Internal Revenue
bulletin

Bulletin No. 2000–11
March 13, 2000

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. 2000–12, page 744.

Treatment of certain debt acquisitions. This ruling addresses three situations in which a taxpayer acquires two debt instruments that are structured so that it is expected that the value of one will increase significantly, at the same time that the value of the other one decreases significantly, and holds that in each situation the taxpayer cannot recognize the claimed loss on the sale of the debt instrument that decreases in value while not recognizing the gain on the other debt instrument.

T.D. 8877, page 747.
REG–103735–00, page 770.

Proposed and temporary regulations require certain corporate taxpayers to file a statement with their federal corporate income tax returns under section 6011(a) of the Code. A public hearing is scheduled for June 20, 2000.

EXCISE TAX

Rev. Proc. 2000–17, page 766.

Excise tax; minimum funding standard. This revenue procedure provides that under certain circumstances the second tier excise tax described in section 4971(b) of the Code, which is imposed as a result of the failure to meet the minimum funding standards under section 412, will be waived automatically.

ADMINISTRATIVE

T.D. 8875, page 761.
REG–103736–00, page 768.

Proposed and temporary regulations relate to the maintenance of lists of investors in potentially abusive tax shelters under section 6112 of the Code. A public hearing is scheduled for June 20, 2000.

T.D. 8876, page 753.
REG–110311–98, page 767.

Proposed and temporary regulations relate to the registration of confidential corporate tax shelters pursuant to section 6111(d) of the Code. A public hearing is scheduled for June 20, 2000.

Announcement 2000–13, page 771.

This announcement corrects final regulations T.D. 8847 (1999–52 I.R.B. 701) under sections 743, 754, and 755 of the Code relating to adjustments following the sale of partnership interests.

Announcement 2000–14, page 772.

This announcement explains that supplemental information on Short-Term Treasury Bills for Publication 1212, *List of Original Issue Discount Instruments* (revised December 1999), is now available.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

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 consolidated 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 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 first 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 first Bulletin of the succeeding semiannual period, respectively.

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

Section 165.—Losses

26 CFR 1.165–1: Losses. See Rev. Rul. 2000–12, page 744.

Section 1275.—Other Definitions and Special Rules

26 CFR 1.1275–2: Special rules relating to debt instruments. (Also section 165; 1.165–1.)

26 CFR 1.1275–6: Integration of qualifying debt instruments.

Treatment of certain debt acquisitions. This ruling addresses three situations in which a taxpayer acquires two debt instruments that are structured so that it is expected that the value of one will increase significantly at the same time that the value of the other one decreases significantly, and holds that in each situation the taxpayer cannot recognize the claimed loss on the sale of the debt instrument that decreases in value while not recognizing the gain on the other debt instrument.

Rev. Rul. 2000–12

ISSUE

Under the circumstances described below, if a taxpayer acquires two debt instruments that are structured so that it is expected that the value of one will increase significantly at the same time that the value of the other one decreases significantly, can the taxpayer recognize a current loss on the sale of the debt instrument that decreases in value while not recognizing the gain on the other debt instrument?

FACTS

Situation 1

X is a corporation that files returns on a calendar-year basis. On September 1, 1993, *X* purchases two privately-placed debt instruments, Note 1 and Note 2, from unrelated issuers for $1,000,000 each.

Note 1 has a 10-year term and a stated principal amount of $1,000,000. It provides for quarterly interest payments, beginning on December 1, 1993. The interest rate for the first quarter is 5.9 percent, compounded quarterly. Note 1 provides for contingent payments based on an event that will occur (or not occur) with a probability of 50 percent on December 1, 1993 (the reset event). The reset event does not depend on actively traded personal property. If the reset event occurs, the interest rate doubles to 11.8 percent, compounded quarterly. If the reset event does not occur, the interest rate is reset at zero.

Note 2 has the same terms as Note 1 except that the consequences of the contingency are reversed. Thus, if the reset event occurs, the interest rate is reset at zero. If the reset event does not occur, the interest rate doubles to 11.8 percent, compounded quarterly.

At the time the notes are purchased, based upon the structure of the notes, it can be expected that, as a result of the reset, one note will increase significantly in value and the other note will decrease in value by the same amount. The expected tax loss on the note that decreases in value significantly exceeds any reasonably expected economic loss on the two notes.

On December 1, 1993, the reset event does not occur. Thus, on that date, the interest rate on Note 1 is reset at zero, and the interest rate on Note 2 doubles to 11.8 percent, compounded quarterly. As a result of the reset, the fair market value of Note 2 increases significantly because of the doubling of its interest rate, and the fair market value of Note 1 decreases by the same amount. On December 2, 1993, *X* sells Note 1 for its fair market value and claims a loss.

Situation 2

Y is a corporation that files returns on a calendar-year basis. On September 1, 1998, *Y* purchases two privately-placed debt instruments, Note 3 and Note 4, from unrelated issuers for $1,000,000 each.

Note 3 has a 10-year term and a stated principal amount of $1,000,000. It provides for quarterly interest payments, beginning on December 1, 1998. The interest rate for the first quarter is 5.7 percent, compounded quarterly. Note 3 provides for contingent payments based on an event that will occur (or not occur) with a probability of 50 percent on December 1, 1998 (the reset event). The reset event does not depend on actively traded personal property. If the reset event occurs, the interest rate doubles to 11.4 percent, compounded quarterly. If the reset event does not occur, the interest rate is reset at zero.

Note 4 has the same terms as Note 3 except that the consequences of the contingency are reversed. Thus, if the reset event occurs, the interest rate is reset at zero. If the reset event does not occur, the interest rate doubles to 11.4 percent, compounded quarterly.

At the time the notes are purchased, based upon the structure of the notes, it can be expected that, as a result of the reset, one note will increase significantly in value and the other note will decrease in value by the same amount. The expected tax loss on the note that decreases in value significantly exceeds any reasonably expected economic loss on the two notes.

On December 1, 1998, the reset event does not occur. Thus, on that date, the interest rate on Note 3 is reset at zero, and the interest rate on Note 4 doubles to 11.4 percent, compounded quarterly. As a result of the reset, the fair market value of Note 4 increases significantly because of the doubling of its interest rate, and the fair market value of Note 3 decreases by the same amount. On December 2, 1998, *Y* sells Note 3 for its fair market value and claims a loss.

Situation 3

Z is a corporation that files returns on a calendar-year basis. On September 1, 1998, *Z* purchases two privately-placed debt instruments, Note 5 and Note 6, from unrelated issuers.

Note 5 is purchased for $1,000,000. Note 5 has a 10-year term and a stated principal amount of $1,000,000. It provides for quarterly interest payments, beginning on December 1, 1998. The interest rate for the first quarter is 5.7 percent, compounded quarterly. Note 5 provides for contingent payments based on an event that will occur (or not occur) with a probability of 50 percent on December 1, 1998 (the reset event). The reset event does not depend on actively traded personal property. If the reset event occurs, the interest rate doubles to 11.4 percent, compounded quarterly. If the reset event does not occur, the interest rate is reset at zero.

Note 6 is purchased for $615,000. Note 6 has a 20-year term and a stated principal amount of $615,000. It provides for quarterly interest payments beginning on December 1, 1998. The interest rate on Note 6 for the first quarter is set at 3-month LIBOR. If the reset event occurs, the interest rate is reset at zero. If the reset event does not occur, the interest rate doubles to 200 percent of 3-month LIBOR, adjusted quarterly.

At the time the notes are purchased, based upon the structure of the notes, it can be expected that, as a result of the reset, the value of one note will increase significantly and the value of the other note will decrease significantly. The expected tax loss on the note that decreases in value significantly exceeds any reasonably expected economic loss on the two notes.

On December 1, 1998, the reset event does not occur. Thus, on that date, the interest rate on Note 5 is reset at zero, and the interest rate on Note 6 doubles to 200 percent of 3-month LIBOR, adjusted quarterly. As a result, the fair market value of Note 6 increases significantly because of the doubling of its interest rate, and the fair market value of Note 5 decreases significantly. On December 2, 1998, *Z* sells Note 5 for its fair market value and claims a loss.

LAW AND ANALYSIS

Situation 1

Section 165(a) of the Internal Revenue Code provides that there shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise. Section 1.165–1(b) of the Income Tax Regulations provides, in addition, that for a loss to be allowable as a deduction under § 165(a), it must be evidenced by closed and completed transactions, fixed by identifiable events, and actually sustained during the taxable year. Section 1.165–1(b) also provides that only a bona fide loss is allowable and that substance and not mere form shall govern in determining a deductible loss.

The courts have held that a loss is allowable as a deduction for federal income tax purposes only if it is bona fide and reflects actual economic consequences. An artificial loss lacking economic substance is not allowable. *See ACM Partnership v. Commissioner*, 157 F.3d 231, 252 (3d Cir. 1998) ("Tax losses such as these ... which do not correspond to any actual economic losses, do not constitute the type of 'bona fide' losses that are deductible under the Internal Revenue Code and regulations."), *cert. denied*, 526 U.S. 1017 (1999); *Scully v. United States*, 840 F.2d 478, 486 (7th Cir. 1988) (to be deductible, a loss must be a "genuine economic loss"); *Shoenberg v. Commissioner*, 77 F.2d 446, 448 (8th Cir. 1935) (to be deductible, a loss must be "actual and real"), *cert. denied*, 296 U.S. 586 (1935).

The courts similarly have disallowed losses from option-straddle transactions that were found to be devoid of economic substance. The option-straddle transactions were prearranged to generate a loss for tax purposes while deferring an offsetting gain. Even though the relevant trades may have taken place, the loss deduction claimed was not allowed because no true loss had occurred. *Lerman v. Commissioner*, 939 F.2d 44, 52 (3d Cir. 1991), *cert. denied*, 502 U.S. 984 (1991), and *Keane v. Commissioner*, 865 F.2d 1088, 1092 (9th Cir. 1989), *aff'g Glass v. Commissioner*, 87 T.C. 1087 (1986).

The sale of Note 1 in *Situation 1* does not produce an allowable loss under § 165. When *X* sells Note 1 before its maturity date but retains Note 2, *X* does not realize an actual economic loss because the purported loss on the sale of Note 1 is substantially offset by the unrealized gain in Note 2. Such an artificial loss is not allowable for federal income tax purposes.

Situation 2

Sections 1271 through 1275, and the regulations thereunder, provide rules for the taxation of holders of debt instruments, including debt instruments that provide for one or more contingent payments. These rules generally require holders of debt instruments to accrue original issue discount (OID) using the constant-yield method. Note 3 and Note 4 are subject to the OID rules because the notes provide for contingent payments.

Section 1.1275–6 generally provides for the integration of a "qualifying debt instrument" with a "§ 1.1275–6 hedge" if the combined cash flows of the components are substantially equivalent to the cash flows on a fixed rate debt instrument or a variable rate debt instrument that pays interest at a qualified floating rate. When § 1.1275–6 applies, the combined cash flows of the qualifying debt instrument and the § 1.1275–6 hedge generally are treated as a synthetic debt instrument for all federal income tax purposes. The purpose of § 1.1275–6 is to permit a more appropriate determination of the character and timing of income, deductions, gains, or losses than would be achieved by separate treatment of the components. Section 1.1275–6 generally applies to qualifying debt instruments issued on or after August 13, 1996.

Under § 1.1275–6(b)(1), a contingent payment debt instrument (CPDI) that is issued for cash is a qualifying debt instrument. Under § 1.1275–6(b)(2)(i), a § 1.1275–6 hedge is any financial instrument (including a debt instrument) if the combined cash flows of the financial instrument and the qualifying debt instrument permit the calculation of a yield to maturity (under the principles of § 1272) or the right to the combined cash flows would qualify under § 1.1275–5 as a variable rate debt instrument that pays interest at a qualified floating rate or rates (except for the requirement that the interest payments be stated as interest)(fixed-or-floating requirement).

Section 1.1275–6(b)(2)(ii)(B) provides that a debt instrument can be a § 1.1275–6 hedge only if it is issued substantially contemporaneously with, and has the same maturity (including rights to accelerate or delay payments) as, the qualifying debt instrument.

Section 1.1275–6(c)(2) grants the Commissioner authority to integrate a qualifying debt instrument that is a CPDI with a § 1.1275–6 hedge if the combined cash flows are substantially the same as either of the cash flows necessary to satisfy the fixed-or-floating requirement of § 1.1275–6(b)(2)(i). This rule allows the Commissioner to prevent the potential timing and character mismatches that arise if the CPDI and its hedge are treated separately.

Section 1.1275–6(d)(2) provides rules for legging out of an integrated transaction. Section 1.1275–6(d)(2)(i)(B) sets out the rules for determining when a legging out occurs if the Commissioner has integrated a qualifying debt instrument and a financial instrument under §

1.1275–6(c)(2). Under those rules, the taxpayer legs out of the integrated transaction if, prior to the maturity of the synthetic debt instrument, the requirements for Commissioner integration under § 1.1275–6(c)(2) are no longer met. Section 1.1275–6(d)(2)(ii) provides that if the taxpayer legs out of an integrated transaction, then the taxpayer is treated as selling or otherwise terminating the synthetic debt instrument, immediately before legging out, for its fair market value and realizing and recognizing at that time any resulting income, deduction, gain, or loss.

In *Situation 2*, unlike *Situation 1*, the notes are issued after the effective date of the integration rules of § 1.1275–6 and qualify for integration by the Commissioner under § 1.1275–6(c)(2). In this case, the Commissioner integrates the notes under § 1.1275–6(c)(2) as of the issue date. Upon the sale of Note 3, the requirements for Commissioner integration under § 1.1275–6(c)(2) are no longer met. Therefore, *Y* is treated as legging out of the integrated transaction under § 1.1275–6(d)(2)(ii).

Under the legging out rules of § 1.1275–6(d)(2)(ii), immediately before Note 3 is sold, *Y* is treated as disposing of the synthetic debt instrument for its fair market value, and *Y* must realize and recognize at that time any gain or loss on the deemed disposition. As a result, *Y* cannot recognize the claimed loss on the sale of Note 3 while not recognizing the gain on Note 4.

Situation 3

Under § 1.1275–2(g), if a principal purpose in structuring a debt instrument or engaging in a transaction is to achieve a result that is unreasonable in light of the purposes of §§ 163(e), 1271 through 1275, or any related section of the Code, the Commissioner can apply or depart from the regulations under the applicable sections as necessary or appropriate to achieve a reasonable result. Section 1.1275–2(g) applies to debt instruments issued on or after August 13, 1996.

