

Transaction of Interest -- Section 831(b) Micro-Captive Transactions

Notice 2017-08

SECTION 1. BACKGROUND

On November 1, 2016, the Department of the Treasury (the “Treasury Department”) and the Internal Revenue Service (the “IRS”) released Notice 2016-66, 2016-47 I.R.B. 745, identifying transactions that are the same as, or substantially similar to, the transaction described in section 2.01 of Notice 2016-66 as transactions of interest for purposes of § 1.6011-4(b)(6) of the Income Tax Regulations and §§ 6111 and 6112 of the Internal Revenue Code. Notice 2016-66 alerted persons involved in these transactions to certain responsibilities and penalties that may arise from their involvement with these transactions.

Generally, §1.6011-4(e)(1) provides that the disclosure statement for a reportable transaction must be attached to the taxpayer’s tax return for each taxable year for which a taxpayer participates in a reportable transaction. In addition, a disclosure statement for a reportable transaction must be attached to each amended return that reflects a taxpayer’s participation in a reportable transaction. A copy of the disclosure statement must be sent to the Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction.

In addition, §1.6011-4(e)(2)(i) provides that if a transaction becomes a

transaction of interest after the filing of a taxpayer's tax return (including an amended return) reflecting the taxpayer's participation in the transaction of interest and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the transaction of interest, then a disclosure statement must be filed, regardless of whether the taxpayer participated in the transaction in the year the transaction became a transaction of interest, with OTSA within 90 calendar days after the date on which the transaction became a transaction of interest.

Section 301.6111-3(e) provides that the material advisor's disclosure statement for a reportable transaction must be filed with OTSA by the last day of the month that follows the end of the calendar quarter in which the advisor became a material advisor with respect to the reportable transaction or in which the circumstances necessitating an amended disclosure statement occur.

Section 3.03 of Notice 2016-66 provided that the rules regarding the time for providing disclosure of a transaction described in section 2.01 of Notice 2016-66 are in § 1.6011-4(e), with respect to participants in the transaction of interest, and § 301.6111-3(e), with respect to material advisors. Notice 2016-66 further provided that, if, under § 1.6011-4(e), a participant is required to file a disclosure statement with respect to a transaction described in section 2.01 of Notice 2016-66 after November 1, 2016, and prior to January 30, 2017, that disclosure statement will be considered to be timely filed if the taxpayer alternatively files the disclosure with the Office of Tax Shelter Analysis by January 30, 2017.

After the release of Notice 2016-66, the Treasury Department and the IRS received several requests for an extension of time for participants and material advisors filing disclosure statements. This notice modifies section 3.03 of Notice 2016-66 to provide an extension of time for the filing of those disclosure statements.

SECTION 2. EXTENSION AND MODIFICATION OF TIME FOR DISCLOSURE

The time for providing disclosure of a transaction described in section 2.01 of Notice 2016-66 set forth in § 1.6011-4(e), with respect to participants in the transaction of interest, and § 301.6111-3(e), with respect to material advisors, is extended.

Accordingly, section 3.03 of Notice 2016-66 is modified as follows:

.03 Time for Disclosure

a. Participants

For rules regarding the time for providing disclosure of a transaction described in section 2.01 of this notice, see § 1.6011-4(e). However, if, under § 1.6011-4(e)(1), a taxpayer is required to file a disclosure statement with respect to a transaction described in section 2.01 of this notice after November 1, 2016, and prior to May 1, 2017, that disclosure statement will be considered to be timely filed if the taxpayer alternatively files the disclosure with the Office of Tax Shelter Analysis by May 1, 2017 (because April 30 is a Sunday). In addition, for purposes of disclosure of transactions described in section 2.01 of this notice, the 90-day period provided in § 1.6011-4(e)(2)(i) is extended to 180 days.

b. Material advisors

For rules regarding the time for providing disclosure of a transaction described in section 2.01 of this notice, see § 301.6111-3(e). However, if under § 301.6111-3(e) a material advisor is required to file a disclosure statement with respect to a transaction described in section 2.01 of this notice by January 31, 2017, that disclosure statement will be considered to be timely filed if the material advisor files the disclosure with the Office of Tax Shelter Analysis by May 1, 2017 (because April 30 is a Sunday).

SECTION 3. EFFECT ON OTHER DOCUMENTS

Section 3.03 of Notice 2016-66 is modified.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is John E. Glover of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice contact Mr. Glover at (202) 317-6995 (not a toll-free call).