

## **HIGHLIGHTS OF THIS ISSUE**

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### **INCOME TAX**

**Rev. Rul. 2002-66, page 812.**

**Effect of collars on qualified covered calls.** Guidance is provided under section 1092 of the Code regarding the effect of collars upon qualified covered call options.

**Rev. Rul. 2002-68, page 808.**

**2002 base period T-bill rate.** The "base period T-bill rate" for the period ending September 30, 2002, is published, as required by section 995(f) of the Code.

**Rev. Rul. 2002-74, page 814.**

**Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate.** For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for November 2002.

**Rev. Rul. 2002-75, page 812.**

**Tax-free exchange of annuity contracts.** This ruling states that the transfer of an entire annuity contract into another pre-existing annuity contract qualifies as a tax-free exchange and defines the basis and investment in the contract for the surviving contract.

**Rev. Rul. 2002-77, page 806.**

**LIFO; price indexes; department stores.** The September 2002 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, September 30, 2002.

**T.D. 9017, page 815.**

**REG-103735-00, page 832.**

Temporary and proposed regulations under section 6011 of the Code modify the disclosure requirements relating to reportable transactions. Six new provisions are added pursuant to section 6011 requiring the disclosure of listed transactions that are related to estate, gift, employment, and pension and exempt organizations excise tax. A public hearing on the proposed regulations is scheduled for December 11, 2002.

**T.D. 9018, page 823.**

**REG-103736-00, page 834.**

Temporary and proposed regulations under section 6112 of the Code modify the requirement for sellers and organizers to maintain lists or persons in potentially abusive tax shelters. A public hearing on the proposed regulations is scheduled for December 11, 2002.

### **EMPLOYEE PLANS**

**Rev. Rul. 2002-63, page 803.**

**Covered compensation tables; 2003.** Covered compensation tables under section 401 of the Code for the year 2003 are provided for use in determining contributions to defined benefit plans and permitted disparity.

**Rev. Rul. 2002-73, page 805.**

**Deductibility; timing.** This ruling modifies Rev. Rul. 2002-46 to provide that the scope limitations imposed by Rev. Proc. 2002-9 (providing for automatic consent to change a method of accounting) are waived for taxpayers who wish to change their method of accounting to comply with the holding of Rev. Rul. 2002-46. This applies only for the taxpayers' first taxable year ending on or after October 16, 2002, effective on that date. Rev. Rul. 2002-46 modified. Rev. Proc. 2002-9 modified and amplified.

**Notice 2002-71, page 830.**

**Retirement plans; year 2003 section 415(d) limitations.**

This notice sets forth certain cost-of-living adjustments effective January 1, 2003, applicable to the dollar limits on benefits under qualified defined benefit pension plans and to other provisions affecting (1) certain plans of deferred compensation and (2) "control employees."

## **EXEMPT ORGANIZATIONS**

**Announcement 2002-103, page 836.**

This announcement corrects Announcement 2002-92, 2002-41 I.R.B. 709, by amending the e-mail address to which comments may be sent. These two announcements request comments regarding proposed revisions of Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, and *Instructions for Form 1023*.

**Announcement 2002-104, page 836.**

A list is provided of organizations now classified as private foundations.

## **ADMINISTRATIVE**

**Rev. Proc. 2002-69, page 831.**

This procedure provides guidance on the classification for federal tax purposes of a qualified entity (described in section 3.02 of this procedure) that is owned solely by a husband and wife as community property under the laws of a state, a foreign country, or a possession of the United States.

# The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court

decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I. — 1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

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# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2002. See Rev. Rul. 2002-74, page 814.

## Section 263.—Capital Expenditures

If a taxpayer writes a qualified covered call, owns the underlying equity, and holds a put option on the same underlying stock, do the combined positions form a straddle that triggers to the capitalization rules of section 263(g). See Rev. Rul. 2002-66, page 812.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2002. See Rev. Rul. 2002-74, page 814.

## Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of November 2002. See Rev. Rul. 2002-74, page 814.

## Section 401. — Qualified Pension, Profit-Sharing, and Stock Bonus Plans

*26 CFR 1.401(l)-1: Permitted disparity in employer-provided contributions or benefits.*

**Covered compensation tables; 2003.** The covered compensation tables for the year 2003 are provided for use in determining contributions to defined benefit plans and permitted disparity.

