. 395 (transactions in which one participant claims to realize rental or other income from property or service contracts and another participant claims the deductions related to that income (often referred to as "lease strips"), modifying and superseding Notice 95-53, 1995-2 C.B. 334 (identified as "listed transactions" on February 28, 2000));
23. Notice 2003-77, 2003-49 I.R.B. 1182 (certain transactions that use contested liability trusts improperly to accelerate deductions for contested liabilities under section 461(f) (identified as "listed transactions" on November 19, 2003)). See also §1.461-2 of the Income Tax Regulations. See Rev. Proc. 2004-31, 2004-22 I.R.B. 986, for procedures which taxpayers must use to change their methods of accounting for deducting under section 461(f) amounts transferred to trusts in transactions described in Notice 2003-77;
24. Notice 2003-81, 2003-51 I.R.B. 1223, modified and supplemented by Notice 2007-71, 2007-35 I.R.B. 472, (certain transactions in which a taxpayer claims a loss upon the assignment of a §1256 contract to a charity but fails to report the recognition of gain when the taxpayer's obligation under an offsetting non-section 1256 contract terminates(identified as "listed transactions" on December 4, 2003));
25. Notice 2004-8, 2004-4 I.R.B. 333 (certain transactions designed to avoid the limitations on contributions to Roth IRAs described in §408A (identified as "listed transactions" on December 31, 2003));
26. Rev. Rul. 2004-4, 2004-6 I.R.B. 414 (transactions that involve segregating the business profits of an ESOP-owned S corporation in a qualified subchapter S subsidiary, so that rank-and-file employees do not benefit from participation in the ESOP (identified as "listed transactions" on January 23, 2004));

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27. Rev. Rul. 2004-20, 2004-10 I.R.B. 546 (transactions that are the same as, or substantially similar to, those described in Situation 2 of Rev. Rul. 2004-20, 2004-10 I.R.B. 546, modifying and superseding Rev. Rul. 55-748, 1955-2 C.B. 234 (certain arrangements in which an employer deducts contributions to a qualified pension plan for premiums on life insurance contracts that provide for death benefits in excess of the participant's death benefit, where under the terms of the plan, the balance of the death benefit proceeds revert to the plan as a return on investment) (identified as "listed transactions" on February 13, 2004)). See also Rev. Rul. 2004-21, 2004-10 I.R.B. 544, sections 1.79- 1(d)(3), 1.83-3(e) and 1.402(a)-1(a)(1) and (2) of the proposed Income Tax Regulations, and Rev. Proc. 2004-16, 2004-10 I.R.B. 559;
28. Notice 2004-20, 2004-11 I.R.B. 608 (Foreign Tax Credit Intermediary) (transactions in which, pursuant to a prearranged plan, a domestic corporation purports to acquire stock in a foreign target corporation and to make an election under section 338 before selling all or substantially all of the target corporation's assets in a preplanned transaction that generates a taxable gain for foreign tax purposes (but not for U.S. tax purposes) (identified as "listed transactions" on February 17, 2004));
29. Notice 2004-30, 2004-17 I.R.B. 828 (transactions in which S corporation shareholders attempt to transfer the incidence of taxation on S corporation income by purportedly donating S corporation nonvoting stock to an exempt organization while retaining the economic benefits associated with that stock (identified as "listed transactions" on April 1, 2004));
30. Notice 2004-31, 2004-17 I.R.B. 830 (Inter-company Financing Using Guaranteed Payments) (transactions in which corporations claim inappropriate deductions for payments made through a partnership (identified as "listed transactions" on April 1, 2004));
31. Notice 2005-13, 2005-9 I.R.B. 1 (transactions in which a taxpayer enters into a purported sale-leaseback arrangement with a tax-indifferent person in which substantially all of the tax-indifferent person's payment obligations are economically defeased and the taxpayer's risk of loss from a decline, and opportunity for profit from an increase, in the value of the leased property are limited (identified as "listed transactions" on February 11, 2005));
32. Notice 2007-57, 2007-29 I.R.B. 1 (transactions in which a U.S. taxpayer uses offsetting positions with respect to foreign currency or other property for the purpose of importing a loss, but not the corresponding gain, in determining U.S. taxable income (identified as "listed transactions" on July 16, 2007));
33. Notice 2007-83, 2007-45 I.R.B. 1 (transactions in which certain trust arrangements claiming to be welfare benefit funds and involving cash value life insurance policies that are being promoted to and used by taxpayers to improperly claim federal income and employment tax benefits (identified as "listed transactions" on October 17, 2007)); and,
34. Notice 2008-34, 2008-12 I.R.B. 1 (transactions in which a tax indifferent party, directly or indirectly, contributes one or more distressed assets (for example, a creditor's interests in debt) with a high basis and low fair market value to a trust or series of trusts and sub-trusts, and a U.S. taxpayer acquires an interest in the trust (and/or series of trusts and/or sub-trusts) for the purpose of shifting a built-in loss from the tax indifferent party to the U.S. taxpayer that has not incurred the economic loss (identified as listed transactions on February 27, 2008)).