

HIGHLIGHTS
OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 2006-61, page 1028.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for December 2006.

T.D. 9295, page 1030.

Final and temporary regulations under sections 6011, 6111, and 6112 of the Code amend the rules relating to requests for private letter rulings regarding reportable transactions and remove the tolling provision from the current regulations. These regulations cross-reference REG-103038-05, REG-103039-05, and REG-103043-05 in this Bulletin.

REG-103038-05, page 1049.

Proposed regulations under section 6011 of the Code amend the rules relating to the disclosure of reportable transactions by taxpayers. These regulations cross-reference T.D. 9295 in this Bulletin.

REG-103039-05, page 1057.

Proposed regulations under section 6111 of the Code provide the rules relating to the disclosure of reportable transactions by material advisors. These regulations cross-reference T.D. 9295 in this Bulletin.

REG-103043-05, page 1063.

Proposed regulations under section 6112 of the Code provide the rules relating to the obligation of material advisors to prepare and maintain lists with respect to reportable transactions. These regulations cross-reference T.D. 9295 in this Bulletin.

EXEMPT ORGANIZATIONS

REG-103038-05, page 1049.

Proposed regulations under section 6011 of the Code amend the rules relating to the disclosure of reportable transactions by taxpayers. These regulations cross-reference T.D. 9295 in this Bulletin.

ESTATE TAX

REG-103038-05, page 1049.

Proposed regulations under section 6011 of the Code amend the rules relating to the disclosure of reportable transactions by taxpayers. These regulations cross-reference T.D. 9295 in this Bulletin.

GIFT TAX

REG-103038-05, page 1049.

Proposed regulations under section 6011 of the Code amend the rules relating to the disclosure of reportable transactions by taxpayers. These regulations cross-reference T.D. 9295 in this Bulletin.

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Announcements of Disbarments and Suspensions begin on page 1066.
Finding Lists begin on page ii.



EMPLOYMENT TAX

REG-103038-05, page 1049.

Proposed regulations under section 6011 of the Code amend the rules relating to the disclosure of reportable transactions by taxpayers. These regulations cross-reference T.D. 9295 in this Bulletin.

Notice 2006-106, page 1033.

This notice provides tables that show the amount of an individual's wages, salary, or other income that is exempt from a notice of levy used to collect delinquent tax in 2007.

EXCISE TAX

REG-103038-05, page 1049.

Proposed regulations under section 6011 of the Code amend the rules relating to the disclosure of reportable transactions by taxpayers. These regulations cross-reference T.D. 9295 in this Bulletin.

ADMINISTRATIVE

T.D. 9295, page 1030.

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REG-103043-05, page 1063.

Proposed regulations under section 6112 of the Code provide the rules relating to the obligation of material advisors to prepare and maintain lists with respect to reportable transactions. These regulations cross-reference T.D. 9295 in this Bulletin.

Rev. Proc. 2006-54, page 1035.

This document updates the procedures for requesting assistance from the U.S. competent authority under the provisions of an income, estate, or gift tax treaty to which the United States is a party. Rev. Procs. 2002-52 and 2006-26 modified and superseded. Rev. Proc. 2006-9 amplified. Rev. Rul. 92-75 clarified.

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by

applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2006. See Rev. Rul. 2006-61, page 1028.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2006. See Rev. Rul. 2006-61, page 1028.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of December 2006. See Rev. Rul. 2006-61, page 1028.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2006. See Rev. Rul. 2006-61, page 1028.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2006. See Rev. Rul. 2006-61, page 1028.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2006. See Rev. Rul. 2006-61, page 1028.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2006. See Rev. Rul. 2006-61, page 1028.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2006. See Rev. Rul. 2006-61, page 1028.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2006. See Rev. Rul. 2006-61, page 1028.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2006. See Rev. Rul. 2006-61, page 1028.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month

of December 2006. See Rev. Rul. 2006-61, page 1028.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for December 2006.

Rev. Rul. 2006-61

This revenue ruling provides various prescribed rates for federal income tax purposes for December 2006 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520. Finally, Table 6 contains the 2007 interest rate for sections 846 and 807.

REV. RUL. 2006-61 TABLE 1

Applicable Federal Rates (AFR) for December 2006

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	4.97%	4.91%	4.88%	4.86%
110% AFR	5.47%	5.40%	5.36%	5.34%
120% AFR	5.98%	5.89%	5.85%	5.82%
130% AFR	6.48%	6.38%	6.33%	6.30%
<i>Mid-term</i>				
AFR	4.73%	4.68%	4.65%	4.64%
110% AFR	5.22%	5.15%	5.12%	5.10%
120% AFR	5.70%	5.62%	5.58%	5.56%
130% AFR	6.17%	6.08%	6.03%	6.00%
150% AFR	7.14%	7.02%	6.96%	6.92%
175% AFR	8.36%	8.19%	8.11%	8.05%
<i>Long-term</i>				
AFR	4.90%	4.84%	4.81%	4.79%
110% AFR	5.39%	5.32%	5.29%	5.26%
120% AFR	5.89%	5.81%	5.77%	5.74%
130% AFR	6.39%	6.29%	6.24%	6.21%

REV. RUL. 2006-61 TABLE 2

Adjusted AFR for December 2006

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	3.42%	3.39%	3.38%	3.37%
Mid-term adjusted AFR	3.59%	3.56%	3.54%	3.53%
Long-term adjusted AFR	4.14%	4.10%	4.08%	4.07%

REV. RUL. 2006-61 TABLE 3

Rates Under Section 382 for December 2006

Adjusted federal long-term rate for the current month	4.14%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.22%

REV. RUL. 2006-61 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for December 2006

Appropriate percentage for the 70% present value low-income housing credit	8.12%
Appropriate percentage for the 30% present value low-income housing credit	3.48%

REV. RUL. 2006-61 TABLE 5
Rate Under Section 7520 for December 2006

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest 5.8%

REV. RUL. 2006-61 TABLE 6

Applicable rate of interest for 2007 for purposes of section 846 and 807 3.97%

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2006. See Rev. Rul. 2006-61, page 1028.

Section 6011.—General Requirement of Return, Statement, or List

26 CFR 1.6011-4: Requirement of statement disclosing participation in certain transactions by taxpayers.

26 CFR 301.6111-3T: Disclosure of reportable transactions (temporary).

26 CFR 301.6112-1: Requirement to prepare, maintain, and furnish lists with respect to potentially abusive tax shelters.

T.D. 9295

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 301

AJCA Modifications to the Section 6011, 6111, and 6112 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary and final regulations under sections 6011, 6111, and 6112 of the Internal Revenue Code that modify the rules relating

to the disclosure of reportable transactions and the list maintenance requirements. These regulations affect taxpayers participating in reportable transactions under section 6011, material advisors responsible for disclosing reportable transactions under section 6111, and material advisors responsible for keeping lists under section 6112. These temporary and final regulations are being issued concurrently with proposed regulations (REG-103038-05, REG-103039-05, and REG-103043-05) under sections 6011, 6111, and 6112 published elsewhere in the Bulletin.

DATES: Effective Date: These regulations are effective November 1, 2006.

FOR FURTHER INFORMATION CONTACT: Tara P. Volungis or Charles Wien, 202-622-3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR parts 1 and 301 by modifying the rules relating to the disclosure of reportable transactions under sections 6011 and 6111 and the list maintenance rules under section 6112. On February 28, 2003, the IRS issued final regulations under sections 6011, 6111, and 6112 (T.D. 9046, 2003-1 C.B. 615) (the February 2003 regulations). The February 2003 regulations were published in the **Federal Register** (68 FR 10161) on March 4, 2003. On December 29, 2003, the IRS issued final regulations under section 6011 and 6112 (T.D. 9108, 2004-1 C.B. 429) (the December 2003 regulations). The December 2003 regulations were published in the **Federal Register** (68 FR 75128) on December 30, 2003.

Explanation of Provisions

These regulations relate to the provisions for obtaining a private letter ruling and the tolling of the time for providing disclosure under §1.6011-4 and section 6111 and for maintaining a list under section 6112 during the time the request for a ruling is pending. Because the IRS and Treasury Department believe that the removal of the tolling provision will promote effective tax administration, these regulations eliminate the tolling of the time for providing disclosure and for maintaining the list when a taxpayer or a potential material advisor requests a private letter ruling. Proposed regulations removing the tolling provision are being issued concurrently with these temporary regulations. Taxpayers and potential material advisors may still request a ruling on a transaction under the regular procedures for requesting a ruling, provided the ruling request is not factual or hypothetical, but the time for providing disclosure or for maintaining a list will not be tolled. The removal of the tolling provision is effective for all ruling requests received on or after November 1, 2006.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the Bulletin. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation will be submitted to

the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Tara P. Volungis and Charles Wien, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6011-4T also issued under 26 U.S.C. 6011 * * *

Par. 2. Section 1.6011-4 is amended by:

1. Revising paragraphs (f)(1) and (f)(3).
2. Redesignating the text of paragraph (h) as (h)(1) and adding a heading.
3. Adding paragraph (h)(2).

The revisions and additions read as follows:

§1.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

* * * * *

(f) * * * (1) [Reserved]. For further guidance, see §1.6011-4T(f)(1).

(2) * * *

(3) [Reserved]. For further guidance, see §1.6011-4T(f)(1).

* * * * *

(h) *Effective date*—(1) *In general.* * * * (2) [Reserved]. For further guidance, see §1.6011-4T(h)(2).

Par. 3. Section 1.6011-4T is added to read as follows:

§1.6011-4T Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).

(a) through (e) [Reserved]. For further guidance, see §1.6011-4(a) through (e).

(f) *Rulings and protective disclosures*—(1) *Rulings.* If a taxpayer requests a ruling on the merits of a specific transaction on or before the date that disclosure would otherwise be required under this section, and receives a favorable ruling as to the transaction, the disclosure rules under this section will be deemed to have been satisfied by that taxpayer with regard to that transaction, so long as the request fully discloses all relevant facts relating to the transaction which would otherwise be required to be disclosed under this section. If a taxpayer requests a ruling as to whether a specific transaction is a reportable transaction on or before the date that disclosure would otherwise be required under this section, the Commissioner in his discretion may determine that the submission satisfies the disclosure rules under this section for the taxpayer requesting the ruling for that transaction if the request fully discloses all relevant facts relating to the transaction which would otherwise be required to be disclosed under this section. The potential obligation of the taxpayer to disclose the transaction under this section will not be suspended during the period that the ruling request is pending.

(f)(2) through (g) [Reserved]. For further guidance, see §1.6011-4(f)(2) through (g).

(h) *Effective date*—(1) [Reserved]. For further guidance, see §1.6011-4(h)(1).

(2) *Tolling provision.* Paragraph (f)(1) of this section applies to ruling requests received on or after November 1, 2006. The applicability of this section expires on or before November 2, 2009.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 is amended by adding an entry in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6111-3T also issued under 26 U.S.C. 6111 * * *

Par. 5. Section 301.6111-3T is added to read as follows:

§301.6111-3T Disclosure of reportable transactions (temporary).

(a) through (g) [Reserved].

(h) *Rulings.* If a potential material advisor requests a ruling as to whether a specific transaction is a reportable transaction on or before the date that disclosure would otherwise be required under this section, the Commissioner in his discretion may determine that the submission satisfies the disclosure rules under this section for that transaction if the request fully discloses all relevant facts relating to the transaction which would otherwise be required to be disclosed under this section. The potential obligation of the person to disclose the transaction under this section (or to maintain or furnish the list under §301.6112-1) will not be suspended during the period that the ruling request is pending.

(i) *Effective date*—(1) [Reserved].

(2) *Tolling provision.* Paragraph (h) of this section applies to ruling requests received on or after November 1, 2006. The applicability of this section expires on or before November 2, 2009.

Par. 6. Section 301.6112-1 is amended by revising paragraph (i) to read as follows:

§301.6112-1 Requirement to prepare, maintain, and furnish lists with respect to potentially abusive tax shelters.

* * * * *

(i) [Reserved]. For further guidance, see §301.6111-3T(h).

* * * * *

Mark E. Matthews,
*Deputy Commissioner for
Services and Enforcement.*

Approved October 25, 2006.

Eric Solomon,
*Acting Deputy Assistant
Secretary of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on November 1, 2006, 8:45 a.m., and published in the issue of the Federal Register for November 2, 2006, 71 F.R. 64458)

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2006. See Rev. Rul. 2006-61, page 1028.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2006. See Rev. Rul. 2006-61, page 1028.

Part III. Administrative, Procedural, and Miscellaneous

Tables for Figuring Amount Exempt From Levy on Wages, Salary, and Other Income

Notice 2006-106

1. Table for Figuring Amount Exempt From Levy on Wages, Salary, and Other Income (Forms 668-W(c) and 668-W(c)(DO)) 2007

Publication 1494, shown below, provides tables that show the amount of an individual's income that is exempt from a notice of levy used to collect delinquent tax in 2007.

(Amounts are for each pay period.)

Filing Status: Single							
Pay Period	Number of Exemptions Claimed on Statement						
	1	2	3	4	5	6	More Than 6
Daily	33.65	46.73	59.81	72.88	85.96	99.04	20.58 plus 13.08 for each exemption
Weekly	168.27	233.65	299.04	364.42	429.81	495.19	102.89 plus 65.39 for each exemption
Biweekly	336.54	467.31	598.08	728.85	859.62	990.38	205.77 plus 130.77 for each exemption
Semi-monthly	364.58	506.25	647.92	789.58	931.25	1072.92	222.92 plus 141.67 for each exemption
Monthly	729.17	1012.50	1295.83	1579.17	1862.50	2145.83	445.83 plus 283.33 for each exemption

Filing Status: Unmarried Head of Household							
Pay Period	Number of Exemptions Claimed on Statement						
	1	2	3	4	5	6	More Than 6
Daily	43.27	56.35	69.42	82.50	95.58	108.65	30.19 plus 13.08 for each exemption
Weekly	216.35	281.73	347.12	412.50	477.88	543.27	150.96 plus 65.39 for each exemption
Biweekly	432.69	563.46	694.23	825.00	955.77	1086.54	301.92 plus 130.77 for each exemption
Semi-monthly	468.75	610.42	752.08	893.75	1035.42	1177.08	327.08 plus 141.67 for each exemption
Monthly	937.50	1220.83	1504.17	1787.50	2070.83	2354.17	654.17 plus 283.33 for each exemption

Filing Status: Married Filing Joint Return (and Qualifying Widow(er)s)							
Pay Period	Number of Exemptions Claimed on Statement						
	1	2	3	4	5	6	More Than 6
Daily	54.23	67.31	80.38	93.46	106.54	119.62	41.15 plus 13.08 for each exemption
Weekly	271.15	336.54	401.92	467.31	532.69	598.08	205.77 plus 65.39 for each exemption
Biweekly	542.31	673.08	803.85	934.62	1065.38	1196.15	411.54 plus 130.77 for each exemption
Semi-monthly	587.50	729.17	870.83	1012.50	1154.17	1295.83	445.83 plus 141.67 for each exemption
Monthly	1175.00	1458.33	1741.67	2025.00	2308.33	2591.67	891.67 plus 283.33 for each exemption

Filing Status: Married Filing Separate Return							
Pay Period	Number of Exemptions Claimed on Statement						
	1	2	3	4	5	6	More Than 6
Daily	33.65	46.73	59.81	72.88	85.96	99.04	20.58 plus 13.08 for each exemption
Weekly	168.27	233.65	299.04	364.42	429.81	495.19	102.89 plus 65.39 for each exemption
Biweekly	336.54	467.31	598.08	728.85	859.62	990.38	205.77 plus 130.77 for each exemption
Semi-monthly	364.58	506.25	647.92	789.58	931.25	1072.92	222.92 plus 141.67 for each exemption
Monthly	729.17	1012.50	1295.83	1579.17	1862.50	2145.83	445.83 plus 283.33 for each exemption

2. Table for Figuring Additional Exempt Amount for Taxpayers at Least 65 Years Old and/or Blind

Additional Exempt Amount

Filing Status	*	Daily	Wkly	Bi-Wkly	Semi-Mo	Monthly
Single or Head of Household	1	5.00	25.00	50.00	54.17	108.33
	2	10.00	50.00	100.00	108.33	216.67
Any Other Filing Status	1	4.04	20.19	40.38	43.75	87.50
	2	8.08	40.38	80.77	87.50	175.00
	3	12.12	60.58	121.15	131.25	262.50
	4	16.15	80.77	161.54	175.00	350.00

* ADDITIONAL STANDARD DEDUCTION claimed on Parts 3, 4, & 5 of levy.

Examples

These tables show the amount exempt from a levy on wages, salary, and other income.

For example:

1. A single taxpayer who is paid weekly and claims three exemptions (including one for the taxpayer) has \$299.04 exempt from levy.
2. If the taxpayer in number 1 is over 65 and writes 1 in the ADDITIONAL STANDARD DEDUCTION space on Parts 3, 4, & 5 of the levy, \$324.04 is exempt from this levy (\$299.04 plus \$25.00).
3. A taxpayer who is married, files jointly, is paid biweekly, and claims two exemptions (including one for the taxpayer) has \$673.08 exempt from levy.
4. If the taxpayer in number 3 is over 65 and has a spouse who is blind, this taxpayer should write 2 in the ADDITIONAL STANDARD DEDUCTION space on Parts 3, 4, & 5 of the levy. Then, \$753.85 is exempt from this levy (\$673.08 plus \$80.77).

26 CFR 601.201: Rulings and determination letters.

Procedures for Requesting Competent Authority Assistance Under Tax Treaties

Rev. Proc. 2006-54

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SECTION 1. PURPOSE AND BACKGROUND

.01 *Purpose.* This revenue procedure explains the procedures by which taxpayers may obtain assistance from the U.S. competent authority under the provisions of a tax treaty to which the United States is a party. This revenue procedure updates and supersedes Rev. Proc. 2002–52, 2002–2 C.B. 242.

.02 *Background.* The U.S. competent authority assists taxpayers with respect to matters covered in the mutual agreement procedure provisions of tax treaties. A tax treaty generally permits taxpayers to request competent authority assistance when they consider that the actions of the United States, the treaty country, or both, result or will result in taxation that is contrary to the provisions of the treaty. For example, tax treaties generally permit taxpayers to request assistance in order to relieve economic double taxation arising from an allocation under section 482 of the Internal Revenue Code (the “Code”) or an equivalent provision under the laws of a treaty country. Competent authority assistance may also be available with respect to issues specifically dealt with in other provisions of a treaty. For example, many tax treaties contain provisions permitting competent authorities to resolve issues of fiscal residence or allowing a competent authority to make a discretionary determination that a taxpayer is entitled to the benefits of a treaty under specific limitation on benefits provisions. See sections 3.07 and 3.08 of this revenue procedure. The Deputy Commissioner (International), Large and Mid-Size Business Division, acts as the U.S. competent authority in administering the operating provisions of tax treaties, including reaching mutual agreements

in specific cases, and in interpreting and applying tax treaties. In interpreting and applying tax treaties, the Deputy Commissioner (International), Large and Mid-Size Business Division, acts only with the concurrence of the Associate Chief Counsel (International). See Delegation Order 4–12 (formerly DO–114, Rev. 13), Internal Revenue Manual (“IRM”), Part 1 Organization, Finance and Management, Chapter 2 Servicewide Policies and Authorities, Section 43 Delegation of Authorities for the Examining Process (IRM 1.2.43), <http://www.irs.gov/irm/part1/ch02s10.html#d0e33677>.

.03 *Changes.* Although most of the changes made by this revenue procedure to Rev. Proc. 2002–52 are minor edits for organization, accuracy, readability, or updating of citations to cross-referenced guidance, substantive changes have also been made and may be summarized as follows:

(1) Sections 3.04, 3.08 and 7.06 have been revised to clarify standards for acceptance of requests for competent authority assistance.

(2) Sections 3.08, 4.04 and 5.03 have been revised to clarify signature requirements for requests for determinations regarding limitation on treaty benefits.

(3) Section 4.04 has been revised to provide for filing copies of submissions on electronic media.

(4) Sections 4.05 and 5.03 have been revised to provide additional detail regarding information to be submitted with requests for competent authority assistance.

(5) Sections 7.02 and 7.05 have been revised to clarify current practices regarding coordination with IRS Appeals.

(6) Section 7.06 has been revised to clarify the coordination of the accelerated competent authority procedure with requests for Advance Pricing Agreements.

(7) Section 8.04 has been revised to clarify current practices regarding the processing of requests for the Simultaneous Appeal procedure.

