

IRS News Release

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IRS, Treasury Issue Guidance on New Penalties on Potentially Abusive Transactions

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WASHINGTON – The Treasury Department and the Internal Revenue Service today issued interim guidance on two new penalty provisions enacted as part of the American Jobs Creation Act of 2004.

The American Jobs Creation Act creates a new penalty for the failure to disclose information about “reportable transactions,” which are transactions that the Treasury Department and IRS have determined to be potentially abusive. Notice 2005-11 provides interim guidance regarding application of this penalty to taxpayers who are required to disclose reportable transactions.

“Up to this point, there were no monetary penalties for failing, when required, to disclose these transactions,” said IRS Commissioner Mark W. Everson. “This provision puts teeth in the regulatory scheme.”

In addition, the Act creates a new penalty if a taxpayer understates its tax liability relating to a reportable transaction. A higher penalty will apply if a taxpayer does not adequately disclose the facts of the reportable transaction. If the taxpayer discloses the transaction, the penalty may be avoided if the taxpayer had reasonable cause and acted in good faith. Notice 2005-12 provides interim guidance to taxpayers regarding these provisions, including when a taxpayer may rely on the advice of a tax advisor to establish reasonable cause and good faith.

Both Notice 2005-11 and Notice 2005-12 invite comments from the public regarding rules and standards under these new provisions.