Section 1.1275–2(g)(2) provides that whether a result is unreasonable is determined based on all the facts and circumstances. A significant fact is whether the treatment of the debt instrument is expected to have a substantial effect on the issuer's or a holder's U.S. tax liability. A result is unreasonable only if there is an expected substantial effect on the present value of a taxpayer's tax liability.

A principal purpose of §§ 1271 through 1275 and related sections of the Code is to tax holders of debt instruments according to economic income as determined by the constant-yield method. These provisions ensure that the holder of a debt instrument cannot artificially avoid, defer, or offset timely recognition of the economic income from the debt instrument.

In *Situation 3*, the notes are issued after the effective dates of the integration rules of § 1.1275–6 and the anti-abuse rule of § 1.1275–2(g). But for the anti-abuse rule, there are two reasons why the integration rules would not apply. First, it cannot be determined at the time of issuance whether the combined cash flows will be substantially the same as either of the cash flows necessary to satisfy the fixed-or-floating requirement of § 1.1275–6(b)(2)(i). Second, the notes have different maturities and, thus, they do not meet the same-maturity limitation of § 1.1275–6(b)(2)(ii)(B).

If the structure of the transaction were respected for federal income tax purposes, *Z* would be able to recognize the claimed loss upon the sale of Note 5 even though it could be expected, when *Z* purchased the two notes, that, as a result of the reset, one note would increase significantly in value and the other note would decrease significantly in value. The expected tax loss on the note that decreases in value significantly exceeds any reasonably expected economic loss on the two notes. Essentially, *Z* purchased a series of cash flows that, absent the application of the anti-abuse rule of § 1.1275–2(g) (or § 165 principles), would produce an artificial loss immediately after the reset.

This result is unreasonable in light of the purposes of the OID rules. The OID rules were intended, in part, to ensure that the holder of a debt instrument cannot artificially avoid, defer, or offset timely recognition of the economic income from the debt instrument. In this case, the transaction is structured to defeat this purpose by creating an artificial loss immediately after the reset. Section 1.1275–2(g) authorizes the Commissioner to apply or depart from the OID regulations as necessary or appropriate to prevent this unreasonable result.

In this case, the Commissioner departs from the literal requirements of the integration rules by integrating the two notes before Note 5 is sold. Upon the sale of Note 5, *Z* is treated as legging out of an integrated transaction under § 1.1275–6(d)(2)(ii). Under the legging out rules of § 1.1275–6(d)(2)(ii), immediately before Note 5 is sold, *Z* is treated as disposing of the synthetic debt instrument for its fair market value, and *Z* must realize and recognize at that time any gain or loss on the deemed disposition. As a result, *Z* cannot recognize the claimed loss on the sale of Note 5 while not recognizing the gain on Note 6.

HOLDING

In each situation the taxpayer cannot recognize the claimed loss on the sale of the debt instrument that decreases in value while not recognizing the gain on the other debt instrument.

In *Situation 1*, the loss on the sale of Note 1 is not allowed under § 165.

In *Situation 2*, the integration rule of § 1.1275–6(c)(2) applies. The Commissioner integrates the notes as of the issue date. Upon the sale of Note 3, *Y* is treated as legging out of the integrated transaction. Accordingly, *Y* is treated as disposing of the synthetic debt instrument at its fair market value immediately before the sale.

In *Situation 3*, the anti-abuse rule of § 1.1275–2(g) applies. The Commissioner integrates the notes before Note 5 is sold. Upon the sale of Note 5, *Z* is treated as legging out of the integrated transaction. Accordingly, *Z* is treated as disposing of the synthetic debt instrument at its fair market value immediately before the sale.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Charles W. Culmer and Christina A. Morrison of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling contact Mr. Culmer on (202) 622-3950 or Ms. Morrison on (202) 622-3960 (not a toll-free call).

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

26 CFR 1.6011–4T: Requirements of statement disclosing participation in certain transactions by corporate taxpayers (Temporary).

T.D. 8877

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 602

Tax Shelter Disclosure Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations requiring certain corporate taxpayers to file a statement with their Federal corporate income tax return under section 6011(a). The temporary regulations affect corporations participating in certain reportable transactions. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in REG–103735–00, page 770.

DATES: *Effective date*. These temporary regulations are effective for Federal corporate income tax returns filed after February 28, 2000.

Applicability date. For dates of applicability, see §1.6011–4T(g) of these regulations.

FOR FURTHER INFORMATION CONTACT: Richard Castanon, (202) 622-3080, or Mary Beth Collins, (202) 622-3070, (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1685. Responses to these collections of information are mandatory.

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 OMB control number.

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking REG–103735–00, page 770.

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

The Treasury Department and the IRS are concerned about the proliferation of corporate tax shelters. These temporary regulations are intended to provide the Service with early notification of large corporate transactions with characteristics that may be indicative of such tax shelter activity.

Accordingly, this document amends 26 CFR part 1 regarding the general filing requirement for persons required to file a return for a taxable year with respect to a tax imposed under section 11. Section 6011(a) provides that any person made liable for any tax imposed by the Internal Revenue Code (Code), or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary of the Treasury.

Explanation of Provisions

I. Disclosure Statement Required for Certain Corporate Taxpayers

The temporary regulations provide that every person that is required to file a return for a taxable year with respect to any tax imposed under section 11 (corporate taxpayers) and that has participated in a reportable transaction shall attach a disclosure statement to its return for each taxable year for which the taxpayer's Federal income tax liability is affected by its participation in the reportable transaction. In addition, a copy of the disclosure statement must be sent to the IRS in Washington, DC for the first taxable year for which the transaction is disclosed on the taxpayer's Federal income tax return. The temporary regulations outline the form and content of the disclosure statement and also provide an example of the statement.

Where the temporary regulations require a taxpayer to attach a disclosure statement to its return, the information required to be set forth thereon is a required part of the return to the same extent as information required pursuant to prescribed forms. See §1.6011–1. Therefore, when a taxpayer verifies its return, which includes a declaration that the return is complete, a taxpayer affirms that it has accurately made all disclosures required by these temporary regulations.

In the event of an underpayment attributable to a reportable transaction, a taxpayer's failure to satisfy the disclosure requirements of the temporary regulations may affect its exposure to penalties under sections 6662 and 6663 of the Code. Section 6664(c)(1) provides that such penalties may not be imposed with respect to any portion of a taxpayer's underpayment "if it is shown that there was a reasonable cause for such portion *and* that the taxpayer acted in good faith with respect to such portion." (Emphasis added.) Whether a taxpayer is considered to have satisfied the requirements of section 6664(c)(1) is determined on a case-by-case basis, taking into account all pertinent facts and circumstances. See §1.6664–4(b)(1).

The fact that a professional tax advisor has advised a taxpayer that its return position is more likely than not the proper tax treatment is not necessarily sufficient to satisfy the requirements of section 6664(c)(1). If a taxpayer has an underpayment attributable to its participation in a reportable transaction that has not been properly disclosed on its return, the nondisclosure could indicate that the taxpayer has not acted in "good faith" with respect to the underpayment, even if the taxpayer's return position has sufficient legal justification to meet the minimum requirements of section 6664(c)(1). In such a case, the determination of whether a taxpayer has acted in "good faith" will

depend on all of the facts and circumstances, including the reason or reasons why the taxpayer failed to make the required disclosure.

II. Reportable Transactions

The temporary regulations define two categories of reportable transactions. The first category includes certain types of transactions identified by the Treasury and the Service as tax avoidance transactions. The second category includes transactions that warrant further scrutiny because they possess certain identified characteristics that are common in corporate tax shelters.

The regulations require disclosure only for large transactions that provide tax savings in excess of certain dollar thresholds (the projected tax effect test). In addition, the regulations contain exceptions to ensure that normal business transactions are not subject to disclosure. The fact that a transaction is reportable or not reportable under these regulations shall not affect the legal determination whether the tax benefits claimed with respect to the transaction are allowable.

The first category of reportable transactions includes any transaction that is the same as or substantially similar to one of the specified types of tax avoidance transactions that the IRS has identified by published guidance as a listed transaction for purposes of section 6011 and that is expected to reduce the taxpayer's Federal income tax liability by more than $1 million in any single taxable year or by a total of more than $2 million for any combination of taxable years. However, a listed transaction is not treated as a reportable transaction if it has affected the taxpayer's Federal income tax liability as reported on any tax return filed on or before February 28, 2000.

The second category of reportable transactions includes transactions entered into after February 28, 2000, that are expected to reduce a taxpayer's Federal income tax liability by more than $5 million in any single taxable year or by a total of more than $10 million for any combination of taxable years and that have at least two of the following characteristics:

(A) The taxpayer has participated in the transaction under conditions of confidentiality (as defined in §301.6111–2T(c)).

(B) The taxpayer has obtained or been provided with contractual protection against the possibility that part or all of the intended tax benefits from the transaction will not be sustained, including, but not limited to, recission rights, the right to a full or partial refund of fees paid to any person, fees that are contingent on the taxpayer's realization of tax benefits from the transaction, insurance protection with respect to the tax treatment of the transaction, or a tax indemnity or similar agreement (other than a customary indemnity provided by a principal to the transaction that did not participate in the promotion of the transaction to the taxpayer).

(C) The taxpayer's participation in the transaction was promoted, solicited, or recommended by one or more persons who have received or are expected to receive fees or other consideration with an aggregate value in excess of $100,000, and such person or persons' entitlement to such fees or other consideration was contingent on the taxpayer's participation in the transaction.

(D) The expected treatment of the transaction for Federal income tax purposes in any taxable year differs or is expected to differ by more than $5 million from the treatment of the transaction for purposes of determining book income as taken into account on the schedule M-1 (or comparable schedule) on the taxpayer's Federal corporate income tax return for the same period.

(E) The transaction involves the participation of a person that the taxpayer knows or has reason to know is in a Federal income tax position that differs from that of the taxpayer (such as a tax exempt entity or a foreign person), and the taxpayer knows or has reason to know that such difference in tax position has permitted the transaction to be structured on terms that are intended to provide the taxpayer with more favorable Federal income tax treatment than it could have obtained without the participation of such person (or another person in a similar tax position).

(F) The expected characterization of any significant aspect of the transaction for Federal income tax purposes differs from the expected characterization of such aspect of the transaction for purposes of taxation of any party to the transaction in another country.

However, a transaction that has at least two of the foregoing characteristics is not a reportable transaction if any of the following conditions is satisfied—

(A) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that it would have participated in the same transaction on substantially the same terms irrespective of the expected Federal income tax benefits;

(B) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that there is a long-standing and generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are allowable under the Code for substantially similar transactions;

(C) The taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction; or

(D) The transaction is identified in published guidance as being excepted from disclosure.

A transaction involving the acquisition, disposition, or restructuring of a business, including the acquisition, disposition, or other change in the ownership or control of an entity that is engaged in a business, or a transaction involving a recapitalization or an acquisition of capital for use in the taxpayer's business, shall be considered a transaction carried out in the ordinary course of a taxpayer's business.

III. Record Retention

The taxpayer must retain all documents related to a transaction subject to disclosure under this section until the expiration of the statute of limitations for the first taxable year for which a disclosure statement is filed with its tax return. (This obligation is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) Such documents include, but are not limited to, the following: all marketing materials related to the transaction; all written analyses used in decision-making related to the transaction; all correspondence and agreements related to the transaction between the taxpayer and any promoter, advisor, lender, or other

party to the reportable transaction; all documents discussing, referring to, or demonstrating the tax benefits arising from the reportable transaction; and all documents, if any, referring to the business purposes for the reportable transaction.

IV. Effective Date

The temporary regulations apply to Federal corporate income tax returns filed after February 28, 2000.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also 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 the persons responsible for filing the statement required by these regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. 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 Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 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. 6001 and 6011(a). * * *

Par. 2. Section 1.6011–4T is added to read as follows:

§1.6011–4T Requirement of statement disclosing participation in certain transactions by corporate taxpayers (Temporary).

(a) *In general*. Every taxpayer that is required to file a return for a taxable year with respect to a tax imposed under section 11 and that has participated, directly or indirectly, in a reportable transaction within the meaning of paragraph (b) of this section must attach to its return for the taxable year described in paragraph (d) of this section a disclosure statement in the form prescribed by paragraph (c) of this section. For this purpose, a taxpayer will have indirectly participated in a transaction if its Federal income tax liability is affected by the transaction even if it is not a direct party to the transaction (e.g., it participates through a partnership or through a controlled entity). A separate disclosure statement is required for each reportable transaction. The fact that a taxpayer files a disclosure statement for a reportable transaction shall not affect the legal determination whether the tax benefits claimed with respect to the transaction are allowable.

(b) *Definition of reportable transaction*—(1) *In general*. A reportable transaction is a transaction that is described in either paragraph (b)(2) or (3) of this section and that meets the projected tax effect test in paragraph (b)(4) of this section. The term *transaction* includes all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, and includes any series of related steps carried out as part of a prearranged plan and any series of substantially similar transactions entered into in the same taxable year.

(2) *Listed transactions*. A transaction is described in this paragraph (b)(2) if the transaction 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 for purposes of section 6011. However, a listed transaction is not treated as a reportable transaction if it has affected the taxpayer's Federal income tax liability as reported on any tax return filed on or before February 28, 2000. The fact that a transaction becomes a listed transaction does not imply that the transaction was not otherwise a reportable transaction prior thereto.

(3) *Other reportable transactions*—(i) *In general*. Except as provided in paragraph (b)(3)(ii) of this section, a transaction is described in this paragraph (b)(3) if it is entered into after February 28, 2000, and has at least two of the following characteristics:

(A) The taxpayer has participated in the transaction under conditions of confidentiality (as defined in §301.6111–2T(c)).

(B) The taxpayer has obtained or been provided with contractual protection against the possibility that part or all of the intended tax benefits from the transaction will not be sustained, including, but not limited to, recission rights, the right to a full or partial refund of fees paid to any person, fees that are contingent on the taxpayer's realization of tax benefits from the transaction, insurance protection with respect to the tax treatment of the transaction, or a tax indemnity or similar agreement (other than a customary indemnity provided by a principal to the transaction that did not participate in the promotion of the transaction to the taxpayer).