### Rev. Rul. 2002-63

This revenue ruling provides tables of covered compensation under section 401(l)(5)(E) of the Internal Revenue Code (the "Code") and the Income Tax Regulations, thereunder, for the 2003 plan year.

Section 401(l)(5)(E)(i) defines covered compensation with respect to an employee, as the average of the contribution and benefit bases in effect under section 230 of the Social Security Act (the "Act") for each year in the 35-year period ending with the year in which the employee attains social security retirement age.

Section 401(l)(5)(E)(ii) states that the determination for any year preceding the year in which the employee attains social security retirement age shall be made by assuming that there is no increase in covered compensation after the determination year and before the employee attains social security retirement age.

Section 1.401(l)-1(c)(34) of the Income Tax Regulations defines the taxable wage base as the contribution and benefit base under section 230 of the Act.

Section 1.401(l)-1(c)(7)(i) defines covered compensation for an employee as the average (without indexing) of the taxable wage bases in effect for each calendar year during the 35-year period ending with the last day of the calendar year in which the employee attains (or will attain) social security retirement age. A 35-year period is used for all individuals regardless of the year of birth of the individual. In determining an employee's covered compensation for a plan year, the taxable wage base for all calendar years beginning after the first day of the plan year is assumed to be the same as the taxable wage base in effect as of the beginning of the plan year. An employee's covered compensation for a plan year beginning after the 35-year period applicable under § 1.401(l)-1(c)(7)(i) is the employee's covered compensation for a plan year during which the 35-year period ends. An employee's covered compensation for a plan year beginning before the 35-year period applicable under § 1.401(l)-1(c)(7)(i) is the taxable wage base in effect as of the beginning of the plan year.

Section 1.401(l)-1(c)(7)(ii) provides that, for purposes of determining the amount of an employee's covered compensation under § 1.401(l)-1(c)(7)(i), a plan may use tables, provided by the Commissioner, that are developed by rounding the actual amounts of covered compensation for different years of birth.

For purposes of determining covered compensation for the 2003 year, the taxable wage base is \$87,000.

The following tables provide covered compensation for 2003:

2003 COVERED COMPENSATION TABLE

CALENDAR YEAR OF BIRTH	CALENDAR YEAR OF SOCIAL SECURITY RETIREMENT AGE	2003 COVERED COMPENSATION TABLE II
1907	1972	\$4,488
1908	1973	4,704
1909	1974	5,004
1910	1975	5,316
1911	1976	5,664
1912	1977	6,060
1913	1978	6,480

2003 COVERED COMPENSATION TABLE

CALENDAR YEAR OF BIRTH	CALENDAR YEAR OF SOCIAL SECURITY RETIREMENT AGE	2003 COVERED COMPENSATION TABLE II
1914	1979	7,044
1915	1980	7,692
1916	1981	8,460
1917	1982	9,300
1918	1983	10,236
1919	1984	11,232
1920	1985	12,276
1921	1986	13,368
1922	1987	14,520
1923	1988	15,708
1924	1989	16,968
1925	1990	18,312
1926	1991	19,728
1927	1992	21,192
1928	1993	22,716
1929	1994	24,312
1930	1995	25,920
1931	1996	27,576
1932	1997	29,304
1933	1998	31,128
1934	1999	33,060
1935	2000	35,100
1936	2001	37,212
1937	2002	39,444
1938	2004	43,968
1939	2005	46,236
1940	2006	48,492
1941	2007	50,724
1942	2008	52,908
1943	2009	55,008
1944	2010	57,096
1945	2011	59,148
1946	2012	61,152
1947	2013	63,132
1948	2014	64,968
1949	2015	66,720
1950	2016	68,352
1951	2017	69,912
1952	2018	71,376
1953	2019	72,780
1954	2020	74,136
1955	2022	76,656
1956	2023	77,856
1957	2024	78,972
1958	2025	79,992
1959	2026	80,952
1960	2027	81,852

