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From:

Sent: Friday, November 21, 2008 7:45:10 AM

To:

Cc:

Subject: RE: Penalties

These are slides particular to promoter penalties. Probably too narrow for your purposes.

Promoter Penalties

TAX SHELTER REGISTRATION REQUIREMENT- SECTION 6111

1. Registration-

- With IRS no later than first day offered for sale.
- Include Information identifying and describing the tax shelter.
- Include information describing the tax benefits represented or to be represented.

TAX SHELTER REGISTRATION REQUIREMENT- SECTION 6111

continued

- 2. IRS assigns an identification number .**
- 3. Organizer must provide identification number to investors.**
- 4. Investors must include identification number on their returns.**

TAX SHELTER REGISTRATION REQUIREMENT- SECTION 6111

continued

5. Tax Shelter Definition

- Tax benefits (credits and deductions) meet a specified ratio to investment.**

And

- Meets technical registration requirements under securities laws or have > 5 investors with a total investment > \$250,000.**
- Includes confidential corporate tax shelters.**

PENALTY FOR FAILURE TO REGISTER SHELTER-SECTION 6707

- 1. > \$500 or 1% of amount invested in shelter.**
- 2. Confidential Corporate Shelters penalty > of \$10,000 or 50% of fees paid to promoters (75% in the case of intentional acts).**

PENALTY FOR FAILURE TO FURNISH IDENTIFICATION NUMBER TO INVESTORS - SECTION 6707

\$100 for each failure

**PENALTY IMPOSED ON
TAXPAYER FOR FAILURE TO
INCLUDE REGISTRATION
NUMBER ON RETURN-
SECTION 6707**

\$250 per failure

Reasonable cause exception

**REQUIREMENT TO MAINTAIN LISTS
OF INVESTORS--Section 6112**

- 1. Lists identifying investors in “potentially abusive tax shelters” must be maintained by “material advisors”**
- 2. Lists must be made available to Secretary upon request**

DEFINITIONS -- Section 6112

“Potentially abusive tax shelters”

- Transactions required to be registered under section 6111
- Listed transactions (§1.6011-4(b)(2)) required to be disclosed by the taxpayer
- Other transactions that are, or are expected to be, reportable transactions (§1.6011-4(b)(3) through (7))
- Interests in transactions that are transferred if the type of transaction would be reportable under §1.6011-4(b)

DEFINITIONS -- Section 6112 (cont'd)

■ “Transaction”

– Not specifically defined, but . . .

– *Includes*

- All of the factual elements relevant to the expected tax treatment of an investment, entity, plan, or arrangement
- Any series of steps carried out as part of a plan

DEFINITIONS -- Section 6112 (cont'd)

- “Material advisor”
 - Person required to register a transaction under section 6111
 - Person who meets a minimum fee requirement + provides a “tax statement”
 - To or for the benefit of a person required to disclose the transaction under §1.6011-4
 - To or for the benefit of a person required to register under section 6111
 - To or for the benefit of a person who acquires an interest in a section 6111 tax shelter
 - To or for the benefit of certain transferees of interests in reportable transactions

DEFINITIONS -- Section 6112 (cont'd)

- “Tax statement” –
 - Oral or written statement
 - that relates to a tax aspect of a transaction and
 - that causes the transaction to be a reportable transaction or a section 6111 tax shelter

DEFINITIONS -- Section 6112 (cont'd)

- **“Minimum fee” (fee is per transaction)**
 - Listed transactions
 - \$25,000 if persons for whose benefit the tax statement is made are corporations
 - \$10,000 for all others
 - Other transactions
 - \$250,000 if persons for whose benefit the tax statement is made are corporations
 - \$50,000 for all others

PENALTY FOR FAILURE TO MAINTAIN LIST-SECTION 6708

- 1. Penalty of \$50 for each person that fails to disclose.**
- 2. The maximum penalty for each year is \$100,000.**
- 3. Reasonable cause exception.**