

Instructions for Form 8886

(March 2003)



Department of the Treasury
Internal Revenue Service

Reportable Transaction Disclosure Statement

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

Purpose of Form

Use Form 8886 to disclose information for each reportable transaction in which you participated. See **Participation in a Reportable Transaction** below to determine if you participated in a reportable transaction.

The form applies to transactions entered into after December 31, 2002. However, these instructions are based on Regulations section 1.6011-4, which applies to transactions entered into after February 27, 2003. For transactions entered into after December 31, 2002, and before February 28, 2003, you may either follow these instructions or the rules of Temporary Regulations section 1.6011-4T (T.D. 9017, 2002-45 I.R.B. 815). For transactions entered into prior to January 1, 2003, see your tax return instructions for the disclosure requirements.

Generally, you must file a separate Form 8886 for each reportable transaction. However, you may report more than one transaction on one form if the transactions are the same or substantially similar. See the definition of substantially similar below.

The fact that a transaction must be reported on this form does not mean the tax benefits from the transaction will be disallowed.

Who Must File

Any taxpayer, including an individual, trust, estate, partnership, S corporation, or other corporation, that participates in a reportable transaction and is required to file a Federal income tax return or information return must file Form 8886. However, a regulated investment company (RIC) (as defined in section 851) or an investment vehicle that is at least 95% owned by one or more RICs at all times during the course of a transaction is not required to file Form 8886 for any transaction other than a listed transaction (as defined below).

Definitions

Transaction

A transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement and it includes any series of steps carried out as part of a plan.

Substantially Similar

A transaction is substantially similar to another transaction if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. See Regulations section 1.6011-4(c)(4) for examples.

Participation in a Reportable Transaction

A reportable transaction is a transaction described in one or more of the following six categories.

Listed Transactions

This category includes transactions that are the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction. These transactions are identified by notice, regulation, or other form of published guidance as a listed transaction. For existing guidance see:

- Notice 2001-51, 2001-34 I.R.B. 190
- Notice 2002-21, 2002-14 I.R.B. 730
- Notice 2002-35, 2002-21 I.R.B. 992
- Notice 2002-50, 2002-28 I.R.B. 98
- Rev. Rul. 2002-46, 2002-29 I.R.B. 117
- Notice 2002-65, 2002-41 I.R.B. 690
- Notice 2002-70, 2002-44 I.R.B. 765
- Rev. Rul. 2003-6, 2003-3 I.R.B. 286

The listed transactions in the above notices and rulings will be updated in future issues of the Internal Revenue Bulletin. You can find a notice or ruling in the Internal Revenue Bulletin at www.irs.gov/pub/irs-irbs/irbXX-YY.pdf, where XX is the two-digit year and YY is the two-digit bulletin number. For example, you can find Notice 2001-51, 2001-34 I.R.B. 190, at www.irs.gov/pub/irs-irbs/irb01-34.pdf.

You have participated in a listed transaction if your tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction or if you know or have reason to know that tax benefits reflected on your tax return are derived directly or indirectly from such tax consequences or tax strategy.

Confidential Transactions

This category includes transactions that are offered to you under conditions of confidentiality. Generally, the transaction is considered offered under conditions of confidentiality if:

- Your disclosure of the tax treatment or tax structure of the transaction is limited in any way by an express or implied understanding or agreement (whether or not legally binding) with or for the benefit of any person who makes or provides a statement, oral or written, to you concerning the potential tax consequences resulting from the transaction or
- You know or have reason to know that your use or disclosure of information relating to the tax treatment or tax structure of the transaction is limited in any other way for the benefit of any other person who makes or provides a statement, oral or written, to you concerning the potential tax consequences resulting from the transaction.

A transaction is not considered offered under conditions of confidentiality if limits on disclosure of the tax treatment or tax structure of the transaction are reasonably necessary to comply with securities laws and disclosure is not otherwise limited. For an exception in the case of certain mergers and acquisitions, see Regulations section 1.6011-4(b)(3)(ii)(B).

You have participated in a confidential transaction if your tax return reflects a tax benefit from the transaction. If disclosure by a pass-through entity (partnership, S corporation, or trust) is limited, but disclosure by the partner, shareholder, or beneficiary is not limited, then the pass-through entity (but not the partner, shareholder, or beneficiary) has participated in the confidential transaction.

Transactions With Contractual Protection

This category includes transactions for which you have, or a related party (as described in sections 267(b) or 707(b)) has, the right to a full refund or partial refund of fees if all or part of the intended tax consequences from the transaction are not sustained. It also includes a transaction for which fees are contingent on your realization of tax benefits from the transaction. For exceptions and other details, see Regulations section 1.6011-4(b)(4).

You have participated in a transaction with contractual protection if your tax return reflects a tax benefit from the transaction. If a pass-through entity (partnership, S corporation, or trust) has the right to a full or partial refund of fees or has a contingent fee arrangement, but the partner, shareholder, or beneficiary individually does not, then the pass-through entity (but not the partner, shareholder, or beneficiary) has participated in the transaction with contractual protection.