2003 COVERED COMPENSATION TABLE

CALENDAR YEAR OF BIRTH	CALENDAR YEAR OF SOCIAL SECURITY RETIREMENT AGE	2003 COVERED COMPENSATION TABLE II
1961	2028	82,692
1962	2029	83,448
1963	2030	84,180
1964	2031	84,876
1965	2032	85,500
1966	2033	86,028
1967	2034	86,436
1968	2035	86,748
1969	2036	86,940
1970 or later	2037	87,000

2003 ROUNDED COVERED COMPENSATION TABLE

YEAR OF BIRTH	COVERED COMPENSATION
1937	39,000
1938–1939	45,000
1940	48,000
1941	51,000
1942–1943	54,000
1944	57,000
1945–1946	60,000
1947	63,000
1948–1949	66,000
1950–1951	69,000
1952–1953	72,000
1954	75,000
1955–1957	78,000
1958–1960	81,000
1961–1964	84,000
1965 and later	87,000

The principal author of this revenue ruling is Todd Newman of Employee Plans Customer Education and Outreach of the Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, please contact the Employee Plans taxpayer assistance telephone service at 1-877-829-5500, between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday (a toll-free number). Mr. Newman's number is (202) 283-9702 (not a toll-free number).

**Section 404.—Deduction for Contributions of an Employer to an Employees' Trust or Annuity Plan and Compensation Under a Deferred-Payment Plan**

**Deductibility; timing.** This ruling modifies Rev. Rul. 2002-46 to provide that the scope limitations imposed by Rev. Proc. 2002-9 (providing for automatic consent to change a method of accounting) are waived for taxpayers who wish to change their method of accounting to comply with the holding of Rev. Rul. 2002-46. This ap-

plies only for the taxpayers' first taxable year ending on or after October 16, 2002, effective on that date.

**Rev. Rul. 2002-73**

Rev. Rul. 2002-46, 2002-29 I.R.B. 117, holds that grace period contributions to a qualified cash or deferred arrangement within the meaning of § 401(k) of the Internal Revenue Code or to a defined contribution plan as matching contributions within the meaning of § 401(m) are not deductible by the employer for a taxable year

if the contributions are attributable to compensation earned by plan participants after the end of that taxable year.

Rev. Rul. 2002-46 modifies Rev. Proc. 2002-9, 2002-3 I.R.B. 327 (as modified and amplified by Rev. Proc. 2002-19, 2002-13 I.R.B. 696, modified and clarified by Announcement 2002-17, 2002-8 I.R.B. 561, and amplified, clarified, and modified by Rev. Proc. 2002-54, 2002-35 I.R.B. 432) to add to the Appendix of Rev. Proc. 2002-9 a change in method of accounting to conform to the holding of Rev. Rul. 2002-46. Thus, taxpayers wishing to change to a method consistent with Rev. Rul. 2002-46 must apply for automatic approval under Rev. Proc. 2002-9. Rev. Rul. 2002-46 provides that the scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply to a change to a method consistent with Rev. Rul. 2002-46, unless the taxpayer's method of accounting is an issue under consideration for a taxable year under examination within the meaning of section 3.09(1) of Rev. Proc. 2002-9 when the Form 3115, *Application to Change a Method of Accounting*, is filed with the national office.

Upon further consideration, the Internal Revenue Service has determined that it is appropriate to waive the scope limitations of section 4.02 for this change only for a limited period of time. Accordingly, the APPLICATION section of Rev. Rul. 2002-46 is modified to read as follows:

#### APPLICATION

A change in a taxpayer's treatment of contributions to a method consistent with this revenue ruling is a change in method of accounting to which §§ 446 and 481 apply. A taxpayer that wants to change its treatment of contributions to a method consistent with this revenue ruling must follow the automatic change in method of accounting provisions in Rev. Proc. 2002-9, 2002-3 I.R.B. 327 (as modified and amplified by Rev. Proc. 2002-19, 2002-13 I.R.B. 696, modified and clarified by Announcement 2002-17, 2002-8 I.R.B. 561, and amplified, clarified, and modified by Rev. Proc. 2002-54, 2002-35 I.R.B. 432), with the following modifications:

(1) The scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply to a tax-

payer that wants to make the change for its first taxable year ending on or after October 16, 2002, provided the taxpayer's method of accounting for contributions addressed in this revenue ruling is not an issue under consideration for taxable years under examination, within the meaning of section 3.09(1) of Rev. Proc. 2002-9, at the time the Form 3115 is filed with the national office;

(2) To assist the Service in processing changes in method of accounting under this revenue ruling, and to ensure proper handling, section 6.02(4)(a) of Rev. Proc. 2002-9 is modified to require that a Form 3115 filed under this revenue ruling include the statement: "Automatic Change Filed Under Rev. Rul. 2002-46." This statement should be legibly printed or typed on the appropriate line on any Form 3115 filed under this revenue ruling."

#### EFFECTIVE DATE

This modification is effective October 16, 2002.

#### EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2002-46 is modified. Rev. Proc. 2002-9 is modified and amplified.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Grant D. Anderson of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Anderson at (202) 622-4970 (not a toll-free call). For information regarding any other aspect of Rev. Rul. 2002-46, contact the Employee Plans taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) between the hours of 8:00 a.m. and 4:00 p.m., Eastern Time, Monday through Friday.

### Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2002. See Rev. Rul. 2002-74, page 814.

### Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2002. See Rev. Rul. 2002-74, page 814.

### Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2002. See Rev. Rul. 2002-74, page 814.

### Section 472.—Last-in, First-out Inventories

26 CFR 1.472-1: Last-in, first-out inventories.

**LIFO; price indexes; department stores.** The September 2002 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, September 30, 2002.

#### Rev. Rul. 2002-77

The following Department Store Inventory Price Indexes for September 2002 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472-1(k) of the Income Tax Regulations and Rev. Proc. 86-46, 1986-2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to September 30, 2002.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups — soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE  
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS  
(January 1941 = 100, unless otherwise noted)

Groups	Sep. 2001	Sep. 2002	Percent Change from Sep. 2001 to Sep. 2002 <sup>1</sup>
1. Piece Goods .....	509.9	484.6	-5.0
2. Domestics and Draperies .....	589.1	574.2	-2.5
3. Women's and Children's Shoes .....	668.9	658.0	-1.6
4. Men's Shoes .....	854.7	886.9	3.8
5. Infants' Wear .....	625.4	618.5	-1.1
6. Women's Underwear .....	571.0	548.2	-4.0
7. Women's Hosiery .....	356.7	343.2	-3.8
8. Women's and Girls' Accessories .....	557.9	549.2	-1.6
9. Women's Outerwear and Girls' Wear .....	392.0	385.7	-1.6
10. Men's Clothing .....	578.4	561.1	-3.0
11. Men's Furnishings .....	603.1	593.8	-1.5
12. Boys' Clothing and Furnishings .....	477.1	446.2	-6.5
13. Jewelry .....	899.0	896.7	-0.3
14. Notions .....	795.0	809.1	1.8
15. Toilet Articles and Drugs .....	979.9	971.4	-0.9
16. Furniture and Bedding .....	632.8	625.9	-1.1
17. Floor Coverings .....	622.9	601.1	-3.5
18. Housewares .....	767.5	748.9	-2.4
19. Major Appliances .....	227.0	222.2	-2.1
20. Radio and Television .....	52.9	47.7	-9.8
21. Recreation and Education <sup>2</sup> .....	89.3	85.4	-4.4
22. Home Improvements <sup>2</sup> .....	125.6	124.9	-0.6
23. Auto Accessories <sup>2</sup> .....	110.1	112.0	1.7
Groups 1 - 15: Soft Goods .....	588.6	578.4	-1.7
Groups 16 - 20: Durable Goods .....	421.2	407.9	-3.2
Groups 21 - 23: Misc. Goods <sup>2</sup> .....	98.3	96.0	-2.3
Store Total <sup>3</sup> .....	526.8	515.8	-2.1

<sup>1</sup> Absence of a minus sign before the percentage change in this column signifies a price increase.

<sup>2</sup> Indexes on a January 1986=100 base.

<sup>3</sup> The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

**DRAFTING INFORMATION**

The principal author of this revenue ruling is Michael Burkom of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Burkom at (202) 622-7718 (not a toll-free call).

