

 Fact Sheet

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IRS Settlement Initiative

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The Internal Revenue Service today announced a settlement initiative for taxpayers to resolve their tax disputes with the IRS over certain abusive tax avoidance transactions. The initiative is open until January 23, 2006.

The settlement program, described in Announcement 2005-80, provides a onetime opportunity for taxpayers voluntarily to come forward and resolve their civil tax disputes over sixteen listed and five other potentially abusive transactions. Under the initiative, taxpayers would concede the improper tax benefits they claimed and be provided some tax relief for transaction costs and civil penalties.

This initiative is available for taxpayers both known and unknown to the IRS.

A. Program Fundamentals. The twenty-one transactions can be divided into three groups:

1. Group 1—Six Listed Transactions.
2. Group 2—Ten Listed Transactions
3. Group 3—Five Other Transactions.

Groups 1 and 2 include 16 of the current 31 abusive transactions listed by the IRS. The only difference between the groups, as described below, is the penalty level required to participate. The remaining 15 listed transactions are excluded from the Settlement for a variety of reasons such as (a) the IRS has previously done a settlement initiative on the transaction; or (b) the listed transaction is dormant and all cases are closed.

Group 3 covers five transactions that the IRS is concerned about but have not been formally listed. Notices have been issued regarding intellectual property transfers to charities and conservation easements advising taxpayers that, depending on the format and structure of the transaction, in appropriate cases the IRS will challenge these transaction.

The attachment identifies all the transactions covered by the three groups.

B. Settlement Initiative Terms. Participation in the Settlement Initiative requires:

- 1. Transaction Merits.** The taxpayer must concede 100% of the transaction's tax benefits.
- 2. Transaction Costs.** The taxpayer will be allowed to treat as an ordinary loss the full transaction costs claimed on the tax return, including promoter and professional fees.
- 3. Penalties.** A penalty of a quarter of the maximum applicable penalty (which in most cases would be 20% of the tax, but in certain cases would be 40%) will be paid on Group 2 and 3 transactions. For Group 1 transactions, the penalty will be half of the maximum.

No penalty will be due if the taxpayer:

(a) Made a voluntary disclosure under the program described in Announcement 2002-2;

or

(b) Got a written tax opinion before filing the tax return that:

- Was not a opinion that was part of the package sold by the promoter, but was given by a tax adviser meeting certain tests, **and**
- Was a “more likely that not” opinion, that is, it concluded at a confidence level greater than 50% that the significant tax issues would be resolved in the taxpayer’s favor.

C. Settlement Procedures. The taxpayer will file an Election Form with the IRS indicating an intent to participate, which would include required information necessary to determine eligibility and calculate the taxes, interest and applicable penalties. The Form must be sent to a specified IRS address with a copy sent to the examining agent or Appeals officer if the taxpayer is under audit or at Appeals.

Full payment (or a payment plan acceptable to the Service) of all taxes, interest and penalties will be required as a condition to settling and executing a closing agreement with the IRS.

D. Other Dispute Resolution Procedures. The settlement initiative will not affect conventional IRS resolution procedures available to taxpayers, either with Compliance (exam), Appeals Fast Track or the traditional Appeals review process. For eligible taxpayers that forgo the settlement initiative and take their issues to Appeals, Appeals will carefully consider both the issue merits and the penalty but the taxpayer should not expect to receive a better offer in Appeals than that offered by the settlement initiative and may in fact have a less favorable outcome.

IRS Fact Sheet Attachment
Settlement Initiative
Eligible Transactions

Group 1--Listed Transactions (Penalty= $\frac{1}{2}$ of the Maximum)

Notice 2002-21, 2002-1 C.B. 730, Tax Avoidance Using Inflated Basis (20%);
Notice 2001-16, 2001-1 C.B. 730, Intermediary Transactions (20%);
Notice 2003-55, 2003-2 C.B. 395, Lease Strips (10% except 20% for Transactions involving Losses Reported from Inflated Basis);
Notice 2003-81, 2003-2 C.B. 1223, Tax Avoidance Using Offsetting Foreign Currency Contracts (10%); and
Notice 2003-54, 2003-2 C.B. 363, Common Trust Fund Straddle Tax Shelter (10%).
Notice 99-59, 1999-2 C.B. 761, Distributions of Encumbered Property (10%);

Group 2--Listed Transactions (Penalty= $\frac{1}{4}$ of the Maximum)

Rev. Rul. 2004-20, 2004-1 C.B. 546, Situation 2 (5%) (and including the non-listed Situation 1 and Rev. Rul. 2004-21, 2004-1 C.B. 544);
Rev. Rul. 2004-4, 2004-1 C.B. 414, ESOP-owned S corporation (5%);
Notice 2004-8, 2004-1 C.B. 333, Abusive Roth IRA Transactions (5%);
Notice 2003-77, 2003-2 C.B. 1182, Contested Liabilities (5%);
Notice 2003-24, 2003-1 C.B. 853, Welfare Benefit Funds under § 419A(f)(5) (5%);
Rev. Rul. 2003-6, 2003-1 C.B. 286, ESOPs holding stock in an S corporation (5%);
Notice 2000-60, 2000-2 C.B. 568, Stock Compensation (5%);
Rev. Rul. 2000-12, 2000-1 C.B. 744, Debt Straddles (5%);
Treas. Reg. § 1.643(a)-8, Distributions by Charitable Remainder Trusts (5%); and
Notice 95-34, 1995-1 C.B. 309, Certain Trust Arrangements Seeking Exemption from Section § 419 (5%).

Group 3--Other Transactions (Penalty= $\frac{1}{4}$ of the Maximum)

Certain Abusive Conservation Easements (see Notice 2004-41, 2004-28 I.R.B. 31) (5%);
Certain Abusive Donations of Patents and Other Intellectual Property (see Notice 2004-7, 2004-1 C.B. 310) (5%);
Rev. Rul. 2004-98, 2004-42 I.R.B. 664, Reimbursements for Employee Parking (5%);
Rev. Rul. 2002-3, 2002-1 C.B. 316; Rev. Rul. 2002-80, 2002-2 C.B. 925, Reimbursements of employees' medical expenses (5%); and Management S Corporation/ESOP Transactions (5%).