

## Part III - Administrative, Procedural, and Miscellaneous

### Form 8918 - § 6111 Disclosures

#### Notice 2007-85

This notice provides guidance to material advisors required to file a disclosure statement by October 31, 2007, under § 301.6111-3 of the Procedure and Administration Regulations.

#### BACKGROUND

On August 3, 2007, the Internal Revenue Service and Treasury Department published final regulations under § 301.6111-3 in the Federal Register (72 FR 43157) providing the rules relating to the disclosure of reportable transactions by material advisors under section 6111 of the Internal Revenue Code. See T.D. 9351. In general, these regulations apply to transactions with respect to which a material advisor makes a tax statement on or after August 3, 2007. However, these regulations apply to transactions of interest entered into on or after November 2, 2006, with respect to which a material advisor makes a tax statement on or after November 2, 2006.

The regulations provide that each material advisor, with respect to any reportable transaction, must file a return as described in § 301.6111-3(d). Section 301.6111-3(d)

provides that each material advisor required to file a disclosure statement under § 301.6111-3 must file a completed Form 8918 "Material Advisor Disclosure Statement" (or successor form). The Form 8918 must be filed with the Office of Tax Shelter Analysis (OTSA) by the last day of the calendar month that follows the end of the calendar quarter in which the advisor became a material advisor with respect to the reportable transaction or in which the circumstances necessitating an amended disclosure occur.

Prior to the publication of the final regulations, material advisors were required to disclose reportable transactions on Form 8264 "Application for Registration of a Tax Shelter." Notice 2004-80, 2004-50 I.R.B. 963, and Notice 2005-22, 2005-12 I.R.B. 756, described the manner in which the Form 8264 was to be completed.

#### INTERIM PROVISION

The next due date for disclosures by material advisors is October 31, 2007. As of the date of release of this notice, Form 8918 has not yet been published. The IRS anticipates that the Form 8918 will be published soon.

Due to the unavailability of Form 8918, a material advisor required to file a completed Form 8918 by October 31, 2007, will be treated as satisfying the disclosure requirement of § 301.6111-3(d) if the material advisor files Form 8264 instead. If Form 8918 is published on or before October 31, 2007, material advisors may choose to use either Form 8918 or Form 8264 for disclosures required to be filed by October 31, 2007. For disclosures required to be filed after October 31, 2007, material advisors must use Form 8918 (or successor form) unless instructed otherwise by the IRS. Reportable transactions disclosed on the Form 8264 should be disclosed in the manner described

in Notice 2004-80 and Notice 2005-22.

#### EFFECTIVE DATE

This notice is effective October 16, 2007, the date this notice was released to the public.

#### DRAFTING INFORMATION

The principal author of this notice is Charles D. Wien of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Charles D. Wien at 202-622-3070 (not a toll-free call).