**Section 482.—Allocation of Income and Deductions Among Taxpayers**

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2002. See Rev. Rul. 2002-74, page 814.

**Section 483.—Interest on Certain Deferred Payments**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2002. See Rev. Rul. 2002-74, page 814.



## Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2002. See Rev. Rul. 2002-74, page 814.

## Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2002. See Rev. Rul. 2002-74, page 814.

## Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2002. See Rev. Rul. 2002-74, page 814.

## Section 995.—Taxation of DISC Income to Shareholders

**2002 base period T-bill rate.** The “base period T-bill rate” for the period ending September 30, 2002, is published, as required by section 995(f) of the Code.

## Rev. Rul. 2002-68

Section 995(f)(1) of the Internal Revenue Code provides that a shareholder of a DISC shall pay interest each taxable year in an amount equal to the product of the shareholder’s DISC-related deferred tax liability for the year and the “base period T-bill rate.” Under section 995(f)(4), the base period T-bill rate is the annual rate of interest determined by the Secretary to be equivalent to the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder. The base period T-bill rate for the period ending September 30, 2002 is 2.18 percent.

Pursuant to section 6222 of the Code, interest must be compounded daily. The table below provides factors for compounding the base period T-bill rate daily for any number of days in the shareholder’s taxable year (including a 52-53 week accounting pe-

riod) for the 2002 base period T-bill rate. To compute the amount of the interest charge for the shareholder’s taxable year, multiply the amount of the shareholder’s DISC-related deferred tax liability (as defined in section 995(f)(2)) for that year by the base period T-bill rate factor corresponding to the number of days in the shareholder’s taxable year for which the interest charge is being computed. Generally, one would use the factor for 365 days. One would use a different factor only if the shareholder’s taxable year for which the interest charge being determined is a short taxable year, if the shareholder uses the 52-53 week taxable year, or if the shareholder’s taxable year is a leap year.

For the base period T-bill rates for the periods ending in prior years, see Rev. Rul. 2001-56, 2001-2 C.B. 500, and Rev. Rul. 2000-52, 2000-2 C.B. 516.

### DRAFTING INFORMATION

The principal author of this revenue ruling is David Bergkuist of the Office of the Associate Chief Counsel (International). For further information about this revenue ruling, contact Mr. Bergkuist at (202) 622-3850 (not a toll-free call).

### ANNUAL RATE, COMPOUNDED DAILY

DAYS	2.180 PERCENT FACTOR
16	.000956045
17	.001015828
18	.001075614
19	.001135405
20	.001195199
21	.001254996
22	.001314797
23	.001374602
24	.001434410
25	.001494221
26	.001554037
27	.001613855
28	.001673678
29	.001733504
30	.001793333
31	.001853167
32	.001913003
33	.001972844
34	.002032687
35	.002092535
36	.002152386
37	.002212240
38	.002272099
39	.002331960
40	.002391826
41	.002451694
42	.002511567
43	.002571443
44	.002631323
45	.002691206
46	.002751093
47	.002810983
48	.002870877
49	.002930774
50	.002990675
51	.003050580
52	.003110488
53	.003170400
54	.003230315
55	.003290234