(8) Section 9.03(3) has been revised to reduce the frequency with which taxpayers filing protective claims are required to notify the U.S. competent authority as to their intent to file a request for assistance.

(9) Section 10 has been revised to clarify the role of the U.S. competent authority in considering requests regarding conforming a taxpayer’s accounts and allowing repatriation of certain amounts following an allocation of income between related U.S. and foreign corporations under section 482 of the Code.

(10) Section 12.02(8) has been revised to provide for denial of competent authority assistance where the underlying transaction is listed for purposes of the applicable Treasury regulations as a tax avoidance transaction.

(11) Section 14 has been revised to implement user fees for requests for determinations regarding limitation on treaty benefits.

SECTION 2. SCOPE

.01 *In General.* This revenue procedure addresses procedures for obtaining assistance from the U.S. competent authority under the provisions of an income, estate or gift tax treaty entered into between the United States and another country. The U.S. competent authority assists taxpayers with respect to matters covered in tax treaties in the manner specified in the mutual agreement procedure provisions or other provisions of the relevant tax treaty. Taxpayers are urged to examine the specific provisions of the treaty under which they seek relief, in order to deter-

mine whether relief may be available in their particular case. If, after examining the applicable treaty, a taxpayer is unsure whether relief is available, the taxpayer should contact competent authority. This revenue procedure is not intended to limit any specific treaty provisions relating to competent authority matters.

.02 *Requests for Assistance.* In general, requests by taxpayers for competent authority assistance must be submitted in accordance with this revenue procedure. However, where a treaty or other published administrative guidance provides specific procedures for requests for competent authority assistance, those procedures will apply, and the provisions of this revenue procedure will not apply to the extent inconsistent with such procedures. Taxpayers may consult the “Tax Information for International Businesses” and “Competent Authority Agreements” pages at www.irs.gov for links to a variety of agreements and other documents that may modify the procedures set forth in this revenue procedure.

.03 *General Process.* If a taxpayer’s request for competent authority assistance is accepted, the U.S. competent authority generally will consult with the appropriate foreign competent authority and attempt to reach a mutual agreement that is acceptable to all parties. The U.S. competent authority also may initiate competent authority negotiations in any situation deemed necessary to protect U.S. interests. Such a situation may arise, for example, when a taxpayer fails to request competent authority assistance after agreeing to a U.S. or foreign tax assessment that is contrary to the provisions of an applicable tax treaty or for which correlative relief may be available.

.04 *Failure to Request Assistance.* Failure to request competent authority assistance or to take appropriate steps as necessary to maintain the availability of the remedy may cause a denial of part or all of any foreign tax credits claimed. *See* Treas. Reg. §1.901-2(e)(5)(i). *See also* section 9 of this revenue procedure concerning protective measures and section 11 of this revenue procedure concerning the determination of creditable foreign taxes.

SECTION 3. GENERAL CONDITIONS UNDER WHICH THIS PROCEDURE APPLIES

.01 *General.* The exclusions, exemptions, deductions, credits, reductions in rate, and other benefits and safeguards provided by treaties are subject to conditions and restrictions that may vary in different treaties. Taxpayers should examine carefully the specific treaty provisions applicable in their cases to determine the nature and extent of treaty benefits or safeguards they are entitled to and the conditions under which such benefits or safeguards are available. *See* section 9 of this revenue procedure, which prescribes protective measures to be taken by the taxpayer and any concerned related person with respect to U.S. and foreign tax authorities. *See also* section 12.02 of this revenue procedure for circumstances in which competent authority assistance may be denied.

.02 *Requirements of a Treaty.* There is no authority for the U.S. competent authority to provide relief from U.S. tax or to provide other assistance due to taxation arising under the tax laws of a foreign country or the United States, unless such authority is granted by a treaty. *See also* Rev. Proc. 2006-23, 2006-20 I.R.B. 900, for procedures for requesting the assistance of the IRS when a taxpayer is or may be subject to inconsistent tax treatment by the IRS and a U.S. possession tax agency.

.03 *Applicable Standards in Allocation Cases.* With respect to requests for competent authority assistance involving the allocation of income and deductions between a U.S. taxpayer and a related person, the U.S. competent authority and its counterpart in the treaty country will be bound by the arm’s length standard provided by the applicable provisions of the relevant treaty. The U.S. competent authority will also be guided by the arm’s length standard consistent with the regulations under section 482 of the Code and the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations as published from time to time by the Organisation for Economic Co-operation and Development. When negotiating mutual agreements on the allocation of income and deductions, the U.S. competent authority will take into account all of the

facts and circumstances of the particular case and the purpose of the treaty, which is to avoid double taxation.

.04 *Who Can File Requests for Assistance.* The U.S. competent authority will consider requests for assistance from U.S. persons, as defined in section 7701(a)(30) of the Code, and from non-U.S. persons as permitted under an applicable tax treaty. As noted in section 12.02 of this revenue procedure, there are circumstances in which the U.S. competent authority will not pursue assistance. For purposes of this revenue procedure, except where the context otherwise requires, the term “taxpayer” refers to the person requesting competent authority assistance.

.05 *Closed Cases.* A case previously closed after examination will not be reopened in order to make an adjustment unfavorable to the taxpayer except in the presence of an exceptional circumstance described in Rev. Proc. 2005-32, 2005-23 I.R.B. 1206 (providing procedures for reopening cases if fraud, substantial error, or certain other circumstances are present). The U.S. competent authority may, but is not required to, accept a taxpayer’s request for competent authority consideration that will require the reopening of a case closed after examination.

.06 *Foreign Initiated Competent Authority Request.* When a foreign competent authority refers a request from a foreign person to the U.S. competent authority for consultation under the mutual agreement procedure, the U.S. competent authority generally will require the U.S. related person (in the case of an allocation of income or deductions between related persons) or may require the foreign person (in other cases) to file a request for competent authority assistance under this revenue procedure.

.07 *Requests Relating to Residence Issues.* U.S. competent authority assistance may be available to taxpayers seeking to clarify their residency status in the United States. Examples include cases in which taxpayers believe that they are erroneously treated as non-U.S. residents by treaty countries or cases where taxpayers are treated as dual residents despite the objective tie-breaker provisions contained in the applicable treaties. Generally, competent authority assistance is limited to situations where resolution of a residency

issue is necessary in order to avoid double taxation or to determine the applicability of a benefit under the treaty. Further, a request for assistance regarding a residency issue will be accepted only if it is established that the issue requires consultation with the foreign competent authority in order to ensure consistent treatment by the United States and the applicable treaty country. The U.S. competent authority does not issue unilateral determinations with respect to whether an individual is a resident of the United States or of a treaty country.

.08 Determinations Regarding Limitation on Benefits. Many treaties contain a limitation on benefits article that enumerates prescribed requirements that must be met to be eligible for benefits under the treaty. The U.S. competent authority will not issue determinations regarding a taxpayer's status under one of the prescribed requirements in a limitation on benefits provision. However, certain treaties provide that the competent authority may, as a matter of discretion, determine the availability of treaty benefits where the prescribed requirements are not met. Requests for assistance in such cases should comply with this revenue procedure and any other specific procedures that may be issued from time to time. A request may be with respect to an initial discretionary determination, a renewal or a redetermination. The request should take the form of a letter as described in section 4.04 of this revenue procedure, except that if the requester does not file federal tax returns and cannot identify a person authorized to sign such returns, the letter may be dated and signed by any authorized representative or officer of the requester. Taxpayers who are requesting a discretionary determination under a limitation on benefits provision should include the user fee as described in Section 14 of this revenue procedure as well as the information described in Exhibit 4.60.3-3 of the Internal Revenue Manual ("IRM"), Part 4 Examining Process, Chapter 60 International Procedure, Section 3 Tax Treaty Related Matters (IRM 4.60.3), <http://www.irs.gov/irm/part4/ch45s03.html>.

SECTION 4. PROCEDURES FOR REQUESTING COMPETENT AUTHORITY ASSISTANCE

.01 Time for Filing. A request for competent authority assistance generally may be filed at any time after an action results in taxation not in accordance with the provisions of the applicable treaty. In a case involving a U.S. initiated adjustment of tax or income resulting from a tax examination, a request for competent authority assistance may be submitted as soon as practicable after the amount of the proposed adjustment is communicated in writing to the taxpayer (e.g., a Notice of Proposed Adjustment). Where a U.S. initiated adjustment has not yet been communicated in writing to the taxpayer, the U.S. competent authority generally will deny the request as premature. In the case of a foreign examination, a request may be submitted as soon as the taxpayer believes such filing is warranted based on the actions of the country proposing the adjustment. In a case involving the re-allocation of income or deductions between related persons, the request should not be filed until such time that the taxpayer can establish that there is a probability of double taxation. In cases not involving an examination, a request can be made when the taxpayer believes that an action or potential action warrants the assistance of the U.S. competent authority. Examples of such action include: (a) a ruling or promulgation by a foreign tax authority concerning a taxation matter; and (b) the withholding of tax by a withholding agent. Except where otherwise provided in an applicable treaty, taxpayers have discretion over the time for filing a request; however, delays in filing may preclude effective relief. See section 9 of this revenue procedure, which explains protective measures to be taken by the taxpayer and any concerned related person with respect to U.S. and foreign tax authorities. See also section 7.06 of this revenue procedure for rules relating to accelerated issue resolution and competent authority assistance.

.02 Place of Filing. The taxpayer must send all written requests for, or any inquiries regarding, U.S. competent authority assistance to the Deputy Commissioner (International), Large and Mid-Size Business Division, Attn: Office of Tax Treaty,

Internal Revenue Service, 1111 Constitution Avenue, NW, Routing: MA3-322A, Washington, D.C. 20224.

.03 Additional Filing. In the case of U.S. initiated adjustments, the taxpayer also must file a copy of the request with the office of the IRS where the taxpayer's case is pending. If the request is filed after the matter has been designated for litigation or while a suit contesting the relevant tax liability of the taxpayer is pending in a United States court, a copy of the request also must be filed with the Office of Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, with a separate statement attached identifying the court where the suit is pending and the docket number of the action.

.04 Form of Request. A request for U.S. competent authority assistance must be in the form of a letter addressed to the Deputy Commissioner (International), Large and Mid-Size Business Division. It must be dated and signed by a person having the authority to sign the taxpayer's federal tax returns. The request must contain a statement that competent authority assistance is being requested and must include the information described in section 4.05 of this revenue procedure. In addition to the original signed submission, a copy of the text of the request and any materials contemporaneously prepared in support of the request must also be submitted, in Adobe PDF or Microsoft Word format, in the form of a CD, DVD, or 3.5-inch diskette. See section 5 of this revenue procedure for requests involving small cases.

.05 Information Required. The following information must be included in the request for competent authority assistance:

- (1) a reference to the specific treaty and the provisions therein pursuant to which the request is made;
- (2) the names, addresses, U.S. taxpayer identification number and foreign taxpayer identification number (if any) of the taxpayer and, if applicable, all related persons involved in the matter;
- (3) a brief description of the issues for which competent authority assistance is requested, including a description of the relevant transactions, activities or other circumstances involved in the issues raised and the basis for the adjustment, if any;

(4) if applicable, a description of the control and business relationships between the taxpayer and any relevant related person for the years in issue, including any changes in such relationship to the date of filing the request;

(5) the years and amounts involved with respect to the issues in both U.S. dollars and foreign currency;

(6) the IRS office that has made or is proposing to make the adjustment or, if known, the IRS office with examination jurisdiction over the taxpayer;

(7) an explanation of the nature of the relief sought or the action requested in the United States or in the treaty country with respect to the issues raised, including a statement as to whether the taxpayer wishes to apply for treatment similar to that provided under Rev. Proc. 99-32, 1999-2 C.B. 296 (referred to in this revenue procedure as “Rev. Proc. 99-32 treatment” and explained in further detail in section 10 of this revenue procedure);

(8) a statement whether the period of limitations for the years for which relief is sought has expired in the United States or in the treaty country;

(9) a statement of relevant domestic and foreign judicial or administrative proceedings that involve the taxpayer and related persons, including all information related to notification of the treaty country;

(10) to the extent known by the taxpayer, a statement of relevant foreign judicial or public administrative proceedings that do not involve the taxpayer or related persons but involve the same issue for which competent authority assistance is requested;

(11) a statement whether the request for competent authority assistance involves issues that are currently, or were previously, considered part of an Advance Pricing Agreement (“APA”) proceeding or other proceeding relevant to the issue under consideration in the United States or part of a similar proceeding in the foreign country;

(12) if applicable, powers of attorney with respect to the taxpayer, and the request should identify the individual to serve as the taxpayer’s initial point of contact for the competent authority;

(13) if the jurisdiction of an issue is with an IRS Appeals office, a summary of prior discussions of the issue with that office and contact information regarding the IRS Ap-

peals officer handling the issue; also, if appropriate, a statement whether the taxpayer is requesting the Simultaneous Appeals procedure as provided in section 8 of this revenue procedure;

(14) in a separate section, the statement and information required by section 9.02 of this revenue procedure if the request is to serve as a protective claim;

(15) on a separate document, a statement that the taxpayer consents to the disclosure to the competent authority of the treaty country (with the name of the treaty country specifically stated) and that competent authority’s staff, of any or all of the items of information set forth or enclosed in the request for U.S. competent authority assistance within the limits contained in the tax treaty under which the taxpayer is seeking relief. The taxpayer may request, as part of this statement, that its trade secrets not be disclosed to a foreign competent authority. This statement must be dated and signed by a person having authority to sign the taxpayer’s federal tax returns and is required to facilitate the administrative handling of the request by the U.S. competent authority for purposes of the recordkeeping requirements of section 6103(p) of the Code. Failure to provide such a statement will not prevent the U.S. competent authority from disclosing information under the terms of a treaty. See section 6103(k)(4) of the Code. Taxpayers are encouraged to provide duplicates to the U.S. and foreign competent authorities of all information otherwise disclosable under the treaty;

(16) a penalties of perjury statement in the following form:

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of the request for competent authority assistance are true, correct and complete. The declaration must be dated and signed by the person or persons on whose behalf the request is being made and not by the taxpayer’s representative. The person signing for a corporate taxpayer must be an authorized officer of the taxpayer who has personal knowledge of the facts. The person signing for a trust, an estate or a partnership must be respectively, a trustee, an executor or a partner who has personal knowledge of the facts; and

(17) any other information required or requested under this revenue procedure, as applicable. See, e.g., section 7.06 of this revenue procedure, which requires the provision of certain information in the case of a request for the accelerated competent authority procedure, and section 10 of this revenue procedure, which requires the provision of certain information in the case of a request for Rev. Proc. 99-32 treatment. Requests for supplemental information may include items such as detailed financial information, comparability analysis, or other material relevant to a transfer pricing analysis.

.06 Other Dispute Resolution Programs. Requests for competent authority assistance that involve an APA or Pre-Filing Agreement request must include the information required under Rev. Proc. 2006-9, 2006-2 I.R.B. 278 (concerning APAs), and Rev. Proc. 2005-12, 2005-2 I.R.B. 311 (concerning Pre-Filing Agreements).

.07 Other Documentation. In addition, on request, the taxpayer must submit any other information or documentation deemed necessary by the U.S. or foreign competent authority for purposes of reaching an agreement. This includes English translations of any documentation required in connection with the competent authority request.

.08 Updates. The taxpayer must keep the U.S. competent authority informed of all material changes in the information or documentation previously submitted as part of, or in connection with, the request for competent authority assistance. The taxpayer also must provide any updated information or new documentation that becomes known or is created after the request is filed and which is relevant to the resolution of the issues under consideration.

.09 Conferences. To the extent possible, the U.S. competent authority will consult with the taxpayer regarding the status and progress of the mutual agreement proceedings. The taxpayer may request a pre-filing conference with the U.S. competent authority to discuss the mutual agreement process with respect to matters covered under a treaty, including discussion of the proper time for filing, the practical aspects of obtaining relief and actions necessary to facilitate the proceedings. Simi-

larly, after a matter is resolved by the competent authorities, a taxpayer may also request a conference with the U.S. competent authority to discuss the resolution.

SECTION 5. SMALL CASE PROCEDURE FOR REQUESTING COMPETENT AUTHORITY ASSISTANCE

.01 *General.* To facilitate requests for assistance involving small cases, this section provides a special procedure simplifying the form of a request for assistance and, in particular, the amount of informa-

tion that initially must be submitted. All other requirements of this revenue procedure continue to apply to requests for assistance made pursuant to this section.

.02 *Small Case Standards.* A taxpayer may file an abbreviated request for competent authority assistance in accordance with this section if the total proposed adjustment involved in the matter is not greater than the following:

Taxpayer	Proposed Adjustment
Individual	\$200,000
Corporation/Partnership	\$1,000,000
Other	\$200,000

.03 *Small Case Filing Procedure.* The abbreviated request for competent authority assistance under the small case procedure must be dated and signed by a person having the authority to sign the taxpayer's federal tax returns. Although other information and documentation may be requested at a later date, the initial request for assistance should include the following information and materials:

- (1) a statement indicating that this is a matter subject to the small case procedure;
- (2) the name, address, U.S. taxpayer identification number and foreign taxpayer identification number (if any) of the taxpayer and, if applicable, all related persons involved in the matter;
- (3) a description of the issue and the nature of the relief sought;
- (4) the taxable years and amounts involved with respect to the issues in both U.S. and foreign currency;
- (5) the name of the treaty country;
- (6) if applicable, powers of attorney with respect to the taxpayer;
- (7) on a separate document, a statement that the taxpayer consents to the disclosure to the competent authority of the treaty country (with the name of the treaty country specifically stated) and that competent authority's staff, of any or all of the items of information set forth or enclosed in the request for U.S. competent authority assistance within the limits contained in the tax treaty under which the taxpayer is seeking relief. The taxpayer may request, as part of this statement, that its trade secrets not be disclosed to a foreign competent authority. This statement must be dated and

signed by a person having authority to sign the taxpayer's federal tax returns and is required to facilitate the administrative handling of the request by the U.S. competent authority for purposes of the recordkeeping requirements of section 6103(p) of the Code. Failure to provide such a statement will not prevent the U.S. competent authority from disclosing information under the terms of a treaty. See section 6103(k)(4) of the Code; and

(8) a penalties of perjury statement in the following form:

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of the request for competent authority assistance are true, correct and complete.

The declaration must be dated and signed by the person or persons on whose behalf the request is being made and not by the taxpayer's representative. The person signing for a corporate taxpayer must be an authorized officer of the taxpayer who has personal knowledge of the facts. The person signing for a trust, an estate or a partnership must be respectively, a trustee, an executor or a partner who has personal knowledge of the facts.

SECTION 6. RELIEF REQUESTED FOR FOREIGN INITIATED ADJUSTMENT WITHOUT COMPETENT AUTHORITY INVOLVEMENT

Taxpayers seeking correlative relief with respect to a foreign initiated adjust-

ment involving a treaty matter should present their request to the U.S. competent authority. However, when the adjustment involves years under the jurisdiction of the Industry or Area Director or IRS Appeals, taxpayers sometimes try to obtain relief from these offices. This may occur, for example, if the adjustment involves a re-allocation of income or deductions involving a related person in a country with which the United States has an income tax treaty. In these cases, taxpayers will be advised to contact the U.S. competent authority office. In appropriate cases, the U.S. competent authority will advise the Industry or Area Director or IRS Appeals office on appropriate action. The U.S. competent authority may request the taxpayer to provide the information described under sections 4.05 and 4.07 of this revenue procedure. Failure to request competent authority assistance may result in denial of correlative relief with respect to the issue, including applicable foreign tax credits.

SECTION 7. COORDINATION WITH OTHER ADMINISTRATIVE OR JUDICIAL PROCEEDINGS

.01 *Suspension of Administrative Action with Respect to U.S. Adjustments.* When a request for competent authority assistance is accepted with respect to a U.S. initiated adjustment, the IRS will postpone further administrative action with respect to the issues under competent authority consideration (such as assessment or collection procedures), except: (a) in situations in which the IRS may be

requested otherwise by the U.S. competent authority; or (b) in situations involving cases pending in court and in other instances in which action must be taken to avoid prejudicing the U.S. Government's interest. The normal administrative procedures continue to apply, however, to all other issues not under U.S. competent authority consideration. For example, if there are other issues raised during the examination and the taxpayer is not in agreement with these issues, the usual procedures for completing the examination with respect to these issues apply. If the taxpayer is issued a Notice of Proposed Adjustment with respect to these issues and prepares a protest of the unagreed issues, the taxpayer need not include any unagreed issue under consideration by the competent authority. Following the receipt of a taxpayer's protest, normal IRS Appeals procedures will be initiated with respect to those issues not subject to competent authority consideration.