(C) The taxpayer's participation in the transaction was promoted, solicited, or recommended by one or more persons who have received or are expected to receive fees or other consideration with an aggregate value in excess of $100,000, and such person or persons' entitlement to such fees or other consideration was contingent on the taxpayer's participation in the transaction.

(D) The expected treatment of the transaction for Federal income tax purposes in any taxable year differs or is expected to differ by more than $5 million from the treatment of the transaction for purposes of determining book income as taken into account on the schedule M-1 (or comparable schedule) on the taxpayer's Federal corporate income tax return for the same period.

(E) The transaction involves the participation of a person that the taxpayer

knows or has reason to know is in a Federal income tax position that differs from that of the taxpayer (such as a tax exempt entity or a foreign person), and the taxpayer knows or has reason to know that such difference in tax position has permitted the transaction to be structured on terms that are intended to provide the taxpayer with more favorable Federal income tax treatment than it could have obtained without the participation of such person (or another person in a similar tax position).

(F) The expected characterization of any significant aspect of the transaction for Federal income tax purposes differs from the expected characterization of such aspect of the transaction for purposes of taxation of any party to the transaction in another country.

(ii) *Exceptions*. A transaction is not a reportable transaction under paragraph (b)(3) of this section if paragraph (b)(3)(ii)(A), (B), (C), or (D) of this section is satisfied.

(A) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that it would have participated in the same transaction on substantially the same terms irrespective of the expected Federal income tax benefits.

(B) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that there is a long-standing and generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are allowable under the Internal Revenue Code (Code) for substantially similar transactions.

(C) The taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. Such a determination must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, authoritative administrative guidance, and judicial decisions that establish principles of general application in the tax law (e.g., *Gregory v. Helvering*, 293 U.S. 465 (1935)).

(D) The transaction is identified in published guidance as being excepted from disclosure under this section.

(iii) *Ordinary course of business*. For purposes of paragraphs (b)(3)(ii)(A) and (B) of this section, a transaction involving the acquisition, disposition, or restructuring of a business, including the acquisition, disposition, or other change in the ownership or control of an entity that is engaged in a business, or a transaction involving a recapitalization or an acquisition of capital for use in the taxpayer's business, shall be considered a transaction carried out in the ordinary course of a taxpayer's business.

(4) *Projected tax effect*—(i) *In general*. A transaction described in paragraph (b)(2) of this section meets the projected tax effect test if, at the time the taxpayer enters into the transaction or at any time thereafter, the taxpayer reasonably estimates that the transaction will reduce the taxpayer's Federal income tax liability by more than $1 million in any single taxable year or by a total of more than $2 million for any combination of taxable years in which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability. A transaction described in paragraph (b)(3) of this section meets the projected tax effect test if, at the time the taxpayer enters into the transaction or at any time thereafter, the taxpayer reasonably estimates that the transaction will reduce the taxpayer's Federal income tax liability by more than $5 million in any single taxable year or by a total of more than $10 million for any combination of taxable years in which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability. For purposes of this paragraph (b)(4), a transaction will be treated as reducing a taxpayer's Federal income tax liability for a taxable year if, and to the extent that, disallowance of the tax treatment claimed or expected to be claimed would result in an increase in the taxpayer's Federal income tax liability for that year. These dollar thresholds may be adjusted pursuant to forms prescribed for reporting under this section and the instructions to such forms.

(ii) *Estimation of projected tax effect*. A taxpayer's estimate of the effect of a transaction on its Federal income tax liability shall take into account all projected Federal income tax consequences of the transaction, including all deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, and any other tax consequences that may reduce the taxpayer's Federal income tax liability by affecting the timing, character, or source of any item of income, gain, deduction, loss, or credit. The estimate shall not take into account the potential Federal income tax effect of any other transaction or transactions that the taxpayer might have entered into if the taxpayer had not entered into the transaction in question. Gross income may not be taken into account if the elements of the transaction that result in the creation of the gross income are not necessary to achieve the intended tax results of the transaction, whether or not these elements are an integral part of the transaction. For example, gross income may not be taken into account to the extent that it would have been reasonably possible for the taxpayer to have participated in the transaction in a manner that would have been expected to produce less gross income without a commensurate effect on the other tax consequences of the transaction. In addition, gain on property that the taxpayer acquired independent of its participation in the transaction may not be taken into account.

(5) *Examples*. The following examples illustrate the application of paragraph (b) of this section. Assume, for purposes of these examples, that the transactions are not the same as or substantially similar to any of the types of transactions that the IRS has identified as listed transactions under section 6011 and, thus, are not described in paragraph (b)(2) of this section. The examples are as follows:

Example 1. In March of 2000, C, a domestic corporation, invests $100 million to purchase certain financial instruments the terms of which have been structured to enable the holder to claim a deductible tax loss upon the disposition of one or more of the instruments a short time after acquisition while deferring gain on the retained instruments. C purchased the instruments on the recommendation of X, which is expected to receive direct or indirect com-

pensation in excess of $100,000 contingent on C's purchase. C disposes of certain of the financial instruments in November of 2000, and reports a loss from the disposition of those financial instruments on its 2000 Federal corporate income tax return which reduces its reported Federal income tax liability by more than $5 million. That loss is not reflected on C's income statement for purposes of determining book income as taken into account on the schedule M-1 on C's Federal corporate income tax return. Further, C is unable to reasonably determine that it would have entered into the transaction irrespective of the Federal income tax benefits, or that the transaction is a customary form of transaction giving rise to tax consequences for which there is a long-standing and generally accepted understanding that such tax consequences are allowable under the Code for similar transactions, or that the Commissioner would have no reasonable basis to deny the claimed loss. The transaction involving C's purchase and disposition of the financial instruments has the characteristics described in paragraphs (b)(3)(i)(C) and (D) of this section. None of the exceptions in paragraph (b)(3)(ii) of this section applies. Therefore, the transaction involving C's purchase and disposition of the financial instruments is a reportable transaction because it is described in paragraph (b)(3) of this section.

Example 2. In the year 2001, D, a domestic corporation, completes construction of an office building to be used in its business. After completion of the building but before D files its tax return for the year 2001, it is approached by Y, a professional services organization, which advises D that Y has developed a set of programs that will enable D to maximize its depreciation deductions with respect to the building and the related furniture and fixtures. Y allows D to review Y's programs subject to D's agreement that it will not use any portion of the programs in establishing its depreciation accounts for Federal tax purposes unless it pays Y a fee of $150,000. In addition, D makes a commitment to Y that it will not divulge any information relating to the programs to any person, whether or not D decides to use the programs. D agrees to use Y's programs for purposes of computing its depreciation allowances for 2001 and later taxable years. D expects its use of the programs to reduce its Federal income tax liability by more than $10 million over the life of the building. However, D reasonably determines that it would have constructed and owned the office building in the same manner irrespective of the enhanced depreciation that it expects to derive from the use of Y's programs. Therefore, regardless of whether D's depreciation deductions on the building may be subject to disallowance, the transaction encompassing the construction of the building and the use of Y's programs is not a reportable transaction by reason of the exception under paragraph (b)(3)(ii)(A) of this section.

Example 3. E is a domestic corporation, which is a calendar year taxpayer. E is engaged in the leasing business. In 2001, E enters into a large number of substantially similar arrangements described in paragraph (b)(3)(i) of this section under which it acquires and leases tangible personal property to U.S. persons who use such property in their businesses. E treats the leases as leases for Federal income tax purposes and as loans for financial accounting purposes. During the first three taxable years in which the leases are in effect, E reasonably expects that its reported taxable income will be more than $30 million lower than it would be if the leases were treated as loans for Federal income tax purposes, giving rise to a total expected reduction of E's Federal income tax liability for those years in excess of $10 million. E cannot conclude that it would have entered into the leases on substantially the same terms irrespective of the expected Federal income tax benefits, nor can it conclude that the Commissioner would have no reasonable basis to deny its tax treatment of the leases. However, E does reasonably determine that the terms of the leases are consistent with customary commercial form in the leasing industry, and that there is a long-standing and generally accepted understanding that the combination of Federal income tax consequences it is claiming with respect to the leases are allowable under the Code for similar transactions. The substantially similar leases would be treated for purposes of this section as a single transaction that would satisfy the projected tax effect test described in paragraph (b)(4) of this section. However, the leases would not be a reportable transaction by reason of the exception under paragraph (b)(3)(ii)(B) of this section.

(c) *Form and content of disclosure statement.*(1) The disclosure statement for each reportable transaction must include the information required by paragraph (c)(1)(i) through (c)(1)(vi) of this section and shall be presented in a format (preferably no longer than one page) similar to that shown in the *Example* in paragraph (c)(2) of this section or on such form as may be prescribed for use under this section.

(i) The name, if any, by which the transaction is known or commonly referred to by the taxpayer; if no name exists, provide a short-hand designation of this transaction to distinguish it from other reportable transactions in which the taxpayer may have participated (or may participate in the future).

(ii) A statement indicating whether, to the best knowledge of the taxpayer, the transaction has been registered as a tax shelter under section 6111. If the transaction has been registered as a tax shelter under section 6111, indicate whether Form 8271, "Investor Reporting of Tax Shelter Registration Number", has been filed with the taxpayer's return and provide the registration number, if any, that has been assigned to the tax shelter.

(iii) A brief description of the principal elements of the transaction that give rise to the expected tax benefits.

(iv) A brief description of the expected tax benefits of the transaction (e.g., loss deductions, interest deductions, rental deductions, foreign tax credits, etc.).

(v) An identification of each taxable year (including prior taxable years) for which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability and an estimate (which may be rounded to the nearest $1 million) of the amount by which the transaction is expected to reduce the taxpayer's Federal income tax liability for each such taxable year.

(vi) The names and addresses of any parties who promoted, solicited, or recommended the taxpayer's participation in the transaction and who had a financial interest, including the receipt of fees, in the taxpayer's decision to participate.

(2) *Example*. The following example illustrates the application of paragraph (c) of this section: In January of 1999, X, a domestic corporation which is a calendar year taxpayer, entered into an arrangement under which it purported to lease a building owned and occupied by the government of a municipality located in foreign country W and lease the building back to the municipal government. X determines that the transaction is a reportable transaction described in paragraph (b)(1) of this section because it is described in paragraph (b)(2) of this section and satisfies the projected tax effect test in paragraph (b)(4) of this section. As of February 28, 2000, X had not filed its 1999 Federal corporate income tax return. The following form of disclosure statement would satisfy the requirements described in paragraph (c)(1) of this section.

DISCLOSURE STATEMENT FOR REPORTABLE TRANSACTION	
Corporation X (address)	(EIN)
1. Identification of transaction: LILO–Country W	
2. Registration status under section 6111: Not registered	
3. Description of transaction: We leased a building from a municipality in W. We made an advance payment of rent of $89 million. The lease term is 34 years. The foreign municipality subleased the asset back from us for a term of 20 years. The foreign municipality has the option, at the end of the sublease term, to buy out our interest for $50 million. Our advance lease payment has been financed with a bank loan of $60 million. The foreign municipality placed $75 million of the advance rental payment in special accounts to satisfy the sublease and buyout obligations.	
4. Principal tax benefits: Deductions for rental and interest payments in excess of income from leaseback rental payments	
5. Estimates of expected reduction of Federal income tax liability for affected taxable years: 1999-2002, $5 million per year; 2003-2013, $4 million per year; and 2014-2017, $3 million per year.	
6. Promoters:	Financial Institution Y (address) (telephone number) Professional Service Firm Z (address) (telephone number)

(d) *Time of providing disclosure*—(1) *In general*. The disclosure statement for a reportable transaction shall be attached to the taxpayer's Federal corporate income tax return for each taxable year for which the taxpayer's Federal income tax liability is affected by its participation in the transaction. In addition, at the same time that the disclosure statement is first attached to the taxpayer's Federal income tax return, a copy of that disclosure statement must be sent to: Internal Revenue Service LM:PF, Large & Mid-Size Business Division, 1111 Constitution Ave., N.W., Washington, DC 20224. If a transaction becomes a reportable transaction on or after the date the taxpayer has filed its return for the first taxable year for which the transaction affected the taxpayer's Federal income tax liability (e.g., there is a change in facts affecting the expected Federal income tax effect of the transaction, or the transaction subsequently becomes one identified in published guidance as a listed transaction described in (b)(2) of this section), the disclosure statement shall be filed as an attachment to the taxpayer's Federal corporate income tax return next filed after the date the transaction becomes a reportable transaction. If a disclosure statement is required as an attachment to a Federal corporate income tax return that is filed earlier than 180 days after February 28, 2000, the taxpayer may either attach the disclosure statement to the return, or file the disclosure statement as an amendment to the return no later than 180 days after February 28, 2000.

(2) *Example*. The following example illustrates the application of this paragraph (d): In December of 2000, F, a domestic corporation which is a calendar year taxpayer, enters into a transaction described in paragraph (b)(3) of this section but not described in paragraph (b)(2) of this section. At the time F enters into the transaction and thereafter, F reasonably estimates that the transaction will reduce F's Federal income tax liability by $2 million in any single taxable year and by a total of $8 million for any combination of taxable years in which the transaction is expected to have the effect of reducing F's Federal income tax liability. Consequently, the transaction does not meet the projected tax effect test described in paragraph (b)(4) of this section for transactions described in paragraph (b)(3) of this section. On March 1, 2002, the IRS publishes a notice identifying the transaction as a listed transaction described in paragraph (b)(2) of this section. Thus, upon issuance of the notice, the transaction becomes a transaction described in paragraph (b)(2) of this section. As a result of the lower dollar thresholds of the projected tax effect test with respect to transactions described in (b)(2) of this section, the transaction meets the projected tax effect test in paragraph (b)(4) of this section. Consequently, the transaction becomes a reportable transaction described in paragraph (b)(1) of this section, and F is required to file a disclosure statement meeting the requirements of paragraph (c)(1) of this section for the transaction as an attachment to F's next filed Federal corporate income tax return. If F's 2001 return has not been filed on or before the date the Service identifies the transaction as a listed transaction, the disclosure statement must be attached to F's 2001 return.

