

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also: Part I, §§ 6011, 6112; 1.6011-4, 301.6112-1.)

Rev. Proc. 2004-68

SECTION 1. PURPOSE

This revenue procedure provides that certain transactions with brief asset holding periods are not reportable transactions for purposes of the disclosure rules under § 1.6011-4(b)(7) of the Income Tax Regulations. However, these transactions may be reportable transactions for purposes of the disclosure rules under § 1.6011-4(b)(2), (b)(3), (b)(4), (b)(5), or (b)(6).

SECTION 2. BACKGROUND

.01 Section 1.6011-4 requires a taxpayer that participates in a reportable transaction to disclose the transaction in accordance with the procedures provided in § 1.6011-4. Under § 1.6011-4(b), there are six categories of reportable transactions. One category of reportable transaction is a transaction involving a brief asset holding period. A transaction involving a brief asset holding period is defined in § 1.6011-4(b)(7). Generally, a transaction involving a brief asset holding period is any transaction resulting in the taxpayer claiming a tax credit exceeding \$250,000 (including a foreign tax credit) if the underlying asset giving rise to the credit is held by the taxpayer for 45 days or less.

.02 Section 1.6011-4(b)(8)(i) provides that a transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of § 1.6011-4.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that may be required to disclose reportable transactions under § 1.6011-4, material advisors that may be required to

disclose reportable transactions under § 6111, as amended by § 815 of the American Jobs Creation Act of 2004, P.L. 108-357, 118 Stat. 1418 (October 22, 2004), and material advisors that may be required to maintain lists under former and new § 6112.

SECTION 4. APPLICATION

.01 In general. For purposes of determining the holding period, the principles of § 246(c)(3) and (c)(4) of the Internal Revenue Code will apply.

.02 Exceptions. In addition to the existing exception in § 1.6011-4(b)(7), the following transactions are not taken into account in determining whether a transaction is a transaction involving a brief asset holding period under § 1.6011-4(b)(7)

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(1) In the case of transactions involving solely foreign tax credits, sales made in the ordinary course of the taxpayer's trade or business of property described in § 1221(a)(1), provided, however, that this exception applies only to credits with respect to sales proceeds and not to the receipt of other income, such as interest received on bonds held in inventory.

(2) Transactions involving a brief asset holding period under the principles of § 246(c)(4) solely by reason of (i) a hedge that reduces only the risk of interest rate or currency fluctuations, or (ii) a guarantee issued by a person that is related to the taxpayer within the meaning of §§ 267(b) or 707(b).

(3) Transactions involving a debt instrument that has a term of 45 days or less if the taxpayer's holding period in the debt instrument equals the debt instrument's entire term. For purposes of this paragraph (3), the taxpayer's holding period in the debt instrument is determined under § 1.6011-4(b)(7), except that the taxpayer's holding period is not reduced as a result of a hedge or guarantee described in paragraph (2) of this section.

(4) Transactions resulting in a foreign tax credit for withholding taxes imposed in respect of non-dividend income or gain with respect to any property that are not disallowed under § 901(l) (including transactions eligible for the exception for securities dealers under § 901(l)(2)).

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective November 16, 2004, the date this revenue procedure was released to the public. This revenue procedure applies to transactions that are entered into on or after January 1, 2003.

SECTION 6. DRAFTING INFORMATION

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