.02 Coordination with IRS Appeals. Taxpayers who disagree with a proposed U.S. adjustment have the option of pursuing their right of administrative review with IRS Appeals before requesting competent authority assistance; making a request pursuant to the Simultaneous Appeals procedure in section 8 of this revenue procedure; or requesting competent authority assistance immediately for bilateral consideration. Taxpayers requesting unilateral withdrawal of a U.S. adjustment without consultation with the treaty country must direct such a request to IRS Appeals rather than to the U.S. competent authority. Taxpayers who are pursuing their rights with IRS Appeals may contact the U.S. competent authority if they believe they have a potential competent authority issue. If a taxpayer does not go through the Simultaneous Appeals procedure and instead enters into settlement discussions with IRS Appeals before making a competent authority request, the U.S. competent authority may rely upon, but will not necessarily be bound by, such previous consideration by IRS Appeals when considering the case (*see also* section 7.05 of this revenue procedure regarding settlements with IRS Appeals and section 8.05 of this revenue procedure regarding the role of IRS Appeals in the Simultaneous Appeals procedure). If a

taxpayer enters into the Appeals arbitration program (*see* Rev. Proc. 2006-44, 2006-44 I.R.B. 800), the taxpayer generally may not request competent authority assistance until the arbitration process is completed. However, if the taxpayer demonstrates that a request for competent authority assistance is necessary to keep open a statute of limitations in the treaty country, then competent authority assistance may be requested while arbitration is pending, and the U.S. competent authority will suspend action on the case until arbitration is completed. If a taxpayer makes a competent authority request, the taxpayer is deemed to consent to communications between the U.S. competent authority and IRS Appeals regarding the matter. *See* Rev. Proc. 2000-43, 2000-2 C.B. 404.

.03 Coordination with Litigation. The U.S. competent authority will not, without the consent of the Associate Chief Counsel (International), accept (or continue to consider) a taxpayer's request for assistance if the request involves a taxable period pending in a United States court or involves a matter pending in a United States court or designated for litigation for any taxable period. If the case is pending in the United States Tax Court, the taxpayer may, in appropriate cases, be asked to join the IRS in a motion to sever issues or delay trial pending completion of the competent authority proceedings. If the case is pending in any other court, the Associate Chief Counsel (International) will consult with the Department of Justice about appropriate action, and the taxpayer may, in appropriate cases, be asked to join the U.S. Government in a motion to sever issues or delay trial pending completion of the competent authority proceedings. Final decision on severing issues or delaying trial rests with the court. The filing of a competent authority request does not, however, relieve the taxpayer from taking any action that may be necessary or required with respect to litigation.

.04 Coordination with Other Alternative Dispute Resolution and Pre-Filing Procedures. Competent authority assistance is available to taxpayers in conjunction with other alternative dispute resolution and pre-filing procedures in order to ensure taxation in accordance with tax treaty provisions. Other revenue procedures and IRS publications should

be consulted as necessary with regard to specific matters. *See, e.g.,* Rev. Proc. 2006-9, 2006-2 I.R.B. 278 (concerning APAs); Rev. Proc. 2005-12, 2005-2 I.R.B. 311 (concerning Pre-Filing Agreements); or Rev. Proc. 98-21, 1998-1 C.B. 585 (concerning Article XIII(8) of the U.S.-Canada treaty). Taxpayers with applications under any other dispute resolution procedures should seek competent authority assistance as early as possible if they believe they have potential competent authority issues.

.05 Effect of Agreements or Judicial Determinations on Competent Authority Proceedings. If a taxpayer either executes a closing agreement with the IRS (whether or not contingent upon competent authority relief) with respect to a potential competent authority issue or reaches a settlement on the issue with IRS Appeals (including an Appeals settlement through the arbitration process) or with Chief Counsel pursuant to an executed closing agreement or other written agreement such as Form 870-AD, the U.S. competent authority will endeavor only to obtain a correlative adjustment from the treaty country and will not undertake any actions that would otherwise change such agreements. However, the U.S. competent authority will, in appropriate cases, consider actions necessary for the purpose of providing treatment similar to that provided in Rev. Proc. 99-32. Once a taxpayer's tax liability for the taxable periods in issue has been determined by a U.S. court (including settlement of the proceedings before or during trial), the U.S. competent authority similarly will endeavor only to obtain correlative relief from the treaty country and will not undertake any action that would otherwise reduce the taxpayer's federal tax liability for the taxable periods in issue as determined by a U.S. court. Taxpayers therefore should be aware that in these situations, as well as in situations where a treaty country takes a similar position with respect to issues resolved under its domestic laws, relief from double taxation may be jeopardized.

.06 Accelerated Competent Authority Procedure. A taxpayer requesting competent authority assistance with respect to an issue raised by the IRS also may request that the competent authorities attempt to resolve the issue for subsequent taxable

periods for which returns have been filed, if the same issue continues in those periods. See also Rev. Proc. 94-67, 1994-2 C.B. 800, concerning the Accelerated Issue Resolution (“AIR”) process. The U.S. competent authority will consider the request and will contact the appropriate IRS field office to consult on whether the issue should be resolved for subsequent taxable periods. If the IRS field office consents to this procedure, the U.S. competent authority will address with the foreign competent authority the request for such taxable periods. For purposes of resolving the issue, the taxpayer must furnish all relevant information and statements that may be requested by the U.S. competent authority pursuant to this revenue procedure. In addition, if the case involves a Coordinated Industry Case (“CIC”) taxpayer, the taxpayer must furnish all relevant information and statements requested by the IRS, as described in Rev. Proc. 94-67, 1994-2 C.B. 800. If the case involves a non-CIC taxpayer, the taxpayer must furnish all relevant information and statements that may be requested by the IRS field office. A request for the accelerated competent authority procedure may be made at the time of filing a request for competent authority assistance or at any time thereafter, but generally before conclusion of the mutual agreement in the case; however, taxpayers are encouraged to request the procedure as early as practicable. The application of the accelerated procedure may require the prior consent of the Associate Chief Counsel (International). See section 7.03 of this revenue procedure. A request for the accelerated competent authority procedure must contain a statement that the taxpayer agrees that: (a) the inspection of books of account or records under the accelerated competent authority procedure will not preclude or impede (under section 7605(b) or any administrative provision adopted by the IRS) a later examination of a return or inspection of books of account or records for any taxable period covered in the accelerated competent authority assistance request; and (b) the IRS need not comply with any applicable procedural restrictions (for example, providing notice under section 7605(b)) before beginning such examination or inspection. The accelerated competent authority procedure is not subject to the AIR process limitations. The accelerated competent

authority procedure is implicitly invoked when a taxpayer requests a rollback of its requested bilateral APA to already filed years. Thus, the provisions of section 7.06 of this revenue procedure also apply when a rollback is requested pursuant to Rev. Proc. 2006-9, which governs requests for APAs filed with the Office of Associate Chief Counsel (International), Advance Pricing Agreement Program.

SECTION 8. SIMULTANEOUS APPEALS PROCEDURE

.01 *General.* A taxpayer filing a request for competent authority assistance under this revenue procedure may, at the same time or at a later date, request IRS Appeals’ consideration of the competent authority issue under the procedures and conditions provided in this section. The U.S. competent authority also may request IRS Appeals’ involvement if it is determined that such involvement would facilitate the negotiation of a mutual agreement in the case or otherwise would serve the interest of the IRS. The taxpayer may, at any time, request a prefiling conference with the offices of the Chief of IRS Appeals and the U.S. competent authority to discuss the Simultaneous Appeals procedure. See also section 7.02 of this revenue procedure for coordination with the competent authority of cases already in IRS Appeals. However, arbitration or mediation procedures that otherwise would be available through the IRS Appeals process are not available for cases in the Simultaneous Appeals procedure. See Rev. Proc. 2006-44, 2006-44 I.R.B. 800, and Rev. Proc. 2002-44, 2002-2 C.B. 10.

.02 *Time for Requesting the Simultaneous Appeals Procedure.*

(1) *When Filing for Competent Authority Assistance.* The Simultaneous Appeals procedure may be invoked at any of the following times:

(a) When the taxpayer applies for competent authority assistance with respect to an issue for which the examining IRS office has proposed an adjustment and before the protest is filed;

(b) When the taxpayer files a protest and decides to sever the competent authority issue and seek competent authority assistance while other issues are referred to IRS Appeals; and

(c) When the case is in IRS Appeals and the taxpayer later decides to request competent authority assistance with respect to the competent authority issue. The taxpayer may sever the competent authority issue for referral to the U.S. competent authority and invoke the Simultaneous Appeals procedure at any time when the case is in IRS Appeals but before settlement of the issue. Taxpayers, however, are encouraged to invoke the Simultaneous Appeals procedure as soon as possible, preferably as soon as practicable after the first IRS Appeals conference.

(2) *After Filing for Competent Authority Assistance.* The taxpayer may request the Simultaneous Appeals procedure at any time after requesting competent authority assistance. However, a taxpayer’s request for the Simultaneous Appeals procedure generally will be denied if made after the date the U.S. position paper is communicated to the foreign competent authority, unless the U.S. competent authority determines that the procedure would facilitate an early resolution of the competent authority issue or otherwise is in the best interest of the IRS.

.03 *Cases Pending in Court.* If the matter is pending before a U.S. court or has been designated for litigation and jurisdiction has been released to the U.S. competent authority, a request for the Simultaneous Appeals procedure may be granted only with the consent of the U.S. competent authority and the Office of Associate Chief Counsel (International).

.04 *Request for Simultaneous Appeals Procedure.* The taxpayer’s request for the Simultaneous Appeals procedure should be addressed to the U.S. competent authority either as part of the initial competent authority assistance request or, if made later, as a separate letter to the U.S. competent authority. The request should state whether the issue was previously protested to IRS Appeals for the periods in competent authority or for prior periods (in which case a copy of the relevant portions of the protest and an explanation of the outcome, if any, should be provided). The U.S. competent authority will send a copy of the request to the Chief of IRS Appeals, who, in turn, will forward a copy to the appropriate Area Director. The U.S. competent authority will consult with IRS Appeals to determine whether the Simultaneous Ap-

peals procedure should be invoked. When the U.S. competent authority invokes the Simultaneous Appeals procedure, the taxpayer will be notified. The U.S. competent authority has jurisdiction of the issue when the Simultaneous Appeals procedure is invoked.

.05 Role of IRS Appeals in the Simultaneous Appeals Procedure.

(1) *IRS Appeals Process.* The IRS Appeals representative assigned to the case will consult with the taxpayer and the U.S. competent authority for the purpose of reaching a resolution of the unagreed issue under competent authority jurisdiction before the issue is presented to the foreign competent authority. For this purpose, established IRS Appeals procedures generally apply. The IRS Appeals representative will consult with the U.S. competent authority during this process to ensure appropriate coordination of the IRS Appeals process with the competent authority procedure, so that the terms of a tentative resolution and the principles and facts upon which it is based are compatible with the position that the U.S. competent authority intends to present to the foreign competent authority with respect to the issue. Any resolution reached with the IRS under this procedure is subject to the competent authority process and, therefore, is tentative and not binding on the IRS or the taxpayer. The IRS will not request the taxpayer to conclude the IRS Appeals process with a written agreement. The conclusions of the tentative resolution, however, generally will be reflected in the U.S. position paper used for negotiating a mutual agreement with the foreign competent authority. The procedures under this section do not give taxpayers the right to receive reconsideration of the issue by IRS Appeals where the taxpayer applied for competent authority assistance after having received substantial IRS Appeals consideration. Rather, the IRS may rely upon, but will not necessarily be bound by, such previous consideration by IRS Appeals when considering the case under the Simultaneous Appeals procedure.

(2) *Assistance to U.S. Competent Authority.* The U.S. competent authority is responsible for developing a U.S. position paper with respect to the issue and for conducting the mutual agreement procedure. Generally, requesting IRS Appeals' con-

sideration of an issue under competent authority jurisdiction will not affect the manner in which taxpayers normally are involved in the competent authority process.

.06 Denial or Termination of Simultaneous Appeals Procedure.

(1) *Taxpayer's Termination.* The taxpayer may, at any time, withdraw its request for the Simultaneous Appeals procedure.

(2) *IRS's Denial or Termination.* The U.S. competent authority, the Chief of IRS Appeals or the appropriate Industry or Area Director may decide to deny or terminate the Simultaneous Appeals procedure if the procedure is determined to be prejudicial to the mutual agreement procedure or to the administrative appeals process. For example, a taxpayer that received IRS Appeals consideration before requesting competent authority assistance, but was unable to reach a settlement in IRS Appeals, may be denied the Simultaneous Appeals procedure. A taxpayer may request a conference with the offices of the U.S. competent authority and the Chief of IRS Appeals to discuss the denial or termination of the procedure.

.07 Returning to IRS Appeals. If the competent authorities fail to agree or if the taxpayer does not accept the mutual agreement reached by the competent authorities, the taxpayer will be permitted to refer the issue to IRS Appeals for further consideration.

.08 IRS Appeals' Consideration of Non-Competent Authority Issues. The Simultaneous Appeals procedure does not affect the taxpayer's rights to IRS Appeals' consideration of other unresolved issues. The taxpayer may pursue settlement discussions with respect to the other issues without waiting for resolution of the issues under competent authority jurisdiction.

SECTION 9. PROTECTIVE MEASURES

.01 General. In negotiating treaties, the United States seeks to secure an agreement with the treaty country that any competent authority agreement reached with the treaty country will be implemented notwithstanding any time limits or other procedural limitations in the domestic law of either country. However, treaty provisions that provide a competent authority

with the ability to waive such limitations do not affect the application of statutes of limitation in the event that a request for competent authority assistance is declined or the competent authorities are unable to reach an agreement. In addition, the particular treaty or the posture of the particular case may indicate that the taxpayer or a related person must take protective measures with the U.S. and foreign tax authorities so that the implementation of any agreement reached by the competent authorities or alternative remedies outside of the competent authority process are not barred by administrative, legal or procedural barriers. Such barriers may arise either before or after a competent authority request is filed. Protective measures include, but are not limited to: (a) filing protective claims for refund or credit; (b) extending any period of limitations on assessment or refund; (c) avoiding the lapse or termination of the taxpayer's right to appeal any tax determination; (d) complying with all applicable procedures for invoking competent authority consideration, including applicable treaty provisions dealing with time limits within which to invoke such remedy; and (e) contesting an adjustment or seeking an appropriate correlative adjustment with respect to the U.S. or treaty country tax. A taxpayer should take protective measures in a timely manner, that is, in a manner that allows sufficient time for appropriate procedures to be completed and effective before barriers arise. Generally, a taxpayer should consider, at the time an adjustment is first proposed, which protective measures may be necessary and when such measures should be taken. However, earlier consideration of appropriate actions may be desirable, for example, in the case of a recurring adjustment or where the taxpayer otherwise is on notice that an adjustment is likely to be proposed. Taxpayers may consult with the U.S. competent authority to determine the need for and timing of protective measures in their particular case.

.02 Filing Protective Claim for Credit or Refund with a Competent Authority Request.

(1) *In General.* A valid protective claim for credit or refund must meet the requirements of section 6402 of the Code and the regulations thereunder. Accordingly, a

protective claim must: (a) fully advise the IRS of the grounds on which credit or refund is claimed; (b) contain sufficient facts to apprise the IRS of the exact basis of the claim; (c) state the year for which the claim is being made; (d) be on the proper form; and (e) be verified by a written declaration made under penalties of perjury.

(2) *Treatment of Competent Authority Request as Protective Claim.* The IRS will treat a request for competent authority assistance itself as one or more protective claims for credit or refund with respect to issues raised in the request and within the jurisdiction of the U.S. competent authority and will not require a taxpayer to file the form described in Treas. Reg. §301.6402-3 with respect to those issues, provided that the request meets the other requirements of section 6402 of the Code and the regulations thereunder, as described in section 9.02(1) of this revenue procedure. The information constituting the protective claim should be set forth in a separate section of the request for assistance and captioned "Protective claim pursuant to section 9.02 of Rev. Proc. 2006-54." The penalties of perjury statement described in section 4.05(16) of this revenue procedure satisfies the requirement for the written declaration and a separate declaration is not required.

.03 *Protective Filing Before Competent Authority Request.*

(1) *In general.* There may be situations in which a taxpayer will be unable to file a formal competent authority assistance request before the period of limitations expires with respect to the affected U.S. return. In these situations, before the period of limitations expires, the taxpayer should file a protective claim for credit or refund of the taxes attributable to the potential competent authority issue to ensure that alternative remedies outside of the competent authority process will not be barred. A protective filing may be appropriate where: (a) the treaty country is considering but has not yet proposed an adjustment; (b) the treaty country has proposed an adjustment but the related taxpayer in the treaty country decides to pursue administrative or judicial remedies in the foreign country; or (c) the terms of the applicable treaty require notification to be made to the competent authority within a certain time period. In considering whether to accept

a taxpayer's request for competent authority assistance, the U.S. competent authority will consider whether the proper treaty notification has been made in accordance with this subsection.

(2) *Letter to Competent Authority Treated as Protective Claim.* In situations in which a protective claim is filed prior to submitting a request for competent authority assistance, the taxpayer may make a protective claim in the form of a letter to the competent authority. The letter must indicate that the taxpayer is filing a protective claim and set forth, to the extent available, the information required under section 4.05(1) through (17) or under section 5.03(1) through (8) of this revenue procedure, as applicable. The letter must include a penalties of perjury statement as described in sections 4.05(16) and 5.03(8) of this revenue procedure. The letter must be filed in the same place and manner as a request for competent authority assistance. The IRS will treat the letter as a protective claim(s) with respect to issues raised in the letter and within the jurisdiction of the U.S. competent authority and will not require a taxpayer to file the form described in Treas. Reg. §301.6402-3 with respect to those issues, provided that the request meets the other requirements described in section 9.02(1) of this revenue procedure. The letter must include the caption "Protective claim pursuant to section 9.03 of Rev. Proc. 2006-54."

(3) *Notification Requirement.* After filing a protective claim, the taxpayer periodically must notify the U.S. competent authority whether the taxpayer still is considering filing for competent authority assistance. The notification must be filed every twelve months until the formal request for competent authority assistance is filed. The U.S. competent authority may deny competent authority assistance if the taxpayer fails to file this annual notification.

(4) *No Consultation between Competent Authorities until Formal Request is Filed.* The U.S. competent authority generally will not undertake any consultation with the foreign competent authority with respect to a protective claim filed under section 9.03 of this revenue procedure. The U.S. competent authority will place the protective claim in suspense until either a formal request for competent authority assistance is filed or the taxpayer

notifies the U.S. competent authority that competent authority consideration is no longer needed. In appropriate cases, the U.S. competent authority will send the taxpayer a formal notice of claim disallowance.

.04 *Effect of a Protective Claim.*

Protective claims filed under section 9.02 or 9.03 of this revenue procedure will only allow a credit or refund to the extent of the grounds set forth in the protective claim and only to the extent agreed to by the U.S. and foreign competent authorities or to the extent unilaterally allowed by the U.S. competent authority. This revenue procedure does not grant a taxpayer the right to invoke section 482 of the Code in its favor or compel the IRS to allocate income or deductions or grant a tax credit or refund.

.05 *Treaty Provisions Waiving Procedural Barriers.*

In those cases where the mutual agreement article authorizes a competent authority to waive or remove procedural barriers to the credit or refund of tax, taxpayers may be allowed a credit or refund of tax even though the otherwise applicable period of limitations has expired, prior closing agreements have been entered into, or other actions have been taken or omitted that ordinarily would foreclose relief in the form of a credit or refund of tax. However, under these provisions there may still be situations in which taxpayers should take appropriate protective measures as described under this revenue procedure or under applicable foreign procedures. For example, procedural limitations cannot be waived if a request for competent authority assistance is declined or the competent authorities are unable to reach agreement. In addition, some countries may take the position that domestic statutes of limitation on refunds cannot be waived under the relevant treaty. Because there are circumstances that are not under the control of taxpayers or the U.S. competent authority it is advisable that taxpayers take protective measures to increase the possibility that appropriate relief is available to them in all circumstances.