(e) *Retention of documents*. The taxpayer must retain all documents related to a transaction subject to disclosure under this section until the expiration of the statute of limitations applicable to the first taxable year for which disclosure of the transaction was made in accordance with the requirements of this section. (This document retention requirement is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) Such documents include, but are not limited to, the following: all marketing materials related to the transaction; all written analyses used in decision-making related to the transaction; all correspondence and agreements related to the transaction between the taxpayer and any promoter, advisor, lender, or other party to the reportable transaction; all documents discussing, referring to, or demonstrating the tax benefits arising from the reportable transaction; and all documents, if any, referring to the business purposes for the reportable transaction.

(f) *Affiliated groups*. For purposes of this section, an affiliated group of corporations that joins in the filing of a consolidated return under section 1501 shall be considered a single taxpayer.

(g) *Effective date*. This section applies to Federal corporate income tax returns filed after February 28, 2000. However, paragraph (e) of this section applies to documents and other records that the taxpayer acquires, prepares, or has in its possession on or after February 28, 2000. Par. 3. In §602.101, paragraph (b) is amended by adding an entry for §1.6011–4T to read in part as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

Charles O. Rossotti,
Commissioner of Internal Revenue.

Approved February 23, 2000.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury.

(Filed by the office of the Federal Register on February 28, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 2, 2000, 65 F.R. 11205)

CFR Part or Section Where Identified and Described	Current OMB Control No.
* * * * *	
1.6011–4T	1545–1685
* * * * *	

Section 6111.— Registration of Tax Shelters

26 CFR 301.6111–2T: Confidential corporate tax shelters (Temporary).

T.D. 8876

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 301 and 602

Corporate Tax Shelter Registration

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations requiring the registration of confidential corporate tax shelters pursuant to section 6111(d) as amended by section 1028(a) of the Taxpayer Relief Act of 1997 (the Act). The temporary regulations affect persons responsible for registering confidential corporate tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in REG–110311–98, page 767.

DATES: *Effective date*. These temporary regulations are effective February 28, 2000.

Applicability date. For dates of applicability, see §301.6111–2T(h) of these regulations.

FOR FURTHER INFORMATION CONTACT: Richard Castanon, (202) 622-3080, or Mary Beth Collins, (202) 622-3070; concerning international issues Rebecca Rosenberg, (202) 622-3870 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1687. Responses to these collections of information are mandatory.

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 OMB control number.

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

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

In enacting section 6111(d), Congress added confidential corporate tax shelters as a type of tax shelter that must be registered under section 6111. Congress intended the provision to improve tax compliance by giving the Treasury Department earlier notification of transactions that may not comport with Federal tax law and by discouraging taxpayers from entering into questionable transactions. See H.R. REP. NO. 148, 105th Cong., 1st Sess. 469 (1997); S. REP. NO. 33, 105th Cong., 1st Sess. 148 (1997).

Section 1028(e)(1) of the Act provides that the registration requirements of section 6111 and the penalty provisions of section 6707 for failing to comply with the registration requirements apply to confidential corporate tax shelters in which interests are offered to potential participants after the IRS issues guidance on the registration requirements. These regulations provide the guidance necessary to activate the registration requirements of section 6111 and the penalty provisions of section 6707 for confidential corporate tax shelters.

These temporary regulations relate to disclosure obligations for tax shelter organizers and promoters under section 6111. Although the terms of section 6111(d)(1)(A), which are part of the definition of a confidential corporate tax shelter, are similar to the definition of tax shelter under section 6662(d)(2)(C)(iii), these temporary regulations are not intended to define a tax shelter for purposes of section 6662, which relates to the imposition of penalties.

Explanation of Provisions

I. *In General*

Under section 6111(d)(1) and the temporary regulations, a confidential corporate tax shelter is any entity, plan, arrangement, or transaction that satisfies the following three requirements: (1) a significant purpose of the structure of the transaction is the avoidance or evasion of Federal income tax for a direct or an indirect corporate participant; (2) the transaction is offered to any potential participant under conditions of confidentiality; and (3) the tax shelter promoters may receive fees in excess of $100,000 in the aggregate.

II. *Significant Purpose of Tax Avoidance or Tax Evasion*

Under the temporary regulations, there are three categories of transactions for

which the avoidance or evasion of Federal income tax is considered a significant purpose of the structure of the transaction.

First, the avoidance or evasion of Federal income tax is considered a significant purpose of the structure of a transaction if the transaction is the same as or substantially similar to one of the specified types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction for purposes of section 6111.

Second, the avoidance or evasion of Federal income tax is generally considered a significant purpose of the structure of a transaction if the present value of the participant's reasonably expected pre-tax profit (after taking into account foreign taxes as expenses and transaction costs) from the transaction is insignificant relative to the present value of the participant's expected net Federal income tax savings from the transaction. However, if the substance of the transaction is the borrowing of money or the acquisition of financial capital by a corporate participant, the transaction falls within this second category if the present value of the Federal income tax deductions of the taxpayer to whom the loan or financial capital is provided significantly exceeds the present value of the pre-tax return of the person providing the loan or financial capital.

Third, the avoidance or evasion of Federal income tax is generally considered to be a significant purpose of the structure of a transaction if the transaction has been structured to produce Federal income tax benefits that constitute an important part of the intended results of the transaction and the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably expects the transaction to be presented (in the same or substantially similar form) to more than one potential participant. However, a transaction does not come within this third category if the promoter reasonably determines that the potential participant is expected to participate in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the promoter reasonably determines that there is a long-standing and generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are allowable under the Code for substantially similar transactions.

Except for listed transactions, the avoidance or evasion of Federal income tax will not be considered a significant purpose of the structure of a transaction if the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction.

The IRS may make a determination, by published guidance, individual ruling, or otherwise, that a transaction is not required to be registered under the temporary regulations. If a tax shelter promoter (or other person who would be responsible for registration under this section) is uncertain whether a transaction is properly classified as a confidential corporate tax shelter or is otherwise uncertain whether registration is required under this section, that person may, on or before the date that registration would otherwise be required under this section, submit a request to the IRS for a ruling as to whether the transaction is subject to the registration requirements of this section. If the request fully discloses all relevant facts relating to the transaction, that person's potential obligation to register the transaction will be suspended during the period that the ruling request is pending and, if the Service subsequently concludes that the transaction is a confidential corporate tax shelter subject to registration under this section, until the sixtieth day after the issuance of the ruling (or, if the request is withdrawn, sixty days from the date that the request is withdrawn). In the alternative, that person may register the transaction in accordance with the requirements of this section and append a statement to the Form 8264, "Application for Registration of a Tax Shelter," which states that the person is uncertain whether the transaction is required to be registered as a confidential corporate tax shelter, and that the Form 8264 is being filed on a protective basis.

III. *Conditions of Confidentiality*

Section 6111(d)(2) describes when an offer is made under conditions of confidentiality. The determination of whether an offer is made under conditions of confidentiality is based on all the facts and circumstances surrounding the offer, including prior conduct of the parties. If an offeree's disclosure of the structure or tax aspects of the transaction is limited in any way by an express or implied understanding or agreement with or for the benefit of a tax shelter promoter, an offer is considered made under conditions of confidentiality, whether or not such understanding or agreement is legally binding. An offer will also be considered made under conditions of confidentiality in the absence of any such understanding or agreement if any tax shelter promoter knows or has reason to know the transaction is protected from disclosure or use in any other manner, such as where the transaction is claimed to be proprietary to the tax shelter promoter or any party other than the offeree. An offeree's privilege to maintain the confidentiality of a communication relating to a tax shelter in which the taxpayer might participate or has agreed to participate, including an offeree's confidential communication with the offeree's attorney, is not itself a condition of confidentiality.

The temporary regulations provide that, unless facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter enters into a written agreement with each person who participates or discusses participation in the transaction and such agreement expressly authorizes such persons to disclose every aspect of the transaction to any and all persons, without limitation of any kind.

IV. *Fees*

The third requirement that must be satisfied for a transaction to be treated as a confidential corporate tax shelter is that the tax shelter promoters, whether or not related, may receive fees in excess of $100,000 in the aggregate. In determining whether the tax shelter promoters may receive fees in excess of $100,000, all the facts and circumstances surrounding the transaction are considered. For this purpose, all consideration that may be received by the tax shelter promoters is

taken into account, including contingent fees, fees in the form of equity interests, and fees the promoters may receive for other transactions as consideration for promoting the tax shelter.

For example, if a tax shelter promoter may receive a fee for arranging a transaction that is a confidential corporate tax shelter and/or a separate fee for another transaction that is not a confidential corporate tax shelter, part or all of the fee paid with respect to the other transaction may be treated as a fee paid with respect to the confidential corporate tax shelter if the facts and circumstances indicate that the fee paid for the other transaction is in consideration for the confidential corporate tax shelter. For purposes of determining whether the tax shelter promoters may receive fees in excess of $100,000, the fees from all substantially similar transactions are considered part of the same tax shelter and must be aggregated.

V. *Registration Requirements*

To register a confidential corporate tax shelter, the person responsible for registering the tax shelter must file Form 8264, "Application for Registration of a Tax Shelter." (Form 8264 is also used to register tax shelters defined in section 6111(c).) The exemptions from the registration requirements contained in the instructions to the current Form 8264 apply only to tax shelters defined in section 6111(c). Form 8264 will be revised and will include specific requirements and instructions for registering confidential corporate tax shelters. Until that time, persons responsible for registering confidential corporate tax shelters should follow the registration procedures outlined in these regulations.

The temporary regulations provide that the person registering a confidential corporate tax shelter must provide a detailed description of the tax shelter, including the structure of the tax shelter and the tax benefits. Any written materials presented in connection with an offer to participate in the shelter are required to be submitted with the registration form.

Consistent with the registration requirements for tax shelters defined in section 6111(c), the temporary regulations provide that any transactions involving similar business assets or similar plans or arrangements that are offered to corporate taxpayers by the same person or by related persons are aggregated and treated as a single tax shelter. However, in contrast with the registration requirements applicable to tax shelters defined in section 6111(c), the temporary regulations allow the tax shelter promoter to file a single Form 8264 with respect to any such aggregated tax shelter, provided an amended Form 8264 is filed to reflect any material changes and to include any additional or revised written materials presented in connection with an offer to participate in the shelter. Furthermore, the temporary regulations require all transactions that are part of the same tax shelter and that are to be carried out by the same corporate participant (or one or more other members of the same affiliated group within the meaning of section 1504) to be registered on the same Form 8264.

The temporary regulations provide that in cases in which an attorney or federally authorized tax practitioner acts as a tax shelter promoter with respect to a client's participation in a confidential corporate tax shelter and believes that information which would otherwise be required to be disclosed on Form 8264 is protected by the common law attorney-client privilege or the confidentiality privilege under section 7525(a), such promoter may omit the information believed to be privileged from Form 8264 if the promoter attaches a statement to the Form 8264 as described in these temporary regulations.

Section 6111(a)(1) requires a tax shelter to be registered not later than the day on which the first offering for sale of interests in such shelter occurs. Section 6111(d)(4) provides that an offer to participate in a confidential corporate tax shelter shall be treated as an offer for sale.

Registration under these temporary regulations will be limited to confidential corporate tax shelters that are offered for sale after February 28, 2000. If interests in a confidential corporate tax shelter were first offered for sale on or before February 28, 2000, the first offer for sale of interests in the shelter that occurs after February 28, 2000, shall be considered the first offer for sale under this section. The temporary regulations provide that the IRS will consider a registration as timely made for a confidential corporate tax shelter in which interests are offered for sale after February 28, 2000, if the confidential corporate tax shelter is registered no later than August 26, 2000.

If a transaction becomes a confidential corporate tax shelter (e.g., because of a change in the law or factual circumstances, or because the transaction becomes a listed transaction) subsequent to the first offering for sale after February 28, 2000, and the transaction was not previously required to be registered as a confidential corporate tax shelter under this section, the transaction must be registered under this section if interests are offered for sale after the transaction becomes a confidential corporate tax shelter. The transaction must be registered by the later of the next offering for sale of interests in the shelter or August 26, 2000. However, because transactions identified as listed transactions are generally considered to have been structured for a significant tax avoidance purpose, such transactions ordinarily will have been subject to registration under this section before becoming listed transactions.

The temporary regulations provide that if an interest in a confidential corporate tax shelter is first offered for sale after February 28, 2000, and that shelter is also a tax shelter under section 6111(c), the person responsible for registering the shelter may either (1) complete and file Form 8264, including the information required by these temporary regulations for confidential corporate tax shelters, not later than the day on which an interest in the shelter is first offered for sale after February 28, 2000, or (2) complete and file Form 8264 for the section 6111(c) tax shelter not later than the day on which an interest in the tax shelter is first offered for sale under section 6111(a) and then file an amended Form 8264 with the information required by these temporary regulations not later than August 26, 2000.

VI. *Tax Shelter Promoter and Person Required to Register*

The temporary regulations provide that the term "tax shelter promoter" as described in section 6111(d)(2) includes a tax shelter organizer under section 6111(e)(1) and §301.6111–1T(Q&A-26 through Q&A-32) and any other person who participates in the organization, management or sale of a tax shelter (other

than a person who merely performs services of the kind described in Q&A-33 of §301.6111–1T) or any person related (within the meaning of section 267 or 707) to such tax shelter organizer or such other person.

In addition to the registration rules in section 6111, the rules in §301.6111–1T(Q&A-34 through Q&A-39) apply for determining who must register a confidential corporate tax shelter.

The temporary regulations specify that, if all of the tax shelter promoters of a confidential corporate tax shelter are foreign persons and none of such promoters registers the shelter, any person who discusses participation in the shelter must register the shelter under section 6111(a). Pursuant to the authority in section 6111(f)(4), under limited circumstances, the temporary regulations apply to foreign as well as United States persons. For example, a foreign corporation that participates in a tax shelter with a significant purpose of reducing its United States taxes would be required to register the tax shelter if there were no U.S. promoters and the other requirements of the temporary regulations were satisfied.

Under the temporary regulations, if all the tax shelter promoters of a confidential corporate tax shelter are foreign persons, any person who discusses participation in the confidential corporate tax shelter with a tax shelter promoter must register the shelter within 90 days of beginning such discussions unless one or more of the following occurs: (1) the person does not participate in the shelter and notifies the promoter in writing, within the 90-day period, that the person will not participate; or (2) within the 90-day period, the person obtains and reasonably relies on both a written statement from one of the tax shelter promoters that such promoter has registered the tax shelter under this section and a copy of the registration.