Loss Transactions

This category includes transactions that result in your claiming a loss under section 165 (described below) if the gross amount of the loss (before netting any gain against it) is:

For individuals. At least \$2 million in any single tax year or \$4 million in any combination of tax years. (At least \$50,000 for a single tax year if the loss arose from a section 988 transaction defined in section 988(c)(1) (relating to foreign currency transactions), whether or not the loss flows through from an S corporation or partnership).

For corporations (other than S corporations). At least \$10 million in any single tax year or \$20 million in any combination of tax years.

For partnerships with only corporations (other than S corporations) as partners (looking through any partners that are also partnerships). At least \$10 million in any single tax year or \$20 million in any combination of tax years, whether or not any losses flow through to one or more partners.

For all other partnerships and S corporations. At least \$2 million in any single tax year or \$4 million in any combination of tax years, whether or not any losses flow through to one or more partners or shareholders.

For trusts. At least \$2 million in any single tax year or \$4 million in any combination of tax years, whether or not any losses flow through to one or more beneficiaries. (At least \$50,000 for a single tax year if the loss arose from a section 988 transaction defined in section 988(c)(1) (relating to foreign currency transactions), whether or not the loss flows through from an S corporation or partnership).

For purposes of the above threshold amounts, the full amount of a loss must be taken into account in the year it was sustained, regardless of any carryback or carryover of that loss to another year, and does not take into account any income limitations (e.g., the limit on capital losses). When figuring the above threshold amounts for a combination of tax years, only losses claimed in the tax year of the transaction and the 5 following tax years are included.

The types of losses included in this category are section 165 losses, including

amounts deductible under a provision that treats a transaction as a sale or other disposition or otherwise results in a deduction under section 165. However, this category does not include losses described in Rev. Proc. 2003-24, 2003-11 I.R.B. 599 (or future published guidance).

You have participated in a loss transaction if your tax return reflects a section 165 loss that equals or exceeds the applicable threshold amount. If you are a partner, shareholder, or beneficiary of a pass-through entity (partnership, S corporation, or trust), you have participated in a loss transaction if your tax return reflects a section 165 loss allocable to you from the pass-through entity (disregarding netting at the entity level) that equals or exceeds the applicable threshold amount.

Transactions With a Significant Book-Tax Difference

This category includes transactions that result in book-tax differences of more than \$10 million in any tax year. This category applies only to:

- Reporting companies under the Securities Exchange Act of 1934 and related business entities (as defined in sections 267(b) and 707(b)) or
- Business entities that have \$250 million or more in gross assets, including the assets of all related business entities (as defined in sections 267(b) and 707(b)), as of the end of any financial accounting period that ends with or within the tax year in which the transaction occurs.

The book-tax difference is the amount by which the amount of any income, gain, expense, or loss item from the transaction for Federal income tax purposes differs on a gross basis from the amount of the item for book purposes in any tax year. Determine the book-tax difference resulting from the transaction without netting any items. Generally, book income is determined by using U.S. generally accepted accounting principles (GAAP) for worldwide income. However, for a taxpayer that does not use U.S. GAAP for any purpose (including reports to shareholders, creditors, or regulators), the taxpayer may determine the amount of a book item by using the taxpayer's books, if the books use the same method consistently from year to year. For special rules that apply to consolidated returns, foreign persons, owners of disregarded entities, and partners of partnerships, see Regulations section 1.6011-4(b)(6)(ii).

Disregard the following items in determining whether a transaction has a significant book-tax difference.

- Items to the extent any book loss or expense is reported before or without a loss or deduction for Federal income tax purposes.
- Items to the extent any income or gain for Federal income tax purposes is reported before or without book income or gain.

- Any other disregarded items described in Rev. Proc. 2003-25, 2003-11 I.R.B. 601 (or future published guidance).

You have participated in a transaction with a significant book-tax difference if your tax treatment of an item from the transaction differs from the book treatment of that item by more than \$10 million in the tax year. Do not take into account differences that arise solely because a subsidiary of the taxpayer is consolidated with the taxpayer, in whole or in part, for book purposes, but not for tax purposes.

Transactions with a Brief Asset Holding Period

This category includes transactions that result in your claiming a tax credit (including a foreign tax credit) of more than \$250,000 if the asset giving rise to the credit was held by you for 45 days or less. For purposes of determining the holding period of the asset, the principles of section 246(c)(3) and (c)(4) apply. Disregard any transactions generating a foreign tax credit for withholding taxes or other taxes imposed on a dividend that are not disallowed under section 901(k) (including transactions eligible for the exception for security dealers under section 901(k)(4)).

You have participated in a transaction involving a brief asset holding period if your tax return reflects items giving rise to a tax credit of more than \$250,000. If you are a partner, shareholder, or beneficiary of a pass-through entity (partnership, S corporation, or trust), you have participated in such a transaction if you are claiming a tax credit on your tax return from the pass-through entity (disregarding netting at the entity level) of more than \$250,000.

Exceptions

Published Guidance

A transaction is not considered a reportable transaction if the IRS makes a determination in published guidance or in a private letter ruling that it is not subject to the reporting requirements. However, a private letter ruling may be relied upon only by the taxpayer to whom it was issued. This includes a transaction that would otherwise be included in any of the above reportable transaction categories.