SECTION 10. APPLICATION OF REV. PROC. 99-32

Rev. Proc. 99-32, 1999-2 C.B. 296, generally provides a means to conform a

taxpayer's accounts and allow repatriation of certain amounts following an allocation of income between related U.S. and foreign corporations under section 482 of the Code without the federal income tax consequences of the adjustments that would otherwise have been necessary to conform the taxpayer's accounts in light of the allocation of income. In situations where a section 482 allocation is the subject of a request for competent authority assistance, the competent authority may provide relief consistent with the principles of Rev. Proc. 99-32 with respect to any new or pending requests for Rev. Proc. 99-32 treatment relating to such allocation. Accordingly, if a taxpayer intends to seek Rev. Proc. 99-32 treatment in connection with competent authority assistance relating to a section 482 allocation, the taxpayer must request Rev. Proc. 99-32 treatment in conjunction with its request for competent authority assistance. If a taxpayer has already requested Rev. Proc. 99-32 treatment at the time it submits a request for competent authority assistance relating to a section 482 allocation, consideration of Rev. Proc. 99-32 treatment must be transferred to the U.S. competent authority and a copy of the pending Rev. Proc. 99-32 request forwarded along with the request for competent authority assistance.

SECTION 11. DETERMINATION OF CREDITABLE FOREIGN TAXES

For purposes of determining the amount of foreign taxes creditable under sections 901 and 902 of the Code, any amounts paid to foreign tax authorities that would not have been due if the treaty country had made a correlative adjustment may not constitute a creditable foreign tax. *See* Treas. Reg. §1.901-2(e)(5)(i) and Rev. Rul. 92-75, 1992-2 C.B. 197. Acts or omissions by the taxpayer that preclude effective competent authority assistance, including failure to take protective measures as described in section 9 of this revenue procedure or failure to seek competent authority assistance, may constitute a failure to exhaust all effective and practical remedies as may be required to claim a credit. *See* Treas. Reg. §1.901-2(e)(5)(i). Further, the fact that the taxpayer has sought competent authority assistance but obtained no relief, either because the competent authorities failed to reach an

agreement or because the taxpayer rejected an agreement reached by the competent authorities, generally will not, in and of itself, demonstrate that the taxpayer has exhausted all effective and practical remedies to reduce the taxpayer's liability for foreign tax (including liability pursuant to a foreign tax audit adjustment). Any determination within the IRS of whether a taxpayer has exhausted the competent authority remedy must be made in consultation with the U.S. competent authority.

SECTION 12. ACTION BY U.S. COMPETENT AUTHORITY

.01 *Notification of Taxpayer.* Upon receiving a request for assistance pursuant to this revenue procedure, the U.S. competent authority will notify the taxpayer whether the facts provide a basis for assistance.

.02 *Denial of Assistance.* The U.S. competent authority generally will not accept a request for competent authority assistance or will cease providing assistance to the taxpayer if:

(1) competent authority determines that the taxpayer is not entitled to the treaty benefit or safeguard in question or to the assistance requested;

(2) the taxpayer is willing only to accept a competent authority agreement under conditions that are unreasonable or prejudicial to the interests of the U.S. Government;

(3) the taxpayer rejected the competent authority resolution of the same or similar issue in a prior case;

(4) the taxpayer does not agree that competent authority negotiations are a government-to-government activity that does not include the taxpayer's participation in the negotiation proceedings;

(5) the taxpayer does not furnish upon request sufficient information to determine whether the treaty applies to the taxpayer's facts and circumstances;

(6) the taxpayer was found to have acquiesced in a foreign initiated adjustment that involved significant legal or factual issues that otherwise would be properly handled through the competent authority process and then unilaterally made a corresponding correlative adjustment or claimed an increased foreign tax credit, without initially seeking U.S. competent authority assistance;

(7) the taxpayer: (a) fails to comply with this revenue procedure; (b) failed to cooperate with the IRS during the examination of the periods in issue and such failure significantly impedes the ability of the U.S. competent authority to negotiate and conclude an agreement (*e.g.*, significant factual development is required that cannot effectively be completed outside the examination process); or (c) fails to cooperate with the U.S. competent authority (including failing to provide sufficient facts and documentation to support its claim of double taxation or taxation contrary to the treaty) or otherwise significantly impedes the ability of the U.S. competent authority to negotiate and conclude an agreement; or

(8) the transaction giving rise to the request for competent authority assistance: (a) is more properly within the jurisdiction of IRS Appeals; (b) includes an issue pending in a U.S. Court, or designated for litigation, unless competent authority consideration is concurred in by the U.S. competent authority and the Associate Chief Counsel (International); (c) is a listed transaction for purposes of Treas. Reg. §1.6011-4(b)(2) and §301.6111-2(b)(2); or (d) involves fraudulent activity by the taxpayer.

.03 *Extending Period of Limitations for Assessment.* If the U.S. competent authority accepts a request for assistance, the taxpayer may be requested to execute a consent to extend the period of limitations for assessment of tax for the taxable periods in issue. Failure to comply with the provisions of this subsection can result in denial of assistance by the U.S. competent authority with respect to the request.

.04 *No Review of Denial of Request for Assistance.* The U.S. competent authority's denial of a taxpayer's request for assistance or dismissal of a matter previously accepted for consideration pursuant to this revenue procedure is final and not subject to administrative review.

.05 *Notification.* The U.S. competent authority will notify a taxpayer requesting assistance under this revenue procedure of any agreement that the U.S. and the foreign competent authorities reach with respect to the request. If the taxpayer accepts the resolution reached by the competent authorities, the agreement will provide that it is final and is not subject to fur-

ther administrative or judicial review. If the competent authorities fail to agree, or if the agreement reached is not acceptable to the taxpayer, the taxpayer may withdraw the request for competent authority assistance and may then pursue all rights otherwise available under the laws of the United States and the treaty country. Where the competent authorities fail to agree, no further competent authority remedies generally are available, except with respect to treaties that provide for arbitration of the dispute. *See, e.g.*, Article 25(5) of the U.S.-German income tax treaty. A request for arbitration must be made in accordance with the procedures prescribed under the applicable treaty and related documents, including procedures that the IRS may promulgate from time to time.

.06 Closing Agreement. When appropriate, the taxpayer may be requested to enter into a closing agreement that reflects the terms of the mutual agreement and of the competent authority assistance provided and that is executed in conformity with sections 6.07 and 6.17 of Rev. Proc. 68-16, 1968-1 C.B. 770 (as modified by Rev. Proc. 94-67, 1994-2 C.B. 800).

.07 Unilateral Withdrawal or Reduction of U.S. Initiated Adjustments. With respect to U.S. initiated adjustments under section 482 of the Code, the primary goal of the mutual agreement procedure is to obtain a correlative adjustment from the treaty country. For other types of U.S. initiated adjustments, the primary goal of the U.S. competent authority is the avoidance of taxation not in accordance with an applicable treaty. Unilateral withdrawal or reduction of U.S. initiated adjustments, therefore, generally will not be considered. For example, the U.S. competent authority will not withdraw or reduce an adjustment to income, deductions, credits or other items solely because the period of limitations has expired in the foreign country and the foreign competent authority has declined to grant any relief. If the period provided by the foreign statute of limitations has expired, the U.S. competent authority may take into account other relevant facts to determine whether such withdrawal or reduction is appropriate and may, in extraordinary circumstances and as a matter of discretion, provide such relief with respect to the adjustment to avoid actual or economic double taxation. In no event, how-

ever, will relief be granted where there is fraud or negligence with respect to the relevant transactions. In keeping with the U.S. Government's view that tax treaties should be applied in a balanced and reciprocal manner, the United States normally will not withdraw or reduce an adjustment where the treaty country does not grant similar relief in equivalent cases.

SECTION 13. REQUESTS FOR RULINGS

.01 General. Requests for advance rulings regarding the interpretation or application of a tax treaty, as distinguished from requests for assistance from the U.S. competent authority pursuant to this revenue procedure, must be submitted to the Associate Chief Counsel (International). *See* Rev. Proc. 2006-1, 2006-1 I.R.B. 1, and Rev. Proc. 2006-7, 2006-1 I.R.B. 242.

.02 Foreign Tax Rulings. The IRS does not issue advance rulings on the effect of a tax treaty on the tax laws of a treaty country for purposes of determining the tax of the treaty country.

SECTION 14. FEES

.01 Requests to Which a User Fee Does Not Apply. Except as provided in section 14.02 of this revenue procedure, no user fees are required with respect to a request for U.S. competent authority assistance pursuant to this revenue procedure.

.02 Requests to Which a User Fee Applies. In general, a \$15,000 user fee applies to all requests for determinations on limitation on benefits, as described in section 3.08 of this revenue procedure. The fee will apply regardless of whether the request is for: (a) an initial determination; (b) a renewal of a previously issued determination; or (c) a supplemental determination required, for example, if there is a material change in fact or if the taxpayer seeks benefits with respect to a different type of income or requests a lower rate of withholding tax on dividends. If a request is submitted that requires the U.S. competent authority to make a discretionary determination for more than one entity, a separate user fee will be charged for each entity.

.03 Acceptance of Requests. A user fee will not be charged until the U.S. competent authority has formally accepted the re-

quest for consideration. Within 30 days of receipt of a complete submission, the U.S. competent authority will provide written notice to the taxpayer as to whether the request will be accepted or rejected for consideration. If a request is accepted, the taxpayer will be required to mail a check or money order in the appropriate amount, along with a copy of the written notice of acceptance to the IRS office identified below. The check or money order should be payable to the United States Treasury. The fee may be refunded as provided in section 14.05 of this revenue procedure.

.04 Address to Send Payment. The user fee should be sent along with a copy of the written notice of acceptance to the mailing address listed below:

IRS/BFC
P.O. Box 9002
Beckley, WV 25802

.05 Refunds of User Fee. In general, a user fee will not be refunded once the U.S. competent authority accepts a request for consideration and the user fee is paid. For example, the IRS will not refund the user fee if the request for a discretionary determination is withdrawn by the taxpayer or if the taxpayer fails to submit additional information as requested by the U.S. competent authority. A user fee may be refunded, however, if: (a) a higher user fee is paid than is required; or (b) taking into account all the facts and circumstances, including the IRS's resources devoted to the request, the Competent Authority declines to rule and, in his or her sole discretion, decides a refund is appropriate.

SECTION 15. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2006-26, 2006-21 I.R.B. 936, and Rev. Proc. 2002-52, 2002-2 C.B. 242, are modified and superseded by this revenue procedure. Rev. Proc. 2006-9, 2006-9 I.R.B. 278 is amplified. Rev. Rul. 92-75, 1992-2 C.B. 197, is clarified. References in this revenue procedure to Rev. Proc. 99-32 will be treated as references to Rev. Proc. 65-17, 1965-1 C.B. 833, as modified, amplified and clarified from time to time, for taxable years beginning before August 24, 1999.

SECTION 16. EFFECTIVE DATE

This revenue procedure is effective for requests for U.S. competent authority assistance and Rev. Proc. 99-32 treatment filed after December 4, 2006.

SECTION 17. 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 1545-2044.

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 control number.

The collection of information in this revenue procedure is in sections 4.04, 4.05, 5.03, 7.06, 8.04, and 9.03. This information is required, and will be used, to evaluate and process the request for competent authority assistance. The collection of information is required to obtain competent authority assistance. The likely respondents are individuals or business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 9,000 hours.

The estimated annual burden per respondent/recordkeeper is 30 hours. The estimated number of respondents and/or recordkeepers is 300.

The estimated annual frequency of responses is on occasion.

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 section 6103 of the Code.

SECTION 18. DRAFTING INFORMATION

The principal authors of this revenue procedure are Aziz Benbrahim and Vincent Salvo of the Office of the Deputy Commissioner (International), Large and Mid-Size Business Division, and Mae J. Lew and Denen A. Norfleet of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact either Mr. Benbrahim or Mr. Salvo at (202) 435-5000 or Ms. Norfleet at (202) 435-5262 (not toll-free calls).

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

AJCA Modifications to the Section 6011 Regulations

REG-103038-05

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations under section 6011 of the Internal Revenue Code that modify the rules relating to the disclosure of reportable transactions under section 6011. These regulations affect taxpayers participating in reportable transactions under section 6011, material advisors responsible for disclosing reportable transactions under section 6111, and material advisors responsible for keeping lists under section 6112.

DATES: Written or electronic comments and requests for a public hearing must be received by January 31, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-103038-05), room 5203, Internal Revenue Service, PO 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 CC:PA:LPD:PR (REG-103038-05), Courier's Desk, Internal Revenue Service, Crystal Mall 4 Building, 1901 S. Bell St., Arlington, VA, or sent electronically, via the IRS Internet site at www.irs.gov/reg or via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-103038-05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Tara P. Volungis or Charles Wien, 202-622-3070; concerning the submissions of comments and requests for hear-

ing, Kelly Banks, 202-622-0392 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend 26 CFR part 1 by modifying and clarifying the rules relating to the disclosure of reportable transactions under section 6011. This document also proposes to amend 26 CFR parts 20, 25, 31, 53, 54, and 56 by modifying the rules for purposes of estate, gift, employment, and pension and exempt organizations excise taxes that require the disclosure of listed transactions by certain taxpayers on their Federal tax returns under section 6011.

On February 28, 2003, the IRS issued final regulations under sections 6011, 6111, and 6112 (T.D. 9046, 2003-1 C.B. 614) (the February 2003 regulations). The February 2003 regulations were published in the **Federal Register** (68 FR 10161) on March 4, 2003. On December 29, 2003, the IRS issued final regulations under section 6011 and 6112 (T.D. 9108, 2004-1 C.B. 429) (the December 2003 regulations). The December 2003 regulations were published in the **Federal Register** (68 FR 75128) on December 30, 2003.

Since the publication of the February 2003 regulations and the December 2003 regulations, the American Jobs Creation Act of 2004, Public Law 108-357, 118 Stat. 1418, (AJCA) was enacted on October 22, 2004. The AJCA revised sections 6111 and 6112, thereby necessitating changes to the rules under section 6011. The IRS and Treasury Department also have received various comments and questions regarding the rules under §1.6011-4. Consequently, the IRS and Treasury Department are proposing modifications to the rules regarding the disclosure of reportable transactions under §1.6011-4.

It should be noted that section 516 of the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109-222, 120 Stat. 345, (TIPRA), enacted on May 17, 2006, includes new excise taxes that target prohibited tax shelter transactions to which a tax-exempt entity is a party. Prohibited tax shelter transactions consist of listed transactions, confidential trans-

actions, and transactions with contractual protection under section 6011. TIPRA also contains new disclosure requirements, which apply not only to tax-exempt entities but also to taxable entities that are parties to prohibited tax shelter transactions involving tax-exempt entities, and makes penalties applicable for failure to comply with each new disclosure requirement. The IRS and Treasury Department will issue separate guidance regarding the disclosure provision in TIPRA.

Explanation of Provisions

A. Removal of Transactions with a Significant Book-Tax Difference

Under the current regulations in §1.6011-4, there are six categories of reportable transactions. In accordance with the interim guidance provided in Notice 2006-6, 2006-5 I.R.B. 385, these proposed regulations eliminate the *transactions with a significant book-tax difference* category of reportable transaction that is in §1.6011-4(b)(6). The IRS and Treasury Department have determined that this category of reportable transaction is no longer necessary due to the issuance of the Schedule M-3, "*Net Income (Loss) Reconciliation For Corporations With Total Assets of \$10 Million or More*", which now provides the IRS a more complete disclosure of book-tax differences for corporations. The Schedule M-3 reporting requirements will be extended to partnerships and S corporations. The removal of the book-tax difference category applies to transactions that otherwise would have to have been disclosed on or after January 6, 2006 (regardless of when the transaction was entered into).

B. Transactions of Interest

The IRS and Treasury Department are proposing as a new category of reportable transaction the *transactions of interest* reportable transaction. A transaction of interest is a transaction that the IRS and Treasury Department believe has a potential for tax avoidance or evasion, but for which the IRS and Treasury Department lack enough information to determine whether the transaction should be identified specifically as a tax avoidance

transaction. Transactions of interest will be identified in published guidance. When the IRS and Treasury Department have gathered enough information to make an informed decision as to whether the transaction of interest is a tax avoidance type of transaction, the IRS and Treasury Department may take one or more actions, including removing the transaction from the transactions of interest category in published guidance, designating the transaction as a listed transaction, or providing a new category of reportable transaction. Listed transactions do not have to be identified as transactions of interest before the transactions are identified as listed transactions. It is anticipated that, upon finalization of these proposed regulations, the transactions of interest category of reportable transaction will apply to transactions entered into on or after November 2, 2006.

C. Lease Transactions

These proposed regulations also eliminate the special rule for lease transactions. Under the current regulations this special rule provides that certain customary commercial leases of tangible personal property described in Notice 2001-18, 2001-1 C.B. 731, are excluded from all of the reportable transaction categories except listed transactions. Notice 2001-18 originally was published prior to the AJCA to provide exceptions from the confidential corporate tax shelter registration requirements under section 6111(d) and the list maintenance requirements under section 6112. The special rule for lease transactions that cross-references Notice 2001-18 was added to §1.6011-4 in T.D. 9046 in February 2003. At that time, the IRS and Treasury Department were concerned that customary commercial lease transactions routinely would fall under the significant book-tax difference category of reportable transaction. The public also expressed concern that many customary leasing transactions would trigger the confidential transaction category of reportable transaction that was published in the temporary regulations under §1.6011-4T in T.D. 9017, 2002-2 C.B. 815, in October 2002 (and in the February 2003 regulations). Since the publication of the February 2003 regulations, the IRS and Treasury Department amended the

confidential transaction category of reportable transaction in the December 2003 regulations, the AJCA removed the confidential corporate tax shelter provision in section 6111(d) in October 2004, and Notice 2006-6 signaled the removal of the significant book-tax difference transaction category of reportable transaction.

Because the confidential transaction category has been narrowed and the significant book-tax difference transaction category is being removed, the IRS and Treasury Department believe that leasing transactions should be subject to the same disclosure rules as other transactions. While the IRS and Treasury Department do believe the disclosure rules should apply to all leasing transactions, the IRS and Treasury Department also believe that most customary commercial leasing transactions will not meet the reportable transaction requirements and will not be subject to disclosure. The IRS and Treasury Department intend to obsolete Notice 2001-18, 2001-1 C.B. 731, when these proposed regulations are finalized. Comments regarding the removal of this exception, the transactions that will have to be disclosed as a consequence, if any, and the possibility of exceptions for specific types of leasing transactions as to each category of reportable transaction are requested.

D. Transactions Involving a Brief Asset Holding Period

These proposed regulations also modify the transactions involving a brief asset holding period category of reportable transaction in §1.6011-4(b)(7). Section 901(l), added to the Code by the AJCA, and section 901(k) operate to disallow foreign tax credits for withholding and certain other foreign taxes imposed on dividends or other income or gain with respect to property if the taxpayer does not meet a minimum holding period. In light of the enactment of section 901(l), the proposed regulations amend the brief asset holding period category to exclude transactions resulting in a claimed foreign tax credit.

E. Protective Disclosures

The IRS receives disclosures that taxpayers file on a protective basis, claiming that the transactions are not subject to disclosure under section 6011. Some

of those taxpayers fail to provide the IRS with the information requested under section 6011 and the regulations thereunder that would enable the IRS to make a determination as to whether the transaction is subject to disclosure. Consequently, the IRS and Treasury Department have added clarifying language in the proposed regulations that allows protective disclosures to be filed in situations where a taxpayer is unsure of whether the transaction should be disclosed under section 6011 if the taxpayer complies with the rules of §1.6011-4 as if the transaction is subject to disclosure and the person furnishes the IRS the information requested under these regulations.

F. Partners, Shareholders, and Beneficiaries

The IRS and Treasury Department are aware of situations in which partners, shareholders, and beneficiaries have filed their Federal tax returns before receiving Schedule K-1s from the partnership, S corporation or trust that participated in a reportable transaction. The proposed regulations address this problem by providing that if a taxpayer in a partnership, S corporation, or trust receives a timely Schedule K-1 less than 10 calendar days before the due date of the taxpayer's return (including extensions) and, based on receipt of the timely Schedule K-1, the taxpayer determines that the taxpayer participated in a reportable transaction, the disclosure statement will not be considered late if the taxpayer discloses the reportable transaction by filing a disclosure statement with OTSA within 45 calendar days after the due date of the taxpayer's return (including extensions). A taxpayer filing a disclosure statement in accordance with this provision need only file the statement with OTSA and need not file an amended return to make the disclosure. This provision is proposed to be applicable for transactions entered into on or after the date these regulations are published as final regulations in the **Federal Register**. However, taxpayers currently may rely on this provision in the proposed regulations, and taxpayers who have filed a disclosure statement with OTSA within 45 calendar days after the due date of the taxpayer's return (including extensions) as provided in this provision have satisfied the disclosure requirements under §1.6011-4.