To prevent avoidance of the purposes of section 6111(d)(3), the temporary regulations treat any person that participates in a shelter as having discussed that participation. Such discussion will be treated as occurring on the date of the agreement to participate or, if earlier, any other date the person is treated as having discussed participation under any other provision of these regulations. Thus, the participant is treated as having discussed participation in the shelter even if the agreement to participate is made without direct discussions by the participant. This might occur, for example, if participation is agreed to through an intermediary acting on the participant's behalf.

The temporary regulations also state that a person (first person) will be treated as participating indirectly in (and therefore as discussing) a tax shelter if a foreign person in which the first person has at least a 10 percent interest participates in the shelter with a significant purpose of avoiding or evading the first person's Federal income tax. For example, if a foreign corporation participates in a confidential corporate tax shelter with a significant purpose of reducing its 10 percent corporate shareholder's Federal income taxes, the temporary regulations would require the shareholder to register the tax shelter if all promoters are foreign.

For purposes of the registration requirements under section 6111(d)(3), it is presumed that the tax shelter promoters may receive fees in excess of $100,000 in the aggregate unless the person who would be responsible for registering the tax shelter can show otherwise.

VII. *Investor List Requirement of Section 6112*

Any person who organizes or sells an interest in a confidential corporate tax shelter must maintain a list of persons who were sold an interest in the tax shelter and such other information as required by section 6112. See §301.6112–1T. Amendments to the temporary regulations under section 6112 have been published concurrently with the temporary regulations under section 6111(d). Among other things, the amended temporary regulations under section 6112 require lists to be maintained with respect to transactions for which the avoidance or evasion of Federal income tax is considered to be a significant purpose of the structure of the transaction, as determined in these temporary regulations under section 6111(d)(1)(A), whether or not the transactions are offered under conditions of confidentiality.

VIII. *Effective Date*

The regulations apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also 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 the persons responsible for promoting and registering the transactions described in these regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. 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, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Chief Counsel (Passthroughs and Special Industries) and Rebecca Rosenberg, Office of Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

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

Section 301.6111–2T also issued under 26 U.S.C. 6111(f)(4). * * *

Par. 2. Section 301.6111–2T is added to read as follows:

§301.6111–2T Confidential corporate tax shelters (Temporary).

(a) *In general*—(1) Under section 6111(d) and this section, a confidential corporate tax shelter is treated as a tax shelter subject to the requirements of sections 6111(a) and (b).

(2) A confidential corporate tax shelter is any transaction—

(i) A significant purpose of the structure of which is the avoidance or evasion of Federal income tax, as described in paragraph (b) of this section, for a direct or indirect corporate participant;

(ii) That is offered to any potential participant under conditions of confidentiality, as described in paragraph (c) of this section; and

(iii) For which the tax shelter promoters may receive fees in excess of $100,000 in the aggregate, as described in paragraph (d) of this section.

(3) For purposes of this section, references to the term *transaction* include all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, including any series of related steps carried out as part of a prearranged plan.

(4) A transaction described in paragraph (b) of this section is for a direct or an indirect corporate participant if it is expected to provide Federal income tax benefits to any corporation (U.S. or foreign) whether or not that corporation participates directly in the transaction.

(b) *Transactions structured for avoidance or evasion of Federal income tax*—(1) *In general*. The avoidance or evasion of Federal income tax will be considered a significant purpose of the structure of a transaction if the transaction is described in paragraph (b)(2), (3), or (4) of this section. However, a transaction described in paragraph (b)(3) or (4) of this section need not be registered if the transaction is described in paragraph (b)(5) of this section. For purposes of this section, Federal income tax benefits include deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, and any other tax consequences that may reduce a taxpayer's Federal income tax liability by affecting the timing, character, or source of any item of income, gain, deduction, loss, or credit.

(2) *Listed transactions*. A transaction is described in this paragraph (b)(2) if the transaction 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 for purposes of section 6111. If a transaction becomes a listed transaction after the date on which registration would otherwise be required under this section, and if the transaction otherwise satisfies the confidentiality and fee requirements of paragraphs (a)(2)(ii) and (iii) of this section, registration shall in all events be required with respect to any interests in the transaction that are offered for sale after the transaction becomes a listed transaction. However, because a transaction identified as a listed transaction is generally considered to have been structured for a significant tax avoidance purpose, such a transaction ordinarily will have been subject to registration under this section before becoming a listed transaction if the transaction previously satisfied the confidentiality and fee requirements of paragraphs (a)(2)(ii) and (iii) of this section.

(3) *Transactions lacking economic substance*—(i) Except as provided in paragraph (b)(3)(ii) of this section, a transaction is described in this paragraph (b)(3) if the present value of the participant's reasonably expected pre-tax profit (after taking into account foreign taxes as expenses and transaction costs) from the transaction is insignificant relative to the present value of the participant's expected net Federal income tax savings from the transaction.

(ii) If the substance of the transaction is the borrowing of money or the acquisition of financial capital by a corporate participant, the transaction is described in this paragraph (b)(3) only if the present value of the Federal income tax deductions of the taxpayer to whom the loan or financial capital is provided significantly exceeds the present value of the pre-tax return of the person providing the loan or financial capital.

(4) *Other tax-structured transactions*. A transaction is described in this paragraph (b)(4) if it has been structured to produce Federal income tax benefits that constitute an important part of the intended results of the transaction and the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably expects the transaction to be presented in the same or substantially similar form to more than one potential participant, unless the promoter reasonably determines that—

(i) The potential participant is expected to participate in the transaction in the ordinary course of its business (including transactions described in §1.6011–4T(b)(3)(iii)) in a form consistent with customary commercial practice; and

(ii) There is a long-standing and generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are allowable under the Internal Revenue Code for substantially similar transactions.

(5) *Excepted transactions*. The avoidance or evasion of Federal income tax will not be considered a significant purpose of the structure of a transaction if the transaction is described in either paragraph (b)(5)(i) or (ii) of this section.

(i) In the case of a transaction other than a transaction described in paragraph (b)(2) of this section, the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. Such a determination must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, authoritative administrative guidance, and judicial decisions that establish principles of general application in the tax law (e.g., *Gregory v. Helvering*, 293 U.S. 465 (1935)).

(ii) The IRS makes a determination, by published guidance, individual ruling under paragraph (b)(6) of this section, or otherwise, that the transaction is not subject to the registration requirements of this section.

(6) *Requests for ruling*. If a tax shelter promoter (or other person who would be responsible for registration under this section) is uncertain whether a transaction is properly classified as a confidential corporate tax shelter or is otherwise uncertain whether registration is required under this section, that person may, on or before the date that registration would otherwise be required under this section, submit a request to the IRS for a ruling as to whether the transaction is subject to the registration requirements of this section. If the request fully discloses all relevant facts relating to the transaction, that person's potential obligation to register the transaction will be suspended during the period that the ruling request is pending and, if the IRS subsequently concludes that the transaction is a confidential corporate tax shelter subject to registration under this section, until the sixtieth day after the issuance of the ruling (or, if the request is withdrawn, sixty days from the date that the request is withdrawn). In the alternative, that person may register the transaction in accordance with the requirements of this section and append a statement to the Form 8264, "Application for Registration of a Tax Shelter," which states that the person is uncertain whether the transaction is required to be registered as a confidential corporate tax shelter, and that the Form 8264 is being filed on a protective basis.

(7) *Examples.* The following examples illustrate the application of paragraphs (b)(1) through (b)(5) of this section. Assume, for purposes of these examples, that the transactions are not the same as or substantially similar to any of the types of transactions that the IRS has identified as listed transactions for purposes of section 6111 and thus are not described in paragraph (b)(2) of this section. The examples are as follows:

Example 1—(i) *Facts*. Promoter organizes a transaction between X, a U.S. corporation, and FC, a foreign entity that is not subject to Federal income tax. FC contributes cash to PRS, a partnership, in exchange for a 99 percent partnership interest in PRS. Promoter is initially the only other partner in PRS. FC will receive a market rate of return on its cash contribution and a fee for participating in the transaction. PRS purchases personal property and then leases it. PRS sells its right to the lease payments in exchange for cash. PRS allocates 99 percent of the income from the sale to FC and one percent to Promoter. PRS retains the leased property. Shortly after PRS's sale of the lease payments, X buys FC's 99 percent partnership interest in PRS. The depreciation deductions on the leased property are then allocated 99 percent to X and one percent to Promoter.

(ii) *Analysis*. The transaction is described in paragraph (b)(3)(i) of this section because the present value of X's reasonably expected pre-tax profit from the transaction is insignificant relative to the present value of X's expected net Federal income tax savings from the transaction. Therefore, unless Promoter can reasonably determine that the IRS would have no reasonable basis for denial of any significant portion of the Federal income tax benefits intended for X, the transaction is described in paragraph (b)(1) of this section.

Example 2—(i) *Facts*. Y has designed a combination of financial instruments to be issued as a package by corporations. The financial instruments are expected to be treated as equity for financial accounting purposes and as debt giving rise to allowable interest deductions for Federal income tax purposes. Y reasonably expects to present this method of raising capital to more than one potential corporate participant. Assume the transaction is not described in paragraph (b)(3) of this section. Assume that, because of the unusual nature of the combination of financial instruments, Y cannot conclude either that the transaction represented by the financial instruments is in customary commercial form or that there is a long-standing and generally accepted understanding that interest deductions are available to issuers of substantially similar combinations of financial instruments. Further, assume that Y cannot reasonably determine that the IRS would have no reasonable basis to deny the deductions.

(ii) *Analysis*. The transaction represented by this combination of financial instruments is a transaction described in paragraph (b)(4) of this section. However, if Y is uncertain whether this transaction is described in paragraph (b)(4) of this section, or is otherwise uncertain whether registration is required, Y may apply for a ruling under paragraph (b)(6) of this section, and the transaction will not be required to be registered while the ruling is pending or for sixty days thereafter.

(c) *Conditions of confidentiality*—(1) *In general*. All the facts and circumstances relating to the transaction will be considered when determining whether an offer is made under conditions of confidentiality as described in section 6111(d)(2), including prior conduct of the parties. Pursuant to section 6111(d)(2)(A), if an offeree's disclosure of the structure or tax aspects of the transaction is limited in any way by an express or implied understanding or agreement with or for the benefit of any tax shelter promoter, an offer is considered made under conditions of confidentiality, whether or not such understanding or agreement is legally binding. Pursuant to section 6111(d)(2)(B), an offer will also be considered made under conditions of confidentiality in the absence of any such understanding or agreement if any tax shelter promoter knows or has reason to know that the transaction is protected from disclosure or use in any other manner, such as where the transaction is claimed to be proprietary to the tax shelter promoter or any party other than the offeree. An offeree's privilege to maintain the confidentiality of a communication relating to a tax shelter in which the taxpayer might participate or has agreed to participate, including an offeree's confidential communication with the offeree's attorney, is not itself a condition of confidentiality.

(2) *Presumption*. Unless facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter enters into a written agreement with each person who participates or discusses participation in the transaction and such agreement expressly authorizes such persons to disclose every aspect of the transaction with any and all persons, without limitation of any kind.

(d) *Determination of fees.* All the facts and circumstances relating to the transaction will be considered when determining the amount of fees, in the aggregate, that the tax shelter promoters may receive. For purposes of this paragraph (d), all consideration that tax shelter promoters may receive is taken into account, including contingent fees, fees in the form of equity interests, and fees the promoters may receive for other transactions as consideration for promoting the tax shelter. For example, if a tax shelter promoter may receive a fee for arranging a transaction that is a confidential corporate tax shelter and a separate fee for another transaction that is not a confidential corporate tax shelter, part or all of the fee paid with respect to the other transaction may be treated as a fee paid with respect to the confidential corporate tax shelter if the facts and circumstances indicate that the fee paid for the other transaction is in consideration for the confidential corporate tax shelter. For purposes of determining whether the tax shelter promoters may receive fees in excess of $100,000, the fees from all substantially similar transactions are considered part of the same tax shelter and must be aggregated.

(e) *Registration*—(1) *Time for registering*—(i) *In general*. A tax shelter must be registered not later than the day on which the first offering for sale of interests in the shelter occurs. An offer to participate in a confidential corporate tax shelter shall be

treated as an offer for sale. If interests in a confidential corporate tax shelter were first offered for sale on or before February 28, 2000, the first offer for sale of interests in the shelter that occurs after February 28, 2000, shall be considered the first offer for sale under this section.

(ii) *Certain registrations deemed timely*—(A) *In general*. The IRS will consider a registration as timely made for a confidential corporate tax shelter in which interests are offered for sale after February 28, 2000, if the tax shelter is registered no later than August 26, 2000. If an interest in a confidential corporate tax shelter is first offered for sale after February 28, 2000, and the tax shelter also constitutes a tax shelter under section 6111(c), the persons responsible for registering the tax shelter may either complete and file Form 8264, "Application for Registration of a Tax Shelter", including the information required by paragraph (e)(2) of this section, not later than the day on which an interest in the tax shelter is first offered for sale after February 28, 2000, or complete and file Form 8264, "Application for Registration of a Tax Shelter", for the section 6111(c) tax shelter not later than the day on which an interest in the tax shelter is first offered for sale under section 6111(a) and then file an amended Form 8264 with the information required by paragraph (e)(2) of this section not later than August 26, 2000.

(B) *Special rule*. If a transaction becomes a confidential corporate tax shelter (e.g., because of a change in the law or factual circumstances, or because the transaction becomes a listed transaction) subsequent to the first offering for sale after February 28, 2000, and the transaction was not previously required to be registered as a confidential corporate tax shelter under this section, the transaction must be registered under this section if interests are offered for sale after the transaction becomes a confidential corporate tax shelter. The transaction must be registered by the later of the next offering for sale of interests in the shelter or August 26, 2000.