Certain Lease Transactions

Customary leasing transactions involving tangible personal property that are exempt from the tax shelter registration requirements and the list maintenance requirements under Notice 2001-18, 2001-9 I.R.B. 731, are not required to be reported on Form 8886 unless the transaction is a listed transaction.

Shareholders of Foreign Corporations

Special rules apply when determining whether you participated in a reportable transaction if you are a U.S. shareholder

of a foreign personal holding company or a controlled foreign corporation or if you are a 10% shareholder of a qualified electing fund. See Regulations section 1.6011-4(c)(3)(i)(G) for details.

Request for Ruling

You may request a ruling from the IRS to determine whether a transaction must be disclosed. The request for a ruling must be submitted to the IRS by the date Form 8886 would otherwise be required to be filed. Send the request to Internal Revenue Service, Attn: CC:PA:T, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. However, if a private delivery service is used, send the request to Internal Revenue Service, Attn: CC:PA:T, Room 6561, 1111 Constitution Avenue, NW, Washington, DC 20224. See Rev. Proc. 2003-1, 2003-1 I.R.B. 1, or later IRS guidance for more details. If the request fully discloses all relevant facts relating to the transaction, your requirement to disclose the transaction will be suspended during the period that the ruling request is pending. If the IRS determines that the transaction is a reportable transaction, you must disclose the transaction on Form 8886 and file the form by the 60th day after the issuance of the ruling. Also send a copy of the form by this date to the address shown in **When and How To File**. If your request for a ruling is withdrawn, you must file the form by the 60th day after the date it is withdrawn.

Recordkeeping

You must keep a copy of all documents and other records related to a reportable transaction. See Regulations section 1.6011-4(g) for more details.

When and How To File

Attach Form 8886 to your income tax return or information return (including a partnership, S corporation or trust return) for each tax year in which you participated in a reportable transaction. If a reportable transaction results in a loss or credit carried back to a prior tax year, attach Form 8886 to an application for tentative refund (Form 1045 or 1139) or amended return for the carryback years. If a transaction becomes a listed transaction after you file your return, attach Form 8886 to the first tax return you file after the date the transaction became a listed transaction.

Also file separately. For only the **first time** you disclose the reportable transaction, send a copy of Form 8886 to the following address when you file the form with your tax return:

Internal Revenue Service
LM:PFTG:OTSA
Large & Mid-Size Business Division
1111 Constitution Ave., NW
Washington, DC 20224

Specific Instructions

Protective Disclosure

If you are uncertain whether a transaction is a reportable transaction under Regulations section 1.6011-4, you may indicate that you are filing on a protective basis by writing "Protective Disclosure" at the top of the form.

Line 1a

Enter the name, if any, by which the transaction is known or commonly referred to. If no name exists, provide a short identifying description of this transaction that distinguishes it from other reportable transactions in which you have participated (or may participate in the future). If you are reporting more than one transaction and the transactions have different names, write "See Attached" and attach a list.

Line 1b

If the transaction has been registered as a tax shelter under section 6111, provide the registration number that has been assigned to the tax shelter. If you are reporting more than one transaction and tax shelter registration number, write "See Attached" and attach a list. Generally, a tax shelter registration number is reported on **Form 8271**, Investor Reporting of Tax Shelter Registration Number. If you are a partner of a partnership or a shareholder of an S corporation that invested in a tax shelter, you may receive a Form 8271 with your Schedule K-1.

Line 2

Check the box for each category that applies to the transaction being reported. The six reportable transaction categories are described under **Participation in a Reportable Transaction** on page 1.

Line 3

Provide a brief identifying description of the listed transaction and identify the notice, revenue ruling, or regulation (e.g., Regulations section 1.634(a)-8 or Notice 2002-70) that identified the listed transaction as shown in Notice 2001-51 or later IRS guidance.

Line 4

Do not report more than one transaction on this form unless the transactions are the same or substantially similar. See the definition of substantially similar on page 1.

Line 7

Include the facts that may be relevant to understanding the claimed or expected Federal income tax treatment of the transaction. In addition:

- If you checked **box 2b**, explain how your disclosure of information concerning the transaction was limited (e.g., by contract or verbal agreement) and the nature and extent of the disclosure limitations. See Regulations section 1.6011-4(b)(3) for more details.

- If you checked **box 2c**, describe the terms of the contractual protection. See Regulations section 1.6011-4(b)(4) for more details.

- If you checked **box 2d**, explain how you calculated the basis of the asset for which there was a loss.

If you need more space, attach separate sheets.

Line 8

Tax benefits include deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as a tax-exempt organization, or any other tax consequences that may affect the amount, timing, character, or source of any item of income, gain, loss, expense, or credit.

If you need more space, attach separate sheets.

Paperwork Reduction Act Notice. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	3 hrs.,6 min.
Learning about the law or the form	2 hr., 28 min.
Preparing, copying, assembling, and sending the form to the IRS	2 hr., 39 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send the form to this address. Instead, see **When and How To File** on this page.