The IRS and Treasury Department solicit comments on whether there may be other situations in which a taxpayer may not know or have reason to know of its participation in a reportable transaction at the time the return is filed and ways in which the disclosure rules could address these situations.

G. Tolling Provision

Other proposed changes relate to the provisions for obtaining a private letter ruling and the tolling of the time for providing disclosure during the time the request for a ruling is pending. Because the IRS and Treasury Department believe that the removal of the tolling provision will promote effective tax administration, these proposed regulations eliminate the tolling of the time for providing disclosure when a taxpayer requests a private letter ruling. Temporary regulations (T.D. 9295) removing the tolling provision are being issued concurrently with these proposed regulations. Taxpayers may still request a ruling on a transaction under the regular procedures for requesting a ruling, provided the ruling request is not factual or hypothetical, but the time for providing disclosure will not be tolled. The removal of the tolling provision is effective for all ruling requests received on or after November 1, 2006.

H. Other Clarifications and Modifications

These proposed regulations also clarify and/or modify other provisions under §1.6011-4. The regulations for estate, gift, employment, and pension and exempt organizations excise taxes are proposed to be modified by making them applicable to transactions of interest.

I. Comments

The IRS and Treasury Department are aware of concerns expressed by commentators regarding the patenting of tax advice or tax strategies. The IRS and Treasury Department share these concerns and are exploring ways in which they could be addressed, including through the creation of a new category of reportable transaction. Comments are requested regarding the creation of such a category of reportable transaction. Comments also are

requested on all proposed changes to the regulations.

J. Effective Date

Generally, when these proposed regulations become final, they will apply to transactions entered into on or after the date these regulations are published as final regulations in the Federal Register. However, upon publication the final regulations will apply to transactions of interest entered into on or after November 2, 2006.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. The disclosure statement referenced in these regulations will be made available for public comment in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules, how they can be made easier to understand, and the administrability of the rules in the proposed regulations. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that submits timely written or electronic comments. If a public hearing is scheduled, notice of the date,

time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Tara P. Volungis and Charles Wien, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, 25, 31, 53, 54, and 56 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6011-4 is revised to read as follows:

§1.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* Every taxpayer that has participated, as described in paragraph (c)(3) of this section, in a reportable transaction within the meaning of paragraph (b) of this section and who is required to file a tax return must attach to its return for the taxable year described in paragraph (e) of this section a disclosure statement in the form prescribed by paragraph (d) of this section. The fact that a transaction is a reportable transaction shall not affect the legal determination of whether the taxpayer's treatment of the transaction is proper.

(b) *Reportable transactions—(1) In general.* A reportable transaction is a transaction described in any of the paragraphs (b)(2) through (7) of this section. The term transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan. There are six categories of reportable transactions: listed transactions, confidential transactions, transactions with

contractual protection, loss transactions, transactions of interest, and transactions involving a brief asset holding period.

(2) *Listed transactions.* A listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

(3) *Confidential transactions*—(i) *In general.* A confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a minimum fee.

(ii) *Conditions of confidentiality.* A transaction is considered to be offered to a taxpayer under conditions of confidentiality if the advisor who is paid the minimum fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies. A transaction is treated as confidential even if the conditions of confidentiality are not legally binding on the taxpayer. A claim that a transaction is proprietary or exclusive is not treated as a limitation on disclosure if the advisor confirms to the taxpayer that there is no limitation on disclosure of the tax treatment or tax structure of the transaction.

(iii) *Minimum fee.* For purposes of this paragraph (b)(3), the minimum fee is:

(A) \$250,000 for a transaction if the taxpayer is a corporation.

(B) \$50,000 for all other transactions unless the taxpayer is a partnership or trust, all of the owners or beneficiaries of which are corporations (looking through any partners or beneficiaries that are themselves partnerships or trusts), in which case the minimum fee is \$250,000.

(iv) *Determination of minimum fee.* For purposes of this paragraph (b)(3), in determining the minimum fee, all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a transaction are taken into account. Fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to

document the transaction, and for services to prepare tax returns to the extent return preparation fees are unreasonable in light of the facts and circumstances. For purposes of this paragraph (b)(3), a taxpayer also is treated as paying fees to an advisor if the taxpayer knows or should know that the amount it pays will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property. The IRS will scrutinize carefully all of the facts and circumstances in determining whether consideration received in connection with a confidential transaction constitutes fees.

(v) *Related parties.* For purposes of this paragraph (b)(3), persons who bear a relationship to each other as described in section 267(b) or 707(b) will be treated as the same person.

(4) *Transactions with contractual protection*—(i) *In general.* A transaction with contractual protection is a transaction for which the taxpayer or a related party (as described in section 267(b) or 707(b)) has the right to a full or partial refund of fees (as described in paragraph (b)(4)(ii) of this section) if all or part of the intended tax consequences from the transaction are not sustained. A transaction with contractual protection also is a transaction for which fees (as described in paragraph (b)(4)(ii) of this section) are contingent on the taxpayer's realization of tax benefits from the transaction. All the facts and circumstances relating to the transaction will be considered when determining whether a fee is refundable or contingent, including the right to reimbursements of amounts that the parties to the transaction have not designated as fees or any agreement to provide services without reasonable compensation.

(ii) *Fees.* Paragraph (b)(4)(i) of this section only applies with respect to fees paid by or on behalf of the taxpayer or a related party to any person who makes or provides a statement, oral or written, to the taxpayer or related party (or for whose benefit a statement is made or provided to the taxpayer or related party) as to the potential tax consequences that may result from the transaction.

(iii) *Exceptions*—(A) *Termination of transaction.* A transaction is not considered to have contractual protection solely because a party to the transaction has the right to terminate the transaction upon the happening of an event affecting the taxation of one or more parties to the transaction.

(B) *Previously reported transaction.* If a person makes or provides a statement to a taxpayer as to the potential tax consequences that may result from a transaction only after the taxpayer has entered into the transaction and reported the consequences of the transaction on a filed tax return, and the person has not previously received fees from the taxpayer relating to the transaction, then any refundable or contingent fees are not taken into account in determining whether the transaction has contractual protection. This paragraph (b)(4) does not provide any substantive rules regarding when a person may charge refundable or contingent fees with respect to a transaction. See Circular 230, 31 CFR Part 10, for the regulations governing practice before the IRS.

(5) *Loss transactions*—(i) *In general.* A loss transaction is any transaction resulting in the taxpayer claiming a loss under section 165 of at least—

(A) \$10 million in any single taxable year or \$20 million in any combination of taxable years for corporations;

(B) \$10 million in any single taxable year or \$20 million in any combination of taxable years for partnerships that have only corporations as partners (looking through any partners that are themselves partnerships), whether or not any losses flow through to one or more partners; or \$2 million in any single taxable year or \$4 million in any combination of taxable years for all other partnerships, whether or not any losses flow through to one or more partners;

(C) \$2 million in any single taxable year or \$4 million in any combination of taxable years for individuals, S corporations, or trusts, whether or not any losses flow through to one or more shareholders or beneficiaries; or

(D) \$50,000 in any single taxable year for individuals or trusts, whether or not the loss flows through from an S corporation or partnership, if the loss arises with respect to a section 988 transaction (as de-

defined in section 988(c)(1) relating to foreign currency transactions).

(ii) *Cumulative losses.* In determining whether a transaction results in a taxpayer claiming a loss that meets the threshold amounts over a combination of taxable years as described in paragraph (b)(5)(i) of this section, only losses claimed in the taxable year that the transaction is entered into and the five succeeding taxable years are combined.

(iii) *Section 165 loss.* (A) For purposes of this section, in determining the thresholds in paragraph (b)(5)(i) of this section, the amount of a section 165 loss is adjusted for any salvage value and for any insurance or other compensation received. See §1.165-1(c)(4). However, a section 165 loss does not take into account offsetting gains, or other income or limitations. For example, a section 165 loss does not take into account the limitation in section 165(d) (relating to wagering losses) or the limitations in sections 165(f), 1211, and 1212 (relating to capital losses). The full amount of a section 165 loss is taken into account for the year in which the loss is sustained, regardless of whether all or part of the loss enters into the computation of a net operating loss under section 172 or a net capital loss under section 1212 that is a carryback or carryover to another year. A section 165 loss does not include any portion of a loss, attributable to a capital loss carryback or carryover from another year, that is treated as a deemed capital loss under section 1212.

(B) For purposes of this section, a section 165 loss includes an amount deductible pursuant to a provision that treats a transaction as a sale or other disposition, or otherwise results in a deduction under section 165. A section 165 loss includes, for example, a loss resulting from a sale or exchange of a partnership interest under section 741 and a loss resulting from a section 988 transaction.

(6) *Transactions of interest.* A transaction of interest is a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a transaction of interest.

(7) *Transactions involving a brief asset holding period.* A transaction involving a brief asset holding period is any transaction resulting in the taxpayer claiming a

tax credit (other than a foreign tax credit) exceeding \$250,000 if the underlying asset giving rise to the credit is held by the taxpayer for 45 days or less. For purposes of determining the holding period, the principles of section 246(c)(3) and (c)(4) apply.

(8) *Exceptions—(i) In general.* A transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction under paragraphs (b)(3) through (7) of this section, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of this section. The Commissioner may make a determination by individual letter ruling under paragraph (f) of this section that an individual letter ruling request on a specific transaction satisfies the reporting requirements of this section with regard to that transaction for the taxpayer who requests the individual letter ruling.

(ii) *Special rule for RICs.* For purposes of this section, a regulated investment company (RIC) as defined in section 851 or an investment vehicle that is owned 95 percent or more by one or more RICs at all times during the course of the transaction are not required to disclose a transaction that is described in any of paragraphs (b)(3) through (5) and (b)(7) of this section unless the transaction is also a listed transaction or a transaction of interest.

(c) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Taxpayer.* The term *taxpayer* means any person described in section 7701(a)(1), including S corporations. Except as otherwise specifically provided in this section, the term *taxpayer* also includes an affiliated group of corporations that joins in the filing of a consolidated return under section 1501.

(2) *Corporation.* When used specifically in this section, the term *corporation* means an entity that is required to file a return for a taxable year on any 1120 series form, or successor form, excluding S corporations.

(3) *Participation—(i) In general—(A) Listed transactions.* 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 paragraph (b)(2) of this section. 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 paragraph (b)(2) of this section. Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance also may identify types or classes of persons that will not be treated as participants in a listed transaction.

(B) *Confidential transactions.* A taxpayer has participated in a confidential transaction if the taxpayer's tax return reflects a tax benefit from the transaction and the taxpayer's disclosure of the tax treatment or tax structure of the transaction is limited in the manner described in paragraph (b)(3) of this section. If a partnership's, S corporation's or trust's disclosure is limited, and the partner's, shareholder's, or beneficiary's disclosure is not limited, then the partnership, S corporation, or trust, and not the partner, shareholder, or beneficiary, has participated in the confidential transaction.

(C) *Transactions with contractual protection.* A taxpayer has participated in a transaction with contractual protection if the taxpayer's tax return reflects a tax benefit from the transaction and, as described in paragraph (b)(4) of this section, the taxpayer has the right to the full or partial refund of fees or the fees are contingent. If a partnership, S corporation, or trust has the right to a full or partial refund of fees or has a contingent fee arrangement, and the partner, shareholder, or beneficiary does not individually have the right to the refund of fees or a contingent fee arrangement, then the partnership, S corporation, or trust, and not the partner, shareholder, or beneficiary, has participated in the transaction with contractual protection.

(D) *Loss transactions.* A taxpayer has participated in a loss transaction if the taxpayer's tax return reflects a section 165 loss and the amount of the section 165 loss equals or exceeds the threshold amount applicable to the taxpayer as described in paragraph (b)(5)(i) of this section. If a taxpayer is a partner in a partnership, shareholder in an S corporation, or beneficiary of a trust and a section 165 loss as described in paragraph (b)(5) of this section flows through the entity

to the taxpayer (disregarding netting at the entity level), the taxpayer has participated in a loss transaction if the taxpayer's tax return reflects a section 165 loss and the amount of the section 165 loss that flows through to the taxpayer equals or exceeds the threshold amounts applicable to the taxpayer as described in paragraph (b)(5)(i) of this section. For this purpose, a tax return is deemed to reflect the full amount of a section 165 loss described in paragraph (b)(5) of this section allocable to the taxpayer under this paragraph (c)(3)(i)(D), regardless of whether all or part of the loss enters into the computation of a net operating loss under section 172 or net capital loss under section 1212 that the taxpayer may carry back or carry over to another year.

(E) *Transactions of interest.* A taxpayer has participated in a transaction of interest if the taxpayer is one of the types or classes of persons identified as participants in the transaction in the published guidance describing the transaction of interest.

(F) *Transactions involving a brief asset holding period.* A taxpayer has participated in a transaction involving a brief asset holding period if the taxpayer's tax return reflects items giving rise to a tax credit described in paragraph (b)(7) of this section. If a taxpayer is a partner in a partnership, shareholder in an S corporation, or beneficiary of a trust and the items giving rise to a tax credit described in paragraph (b)(7) of this section flow through the entity to the taxpayer (disregarding netting at the entity level), the taxpayer has participated in a transaction involving a brief asset holding period if the taxpayer's tax return reflects the tax credit and the amount of the tax credit claimed by the taxpayer exceeds \$250,000.

(G) *Shareholders of foreign corporations—(1) In general.* A reporting shareholder of a foreign corporation participates in a transaction described in paragraphs (b)(2) through (5) and (b)(7) of this section if the foreign corporation would be considered to participate in the transaction under the rules of this paragraph (c)(3) if it were a domestic corporation filing a tax return that reflects the items from the transaction. A reporting shareholder of a foreign corporation participates in a transaction described in paragraph (b)(6) of this section only if the published guidance identifying the transaction includes

the reporting shareholder among the types or classes of persons identified as participants. A reporting shareholder (and any successor in interest) is considered to participate in a transaction under this paragraph (c)(3)(i)(G) only for its first taxable year with or within which ends the first taxable year of the foreign corporation in which the foreign corporation participates in the transaction, and for the reporting shareholder's five succeeding taxable years.

(2) *Reporting shareholder.* The term *reporting shareholder* means a United States shareholder (as defined in section 951(b)) in a controlled foreign corporation (as defined in section 957) or a 10 percent shareholder (by vote or value) of a qualified electing fund (as defined in section 1295).

(ii) *Examples.* The following examples illustrate the provisions of paragraph (c)(3)(i) of this section:

Example 1. Notice 2003-55, 2003-2 C.B. 395, which modified and superseded Notice 95-53, 1995-2 C.B. 334 (see §601.601(d)(2) of this chapter), describes a lease stripping transaction in which one party (the transferor) assigns the right to receive future payments under a lease of tangible property and treats the amount realized from the assignment as its current income. The transferor later transfers the property subject to the lease in a transaction intended to qualify as a transferred basis transaction, for example, a transaction described in section 351. The transferee corporation claims the deductions associated with the high basis property subject to the lease. The transferor's and transferee corporation's tax returns reflect tax positions described in Notice 2003-55. Therefore, the transferor and transferee corporation have participated in the listed transaction. In the section 351 transaction, the transferor will have received stock with low value and high basis from the transferee corporation. If the transferor subsequently transfers the high basis/low value stock to a taxpayer in another transaction intended to qualify as a transferred basis transaction and the taxpayer uses the stock to generate a loss, and if the taxpayer knows or has reason to know that the tax loss claimed was derived indirectly from the lease stripping transaction, then the taxpayer has participated in the listed transaction. Accordingly, the taxpayer must disclose the transaction and the manner of the taxpayer's participation in the transaction under the rules of this section. For purposes of this example, if a bank lends money to the transferor, transferee corporation, or taxpayer for use in their transactions, the bank has not participated in the listed transaction because the bank's tax return does not reflect tax consequences or a tax strategy described in the listing notice (nor does the bank's tax return reflect a tax benefit derived from tax consequences or a tax strategy described in the listing notice) nor is the bank described as a participant in the listing notice.

Example 2. XYZ is a limited liability company treated as a partnership for tax purposes. X, Y, and

Z are members of XYZ. X is an individual, Y is an S corporation, and Z is a partnership. XYZ enters into a confidential transaction under paragraph (b)(3) of this section. XYZ and X are bound by the confidentiality agreement, but Y and Z are not bound by the agreement. As a result of the transaction, XYZ, X, Y, and Z all reflect a tax benefit on their tax returns. Because XYZ's and X's disclosure of the tax treatment and tax structure are limited in the manner described in paragraph (b)(3) of this section and their tax returns reflect a tax benefit from the transaction, both XYZ and X have participated in the confidential transaction. Neither Y nor Z has participated in the confidential transaction because they are not subject to the confidentiality agreement.

Example 3. P, a corporation, has an 80% partnership interest in PS, and S, an individual, has a 20% partnership interest in PS. P, S, and PS are calendar year taxpayers. In 2006, PS enters into a transaction and incurs a section 165 loss (that does not meet any of the exceptions to a section 165 loss identified in published guidance) of \$12 million and offsetting gain of \$3 million. On PS' 2006 tax return, PS includes the section 165 loss and the corresponding gain. PS must disclose the transaction under this section because PS' section 165 loss of \$12 million is equal to or greater than \$2 million. P is allocated \$9.6 million of the section 165 loss and \$2.4 million of the offsetting gain. P does not have to disclose the transaction under this section because P's section 165 loss of \$9.6 million is not equal to or greater than \$10 million. S is allocated \$2.4 million of the section 165 loss and \$600,000 of the offsetting gain. S must disclose the transaction under this section because S's section 165 loss of \$2.4 million is equal to or greater than \$2 million.

(4) *Substantially similar.* The term *substantially similar* includes any transaction that is expected to obtain the same or similar types of 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. For example, a transaction may be substantially similar to a listed transaction even though it involves different entities or uses different Code provisions. (See *e.g.*, Notice 2003-54, 2003-2 C.B. 363, describing a transaction substantially similar to the transactions in Notice 2002-50, 2002-2 C.B. 98, and Notice 2002-65, 2002-2 C.B. 690.) The following examples illustrate situations where a transaction is the same as or substantially similar to a listed transaction under paragraph (b)(2) of this section. (Such transactions may also be reportable transactions under paragraphs (b)(3) through (7) of this section.) The following examples

illustrate the provisions of this paragraph (c)(4):

Example 1. Notice 2000-44, 2000-2 C.B. 255 (see §601.601(d)(2) of this chapter), sets forth a listed transaction involving offsetting options transferred to a partnership where the taxpayer claims basis in the partnership for the cost of the purchased options but does not adjust basis under section 752 as a result of the partnership's assumption of the taxpayer's obligation with respect to the options. Transactions using short sales, futures, derivatives or any other type of offsetting obligations to inflate basis in a partnership interest would be the same as or substantially similar to the transaction described in Notice 2000-44. Moreover, use of the inflated basis in the partnership interest to diminish gain that would otherwise be recognized on the transfer of a partnership asset would also be the same as or substantially similar to the transaction described in Notice 2000-44.

Example 2. Notice 2001-16, 2001-1 C.B. 730 (see §601.601(d)(2) of this chapter), sets forth a listed transaction involving a seller (X) who desires to sell stock of a corporation (T), an intermediary corporation (M), and a buyer (Y) who desires to purchase the assets (and not the stock) of T. M agrees to facilitate the sale to prevent the recognition of the gain that T would otherwise report. Notice 2001-16 describes M as a member of a consolidated group that has a loss within the group or as a party not subject to tax. Transactions utilizing different intermediaries to prevent the recognition of gain would be the same as or substantially similar to the transaction described in Notice 2001-16. An example is a transaction in which M is a corporation that does not file a consolidated return but which buys T stock, liquidates T, sells assets of T to Y, and offsets the gain recognized on the sale of those assets with currently generated losses.

(5) *Tax.* For purposes of this section, the term *tax* means Federal income tax.

(6) *Tax benefit.* A tax benefit includes deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as an entity exempt from Federal income taxation, and any other tax consequences that may reduce a taxpayer's Federal income tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss, or credit.

(7) *Tax return.* For purposes of this section, the term *tax return* means a Federal income tax return and a Federal information return.

(8) *Tax treatment.* The tax treatment of a transaction is the purported or claimed Federal income tax treatment of the transaction.

(9) *Tax structure.* The tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed Federal income tax treatment of the transaction.