(2) *Procedures for registering*—(i) *In general*. To register a confidential corporate tax shelter, the person responsible for registering the tax shelter must file Form 8264, "Application for Registration of a Tax Shelter". (Form 8264 is also used to register tax shelters defined in section 6111(c).) The exemptions from the registration requirements contained in the instructions to the current Form 8264 apply only to tax shelters defined in section 6111(c). Similar to the treatment provided under Q&A-22 and Q&A-48 of §301.6111–1T, transactions involving similar business assets and similar plans or arrangements that are offered to corporate taxpayers by the same person or related persons are aggregated and considered part of a single tax shelter. However, in contrast with the requirement of Q&A-48 of §301.6111–1T, the tax shelter promoter may file a single Form 8264 with respect to any such aggregated tax shelter, provided an amended Form 8264 is filed to reflect any material changes and to include any additional or revised written materials presented in connection with an offer to participate in the shelter. Furthermore, all transactions that are part of the same tax shelter and that are to be carried out by the same corporate participant (or one or more other members of the same affiliated group within the meaning of section 1504) must be registered on the same Form 8264.

(ii) *Interim registration procedure*. Until Form 8264 and its instructions are revised to incorporate the provisions of this paragraph (e)(2)(ii), the person responsible for registering a confidential corporate tax shelter must—

(A) Type or legibly print "Confidential Corporate Tax Shelter Filed Under §301.6111–2T" at the top of Form 8264 (Rev. 11-99), "Application for Registration of a Tax Shelter";

(B) Complete Part I and lines 1a, 2, 3, 4, 6, and 12 in Part II of Form 8264;

(C) In the section titled "Explanation of Items" on Form 8264, provide a detailed description of the tax shelter, including a description of the structure of the tax shelter and the intended tax benefits;

(D) Attach any written materials that are presented to potential participants in connection with the offering of sales of interests in the tax shelter, including any analyses or opinions relating to the intended tax benefits of the shelter; and

(E) Sign the Form 8264 and send it to the Internal Revenue Service Center, Kansas City, MO 64999.

(iii) *Use of subsequent versions of Form 8264*. If a person who is required to register a confidential corporate tax shelter under section 6111 uses a subsequent version of the Form 8264, the person must complete the appropriate parts of the revised form and follow the applicable instructions.

(iv) *Tax shelters that constitute both section 6111(c) and section 6111(d) tax shelters*. If a person is registering an arrangement that is both a confidential corporate tax shelter and a section 6111(c) tax shelter, the person must follow the requirements of this section and the instructions for Form 8264. In such a situation, the taxpayer must complete the entire form because the tax shelter is a section 6111(c) tax shelter and, if using Form 8264 (Rev. 11-99), type or legibly print "Confidential Corporate Tax Shelter filed under §301.6111–2T" at the top of Form 8264 and include the information required in paragraphs (e)(2)(ii)(C) and (D) of this section because the tax shelter is also a confidential corporate tax shelter. If an arrangement is both a section 6111(c) tax shelter and a confidential corporate tax shelter and is a transaction described in the "Exemptions from Registration" section of the instructions for Form 8264 (Rev. 11-99), the person registering the arrangement must comply with the requirements of this section to register the arrangement as a confidential corporate tax shelter.

(3) *Claims of privilege*.(i) In any case in which an attorney or federally authorized tax practitioner within the meaning of section 7525 is the person required to register a confidential corporate tax shelter, and that person believes that information required to be disclosed under paragraph (e)(2) of this section is protected by the attorney-client privilege or by the confidentiality privilege of section 7525(a), any information omitted from the Form 8264 on the basis of such a claim must be supported by a statement attached to Form 8264 which satisfies the requirements set forth in paragraph (e)(3)(ii) of this section.

(ii) A statement supporting a claim of privilege must be signed by the attorney or federally authorized tax practitioner under penalties of perjury, must identify each document or category of information for which a claim of privilege is made, and must include the following representations with respect to each document or

category of information for which the privilege is claimed—

(A) Specifically represent that the information was a confidential practitioner-client communication and, in the case of information which a federally authorized tax practitioner claims is privileged under section 7525, that the omitted information was not part of tax advice that constituted the promotion of a tax shelter within the meaning of section 7525(b);

(B) Specifically represent that the person required to register (and, to the best of such person's knowledge and belief, all others in possession of the omitted information) did not disclose the omitted information to any person whose receipt of such information would result in a waiver of the privilege.

(f) *Definition of tax shelter promoter*. For purposes of section 6111(d)(2) and this section, the term "tax shelter promoter" includes a tax shelter organizer as defined in section 6111(e)(1) and §301.6111–1T(Q&A-26 through Q&A-32) and any other person who participates in the organization, management or sale of a tax shelter (other than a person who merely performs services of the kind described in Q&A-33 of §301.6111–1T) or any person related (within the meaning of section 267 or 707) to such tax shelter organizer or such other person. Any person that satisfies this requirement must comply with the requirements under section 6112.

(g) *Person required to register*—(1) *Tax shelter promoters*. In addition to the rules in section 6111, taxpayers must use the rules of §301.6111–1T (Q&A-34 through Q&A-39) in determining the circumstances under which a tax shelter promoter must register a confidential corporate tax shelter described in section 6111(d).

(2) *Persons who discuss the transaction; all promoters are foreign persons*—(i) *In general*. If all of the tax shelter promoters of a confidential corporate tax shelter are foreign persons, any person who discusses participation in the transaction must register the shelter under this section within 90 days after beginning such discussions.

(ii) *Exceptions*. Registration by a person discussing participation in a transaction is not required if either—

(A) The person does not participate, directly or indirectly, in the shelter and notifies the tax shelter promoter in writing, within 90 days of beginning such discussions, that the person will not participate; or

(B) Within 90 days after beginning such discussions, the person obtains and reasonably relies on both—

(*1*) A written statement from one of the tax shelter promoters that such promoter has registered the tax shelter under this section; and

(*2*) A copy of the registration.

(iii) *Determination of foreign status*. For purposes of this paragraph (g)(2), a person must presume that all tax shelter promoters are foreign persons unless the person either—

(A) Discusses participation in the tax shelter with a promoter that is a United States person; or

(B) Obtains and reasonably relies on a written statement from one of the promoters that at least one of the promoters is a United States person.

(iv) *Discussion*. Discussing participation in a transaction includes discussing such participation with any person that conveys the tax shelter promoter's proposal. For purposes of this paragraph (g)(2), any person that participates directly or indirectly in a transaction will be treated as having discussed participation in the transaction not later than the date of the agreement to participate. Thus, a tax shelter participant will be treated as having discussed participation in the transaction even if all discussions were conducted by an intermediary and the agreement to participate was made indirectly through another person acting on the participant's behalf (for example, through an intermediary empowered to commit the participant to participate in the shelter).

(v) *Special rule for controlled entities*. A person (first person) will be treated as participating indirectly in a confidential corporate tax shelter if a foreign person controlled by the first person participates in the shelter, and a significant purpose of the shelter is the avoidance or evasion of the first person's Federal income tax. For purposes of this paragraph (g)(2)(v), control of a foreign corporation or partnership will be determined under the rules of section 6038(e)(2) and (3), except that such section shall be applied by substituting "10" for "50" each place it appears and "at least" for "more than" each place it appears. In addition, section 6038(e)(2) shall be applied for these purposes without regard to the constructive ownership rules of section 318 and by treating stock as owned if it is owned directly or indirectly. Section 6038(e)(3) shall be applied for these purposes without regard to the last sentence of section 6038(e)(3)(B). Any beneficiary with a 10 percent or more interest in a foreign trust or estate shall be treated as controlling that trust or estate for purposes of this paragraph (g)(2)(v).

(vi) *Other rules*—(A) For purposes of the registration requirements under section 6111(d)(3), it is presumed that the tax shelter promoters will receive fees in excess of $100,000 in the aggregate unless the person responsible for registering the tax shelter can show otherwise.

(B) Any person treated as a tax shelter promoter under section 6111(d) solely by reason of being related (within the meaning of section 267 or 707) to a foreign promoter will be treated as a foreign promoter for purposes of this paragraph (g)(2).

(h) *Effective date.* This section applies to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000. If an interest is sold after February 28, 2000, it is treated as offered for sale after February 28, 2000, unless the sale was pursuant to a written binding contract entered into on or before February 28, 2000.

Par. 3. In §602.101, paragraph (b) is amended by adding an entry for §301.6111–2T to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

Charles O. Rossotti,
Commissioner of Internal Revenue.

Approved February 23, 2000.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on February 28, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 2, 2000, 65 F.R. 11215)

CFR Part or Section Where Identified and Described	Current OMB Control No.
* * * * *	
301.6111–2T	1545–1687
* * * * *	

Section 6112.— Organizers and Sellers of Potentially Abusive Tax Shelters Must Keep Lists of Investors

26 CFR 301.6112–1T: Questions and answers relating to the requirement to maintain a list of investors in potentially abusive tax shelters (Temporary).

T.D. 8875

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 301 and 602

Requirements to Maintain List of Investors in Potentially Abusive Tax Shelters

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations requiring the maintenance of lists of investors in potentially abusive tax shelters described in section 6112. The temporary regulations affect organizers of potentially abusive tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in REG–103736–00, page 768.

DATES: *Effective date*. These temporary regulations are effective February 28, 2000.

Applicability date. For dates of applicability, see A-22 of §301.6112–1T of these regulations.

FOR FURTHER INFORMATION CONTACT: Richard Castanon, (202) 622-3080, or Mary Beth Collins, (202) 622-3070, (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1686. Responses to these collections of information are mandatory.

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 OMB control number.

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking REG–103736–00, page 768.

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 amends 26 CFR part 301 regarding the requirement to maintain lists of investors in potentially abusive tax shelters under section 6112. Section 6708 provides penalties for failing to maintain the investor list under section 6112.

The temporary regulations have been drafted in question and answer format. No inference should be drawn regarding issues not raised or because certain questions and not others are included. The temporary regulations contained in this document will remain in effect until additional temporary or final regulations are published in the **Federal Register**.

Explanation of Provisions

I. *Potentially Abusive Tax Shelter*

Section 6112 provides that any person who organizes or sells any interest in a potentially abusive tax shelter must maintain a list identifying each person who was sold an interest in such shelter. A potentially abusive tax shelter under section 6112 includes any investment that is required to be registered with the IRS as a tax shelter under section 6111, and any other entity, plan, or arrangement, if specified in regulations, that has a potential for tax avoidance or evasion. Any person who is required to maintain a list under section 6112 must make the list available for inspection upon request by the Secretary of the Treasury, and generally must retain any information required to be included on the list for seven years. References in these regulations to the term "transaction" include all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, including any series of related steps carried out as part of a prearranged plan.

Section 6112 authorizes the Secretary of the Treasury to specify in regulations transactions other than those subject to registration under section 6111 that have a potential for tax avoidance or evasion. The conference report accompanying section 6112 explains that "in designating these other arrangements, the Secretary may, for example, specifically identify types of investments, or may provide that any investment falling within a modified form of the definition of tax shelter for registration purposes is subject to the listing requirement." H.R. CONF. REP. NO. 861, 98th Cong., 2d Sess. 982 (1984).

Concurrent with the addition of these amendments to the temporary regulations

under section 6112, the Service has issued temporary and proposed regulations under section 6111(d) relating to the registration of confidential corporate tax shelters. These regulations under section 6112 follow a modified form of the definition of a confidential corporate tax shelter under section 6111(d)(1) for purposes of defining the potentially abusive tax shelters that are subject to the list requirement under section 6112. Under the modified definition, as under section 6111(d)(1)(A), the term "potentially abusive tax shelter" includes a transaction for which a significant purpose of the structure of the transaction is the avoidance or evasion of Federal income tax. The rules set forth in the temporary regulations under section 6111(d) are applicable in determining whether a significant purpose of the structure of a transaction is the avoidance or evasion of Federal income tax.

For purposes of section 6112, the definition of tax shelter under section 6111(d)(1) has been modified in two respects: (1) the limitation of section 6111(d)(1)(B) to transactions offered to any potential participant under conditions of confidentiality does not apply for purposes of section 6112; and (2) the limitation of section 6111(d)(1)(C) to transactions in which the promoters may receive fees in excess of $100,000 does not apply for purposes of section 6112. Therefore, certain categories of transactions that are not subject to registration under section 6111 may be subject to the list requirement of section 6112, including any nonconfidential transactions offered directly or indirectly to corporate participants a significant purpose of the structure of which is the avoidance or evasion of Federal income tax within the meaning of section 6111(d) and the regulations thereunder.

Section 301.6111–2T provides a procedure for obtaining rulings as to whether a transaction is subject to registration under §301.6111–2T. The same procedure shall be available to a person who is uncertain whether a transaction constitutes a potentially abusive tax shelter for which a list must be maintained under section 6112, and the requirement to maintain a list available for inspection by the Secretary shall be suspended during the period that such ruling request is pending and for sixty days thereafter.

II. *Organizer Also Includes Promoter*

The regulations provide that for purposes of the list requirement, an organizer includes a promoter as defined in section 6111(d)(2), as well as any person designated as an organizer under the existing temporary regulations. A promoter is any person who participates in the organization, management, or sale of the tax shelter or any related person (within the meaning of section 267 or 707).

III. *Information to be Included on List*

Section 6112 authorizes the Secretary of the Treasury to specify the information that organizers and sellers of interests in potentially abusive tax shelters are required to include as part of the lists of persons who were sold interests in the tax shelters. The temporary regulations modify the information that must be included as part of the lists and made available for inspection by the IRS. The regulations provide that in addition to the information currently required under A-17 of §301.6112–1T, each list must include (1) a detailed description of the tax shelter that describes both the structure of the tax shelter and the intended tax benefits for participants in the tax shelter, (2) the amount of money invested or to be invested by each person who is required to be included on the list, (3) a summary or schedule of the tax benefits that each such person is intended or expected to derive from participation in the tax shelter, if known by the organizer or seller, and (4) copies of any additional written materials, including tax analyses and opinions, relating to the tax shelter that have been given to any potential participant in the tax shelter or to any representatives, tax advisors, or agents of potential participants by the organizer or seller or by any other person who has participated in the offering of the tax shelter (excluding any written materials that the organizer or seller has never possessed).

Generally, a separate list must be maintained for each potentially abusive tax shelter. Moreover, the temporary regulations provide that interests in substantially similar tax shelter transactions that are sold to different persons generally are to be treated as interests in the same tax shelter for purposes of section 6112. To ensure that the IRS is able to identify all of the tax shelters that have been offered by an organizer or seller and that are structured in a similar manner, the regulations further provide that the list for each tax shelter must identify each other tax shelter (if any) that the organizer or seller has offered that has not been treated as part of the same tax shelter, but that utilizes a similar structure or is intended to produce similar tax benefits.

