

Part III - Administrative, Procedural, and Miscellaneous

Notification of Removal of the Transaction with a Significant Book-Tax Difference Category of Reportable Transaction Under § 1.6011-4

Notice 2006-6

The purpose of this notice is to notify taxpayers and material advisors of a future change to the categories of reportable transactions under § 1.6011-4 of the Income Tax Regulations. Until regulations reflecting this change are issued, taxpayers and material advisors may rely on this notice.

BACKGROUND

Section 1.6011-4 requires a taxpayer that participates in a reportable transaction to disclose the transaction in accordance with procedures provided in § 1.6011-4. Similarly, § 6111 of the Internal Revenue Code, as amended by the American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (the Act), requires that each material advisor with respect to any reportable transaction make a return setting forth information identifying and describing the transaction and any potential tax benefits expected to result from the transaction by the date specified by the Secretary. Section 6112, as amended by the Act, requires material advisors to maintain lists identifying

each person with respect to whom the advisor acted as a material advisor and containing such other information as the Secretary may by regulations require.

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

In 2004, the Internal Revenue Service released Schedule M-3, Net Income (Loss) Reconciliation for Corporations with Total Assets of \$10 Million or More, for corporations that file Form 1120, U.S. Corporation Income Tax Return, effective for taxable years ending on or after December 31, 2004. On August 2, 2004, the Service and Treasury Department released Rev. Proc. 2004-45, 2004-2 C.B. 140, which provided procedures for filing the Schedule M-3 that are deemed to satisfy a taxpayer's disclosure obligations for reporting transactions with a significant book-tax difference under § 1.6011-4. Rev. Proc. 2004-45 also announced that the Service and Treasury Department will continue to evaluate whether the disclosure requirements described in the revenue procedure and Schedule M-3 provide the Service and Treasury Department adequate information regarding significant book-tax differences. In December 2005, the Service released draft Schedules M-3 and instructions for corporations and partnerships that, in general, have total assets of \$10 million or more and that file Forms 1120-PC,

U.S. Property and Casualty Insurance Company Income Tax Return, 1120-L, U.S. Life Insurance Company Income Tax Return, 1120-S, U.S. Income Tax Return for an S Corporation, or 1065, U.S. Return of Partnership Income. When finalized, these Schedules M-3 will be effective for tax years ending on or after December 31, 2006.

Based on a review of the Forms 8886, Reportable Transaction Disclosure Statement, and Schedules M-3 received during the most recent filing season, the Service and Treasury Department have concluded that the book-tax difference category of reportable transactions under § 1.6011-4 is no longer necessary. As a result, the Service and Treasury Department will be issuing temporary and proposed regulations under § 1.6011-4 that will remove from the categories of reportable transactions under § 1.6011-4(b)(1) the category of transactions with a significant book-tax difference currently set forth in § 1.6011-4(b)(6).

REMOVAL OF BOOK-TAX DIFFERENCE CATEGORY UNDER § 1.6011-4

The removal of the book-tax difference category of reportable transactions will apply to transactions with a significant book-tax difference that otherwise would have to be disclosed by taxpayers under § 1.6011-4 on Form 8886 (or on Schedule M-3 as prescribed in Rev. Proc. 2004-45) on or after January 6, 2006, the date this notice is released to the public. Consequently, for those affected transactions, taxpayers are not required to file a disclosure statement solely because the transaction has a significant book-tax difference under § 1.6011-4(b)(6).

The removal of this category of reportable transaction also will apply to transactions with a significant book-tax difference that otherwise would have to be disclosed by material advisors under § 6111 on Form 8264, Application for Registration

of a Tax Shelter, on or after January 6, 2006. For those affected transactions, material advisors are not required to file a disclosure statement solely because the transaction has a significant book-tax difference under § 1.6011-4(b)(6).

Similarly, the removal of this category of reportable transaction will apply to transactions with a significant book-tax difference for which lists under § 6112 otherwise should have been prepared and maintained beginning on or after January 6, 2006. For those affected transactions, material advisors are not required to prepare and maintain lists solely because the transaction has a significant book-tax difference under § 1.6011-4(b)(6).

This notice does not relieve taxpayers or material advisors of any disclosure, registration or list maintenance obligations for transactions that should have been disclosed or registered, or for transactions for which lists should have been prepared and maintained, prior to January 6, 2006. Further, this notice does not relieve taxpayers of any obligation to file a Schedule M-3.

If a transaction with a significant book-tax difference also is described in § 1.6011-4(b)(2) through (5) or (7), the transaction is a reportable transaction under § 1.6011-4 for which disclosure may be required by taxpayers under § 1.6011-4, and for which disclosure and list maintenance may be required by material advisors under §§ 6111 and 6112, respectively.

DRAFTING INFORMATION

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