(d) *Form and content of disclosure statement.* A taxpayer required to file a disclosure statement under this section must file a completed Form 8886, "Reportable Transaction Disclosure Statement" (or a successor form), in accordance with this paragraph (d) and the instructions to the form. The Form 8886 (or a successor form) is the disclosure statement required under this section. The form must be attached to the appropriate tax return(s) as provided in paragraph (e) of this section. If a copy of a disclosure statement is required to be sent to the Office of Tax Shelter Analysis (OTSA) under paragraph (e) of this section, it must be sent in accordance with the instructions to the form. To be considered complete, the information provided on the form must describe the expected tax treatment and all potential tax benefits expected to result from the transaction, describe any tax result protection (as defined in §301.6111-3(c)(12) of this chapter) with respect to the transaction, and identify and describe the transaction in sufficient detail for the IRS to be able to understand the tax structure of the reportable transaction and the identity of all parties involved in the transaction. An incomplete Form 8886 (or a successor form) containing a statement that information will be provided upon request is not considered a complete disclosure statement. If the form is not completed in accordance with the provisions in this paragraph (d) and the instructions to the form, the taxpayer will not be considered to have complied with the disclosure requirements of this section. If a taxpayer receives one or more reportable transaction numbers for a reportable transaction, the taxpayer must include the reportable transaction number(s) on the Form 8886 (or a successor form). See §301.6111-3(d)(2) of this chapter.

(e) *Time of providing disclosure—(1) In general.* The disclosure statement for a reportable transaction must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. In addition, a disclosure statement for a reportable transaction must be attached to each amended return that reflects a taxpayer's participation in a reportable transaction. A copy of the disclosure statement must be sent to OTSA at the same time that any disclosure statement is first filed by the taxpayer per-

taining to a particular reportable transaction. If a reportable transaction results in a loss which is carried back to a prior year, the disclosure statement for the reportable transaction must be attached to the taxpayer's application for tentative refund or amended tax return for that prior year. In the case of a taxpayer that is a partnership, S corporation, or trust, the disclosure statement for a reportable transaction must be attached to the partnership, S corporation, or trust's tax return for each taxable year in which the partnership, S corporation, or trust participates in the transaction under the rules of paragraph (c)(3)(i) of this section. If a taxpayer in a partnership, S corporation, or trust receives a timely Schedule K-1 less than 10 calendar days before the due date of the taxpayer's return (including extensions) and, based on receipt of the timely Schedule K-1, the taxpayer determines that the taxpayer participated in a reportable transaction within the meaning of paragraph (c)(3) of this section, the disclosure statement will not be considered late if the taxpayer discloses the reportable transaction by filing a disclosure statement with OTSA within 45 calendar days after the due date of the taxpayer's return (including extensions).

(2) *Special rules—(i) Listed transactions and transactions of interest.* In general, if a transaction becomes a listed transaction or a transaction of interest after the filing of a taxpayer's tax return (including an amended return) reflecting the taxpayer's participation in the listed transaction or transaction of interest and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction or transaction of interest, then a disclosure statement must be filed, regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction or a transaction of interest, with OTSA within 60 calendar days after the date on which the transaction became a listed transaction or a transaction of interest. The Commissioner also may determine the time for disclosure of listed transactions and transactions of interest in the published guidance identifying the transaction.

(ii) *Loss transactions.* If a transaction becomes a loss transaction because the losses equal or exceed the threshold amounts as described in paragraph

(b)(5)(i) of this section, a disclosure statement must be filed as an attachment to the taxpayer's tax return for the first taxable year in which the threshold amount is reached and to any subsequent tax return that reflects any amount of section 165 loss from the transaction.

(3) *Multiple disclosures.* The taxpayer must disclose the transaction in the time and manner provided for under the provisions of this section regardless of whether the taxpayer also plans to disclose the transaction under other published guidance, for example, §1.6662-3(c)(2).

(4) *Example.* The following example illustrates the application of this paragraph (e):

Example. In January of 2006, F, a calendar year taxpayer, enters into a transaction that at the time is not a listed transaction and is not a transaction described in any of the paragraphs (b)(3) through (7) of this section. All the tax benefits from the transaction are reported on F's 2006 tax return filed timely in April 2007. On May 1, 2009, the IRS publishes a notice identifying the transaction as a listed transaction described in paragraph (b)(2) of this section. Upon issuance of the May 1, 2009 notice, the transaction becomes a reportable transaction described in paragraph (b) of this section. The period of limitations on assessment for F's 2006 taxable year is still open. F is required to file Form 8886 for the transaction with OTSA within 60 calendar days after May 1, 2009.

(f) [The text of the proposed amendment to §1.6011-4(f)(1) is the same as the text for §1.6011-4T(f)(1) published elsewhere in this issue of the Bulletin].

(2) *Protective disclosures.* If a taxpayer is uncertain whether a transaction must be disclosed under this section, the taxpayer may disclose the transaction in accordance with the requirements of this section and comply with all the provisions of this section, and indicate on the disclosure statement that the disclosure statement is being filed on a protective basis. The IRS will not treat disclosure statements filed on a protective basis any differently than other disclosure statements filed under this section. For a protective disclosure to be effective, the taxpayer must comply with these disclosure regulations by providing to the IRS all information requested by the IRS under this section.

(g) *Retention of documents.* In accordance with the instructions to Form 8886 (or a successor form), the taxpayer must retain a copy of all documents and other records related to a transaction subject to disclosure under this section that are material to an understanding of the tax treat-

ment or tax structure of the transaction. The documents must be retained until the expiration of the statute of limitations applicable to the final taxable year for which disclosure of the transaction was required under this section. (This document retention requirement is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) The documents may include the following: marketing materials related to the transaction; written analyses used in decision-making related to the transaction; correspondence and agreements between the taxpayer and any advisor, lender, or other party to the reportable transaction that relate to the transaction; documents discussing, referring to, or demonstrating the purported or claimed tax benefits arising from the reportable transaction; and documents, if any, referring to the business purposes for the reportable transaction. A taxpayer is not required to retain earlier drafts of a document if the taxpayer retains a copy of the final document (or, if there is no final document, the most recent draft of the document) and the final document (or most recent draft) contains all the information in the earlier drafts of the document that is material to an understanding of the purported tax treatment or tax structure of the transaction.

(h) *Effective date—(1) In general.* In general, this section applies to transactions entered into on or after the date these regulations are published as final regulations in the **Federal Register**. However, upon the publication of final regulations, this section will apply to transactions of interest entered into on or after November 2, 2006.

(2) [The text of the proposed amendment to §1.6011-4(h)(2) is the same as the text for §1.6011-4T(h)(2) published elsewhere in this issue of the Bulletin].

PART 20— ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 3. The authority citation for part 20 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 20.6011-4 is amended as follows:

1. Paragraph (a) is amended by adding the language “or a *transaction of interest*” after the first occurrence of “listed transaction” and by adding the language “or trans-

action of interest” after the second occurrence of “listed transaction”.

2. Paragraph (b) is revised.

The revision reads as follows:

§20.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

* * * * *

(b) *Effective date.* This section applies to listed transactions entered into on or after January 1, 2003. Upon the publication of final regulations, this section will apply to transactions of interest entered into on or after November 2, 2006.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 6. Section 25.6011-4 is amended as follows:

1. Paragraph (a) is amended by adding the language “or a *transaction of interest*” after the first occurrence of “listed transaction” and by adding the language “or transaction of interest” after the second occurrence of “listed transaction”.

2. Paragraph (b) is revised.

The revision reads as follows:

§25.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

* * * * *

(b) *Effective date.* This section applies to listed transactions entered into on or after January 1, 2003. Upon the publication of final regulations, this section will apply to transactions of interest entered into on or after November 2, 2006.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 7. The authority citation for part 31 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 8. Section 31.6011-4 is amended as follows:

1. Paragraph (a) is amended by adding the language “or a *transaction of interest*”

after the first occurrence of “listed transaction” and by adding the language “or transaction of interest” after the second occurrence of “listed transaction”.

2. Paragraph (b) is revised.

The revision reads as follows:

§31.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

* * * * *

(b) *Effective date.* This section applies to listed transactions entered into on or after January 1, 2003. Upon the publication of final regulations, this section will apply to transactions of interest entered into on or after November 2, 2006.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 9. The authority citation for part 53 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 10. Section 53.6011-4 is amended as follows:

1. Paragraph (a) is amended by adding the language “or a *transaction of interest*” after the first occurrence of “listed transaction” and by adding the language “or transaction of interest” after the second occurrence of “listed transaction”.

2. Paragraph (b) is revised.

The revision reads as follows:

§53.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

* * * * *

(b) *Effective date.* This section applies to listed transactions entered into on or after January 1, 2003. Upon the publication of final regulations, this section will apply to transactions of interest entered into on or after November 2, 2006.

PART 54—PENSION EXCISE TAXES

Par. 11. The authority citation for part 54 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 12. Section 54.6011-4 is amended as follows:

1. Paragraph (a) is amended by adding the language “or a *transaction of interest*”

after the first occurrence of “listed transaction” and by adding the language “or transaction of interest” after the second occurrence of “listed transaction”.

2. Paragraph (b) is revised.

The revision reads as follows:

§54.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

* * * * *

(b) *Effective date.* This section applies to listed transactions entered into on or after January 1, 2003. Upon the publication of final regulations, this section will apply to transactions of interest entered into on or after November 2, 2006.

PART 56—PUBLIC CHARITY EXCISE TAXES

Par. 13. The authority citation for part 56 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 14. Section 56.6011-4 is amended as follows:

1. Paragraph (a) is amended by adding the language “or a *transaction of interest*” after the first occurrence of “listed transaction” and by adding the language “or transaction of interest” after the second occurrence of “listed transaction”.

2. Paragraph (b) is revised.

The revision reads as follows:

§56.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

* * * * *

(b) *Effective date.* This section applies to listed transactions entered into on or after January 1, 2003. Upon the publication of final regulations, this section will apply to transactions of interest entered into on or after November 2, 2006.

Mark E. Matthews,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on November 1, 2006, 8:45 a.m., and published in the issue of the Federal Register for November 2, 2006, 71 F.R. 64488)

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

AJCA Modifications to the Section 6111 Regulations

REG-103039-05

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations under section 6111 of the Internal Revenue Code which provide the rules relating to the disclosure of reportable transactions by material advisors. These regulations affect material advisors responsible for disclosing reportable transactions under section 6111 and material advisors responsible for keeping lists under section 6112.

DATES: Written or electronic comments and requests for a public hearing must be received by January 31, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-103039-05), room 5203, Internal Revenue Service, PO 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 CC:PA:LPD:PR (REG-103039-05), Courier’s Desk, Internal Revenue Service, Crystal Mall 4 Building, 1901 S. Bell St., Arlington, VA, or sent electronically, via the IRS Internet site at www.irs.gov/regs or via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-103039-05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Tara P. Volungis or Charles Wien, 202-622-3070; concerning the submissions of comments and requests for hearing, Kelly Banks, 202-622-0392 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend 26 CFR part 301 by providing rules relating to the disclosure of reportable transactions by material advisors under section 6111.

The American Jobs Creation Act of 2004, Public Law 108-357, 118 Stat. 1418, (AJCA) was enacted on October 22, 2004. Section 815 of the AJCA amended section 6111 to require each material advisor with respect to any reportable transaction to make a return (in such form as the Secretary may prescribe) setting forth: (1) information identifying and describing the transaction; (2) information describing any potential tax benefits expected to result from the transaction; and (3) such other information as the Secretary may prescribe. Section 6111(a), as amended, also provides that the return must be filed not later than the date specified by the Secretary. Section 6111(b)(1), as amended, provides a definition for the term material advisor and includes as part of that definition a requirement that the material advisor derive certain threshold amounts of gross income that the Secretary may prescribe. The AJCA amendments to section 6111 also authorize the Secretary to prescribe regulations that provide: (1) that only one person shall be required to meet the requirements of section 6111(a) in cases in which two or more persons would otherwise be required to meet such requirements; (2) exemptions from the requirements of section 6111; and (3) rules as may be necessary or appropriate to carry out the purposes of section 6111. Section 815 of the AJCA is effective for transactions with respect to which material aid, assistance, or advice is provided after October 22, 2004.

Prior to these amendments, section 6111(a) required an organizer of a tax shelter to register the tax shelter with the Secretary not later than the day on which interests in the tax shelter were first offered for sale. Under former section 6111(c), the term tax shelter was defined as any investment with respect to which any person could reasonably infer from the representations made or to be made, in connection with the offering for sale of interests in the investments that the tax shelter ratio for any investor as of the close

of any of the first five years ending after the date on which the investment was offered for sale may have been greater than two to one and which was: (1) required to be registered under a Federal or State law regulating securities; (2) sold pursuant to an exemption from registration requiring the filing of a notice with a Federal or State agency regulating the offering or sale of securities; or (3) a substantial investment (the aggregate amount which may have been offered for sale exceeded \$250,000 and the expected involvement of five or more investors). Under former section 6111(d), for purposes of section 6111(a), the term tax shelter included any entity, plan, arrangement or transaction: (1) a significant purpose of the structure of which is the avoidance or evasion of Federal income tax for a direct or indirect participant which is a corporation; (2) which is offered to any potential participant under conditions of confidentiality; and (3) for which the tax shelter promoters may receive fees in excess of \$100,000 in the aggregate.

In response to the AJCA, the IRS and Treasury Department issued interim guidance on section 6111 in Notice 2004-80, 2004-2 C.B. 963; Notice 2005-17, 2005-1 C.B. 606; Notice 2005-22, 2005-1 C.B. 756; and Notice 2006-6, 2006-5 I.R.B. 385 (see §601.601(d)(2)). The IRS and Treasury Department have received various comments and questions regarding the application of section 6111. Consequently, the IRS and Treasury Department propose new rules relating to the disclosure of reportable transactions by material advisors under section 6111.

Explanation of Provisions

A. In General

These proposed regulations are being issued concurrently with proposed regulations under §301.6112-1 (REG-103043-05) and §1.6011-4 (REG-103038-05) published elsewhere in the Bulletin. Under these proposed regulations, each material advisor with respect to any reportable transaction (as defined in §1.6011-4(b)(1)) must file a return by the date prescribed in the regulations. For this purpose, a person is a material advisor with respect to a transaction if the person provides any material

aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount for the material aid, assistance, or advice. A person provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any transaction if the person makes or provides a tax statement to or for the benefit of certain persons. The IRS and Treasury Department also may identify other types or classes of persons as material advisors in published guidance.

Further, these proposed regulations provide that the threshold amount of gross income that a person may derive, directly or indirectly, for providing any material aid, assistance or advice is \$50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons (\$10,000 in the case of a listed transaction). This threshold amount of gross income is increased to \$250,000 in any other case (\$25,000 in the case of a listed transaction). For transactions of interest, the IRS and Treasury Department also may identify reduced threshold amounts in published guidance. A person will be treated as becoming a material advisor when all of the following events have occurred (in no particular order): (A) the person provides material aid, assistance or advice; (B) the person directly or indirectly derives gross income in excess of the threshold amount; and (C) the transaction is entered into by the taxpayer.

The disclosure statement for a reportable transaction must be filed by the last day of the month that follows the end of the calendar quarter in which the advisor became a material advisor with respect to the reportable transaction. Form 8918, "Material Advisor Disclosure Statement," will be published for use by material advisors to disclose reportable transactions and will supersede the Form 8264 which is currently being used for material advisor disclosures. The IRS will issue a reportable transaction number to material advisors who file the Form 8918. Material advisors must provide the reportable transaction number issued by the IRS to persons to whom the material advisor makes or provides tax statements with respect to the transaction. Public comment

on the Form 8918 will be solicited in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

B. Incomplete Disclosure Statements

Persons who file incomplete disclosures under section 6111 are subject to penalties under section 6707. The proposed regulations include clarifying language to the regulation reminding taxpayers that for a disclosure to be considered complete, the information provided on Form 8918 must describe the expected tax treatment and all potential tax benefits expected to result from the transaction, describe any tax result protection with respect to the transaction, and identify and describe the transaction in sufficient detail for the IRS to be able to understand the tax structure of the reportable transaction and the identity of the material advisor(s). An incomplete form containing a statement that information will be provided upon request is not considered a complete disclosure statement.

C. Tax Result Protection

Previous comments to the regulations under §1.6011-4 stated that it is inappropriate to require reporting of transactions under the contractual protection filter of §1.6011-4(b)(4) for which the taxpayer obtains tax result protection (sometimes referred to as “tax result insurance”) because numerous legitimate business transactions with tax indemnities would be subject to reporting. The IRS and Treasury Department removed tax result protection from that category of reportable transaction but cautioned that if the IRS and Treasury Department became aware of abusive transactions utilizing tax result protection, the issue would be reconsidered.

The IRS and Treasury Department have since become aware of taxpayers who have obtained tax result protection for the tax benefits of a listed transaction from a third party provider. In the AJCA, Congress expressed concern about tax result protection for reportable transactions and included insuring in the list of activities added to the statutory language under section 6111. The IRS, Treasury Department, and Congress have an interest in learning more about the insuring of reportable transactions. Accordingly, while a transaction

will not be a reportable transaction simply because there is tax result protection for the transaction, tax result protection provided for a reportable transaction may subject a person to the material advisor disclosure rules under section 6111 because a tax statement includes third party tax result protection that insures the tax benefits of a reportable transaction.

D. Designation Agreements

The proposed regulations include a provision allowing designation agreements for disclosure of reportable transactions similar to the provision in the current regulations under §301.6112-1 that allows material advisors to have a designation agreement authorizing one material advisor to maintain a list of investors in the transaction. However, parties to the designation agreement may still be liable for the penalty under section 6707 if the designated material advisor fails to disclose the reportable transaction under section 6111.

E. Post-Filing Advice

The current regulations under §301.6112-1 provide that a person will not be considered to be a material advisor with respect to a transaction if that person does not make or provide a tax statement regarding the transaction until after the first tax return reflecting tax benefit(s) of the transaction is filed with the IRS. The IRS and Treasury Department, however, believe that a person should be considered a material advisor for certain post-filing advice. Consequently, the proposed rule provides that the exception will not apply to a person who makes a tax statement with respect to the transaction if it is expected that the taxpayer will file a supplemental or amended return reflecting additional tax benefits from the transaction.

F. Protective Disclosures

The IRS receives disclosures filed on a protective basis from persons claiming that the transactions are not subject to disclosure under section 6111. Some of those disclosures fail to provide the IRS with the information requested under sections 6111 and 6112 and the regulations thereunder that would enable the IRS to make a determination as to whether the transaction is subject to disclosure. Consequently, the

IRS and Treasury Department have added clarifying language in the proposed regulation that allows protective disclosures to be filed in situations where a person is unsure of whether the transaction should be disclosed under section 6111. However, the disclosure is effective only if the rules of §301.6111-3 and §301.6112-1 are followed.

G. Tolling Provision

In response to comments that asked whether the tolling provisions of §1.6011-4(f) would apply to requests from a potential material advisor for a letter ruling under section 6111, Notice 2005-22 provided that, until further guidance is issued, if an advisor submits a request for a letter ruling on or before the date the return under section 6111 is due and fully discloses all relevant facts relating to the transaction, the obligation of the potential material advisor to disclose the transaction will be suspended as provided in §1.6011-4(f). The IRS and Treasury Department believe that removing the tolling provision will promote effective tax administration. Consequently, these proposed regulations do not include a provision to toll the time for providing disclosure when a potential material advisor requests a ruling on a transaction. Potential material advisors may request a ruling under section 6111 on a transaction under the regular procedures for requesting a ruling, provided the ruling request is not factual or hypothetical, but the time for providing disclosure under section 6111 will not be tolled. The temporary regulations (T.D. 9295) issued concurrently with these proposed regulations supersede the tolling provision in Notice 2005-22, effective for all ruling requests received on or after November 1, 2006.

H. Effective Date

Generally, when these proposed regulations become final, they will apply to transactions with respect to which a material advisor makes a tax statement on or after the date the regulations are published as final regulations in the **Federal Register**. However, upon publication the final regulations will apply to transactions of interest entered into on or after November 2, 2006 with respect to which a material advisor

makes a tax statement under §301.6111-3 on or after November 2, 2006.

* * * * *

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. The return referenced in these regulations will be made available for public comment in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules, how they can be made easier to understand, and the administrability of the rules in the proposed regulations. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that submits timely written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Tara P. Volungis and Charles Wien, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6111-3 is added to read as follows:

§301.6111-3 Disclosure of reportable transactions.

(a) *In general.* Each material advisor, as defined in paragraph (b) of this section, with respect to any reportable transaction, as defined in §1.6011-4(b) of this chapter, must file a return as described in paragraph (d) of this section by the date described in paragraph (e) of this section.