It is recognized that, in the absence of a limitation on the disclosure obligation under section 6112, there could be situations in which section 6112 and the temporary regulations would require an organizer or a seller of a potentially abusive tax shelter to disclose information that is otherwise protected by the common law attorney-client privilege or by the privilege for confidential tax advice under section 7525(a). The temporary regulations provide that, in any case in which an organizer or a seller of a potentially abusive tax shelter believes that information required to be maintained as part of the list for that tax shelter is protected by the attorney-client privilege or constitutes confidential tax advice protected under section 7525(a), such information may be withheld from disclosure to the Service, provided that the organizer or seller provides the Service with a statement signed under penalties of perjury with information and representations required in that statement that are the same as those required by the regulations under section 6111(d) if the promoter of a confidential corporate tax shelter asserts that information required to be included with Form 8264, "Application for Registration of a Tax Shelter," is privileged.

IV. *Effective Date*

An organizer or a seller must maintain a list with respect to any interest acquired by an investor in a potentially abusive tax shelter after February 28, 2000. If a transaction becomes a potentially abusive tax shelter after interests are acquired by investors, an organizer or a seller must maintain a list with respect to any interest in the transaction acquired after the transaction becomes a potentially abusive tax shelter. Additionally, the IRS will not ask to inspect any list for a potentially abusive tax shelter, other than a tax shelter described in section 6111(c), until August

26, 2000. The lists required by the preceding two sentences with regard to interests acquired in potentially abusive tax shelters must contain the information required by A-17 of this section as it relates to such interests. The rules that apply with respect to interests acquired in potentially abusive tax shelters on or before February 28, 2000, are contained in 26 CFR part 301 revised as of April 1, 1999.

Special Analyses

It has been determined that this Treasury decision 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 persons responsible for maintaining the investor lists described in the regulations are principally large publicly traded corporations and the burden is not significant, as described in the preamble. 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, these temporary regulations 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 Mary Beth Collins and Richard Castanon, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. 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 301.6112–1T also issued under 26 U.S.C. 6112.* * *

Par. 2. Section 301.6112–1T is amended as follows:

1. The last sentence of A-3 is revised.
2. A-4 is revised.
3. Two sentences are added at the end of A-5.
4. A sentence is added at the end of A-7.
5. Paragraph (c) of A-8 is revised.
6. The first sentence of A-9 is removed and two new sentences are added in its place.
7. The second sentence of the introductory text of A-11 is revised.
8. Paragraphs (a) and (b) of A-13 are revised.
9. A-14 is revised.
10. The first sentence of the introductory text of A-15 is revised.
11. A-17 is revised.
12. Two sentences are added at the end of A-18.
13. A-22 is revised.

The additions and revisions read as follows:

§301.6112–1T Questions and answers relating to the requirement to maintain a list of investors in potentially abusive tax shelters (temporary).

* * * * *

A-3. * * * See §301.6111–1T for rules relating to tax shelter registration and §301.6111–2T for rules relating to confidential corporate tax shelter registration.

* * * * *

A-4. (a) Yes. For purposes of the list requirement, a tax shelter includes any tax shelter that is a projected income investment, as defined in A-57A of §301.6111–1T, and any transaction a significant purpose of the structure of which is the avoidance or evasion of Federal income tax within the meaning of section 6111(d)(1)(A) and §301.6111–2T(b). For this purpose, as under §301.6111–2T, the term *transaction* includes all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, including any series of related steps carried out as part of a prearranged plan.

(b) Section 301.6111–2T provides a procedure for obtaining rulings as to whether a transaction is subject to registration under §301.6111–2T. The same procedure shall be available to a person who is uncertain whether a transaction constitutes a tax shelter for which a list must be maintained under this section. The requirement to make a list which contains the information required by this section available for inspection by the Secretary shall be suspended during the period that such ruling request is pending and for sixty days thereafter; however, if it is ultimately determined that the transaction is a tax shelter, the pendency of such a ruling request shall not affect the requirement to maintain the list or limit the participants required to be included on the list or the other information required to be included as part of the list.

* * * * *

A-5. * * * An organizer also includes a promoter described in section 6111(d)(2). Under section 6111(d)(2), a promoter is any person who participates in the organization, management, or sale of the tax shelter or any related person (within the meaning of section 267 or 707).

* * * * *

A-7. * * * In addition, in any case in which a person has directly or indirectly paid consideration to an organizer or seller for the right to participate in a tax shelter, for services necessary to the organization or structure of such tax shelter, or for information that is integral to participation in such tax shelter, the participant shall be considered to have acquired an interest in the tax shelter and to have been sold an interest in the tax shelter by the organizer or seller.

* * * * *

A-8. * * * (c) Any transfer of an interest made by or through a person related (as defined in section 465(b)(3)(C)) to the organizer or the tax shelter (provided the organizer is involved in the tax shelter on the date of the transfer);

* * * * *

A-9. An organizer has a duty to make a reasonable inquiry only with respect to transfers of interests in the tax shelter made by a seller described in paragraph (a) of A-6 of this section who acquired the interests from the organizer or a person related (as defined in section 465(b)(3)(C)) to the organizer, or the tax

shelter or a person related (as defined in section 465(b)(3)(C)) to the tax shelter (provided the organizer is involved in the tax shelter on the date the interest is transferred to the seller). See Q&A-8 of this section. * * *

* * * * *

A-11. * * * Organizers and sellers may not designate one person to maintain a list for the tax shelter, however, unless the tax shelter is timely and properly registered under section 6111 or unless the tax shelter is described in Q&A-4 of this section.* * *

* * * * *

A-13. (a) If the tax shelter is required to be registered under section 6111 at the time an agreement under A-12 of this section is signed, a seller or an organizer who signs the agreement shall not be subject to penalty under section 6708 for failing to maintain a list provided that the seller or organizer—

(1) Submits to the designated person all of the information that the organizer or seller otherwise would be required to maintain on a list (as described in A-8, A-10, and A-17 of this section); and

(2) Provides to each investor (within the meaning of paragraph (c) of A-6 of this section) otherwise required to be included on a list maintained by such organizer or seller a notice in the form prescribed in paragraph (c) of this A-13.

(b) If the tax shelter is described in A-4 of this section at the time an agreement under A-12 of this section is signed, a seller or an organizer who signs the agreement shall not be subject to penalty under section 6708 for failing to maintain a list provided that the seller or organizer submits to the designated person all of the information that the organizer or seller otherwise would be required to maintain on a list (as described in A-8, A-10, and A-17 of this section). If the tax shelter ceases to be a projected income investment under A-57G of §301.6111–1T, or the tax shelter becomes subject to the registration requirements under section 6111, the designated person must provide to each investor (within the meaning of paragraph (c) of A-6 of this section) required to be included on the list an explanation that the tax shelter has ceased to be projected income investment or that the tax shelter is subject to the registration requirements of section 6111, whichever applies, and a notice substantially in the form prescribed in paragraph (c) of this A-13.

* * * * *

A-14. Yes. Any seller described in paragraph (a) of A-6 of this section who does not sign a designation agreement under A-12 of this section (including organizers who are such sellers) with respect to a tax shelter that is required to be registered under section 6111 must provide a notice to all investors (within the meaning of paragraph (c) of A-6 of this section) who acquire interests in the tax shelter from the seller. The notice must be substantially in the form prescribed in paragraph (c) of A-13 of this section except that the notice must include the name and address of the designated person. In the case of a tax shelter described in A-4 of this section, a notice to investors need not be provided until such time, if any, as the tax shelter ceases to be a projected income investment under A-57G of §301.6111–1T, or the tax shelter becomes subject to the registration requirements under section 6111. In such a case, the seller shall provide, with the notice, an explanation that the tax shelter has ceased to be a projected income investment, or that the tax shelter has otherwise become subject to the registration requirements under section 6111, whichever applies.

* * * * *

A-15. An investor who retransfers an interest in a tax shelter that is described in A-4 of this section, is not required to maintain a list with respect to the retransfer unless prior to the retransfer the tax shelter ceases to be a projected income investment under A-57G of §301.6111–1T or otherwise becomes subject to the registration requirements under section 6111.

* * * * *

A-17. (a) A list must contain the following information—

(1) The name of the tax shelter and the registration number, if any, obtained under section 6111;

(2) The TIN (as defined in section 7701(a)(41)), if any, of the tax shelter;

(3) The name, address, and TIN (as defined in section 7701(a)(41)) of each person who is required to be included on the list under A-8 or A-10 of this section and, in the case of a tax shelter that is a transaction described in section 6111(d)(1)(A) and §301.6111–2T(b), the name, address, and TIN of any indirect corporate participant in the shelter if known to the organizer or seller;

(4) If applicable, the number of units (i.e., percentage of profits, number of shares, etc.) acquired by each person who is required to be included on the list;

(5) The date on which each interest was acquired;

(6) The amount of money invested in the tax shelter by each person required to be included on the list under A-8 or A-10 of this section;

(7) A detailed description of the tax shelter that describes both the structure of the tax shelter and the intended tax benefits for participants in the tax shelter;

(8) A summary or schedule of the tax benefits that each person is intended or expected to derive from participation in the tax shelter, if known by the organizer or seller;

(9) Copies of any additional written materials, including tax analyses or opinions, relating to the tax shelter that have been given to any potential participants in the tax shelter or to any representatives, tax advisors, or agents of such potential participants by the organizer or seller or by any other person who has participated in the offering of the tax shelter (excluding any written materials that the organizer or seller has never possessed);

(10) If the interest was not acquired from the person maintaining the list, the name of the person from whom the interest was acquired; and

(11) The name and address of each agent of the person maintaining the list who is described in paragraph (b) of A-6 of this section.

(b) In any case in which an organizer or a seller of a potentially abusive tax shelter believes that information required to be maintained as part of the list for that tax shelter is protected by the attorney-client privilege or constitutes confidential tax advice protected under section 7525(a), such information may be withheld from disclosure to the Service, provided that the organizer or seller provides the Service with a statement signed under penalties of perjury with information and representations required in that statement that are the same as those required by §301.6111–2T if the promoter of a confidential corporate tax shelter asserts that information required to be included with Form 8264, "Application for Registration

of a Tax Shelter," is privileged.
* * * * *

A-18. * * * Interests in substantially similar tax shelter transactions that are sold to different persons generally are to be treated as interests in the same tax shelter for purposes of this section. Further, the list for each tax shelter must identify each other tax shelter (if any) that the organizer or seller has offered that has not been treated as part of the same tax shelter, but that utilizes a similar structure or is intended to produce similar tax benefits.
* * * * *

A-22. An organizer or seller must maintain a list with respect to any interest acquired by an investor (within the meaning of paragraph (c) of A-6 of this section) in a potentially abusive tax shelter after February 28, 2000. If a transaction becomes a potentially abusive tax shelter after interests are acquired by investors, an organizer or a seller must maintain a list with respect to any interest in the transaction acquired after the transaction becomes a potentially abusive tax shelter. Additionally, the Internal Revenue Service will not ask to inspect any list for a potentially abusive tax shelter, other than a tax shelter described in section 6111(c), until August 26, 2000. The lists required by the preceding two sentences with regard to interests acquired in potentially abusive tax shelters must contain the information required by A-17 of this section as it relates to such interests. The rules that apply with respect to interests acquired in potentially abusive tax shelters acquired on or before February 28, 2000, are contained in 26 CFR part 301 revised as of April 1, 1999.

Par. 3. In §602.101, paragraph (b) is amended by revising the entry for §301.6112–1T to read as follows:
§602.101 OMB Control numbers.
* * * * *

(b) * * *

CFR Part or Section Where Identified and Described	Current OMB Control No.
* * * * *	
301.6112–1T	1545–0865 1545-1686
* * * * *	

Charles O. Rossotti,
Commissioner of Internal Revenue.

Approved February 23, 2000.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on February 28, 2000, 8:45 a.m. , and published in the issue of the Federal Register for March 2, 2000, 65 F.R. 11211)

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.(Also Part I, §§412, 4971.)

Rev. Proc. 2000–17

Section 1. Purpose

This revenue procedure provides for a waiver of the 100 percent tax imposed under § 4971(b) of the Internal Revenue Code (the "Code") on an employer who maintains a pension plan for which there is an accumulated funding deficiency under § 412. The waiver is applicable to certain terminated single-employer defined benefit plans if specific conditions are satisfied.

Section 2. Background

.01 Section 4971(a) provides for the imposition of an initial tax of ten percent (five percent in the case of a multiemployer plan) on the amount of the accumulated funding deficiency under a plan as determined under § 412.

.02 Section 4971(b) provides for an additional tax equal to 100 percent of any uncorrected accumulated funding deficiency on which an initial tax is imposed under § 4971(a).

.03 Section 3002(b) of the Employee Retirement Income Security Act of 1974 ("ERISA"), Pub. L. 93–406, 1974–3 C.B. 166, provides that the Secretary of the Treasury may waive the imposition of the tax imposed under § 4971(b) of the Code in appropriate cases.

.04 Rev. Rul. 79–237, 1979–2 C.B. 190, provides that in the year of termination of a plan, the tax imposed by § 4971(b) applies unless the accumulated funding deficiency, as of the end of the plan year in which the plan is terminated, is reduced to zero.

.05 Rev. Proc. 81–44, 1981–2 C.B. 618, outlines the procedure for requesting a waiver of the tax imposed under § 4971(b).

Section 3. Conditions for Waiver

The tax imposed on an employer under § 4971(b) for failure to meet the minimum funding standards with respect to a defined benefit plan is waived for all applicable years, if the four conditions enumerated below are satisfied:

.01 The plan is subject to Title IV of ERISA and is terminated in a standard termination under section 4041 of ERISA.

.02 Plan participants are not entitled to any portion of residual assets remaining after all liabilities of the plan to participants and their beneficiaries have been satisfied.

.03 Excise taxes that have been or could be imposed under § 4971(a) of the Code have been paid for all taxable years, including the taxable year related to the year of plan termination.

.04 All applicable forms in the 5500 series, including Schedules B (Actuarial Information), have been filed for the plan for all plan years including the year of plan termination.

Section 4. Effective Date

This procedure applies to the excise taxes under § 4971(b) of the Code with respect to plans terminating with termination dates under section 4041 of ERISA that occur on or after January 1, 2000.

Drafting Information

The principal author of this revenue procedure is Bill Kerr of the Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, call Employee Plans Taxpayer Assistance at (202) 622-6076 (not a toll free number) between 2:30 and 3:30 Eastern time, Monday through Thursday. Mr. Kerr's number is (202) 622-8055 (also not a toll free number).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Corporate Tax Shelter Registration

REG–110311–98

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cross-reference notice of proposed rulemaking and notice of public hearing.

SUMMARY: In T.D. 8876, page 753, the IRS is issuing temporary regulations requiring the registration of confidential corporate tax shelters pursuant to section 6111(d) as amended by section 1028(a) of the Taxpayer Relief Act of 1997 (the Act). The temporary regulations affect persons responsible for registering confidential corporate tax shelters and corporations participating in confidential corporate tax shelters. The text of those temporary regulations also serves as the text of these proposed regulations. This document also gives notice of a public hearing on this subject.

DATES: Written comments must be received by May 31, 2000. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Tuesday, June, 20, 2000, from 10 a.m. through 1 p.m. must be received by May 31, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–110311–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–110311–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. A public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Richard Castanon or Mary Beth Collins, (202) 622-3070; concerning submissions and the hearings, Guy Traynor, (202)622-7180.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have 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 collections 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, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by May 1, 2000. Comments are specifically requested concerning:

Whether the proposed collections 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 collections of information in this proposed regulation are in §301.6111–2T(b)(6), (e)(1)(ii)(A), (e)(2), (e)(3), (g)(2)(ii) and (g)(2)(iii). This information is required to comply with the registration requirements of section 6111(d) and to avoid the penalty provisions of section 6707 for failing to register a confidential corporate tax shelter. This information will be used to ensure compliance with the Federal tax laws. The collections of information are mandatory. The likely respondents and recordkeepers are business or other for-profit institutions.

The burden for the collection of information in §301.6111–2T(b)(6), (e)(1)(ii)(A), (e)(2), and (e)(3) will be reflected on Form 8264. The burden for the collection of information in §301.6111–2T(g)(2)(ii) and (iii) is as follows:

Estimated total annual reporting and/or recordkeeping burden: 1 hour.

Estimated average annual burden hours per respondent and/or recordkeeper: 15 minutes

Estimated number of respondents and/or recordkeepers: 4

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

The temporary regulations amend the Income Tax Regulations (26 CFR part 1) relating to section 6111. These regulations provide the guidance necessary to activate the registration requirements of section 6111 and the penalty provisions of section 6707 for confidential corporate tax shelters.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

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 has also 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 the persons responsible for promoting and registering the transactions described in the regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. 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 Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand.

Further, the IRS and Treasury specifically request comments on (1) the scope and breadth of the characteristics used in the proposed regulations to identify transactions structured for the avoidance or evasion of Federal income tax; (2) the exceptions to registration provided for in the proposed regulations; and (3) whether particular types of transactions should be identified as excepted from registration. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 20, 2000, from 10 a.m. through 1 p.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 1111 Constitution Avenue entrance, located between 10th and 12th streets. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 31, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Assistant 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 is amended by adding an entry in numerical order to read in part as follows:

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

Section 301.6111–2T also issued under 26 U.S.C. 6111(f)(4). * * *

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

§301.6111–2 Confidential corporate tax shelters.

[The text of this proposed section is the same as the text of §301.6111–2T published elsewhere in T.D. 8876.]

Charles O. Rossotti,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on February 28, 2000, 8:45 a.m. , and published in the issue of the Federal Register for March 2, 2000, 65 F.R. 11272)

Notice of Proposed Rulemaking and Notice of Public Hearing

Requirement to Maintain List of Investors in Potentially Abusive Tax Shelters

REG– 103736–00

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cross-reference notice of proposed rulemaking and notice of public hearing.

SUMMARY: In T.D. 8875, page 761, the IRS is issuing temporary regulations requiring the maintenance of lists of investors in potentially abusive tax shelters described in section 6112. The temporary regulations affect organizers of potentially abusive tax shelters. The text of those temporary regulations also serves as the text of these proposed regulations. This document also gives notice of a public hearing on this subject.

DATES: Written comments, requests to speak and outlines of topics to be discussed at the public hearing scheduled for Tuesday, June, 20, 2000, from 10 a.m. through 1 p.m. must be received by May 31, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–103736–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–103736–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. A public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Richard Castanon or Mary Beth Collins, (202) 622-3070; concerning submissions and the hearings, Guy Traynor, (202) 622-7180.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have 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 collections 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, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by May 1, 2000. Comments are specifically requested concerning:

Whether the proposed collections of information is necessary for the proper performance of the functions of the IRS, 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 collections of information in this proposed regulation are in §301.6112–1T, A-4, A-13, A-14, A-17, and A-22. This information is required to comply with the list maintenance requirement of section 6112 and to avoid the penalty provisions of section 6708 for failing to maintain the investor list under section 6112. This information will be used to ensure compliance with the Federal tax laws. The collections of information are mandatory. The likely respondents and recordkeepers are business or other for-profit institutions.

Estimated total annual reporting and/or recordkeeping burden: 102 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 2.04 hours

Estimated number of respondents and/or recordkeepers: 50

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

The temporary regulations amend temporary Procedure and Administration regulations (26 CFR Part 301) regarding the requirement to maintain lists of investors in potentially abusive tax shelters under section 6112. Section 6708 provides penalties for failing to maintain the investor list under section 6112.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

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 has also 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 the persons responsible for maintaining the investor lists described in the regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. 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 Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 22, 2000, from 10 a.m. to 1 p.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 1111 Constitution Avenue entrance, located between 10th and 12th Streets. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 31, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Assistant 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, which was proposed to be amended, is proposed to be further amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. 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 301.6112–1 also issued under 26 U.S.C. 6112. * * *

Par. 2. Section 301.6112–1 as proposed at 49 FR 34246 (August 29, 1984) is amended as follows:

§301.6112–1 Questions and answers relating to the requirement to maintain a list of investors in potentially abusive tax shelters.

[The text of the amendments to this proposed section is the same as the text of the amendments to §301.6112–1T published elsewhere in T.D. 8875.]

Charles O. Rossotti,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on February 28, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 2, 2000, 65 F.R. 11271)

Notice of Proposed Rulemaking and Notice of Public Hearing

Tax Shelter Disclosure Statements

REG–103735–00

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cross-reference notice of proposed rulemaking and notice of public hearing.

SUMMARY: In T.D. 8877, page 747, the IRS is issuing temporary regulations requiring certain corporate taxpayers to file a statement under section 6011 and maintain certain documents under section 6001. The temporary regulations affect corporations participating in certain reportable transactions. The text of those temporary regulations also serves as the text of these proposed regulations. This document also gives notice of a public hearing on this subject.

DATES: Written comments, requests to speak and outlines of topics to be discussed at the public hearing scheduled for Tuesday, June, 20, 2000, from 10 a.m. through 1 p.m. must be received by May 31, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–103735–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–103735–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. A public hearing will be held at 10 a.m. on Tuesday, June 20, 2000, in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Richard Castanon or Mary Beth Collins, (202) 622-3070; concerning submissions and the hearings, Guy Traynor, (202) 622-7180.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have 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 collections 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, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by May 1, 2000. Comments are specifically requested concerning:

Whether the proposed collections 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 collections of information in this proposed regulation are in §1.6011–4T(a), (c), (d), and (e). This information is required to provide the Service with notice of certain large corporate transactions that provide tax savings in excess of certain dollar thresholds. This information will be used to ensure compliance with the Federal tax laws. The collections of information are mandatory. The likely respondents and recordkeepers are business or other for-profit institutions.

Estimated total annual reporting and/or recordkeeping burden: 25 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 30 minutes

Estimated number of respondents and/or recordkeepers: 50

Estimated annual frequency of responses: Once annually

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

The temporary regulations amend the Income Tax regulations (26 CFR part 1) relating to section 6011. The temporary regulations contain rules relating to the

filing and records requirements for certain corporate taxpayers.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

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 has also 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 the persons responsible for filing the statement required by these regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. 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 Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand.

Further, the IRS and Treasury specifically request comments on (1) the scope and breadth of the characteristics used in the proposed regulations to identify reportable transactions; (2) the exceptions to disclosure provided for in the proposed regulations; and (3) whether particular types of transactions should be identified as excepted from disclosure. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 20, 2000, from 10 a.m. through 1 p.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 1111 Constitution Avenue entrance, located between 10th and 12th streets. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 31, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Assistant 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 1 is 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 added to read as follows:

§1.6011–4T Requirement of statement disclosing participation in certain transactions by corporate taxpayers.

[The text of this proposed section is the same as the text of §1.6011–4T published in T.D. 8877.]

Charles O. Rossotti,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on February 28, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 2, 2000, 65 F.R. 11269)

Adjustments Following Sales of Partnership Interests; Correction

Announcement 2000–13

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to T.D. 8847 (1999–52 I.R.B. 701), which was published in the **Federal Register** on Wednesday, December 15, 1999 (64 F.R. 69903), relating to adjustments following the sale of partnership interests.

DATES: These corrections are effective December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Matthew Lay, (202) 622-3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 743, 754, and 755 of the Internal Revenue Code.

Need for Correction

As published, T.D. 8847 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8847), which were the subject of FR Doc. 99–32400, is corrected as follows:

1. On page 69904, column 1, in the preamble under the paragraph heading "Explanation of Revisions and Summary

of Contents", paragraph 1.(c), the last line, the language "after December 15, 1999." is corrected to read "on or after December 15, 1999.".

2. On page 69905, column 2, in the preamble under the paragraph heading "*4. Elections Under Section 754*", lines 9 and 10, the language "previously were made, the IRS and Treasury believe that it is appropriate to" is corrected to read "previously were made, the IRS and the Treasury Department believe that it is appropriate to".

3. On page 69906, column 2, in the preamble under the paragraph heading "Special Analyses", the paragraph is corrected to read as follows:

"It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that a final regulatory flexibility analysis is required for the collection of information in this Treasury decision under 5 U.S.C. 604. This analysis is set forth below under the heading "Final Regulatory Flexibility Act Analysis." Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received regarding the impact of the regulations on small business."

4. On page 69906, column 2, in the preamble, the paragraph heading "Summary of Final Regulatory Flexibility Act Analysis" is corrected to read "Final Regulatory Flexibility Act Analysis."

§1.743–1 [Corrected]

5. On page 69912, column 1, §1.743–1(h)(2)(iv), line 3 of the introductory text, the language "paragraph (h):" is corrected to read "paragraph (h)(2):".

6. On page 69912, column 1, §1.743–1(h)(2)(iv), the last sentence of paragraph (ii) in the *Example* is corrected to read as follows:

§1.743–1 Optional adjustment to basis of partnership property.

* * * * *

(h) * * *

(2) * * *

(iv) * * *

Example. * * *

(ii) * * * Under paragraph (h)(2)(i) of this section, X's basis in Asset 1 equals $90 (PRS's common basis in the asset, $60, plus the gain recognized by PRS under section 351(b)(1), $15, plus A's basis adjustment under section 743(b), $20, less the portion of the adjustment which reduced A's gain, $5).

* * * * *

§1.754–1 [Corrected]

7. On page 69916, column 2, §1.754–1(c)(2), the paragraph heading "*Revocations made for first taxable year ending after December 15, 1999.*" is corrected to read "*Revocations effective on December 15, 1999.*".

8. On page 69916, column 2, §1.754–1(c)(2), line 7, the language "15, 1999, may revoke such election by" is corrected to read "15, 1999, may revoke such election effective for transfers or distributions occurring on or after December 15, 1999, by".

§1.755–1 [Corrected]

9. On page 69917, column 2, §1.755–1(b)(2)(ii) *Example 2*. (iii), the third line from the bottom of the column, the language "743(b), less ($125), amount of the basis" is corrected to read "743(b), less ($125), the amount of the basis".

Cynthia E. Grigsby,
Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on February 23, 2000, 8:45 a.m., and published in the issue of the Federal Register for February 24, 2000, 65 F.R. 9220)

Announcement 2000–14

Supplemental Information on Treasury Bills for Publication 1212

Banks, brokers, and other middlemen who report discount on Treasury bill redemptions on Form 1099-INT must use the owner's purchase price, where available, to determine the amount of discount to report. This information can usually be obtained from the owner's or middleman's records. However, if the owner's purchase price is not available from existing records, the middleman must report the discount as if the holder had purchased the Treasury bill at its original issue price. In this case, the middleman must use as the original issue price the noncompetitive issue price for the longest-maturity Treasury bill maturing on that date.

For Treasury bill redemptions when the owner's purchase price *cannot* be determined, the following list gives the noncompetitive issue prices and corresponding amounts of discount to be reported on Form 1099-INT for Treasury bills maturing May through July 2000. This list, which should also help middlemen determine any amounts subject to backup withholding, supplements the list that appears in 1999 edition of Publication 1212, *List of Original Issue Discount Instruments.*

Approved February 16, 2000.

Rosalie LaPlante,
Acting National Director, Tax Forms and Publications Division.

SHORT-TERM UNITED STATES TREASURY BILLS
Issued at a Discount and Maturing May 2000 – July 2000

	CUSIP Number	Maturity Date	Issue Date	Noncompetitive Issue Price (% of Principal Amount) (Single-price format as of November 2, 1998)	Dollar Amount of OID to be Reported (per $1000 of Maturity Value)
	912795DU2	05/04/2000	11/04/1999	97.427	25.73
	912795DV0	05/11/2000	11/12/1999	97.426	25.74
	912795DW8	05/18/2000	11/18/1999	97.364	26.36
*	912795DX6	05/25/2000	05/27/1999	95.319	46.81
	912795DY4	06/01/2000	12/02/1999	97.305	26.95
	912795DZ1	06/08/2000	12/09/1999	97.326	26.74
	912795EA5	06/15/2000	12/16/1999	97.265	27.35
*	912795EB3	06/22/2000	06/24/1999	95.056	49.44
	912795EC1	06/29/2000	12/30/1999	97.217	27.83
	912795ER8	07/06/2000	01/06/2000	97.176	28.24
	912795ET4	07/13/2000	01/13/2000	97.260	27.40
*	912795ED9	07/20/2000	07/22/1999	95.238	47.62
	912795EU1	07/27/2000	01/27/2000	97.209	27.91

* 52 week bill

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 law 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 the 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 Contribution 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.—Statements of Procedral 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.
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