(b) *Material advisor*—(1) *In general.* A person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount as defined in paragraph (b)(3) of this section for the material aid, assistance, or advice. The term transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan or arrangement, and includes any series of steps carried out as part of a plan.

(2) *Material aid, assistance, or advice*—(i) *In general.* Except as provided in paragraph (b)(5) of this section, a person provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any transaction if the person makes or provides a tax statement to or for the benefit of—

(A) A taxpayer who either is required to disclose the transaction under §§1.6011-4, 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, or 56.6011-4 of this chapter because the transaction is a listed transaction or a

transaction of interest, or would have been required to disclose the transaction under §§1.6011-4, 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, or 56.6011-4 of this chapter if the transaction had become a listed transaction or a transaction of interest within the period of limitations in §1.6011-4(e) of this chapter;

(B) A taxpayer who the potential material advisor knows is or reasonably expects to be required to disclose the transaction under §1.6011-4 of this chapter because the transaction is or is reasonably expected to become a transaction described in §1.6011-4(b)(3) through (5) or (7) of this chapter;

(C) A material advisor who is required to disclose the transaction under this section because it is a listed transaction or a transaction of interest; or

(D) A material advisor who the potential material advisor knows is or reasonably expects to be required to disclose the transaction under this section because the transaction is or is reasonably expected to become a transaction described in §1.6011-4(b)(3) through (5) or (7) of this chapter.

(ii) *Tax statement*—(A) *In general.* A tax statement is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in §1.6011-4(b)(2) through (7) of this chapter. A tax statement under this section includes tax result protection that insures some or all of the tax benefits of a reportable transaction.

(B) *Confidential transactions.* A statement relates to a tax aspect of a transaction that causes it to be a confidential transaction if the statement concerns a tax benefit related to the transaction and either the taxpayer's disclosure of the tax treatment or tax structure of the transaction is limited in the manner described in §1.6011-4(b)(3) of this chapter by or for the benefit of the person making the statement, or the person making the statement knows the taxpayer's disclosure of the tax structure or tax aspects of the transaction is limited in the manner described in §1.6011-4(b)(3) of this chapter.

(C) *Transactions with contractual protection.* A statement relates to a tax aspect of a transaction that causes it to be a transaction with contractual protection if

the statement concerns a tax benefit related to the transaction and either—

(I) The taxpayer has the right to a full or partial refund of fees paid to the person making the statement or the fees are contingent in the manner described in §1.6011-4(b)(4) of this chapter; or

(2) The person making the statement knows or has reason to know that the taxpayer has the right to a full or partial refund of fees (described in §1.6011-4(b)(4)(ii) of this chapter) paid to another if all or part of the intended tax consequences from the transaction are not sustained or that fees (as described in §1.6011-4(b)(4)(ii) of this chapter) paid by the taxpayer to another are contingent on the taxpayer's realization of tax benefits from the transaction in the manner described in §1.6011-4(b)(4) of this chapter.

(D) *Loss transactions.* A statement relates to a tax aspect of a transaction that causes it to be a loss transaction if the statement concerns an item that gives rise to a loss described in §1.6011-4(b)(5) of this chapter.

(E) *Transactions involving a brief asset holding period.* A statement relates to a tax aspect of a transaction involving a brief asset holding period if the statement concerns an item that gives rise to a tax credit described in §1.6011-4(b)(7) of this chapter.

(iii) *Special rules—(A) Capacity as an employee.* A material advisor generally does not include a person who makes a tax statement solely in the person's capacity as an employee, shareholder, partner or agent of another person. Any tax statement made by that person will be attributed to that person's employer, corporation, partnership or principal. However, a person shall be treated as a material advisor if that person forms or avails of an entity with the purpose of avoiding the rules of section 6111 or 6112 or the penalties under section 6707 or 6708.

(B) *Post-filing advice.* A person will not be considered to be a material advisor with respect to a transaction if that person does not make or provide a tax statement regarding the transaction until after the first tax return reflecting tax benefit(s) of the transaction is filed with the IRS. However, this exception does not apply to a person who makes a tax statement with respect to the transaction if it is expected that the taxpayer will file a supplemental

or amended return reflecting additional tax benefits from the transaction.

(C) *Publicly filed statements.* A tax statement with respect to a transaction that includes only information about the transaction contained in publicly available documents filed with the Securities and Exchange Commission no later than the close of the transaction will not be considered a tax statement to or for the benefit of a person described in paragraph (b)(2) of this section.

(3) *Gross income derived for material aid, assistance, or advice—(i) Threshold amount—(A) In general.* The threshold amount of gross income is \$50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons (looking through any partnerships, S corporations, or trusts). For all other transactions, the threshold amount is \$250,000.

(B) *Listed transactions and transactions of interest.* For listed transactions described in §§1.6011-4, 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, or 56.6011-4 of this chapter, the threshold amounts in paragraph (b)(3)(i)(A) of this section are reduced from \$50,000 to \$10,000 and from \$250,000 to \$25,000. For transactions of interest described in §§1.6011-4, 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, or 56.6011-4 of this chapter, the threshold amounts in paragraph (b)(3)(i)(A) of this section may be reduced as identified in the published guidance describing the transaction.

(ii) *Gross income derived directly or indirectly for the material aid, assistance, or advice.* In determining the amount of gross income a person derives directly or indirectly for material aid, assistance, or advice, all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a reportable transaction are taken into account. Fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent return preparation fees are unreasonable in light of all of the facts and circumstances. A fee does not include amounts paid to a person, includ-

ing an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property. The IRS will scrutinize carefully all of the facts and circumstances in determining whether consideration received in connection with a reportable transaction constitutes gross income derived directly or indirectly for aid, assistance, or advice. For purposes of this section, the threshold amount must be met independently for each transaction that is a reportable transaction and aggregation of fees among transactions is not required.

(4) *Date a person becomes a material advisor—(i) In general.* A person will be treated as becoming a material advisor when all of the following events have occurred (in no particular order)—

(A) The person provides material aid, assistance or advice as described in paragraph (b)(2) of this section;

(B) The person directly or indirectly derives gross income in excess of the threshold amount as described in paragraph (b)(3) of this section; and

(C) The transaction is entered into by the taxpayer to whom or for whose benefit the person provided the tax statement, or in the case of a tax statement provided to another material advisor, when the transaction is entered into by a taxpayer to whom or for whose benefit that material advisor provided a tax statement.

(ii) *Determining if the taxpayer entered into the transaction.* Material advisors, including those who cease providing services before the time the transaction is entered into, must make reasonable and good faith efforts to determine whether the event described in paragraph (b)(4)(i)(C) of this section has occurred.

(iii) *Listed transactions and transactions of interest.* If a transaction that was not a reportable transaction is identified as a listed transaction or a transaction of interest in published guidance after the occurrence of the events described in paragraph (b)(4)(i) of this section, the person will be treated as becoming a material advisor on the date the transaction is identified as a listed transaction or a transaction of interest.

(5) *Other persons designated as material advisors.* Published guidance may identify other types or classes of persons as material advisors.

(c) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Reportable transaction.* The term *reportable transaction* is defined in §1.6011-4(b)(1) of this chapter.

(2) *Listed transaction.* The term *listed transaction* is defined in §1.6011-4(b)(2) of this chapter. See also §§20.6011-4(a), 25.6011-4(a), 31.6011-4(a), 53.6011-4(a), 54.6011-4(a), or 56.6011-4(a) of this chapter.

(3) *Derive.* The term *derive* means receive or expect to receive.

(4) *Person.* The term *person* means any person described in section 7701(a)(1), including an affiliated group of corporations that join in the filing of a consolidated return under section 1501.

(5) *Substantially similar.* The term *substantially similar* is defined in §1.6011-4(c)(4) of this chapter.

(6) *Tax.* The term *tax* means Federal tax.

(7) *Tax benefit.* A tax benefit includes deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as an entity exempt from Federal income taxation, and any other tax consequences that may reduce a taxpayer's Federal tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss, or credit.

(8) *Tax return.* The term *tax return* means a Federal tax return and a Federal information return.

(9) *Tax structure.* The tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed Federal tax treatment of the transaction.

(10) *Tax treatment.* The tax treatment of a transaction is the purported or claimed Federal tax treatment of the transaction.

(11) *Taxpayer.* The term *taxpayer* is defined in §1.6011-4(c)(1) of this chapter.

(12) *Tax result protection.* The term *tax result protection* includes insurance company and other third party products commonly described as tax result insurance.

(13) *Transaction of interest.* The term *transaction of interest* is defined in §1.6011-4(b)(6) of this chapter. See also §§20.6011-4(a), 25.6011-4(a), 31.6011-4(a), 53.6011-4(a), 54.6011-4(a), or 56.6011-4(a) of this chapter.

(d) *Form and content of material advisor's disclosure statement—(1) In general.*

A material advisor required to file a disclosure statement under this section must file a completed Form 8918, "*Material Advisor Disclosure Statement*" (or successor form) in accordance with this paragraph (d) and the instructions to the form. To be considered complete, the information provided on the form must describe the expected tax treatment and all potential tax benefits expected to result from the transaction, describe any tax result protection with respect to the transaction, and identify and describe the transaction in sufficient detail for the IRS to be able to understand the tax structure of the reportable transaction and the identity of the material advisor(s). An incomplete form containing a statement that information will be provided upon request is not considered a complete disclosure statement. A material advisor may file a single form for substantially similar transactions. An amended form must be filed if information previously provided is no longer accurate, if additional information that was not disclosed becomes available, or if there are material changes to the transaction. A material advisor is not required to file an additional form for each additional taxpayer that enters into the same or substantially similar transaction. If the form is not completed in accordance with the provisions in this paragraph (d) and the instructions to the form, the material advisor will not be considered to have complied with the disclosure requirements of this section.

(2) *Reportable transaction number.* The IRS will issue to a material advisor a reportable transaction number with respect to the disclosed reportable transaction. Receipt of a reportable transaction number does not indicate that the disclosure statement is complete, nor does it indicate that the transaction has been reviewed, examined, or approved by the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors to whom the material advisor makes or provides tax statements. The reportable transaction number must be provided at the time the transaction is entered into, or, if the transaction is entered into prior to the material advisor receiving the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

(e) *Time of providing disclosure.* The material advisor's disclosure statement for a reportable transaction must be filed with the Office of Tax Shelter Analysis (OTSA) by the last day of the 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 statement occur. The disclosure statement must be sent to OTSA at the address provided in the instructions for Form 8918 (or a successor form).

(f) *Designation agreements.* If more than one material advisor is required to disclose a reportable transaction under this section, the material advisors may designate by written agreement a single material advisor to disclose the transaction. The transaction must be disclosed by the last day of the month following the end of the calendar quarter that includes the earliest date on which a material advisor who is a party to the agreement became a material advisor with respect to the transaction as described in paragraph (b)(4) of this section. The designation of one material advisor to disclose the transaction does not relieve the other material advisors of their obligation to disclose the transaction to the IRS in accordance with this section, if the designated material advisor fails to disclose the transaction to the IRS in a timely manner.

(g) *Protective disclosures.* If a potential material advisor is uncertain whether a transaction must be disclosed under this section, the advisor may disclose the transaction in accordance with the requirements of this section and comply with all the provisions of this section, and indicate on the disclosure statement that the disclosure statement is being filed on a protective basis. The IRS will not treat disclosure statements filed on a protective basis any differently than other disclosure statements filed under this section. For a protective disclosure to be effective, the advisor must comply with the regulations under this section and §301.6112-1 by providing to the IRS all information requested by the IRS under these sections.

(h) [The text of the proposed §301.6111-3(h) is the same as the text for §301.6111-3T(h) published elsewhere in this issue of the Bulletin].

(i) *Effective date—(1) In general.* In general, this section applies to transac-

tions with respect to which a material advisor makes a tax statement on or after the date these regulations are published as final regulations in the **Federal Register**. However, upon the publication of final regulations, this section will apply to transactions of interest entered into on or after November 2, 2006 with respect to which a material advisor makes a tax statement under §301.6111-3 on or after November 2, 2006.

(2) [The text of the proposed §301.6111-3(i)(2) is the same as the text for §301.6111-3T(i)(2) published elsewhere in this issue of the Bulletin].

Mark E. Matthews,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on November 1, 2006, 8:45 a.m., and published in the issue of the Federal Register for November 2, 2006, 71 F.R. 64496)

Notice of Proposed Rulemaking

AJCA Modifications to the Section 6112 Regulations

REG-103043-05

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 6112 of the Internal Revenue Code which provide the rules relating to the obligation of material advisors to prepare and maintain lists with respect to reportable transactions. These regulations affect material advisors responsible for keeping lists under section 6112.

DATES: Written or electronic comments and requests for a public hearing must be received by January 31, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-103043-05), room 5203, Internal Revenue Service, PO 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 CC:PA:LPD:PR (REG-103043-05),

Courier's Desk, Internal Revenue Service, Crystal Mall 4 Building, 1901 S. Bell St., Arlington, VA, or sent electronically, via the IRS Internet site at www.irs.gov/regs or via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-103043-05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Tara P. Volungis or Charles Wien, 202-622-3070; concerning the submissions of comments and requests for hearing, Kelly Banks, 202-622-0392 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by January 2, 2007.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §301.6112-1(b) and (d). This information is required in order for a material advisor to comply with the list maintenance rules under section 6112. This information will be used to improve compliance with the tax laws by giving the IRS earlier notification of transactions that may not comport with the tax laws. The collection of information is mandatory. The likely respondents are business or other for-profit institutions or individuals.

Estimated total annual reporting burden: 50,000 hours.

Estimated average annual burden hours per respondent: 100 hours.

Estimated number of respondents: 500.

Estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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.

Background

This document proposes to amend 26 CFR part 301 by amending the rules relating to the list maintenance requirements of material advisors with respect to reportable transactions under section 6112.

The American Jobs Creation Act of 2004, Public Law 108-357, 118 Stat. 1418, (AJCA) was enacted on October 22, 2004. Section 815 of the AJCA amended section 6112 to provide that each material advisor (as defined in section 6111, as amended by the AJCA) with respect to any reportable transaction is required to maintain a list (in such manner as the Secretary may by regulations prescribe) 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. Section 815 of the AJCA is effective for transactions with respect to which material aid, assistance, or advice is provided after October 22,

2004. Prior to the amendments to section 6111 made by the AJCA, the definition of material advisor was in §301.6112-1 of the Procedure and Administration Regulations.

In response to the AJCA, the IRS and Treasury Department issued interim guidance affecting section 6112 in Notice 2004-80, 2004-2 C.B. 963; Notice 2005-17, 2005-1 C.B. 606; Notice 2005-22, 2005-1 C.B. 756; and Notice 2006-6, 2006-5 I.R.B. 385 (see §601.601(d)(2)). The IRS and Treasury Department have received various comments and questions regarding the application of section 6112 under the AJCA. Consequently, the IRS and Treasury Department propose amendments to the rules relating to the list maintenance obligation of material advisors under section 6112.

Explanation of Provisions

A. In General

These proposed regulations are being issued concurrently with proposed regulations under §1.6011-4 (REG-103038-05) and §301.6111-3 (REG-103039-05) published elsewhere in the Bulletin. The definition of material advisor is provided in the proposed regulations under §301.6111-3(b). The definition of reportable transaction is provided in the proposed regulations under §1.6011-4(b)(1). Under these proposed regulations, each material advisor for any reportable transaction must maintain a list identifying each person with respect to whom the advisor acted as a material advisor and containing other information described in the regulations.

B. The List

The information that must be contained in the list under these proposed regulations is similar to the information required to be included on the list under the current §301.6112-1 regulations, with some additions or clarifications, such as, the name of each other material advisor to the transaction, if known by the material advisor, and any designation agreement to which the material advisor is a party. The IRS and Treasury Department believe that this information is required to be provided under the current regulations. However, due to questions raised by material advisors un-

der the current regulations, these proposed amendments clarify that the name of other material advisors and designation agreements are required to be maintained.

To date, the IRS has received lists under the current regulations that are not in a form that enables the IRS to determine without undue delay or difficulty the information required under the regulation. Some material advisors have merely produced boxes of documents rather than a list as required under §301.6112-1. Under section 6708 as amended by the AJCA, any person who is required to maintain a list under section 6112(a) who fails to make the list available to the Secretary upon written request within 20 business days after the date of the request, must pay a penalty of \$10,000 for each day of such failure. Failure to maintain the list in accordance with these regulations also subjects a person to the penalty under section 6708. The proposed regulations specifically clarify that the list to be maintained by the material advisor and furnished to the IRS upon request consists of three separate components: (1) an itemized statement of information, (2) a detailed description of the transaction, and (3) copies of documents relating to the transaction. The itemized statement of information must contain all of the requested information in a form that is easy to understand (for example, in a format such as a list, spreadsheet, or table). In order for the material advisor to be in compliance with its obligations under section 6112, the material advisor must maintain and furnish in the time prescribed the itemized statement of information, the description of the transaction, and the copies of documents. Under the proposed regulations, the Secretary, in published guidance, may provide a form or method for maintaining and/or furnishing a list.

C. Other Clarifications and Modifications

The proposed regulations remove the provision detailing how a privilege is claimed with regard to certain information on the list. The regulations continue to require that if a claim of privilege is made, the material advisor must continue to maintain the list in accordance with these regulations.

Similar to provisions in the current §301.6112-1 regulations, material advi-

sors under the proposed regulations may have a designation agreement authorizing one material advisor to maintain and furnish the list. However, the designation agreement does not relieve the other material advisors of their obligation to furnish the list if the designated material advisor fails to furnish the list in a timely manner. Thus, parties to a designation agreement may still be liable for the penalty under section 6708.

Contrary to the provisions in the current regulations under §301.6112-1, these proposed regulations contain no provision to toll the requirement for maintaining the list when a potential material advisor requests a private letter ruling on a specific transaction. The IRS and Treasury Department believe that removing the tolling provision will promote effective tax administration. Consequently, potential material advisors may request a ruling on a transaction, as provided in the temporary regulations under §301.6111-3T(h), under the regular procedures for requesting a ruling, provided the ruling request is not factual or hypothetical, but the requirement for disclosing the transaction under section 6111 and maintaining the list under section 6112 will not be tolled. Final regulations removing the tolling provision are being issued concurrently with these proposed regulations. The removal of the tolling provision is effective for all ruling requests received on or after November 1, 2006.

D. Effective Date

Generally, when these proposed regulations become final, they will apply to transactions with respect to which a material advisor makes a tax statement on or after the date the regulations are published as final regulations in the **Federal Register**. However, upon publication the final regulations will apply to transactions of interest entered into on or after November 2, 2006 with respect to which a material advisor makes a tax statement under §301.6111-3 on or after November 2, 2006.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the

Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that most of the information is already required to be reported under the current regulations; the clarifications and new information required by the proposed regulations add little or no new burden to the existing requirements. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules, how they can be made easier to understand, and the administrability of the rules in the proposed regulations. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that submits timely written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Tara P. Volungis and Charles Wien, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6112-1 is revised to read as follows:

§301.6112-1 Material advisors of reportable transactions must keep lists of advisees, etc.

(a) *In general.* Each material advisor, as defined in §301.6111-3(b), with respect to any reportable transaction, as defined in §1.6011-4(b) of this chapter, shall prepare and maintain a list in accordance with paragraph (b) of this section and shall furnish such list to the Internal Revenue Service (IRS) in accordance with paragraph (e) of this section.

(b) *Preparation and maintenance of lists—(1) In general.* A separate list must be prepared and maintained for each reportable transaction. However, one list must be maintained for substantially similar transactions. A list must be maintained in a form that enables the IRS to determine without undue delay or difficulty the information required in paragraph (b)(3) of this section. The Secretary may, by publication in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter), provide a form or method for maintaining and/or furnishing a list.

(2) *Persons required to be included on lists.* A material advisor is required to maintain a list identifying each person with respect to whom the advisor acted as a material advisor with respect to the reportable transaction. However, a material advisor is not required to identify a person on the list if the person entered into a listed transaction or a transaction of interest more than 6 years before the transaction was identified in published guidance as a listed transaction or a transaction of interest.

(3) *Contents.* Each list must include the three components described in paragraph (b)(3)(i), (ii), and (iii) of this section.

(i) *Statement.* An itemized statement containing the following information—

(A) The name of each reportable transaction, the citation to the published guidance number identifying the transaction if the transaction is a listed transaction or a transaction of interest, and the reportable transaction number obtained under section 6111;

(B) The name, address, and TIN of each person required to be included on the list;

(C) The date on which each person required to be included on the list entered into each reportable transaction, if known by the material advisor;

(D) The amount invested in each reportable transaction by each person required to be included on the list, if known by the material advisor;

(E) A summary or schedule of the tax treatment that each person is intended or expected to derive from participation in each reportable transaction; and

(F) The name of each other material advisor to the transaction, if known by the material advisor.

(ii) *Description of the transaction.* A detailed description of each reportable transaction that describes both the tax structure of the transaction and the purported tax treatment of the transaction.

(iii) *Documents.* The following documents—

(A) A copy of any designation agreement (as described in paragraph (f) of this section) to which the material advisor is a party; and

(B) Copies of any additional written materials, including tax analyses or opinions, relating to each reportable transaction that are material to an understanding of the purported tax treatment or tax structure of the transaction that have been shown or provided to any person who acquired or may acquire an interest in the transactions, or to their representatives, tax advisors, or agents, by the material advisor or any related party or agent of the material advisor. However, a material advisor is not required to retain earlier drafts of a document provided the material advisor retains a copy of the final document (or, if there is no final document, the most recent draft of the document) and the final document (or most recent draft) contains all the information in the earlier drafts of such document that is material to an understanding of the pur-

ported tax treatment or the tax structure of the transaction.

(c) *Definitions.* For purposes of this section, the following terms are defined as:

(1) *Material advisor.* The term *material advisor* is defined in §301.6111-3(b).

(2) *Reportable transaction.* The term *reportable transaction* is defined in §1.6011-4(b)(1) of this chapter.

(3) *Listed transaction.* The term *listed transaction* is defined in §1.6011-4(b)(2) of this chapter. See also §§20.6011-4(a), 25.6011-4(a), 31.6011-4(a), 53.6011-4(a), 54.6011-4(a), or 56.6011-4(a) of this chapter.

(4) *Substantially similar.* The term *substantially similar* is defined in §1.6011-4(c)(4) of this chapter.

(5) *Person.* The term *person* is defined in §301.6111-3(c)(4).

(6) *Related party.* A person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b).

(7) *Tax.* The term *tax* is defined in §301.6111-3(c)(6).

(8) *Tax benefit.* The term *tax benefit* is defined in §301.6111-3(c)(7).

(9) *Tax return.* The term *tax return* is defined in §301.6111-3(c)(8).

(10) *Tax structure.* The term *tax structure* is defined in §301.6111-3(c)(9).

(11) *Tax treatment.* The term *tax treatment* is defined in §301.6111-3(c)(10).

(12) *Transaction of interest.* The term *transaction of interest* is defined in §1.6011-4(b)(6) of this chapter. See also §§20.6011-4(a), 25.6011-4(a), 31.6011-4(a), 53.6011-4(a), 54.6011-4(a), or 56.6011-4(a) of this chapter.

(d) *Retention of lists.* Each material advisor must maintain each component of the list described in paragraph (b)(3) of this section in a readily accessible form for seven years following the earlier of the date on which the material advisor last made a tax statement relating to the transaction, or the date the transaction was last entered into, if known. If the material advisor required to prepare, maintain, and furnish the list is a corporation, partnership, or other entity (entity) that has dissolved or liquidated before completion of the seven-year period, the person responsible under state law for winding up the

affairs of the entity must prepare, maintain and furnish each component of the list on behalf of the entity, unless the entity submits the list to the Office of Tax Shelter Analysis (OTSA) within 60 days after the dissolution or liquidation. If state law does not specify any person as responsible for winding up the affairs, then each of the directors of the corporation, the general partners of the partnership, or the trustees, owners, or members of the entity are responsible for preparing, maintaining and furnishing each component of the list on behalf of the entity, unless the entity submits the list to the OTSA within 60 days after the dissolution or liquidation. The responsible person must also provide notice to OTSA of such dissolution or liquidation within 60 days after the dissolution or liquidation. The list and the notice provided to OTSA must be sent to: Internal Revenue Service, OTSA Mail Stop 4915, 1973 North Rulon White Blvd., Ogden, Utah 84404, or to such other address as provided by the Commissioner.

(e) *Furnishing of lists—(1) In general.* Each material advisor responsible for maintaining a list must, upon written request by the IRS, make each component of the list described in paragraph (b)(3) of this section available to the IRS by furnishing each component of the list to the IRS within 20 business days from the day on which the request is provided. The 20 business-day period shall begin on the first business day following the earlier of the date that the IRS mails a request for the list by certified or registered mail to the last known address of the material advisor required to maintain the list, or hand-delivers the written request in person. Business days include every calendar day other than Saturdays, Sundays, or legal holidays. For purposes of this paragraph (e), *legal holiday* shall have the same meaning provided in section 7503. The request is not required to be in the form of an administrative summons. Each component of 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 in paragraph (b)(3) of this section. If any component of the list is not in a form that enables the IRS to determine without undue delay or difficulty the information required in paragraph (b)(3)

of this section, the material advisor will not be considered to have complied with the list maintenance provisions in section 6112 and this section.

(2) *Claims of privilege.* Each material advisor who is required to maintain a list with respect to a reportable transaction, must still maintain the list pursuant to the requirements of this section even if a person asserts a claim of privilege with respect to the information specified in paragraph (b)(3)(iii)(B) of this section.

(f) *Designation agreements.* If more than one material advisor is required to maintain a list of persons for a reportable transaction, in accordance with paragraph (b) of this section, the material advisors may designate by written agreement a single material advisor to maintain the list or a portion of the list. The designation of one material advisor to maintain the list does not relieve the other material advisors from their obligation to furnish the list to the IRS in accordance with paragraph (e)(1) of this section, if the designated material advisor fails to furnish the list to the IRS in a timely manner. A material advisor is not relieved from the requirement of this section because a material advisor is unable to obtain the list from any designated material advisor, any designated material advisor did not maintain a list, or the list maintained by any designated material advisor is not complete.

(g) *Effective date.* In general, this section applies to transactions with respect to which a material advisor makes a tax statement under §301.6111-3 on or after the date these regulations are published as final regulations in the **Federal Register**. However, upon the publication of final regulations, this section will apply to transactions of interest entered into on or after November 2, 2006 with respect to which a material advisor makes a tax statement under §301.6111-3 on or after November 2, 2006.

Mark E. Matthews,
Deputy Commissioner for
Services and Enforcement.

(Filed by the Office of the Federal Register on November 1, 2006, 8:45 a.m., and published in the issue of the Federal Register for November 2, 2006, 71 F.R. 64501)

Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries — Suspensions, Censures, Disbarments, and Resignations

Announcement 2006-94

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may not knowingly aid or abet another

person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin

their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service,

may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled actuary in accordance with the consent offered.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Tomasulo, Maria V.	Wantagh, NY	CPA	Indefinite from August 7, 2006
Maloy, Jr., Robert J.	Galion, OH	CPA	Indefinite from August 15, 2006
Pate, Janet M.	Broadview, NM	CPA	Indefinite from August 15, 2006
Scott, Howard	Miami, FL	Attorney	Indefinite from August 15, 2006
Adamic, Jonathan E.	San Lorenzo, CA	CPA	Indefinite from August 18, 2006
Becker, Ira S.	Wilmette, IL	CPA	August 22, 2006 to August 21, 2008

Name	Address	Designation	Date of Suspension
Snigur, Virginia Iaquinta	Warwick, NY	Attorney	Indefinite from August 31, 2006
Galpern, Joel G.	North Miami, FL	CPA	Indefinite from September 1, 2006
DiSiena, Frank E.	Katonah, NY	CPA	Indefinite from September 4, 2006
Carusona, Thomas M.	Huntington, NY	Attorney	Indefinite from September 15, 2006
Shaikh, Firoz A.	Melville, NY	CPA	Indefinite from September 15, 2006
Wickline, Ella L.	Ronceverte, WV	Enrolled Agent	Indefinite from September 15, 2006
Smith, Daniel B.	Garden City, NY	CPA	Indefinite from September 18, 2006
Carlin, Charles R.	South Bend, IN	CPA	Indefinite from October 1, 2006
Devine, Daniel M.	Boca Raton, FL	CPA	Indefinite from October 1, 2006
Dupont, Hewitt, J.	Daytona Beach, FL	CPA	Indefinite from October 1, 2006
Farrell, Raymond J.	Matawan, NJ	Attorney	Indefinite from October 1, 2006
Kelligrew, John R.	White Plains, NY	Attorney	Indefinite from October 1, 2006
Klein, Robert B.	Bardonia, NY	Enrolled Agent	Indefinite from October 1, 2006
Long, Gregory S.	Hutchinson, KS	Attorney	Indefinite from October 1, 2006
Moore, Ronald L.	Cayce, SC	CPA	Indefinite from October 1, 2006

Name	Address	Designation	Date of Suspension
Schaffer, Robert J.	Calverton, NY	CPA	Indefinite from October 1, 2006
Berlin, Stanley	Erie, PA	Attorney	Indefinite from October 15, 2006
Briscoe, Jack	Drexel Hill, PA	Attorney	Indefinite from October 15, 2006
Buzzeo, Michael V.	New Canaan, CT	CPA	Indefinite from October 15, 2006
Sacco, John M.	Pound Ridge, NY	CPA	Indefinite from October 15, 2006
Sheiman, Alan P.	Sherman Oaks, CA	Enrolled Agent	Indefinite from October 15, 2006
Tourin, Mark	Miami, FL	CPA	Indefinite from October 15, 2006
Burns, William J.	Randolph, MA	Attorney	Indefinite from October 16, 2006
Webb, Norman R.	Daphne, AL	CPA	Indefinite from October 16, 2006
Brown, Guia EP	Hobe Sound, FL	Enrolled Agent	October 20, 2006 to April 19, 2008
Gram, John A.	Gainesville, GA	Attorney	Indefinite from November 1, 2006
Herzog, Samuel A.	Jericho, NY	CPA	Indefinite from November 1, 2006
Kellicker, John F.	Cleveland, OH	CPA	Indefinite from November 1, 2006
Krieger, Robert M.	Hampton, NH	CPA	Indefinite from November 1, 2006
Minsky, Neil J.	Randolph, NJ	CPA	Indefinite from November 1, 2006
O'Brien, Timothy	Newton Center, MA	Attorney	Indefinite from November 1, 2006

Name	Address	Designation	Date of Suspension
Sukenik, Martin	Kew Gardens, NY	Attorney	Indefinite from November 1, 2006
Savoy, Cassandra	East Orange, NJ	Attorney	Indefinite from November 7, 2006
Bonner, Charles B.	Athens, GA	CPA	Indefinite from November 15, 2006
Levine, Barton P.	New York, NY	Attorney	Indefinite from November 15, 2006
Taves, Joseph G.	Provincetown, MA	CPA	Indefinite from November 15, 2006
Young, Ronald	Fairfield, CT	CPA	Indefinite from November 16, 2006
Brush, Charles, H.	Southbury, CT	CPA	Indefinite from December 1, 2006
Jacob, Robert T.	Tucson, AZ	CPA	Indefinite from December 15, 2006

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date

the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions:

Name	Address	Designation	Date of Suspension
Williams, Donna M.	York, PA	CPA	Indefinite from July 25, 2006
Foushee, Wayne H.	Winston-Salem, NC	Attorney	Indefinite from August 3, 2006
Kronegold, Sheldon H.	Englewood, NJ	Attorney	Indefinite from August 3, 2006

Name	Address	Designation	Date of Suspension
Norman, Clarence	Brooklyn, NY	Attorney	Indefinite from August 3, 2006
Chin, Arnold	San Francisco, CA	Attorney	Indefinite from August 31, 2006
McCann, Thomas	Des Moines, IA	Attorney	Indefinite from August 31, 2006
Whaley, Daniel P.	Hood, CA	Attorney	Indefinite from August 31, 2006
Chukumba, Stephen C.	Montclair, NJ	Attorney	Indefinite from September 12, 2006
Katz, Edward C.	New York, NY	Attorney	Indefinite from September 12, 2006
Kadunce, Darrell L.	Butler, PA	Attorney	Indefinite from September 18, 2006
Allen, Robert W.	Torrance, CA	CPA	Indefinite from September 21, 2006
Brown, Davin W.	Raleigh, NC	CPA	Indefinite from September 21, 2006
Cunningham, R. Scott	Dalton, GA	Attorney	Indefinite from September 21, 2006
Eilers, Tom D.	Raleigh, NC	CPA	Indefinite from September 21, 2006
Gerdes, Roger A.	Carpinteria, CA	Attorney	Indefinite from September 21, 2006
Kurth, Richard Frederick	Danville, IL	Attorney	Indefinite from September 21, 2006
Mitchell, McArthur D.	Charlotte, NC	CPA	Indefinite from September 21, 2006
Ragusa, Patricia A.	Spring, TX	CPA	Indefinite from September 21, 2006

Name	Address	Designation	Date of Suspension
Wulfsberg, David E.	Murrieta, CA	Attorney	Indefinite from September 21, 2006
Cox, Brian J.	Plymouth, MI	CPA	Indefinite from September 25, 2006
Mandelman, Michael D.	Mequon, WI	Attorney	Indefinite from September 25, 2006
Miller, Steven L.	Canal Winchester, OH	Attorney	Indefinite from September 25, 2006
Felli, Jay A.	Mequon, WI	Attorney	Indefinite from October 2, 2006
Schoch V, Arch K.	High Point, NC	Attorney	Indefinite from October 2, 2006
Andre, Patrick F.	Manchester, MO	Attorney	Indefinite from October 12, 2006
Brill, Kevin Michael	Downers Grove, IL	Attorney	Indefinite from October 12, 2006
Day, Richard G.	Largo, FL	Attorney	Indefinite from October 12, 2006
Dull, Kay E.	Miami Shores, FL	Attorney	Indefinite from October 12, 2006
Frank, Arthur J.	Chicago, IL	Attorney	Indefinite from October 12, 2006
Gackle, Thomas E.	Plymouth, MI	Attorney	Indefinite from October 12, 2006
Hamilton, Howard D.	Fort Dodge, IA	Attorney	Indefinite from October 12, 2006
Hodge, Robert M.	Lafayette, LA	Attorney	Indefinite from October 12, 2006
Lesyshen, Donna P.	Waterloo, IA	Attorney	Indefinite from October 12, 2006
Peiss, John H.	Downers Grove, IL	Attorney	Indefinite from October 12, 2006

Name	Address	Designation	Date of Suspension
Petty, James E.	Austin, TX	CPA	Indefinite from October 12, 2006
Ruffin-Hudson, Linda C.	Saint Louis, MO	Attorney	Indefinite from October 12, 2006
Schaefer, James E.	St. Louis Park, MN	Attorney	Indefinite from October 12, 2006
Schmitt, Martha G.	Minneapolis, MN	Attorney	Indefinite from October 12, 2006
Shannon, Terrance J.	Mission Viejo, CA	Attorney	Indefinite from October 12, 2006
Smith, Matthew S.	Denver, CO	Attorney	Indefinite from October 12, 2006
Swanson, Richard	West Chicago, IL	CPA	Indefinite from October 12, 2006
Thomas, Kenneth A.	Farmers Branch, TX	Attorney	Indefinite from October 12, 2006
Tomasa, Ryan H.	Honolulu, HI	Attorney	Indefinite from October 12, 2006
Williams, Jr., Harry D.	San Antonio, TX	Attorney	Indefinite from October 12, 2006
Wilson, Jr., Robert N.	Ayer, MA	Attorney	Indefinite from October 12, 2006
Yum, Chris Chulho	Woodbridge, VA	Attorney	Indefinite from October 12, 2006
Dunham, Richard G.	Irvine, CA	Enrolled Agent	Indefinite from October 15, 2006
Housman, David	Albuquerque, NM	Attorney	Indefinite from October 15, 2006
Malitz, Charles P.	Beachwood, OH	CPA	Indefinite from October 15, 2006
Emig, Robert W.	Houston, TX	CPA	Indefinite from October 24, 2006

Name	Address	Designation	Date of Suspension
Freese, Scott D.	Norfolk, NE	Attorney	Indefinite from October 24, 2006
Rambo, Byron L.	Sanford, FL	EA	Indefinite from October 24, 2006
Ask, Ronald W.	Riverside, CA	Attorney	Indefinite from October 30, 2006
Berry, Richard S.	Tempe, AZ	Attorney	Indefinite from October 30, 2006
Burkhardt, William R.	Canyon Lake, TX	CPA	Indefinite from October 30, 2006
Callaway, Jr., Paul F.	Greensboro, NC	CPA	Indefinite from October 30, 2006
Doyle, David W.	Arvada, CO	Attorney	Indefinite from October 30, 2006
Elmore, III, Virgil	Birmingham, AL	Attorney	Indefinite from October 30, 2006
Grandt, Lawrence E.	Gurnee, IL	CPA	Indefinite from October 30, 2006
Hanson, Steven G.	Lodi, CA	Attorney	Indefinite from October 30, 2006
Omodele, Boluwaji	Houston, TX	CPA	Indefinite from October 30, 2006
Rahden, Horst R.	Fort Wayne, IN	CPA	Indefinite from October 30, 2006
Censoprano, Salvatore	Foster City, CA	CPA	Indefinite from October 31, 2006
Powell, James S.	Lakewood, CO	Attorney	Indefinite from October 31, 2006
Allen, Leonard G.	Mesa, AZ	CPA	Indefinite from November 1, 2006
Parker, Donald A.	Benson, NC	Attorney	Indefinite from November 6, 2006

Name	Address	Designation	Date of Suspension
Rogers, James M.	Tulsa, OK	Attorney	Indefinite from November 6, 2006
Coopet, Michael W.	Saint Paul, MN	Attorney	Indefinite from November 8, 2006
Day, Jr., John Taylor	Hingham, MA	Attorney	Indefinite from November 8, 2006
Grella, Paul J.	Canton, MA	Attorney	Indefinite from November 8, 2006
Meggers, Theodore M.	Des Moines, IA	Attorney	Indefinite from November 8, 2006
Tolbert, James L.	Los Angeles, CA	Attorney	Indefinite from November 8, 2006

Suspensions From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an administrative law judge, the following individuals have been placed under suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Lazaro, Charles	Visalia, CA	Attorney	July 20, 2006 to January 19, 2010
Wasilowski, Ronald	Natrona Heights, PA	CPA	July 21, 2006 to July 20, 2011
Wellbery, William J.	Deerfield Beach, FL	CPA	October 12, 2006 to October 11, 2008
Clapper, Gary L.	La Mesa, CA	Enrolled Agent	November 2, 2006 to November 1, 2008

Consent Disbarments From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice be-

fore the Internal Revenue Service, may offer his or her consent to disbarment from such practice. The Director, Office of Professional Responsibility, in his discretion, may disbar an attorney, certified public ac-

countant, enrolled agent, or enrolled actuary in accordance with the consent offered.

The following individuals have been placed under consent disbarment from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Disbarment
Grossman, Robert S.	Ardmore, PA	Attorney	Indefinite from October 4, 2006

Disbarments From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an oppor-

tunity for a proceeding before an administrative law judge, the following individu-

als have been disbarred from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Hubbard, Murphy	Springfield, MO	CPA	September 20, 2006
Kardos, Sandra E.	Van Nuys, CA	CPA	October 2, 2006
Jewett, Jerry A.	Fremont, OH	Enrolled Agent	November 2, 2006

Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney, certified public accountant, enrolled agent,

or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand.

The following individuals have consented to the issuance of a Censure:

Name	Address	Designation	Date of Censure
Applegate, William F.	Madison, NJ	CPA	September 12, 2006
Vigliotti, Anthony J.	East Haven, CT	Enrolled Agent	September 12, 2006
Bolgiani, Janette A.	Brooklyn, NY	Enrolled Agent	September 14, 2006
Cheney, James E.	Phelps, NY	CPA	September 18, 2006
Dollinger, Douglas	Middletown, NY	Attorney	October 2, 2006
Reeves, Zak E.	Denver, CO	Enrolled Agent	October 2, 2006

Name	Address	Designation	Date of Censure
Castiglione, John	Pittsfield, MA	Attorney	October 4, 2006
Shannon, James P.	Rochester, NH	Attorney	October 4, 2006
Kuller, Mark A.	Bethesda, MD	Attorney	October 6, 2006

Resignations of Enrolled Agents

Under Title 31, Code of Federal Regulations, Part 10, an enrolled agent, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the In-

ternal Revenue Service, may offer his or her resignation as an enrolled agent. The Director, Office of Professional Responsibility, in his discretion, may accept the offered resignation.

The Director, Office of Professional Responsibility, has accepted offers of resignation as an enrolled agent from the following individuals:

Name	Address	Date of Resignation
Schwartz, Judy	Las Vegas, NV	October 13, 2006

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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