ANNUAL RATE,  
COMPOUNDED DAILY—CONTINUED

DAYS	2.180 PERCENT FACTOR	DAYS	2.180 PERCENT FACTOR	DAYS	2.180 PERCENT FACTOR
56	.003350157	96	.005749996	136	.008155574
57	.003410083	97	.005810065	137	.008215787
58	.003470013	98	.005870138	138	.008276004
59	.003529946	99	.005930215	139	.008336224
60	.003589883	100	.005990295	140	.008396448
61	.003649823	101	.006050379	141	.008456676
62	.003709767	102	.006110466	142	.008516907
63	.003769715	103	.006170557	143	.008577142
64	.003829666	104	.006230652	144	.008637380
65	.003889621	105	.006290750	145	.008697622
66	.003949579	106	.006350852	146	.008757867
67	.004009541	107	.006410957	147	.008818116
68	.004069507	108	.006471066	148	.008878369
69	.004129476	109	.006531178	149	.008938625
70	.004189448	110	.006591294	150	.008998885
71	.004249425	111	.006651414	151	.009059149
72	.004309404	112	.006711537	152	.009119416
73	.004369388	113	.006771664	153	.009179687
74	.004429375	114	.006831795	154	.009239961
75	.004489365	115	.006891929	155	.009300239
76	.004549360	116	.006952066	156	.009360520
77	.004609357	117	.007012208	157	.009420805
78	.004669359	118	.007072353	158	.009481094
79	.004729364	119	.007132501	159	.009541386
80	.004789372	120	.007192653	160	.009601682
81	.004849384	121	.007252809	161	.009661982
82	.004909400	122	.007312968	162	.009722285
83	.004969419	123	.007373131	163	.009782592
84	.005029442	124	.007433297	164	.009842902
85	.005089468	125	.007493467	165	.009903216
86	.005149498	126	.007553641	166	.009963533
87	.005209532	127	.007613818	167	.010023854
88	.005269569	128	.007673999	168	.010084179
89	.005329610	129	.007734183	169	.010144507
90	.005389654	130	.007794371	170	.010204839
91	.005449702	131	.007854562	171	.010265175
92	.005509754	132	.007914758	172	.010325514
93	.005569809	133	.007974956	173	.010385857
94	.005629867	134	.008035159	174	.010446203
95	.005689930	135	.008095365	175	.010506553

ANNUAL RATE,  
COMPOUNDED DAILY—CONTINUED

DAYS	2.180 PERCENT FACTOR	DAYS	2.180 PERCENT FACTOR	DAYS	2.180 PERCENT FACTOR
176	.010566906	216	.012984006	256	.015406887
177	.010627264	217	.013044508	257	.015467534
178	.010687624	218	.013105013	258	.015528183
179	.010747989	219	.013165522	259	.015588837
180	.010808357	220	.013226034	260	.015649494
181	.010868728	221	.013286550	261	.015710155
182	.010929103	222	.013347070	262	.015770819
183	.010989482	223	.013407593	263	.015831487
184	.011049865	224	.013468120	264	.015892159
185	.011110251	225	.013528650	265	.015952834
186	.011170640	226	.013589184	266	.016013513
187	.011231033	227	.013649722	267	.016074195
188	.011291430	228	.013710263	268	.016134881
189	.011351831	229	.013770808	269	.016195571
190	.011412235	230	.013831356	270	.016256264
191	.011472642	231	.013891908	271	.016316961
192	.011533054	232	.013952464	272	.016377662
193	.011593468	233	.014013024	273	.016438366
194	.011653887	234	.014073587	274	.016499074
195	.011714309	235	.014134153	275	.016559785
196	.011774735	236	.014194723	276	.016620500
197	.011835164	237	.014255297	277	.016681219
198	.011895597	238	.014315875	278	.016741941
199	.011956033	239	.014376456	279	.016802667
200	.012016473	240	.014437040	280	.016863397
201	.012076917	241	.014497629	281	.016924130
202	.012137364	242	.014558221	282	.016984867
203	.012197815	243	.014618816	283	.017045607
204	.012258270	244	.014679415	284	.017106351
205	.012318728	245	.014740018	285	.017167099
206	.012379190	246	.014800624	286	.017227850
207	.012439655	247	.014861234	287	.017288605
208	.012500124	248	.014921848	288	.017349364
209	.012560597	249	.014982465	289	.017410126
210	.012621073	250	.015043086	290	.017470892
211	.012681553	251	.015103711	291	.017531662
212	.012742036	252	.015164339	292	.017592435
213	.012802523	253	.015224970	293	.017653212
214	.012863014	254	.015285606	294	.017713992
215	.012923508	255	.015346245	295	.017774776

ANNUAL RATE,  
COMPOUNDED DAILY—CONTINUED

DAYS	2.180 PERCENT FACTOR	DAYS	2.180 PERCENT FACTOR	DAYS	2.180 PERCENT FACTOR
296	.017835564	321	.019356435	346	.020879579
297	.017896355	322	.019417317	347	.020940552
298	.017957150	323	.019478203	348	.021001529
299	.018017948	324	.019539092	349	.021062510
300	.018078750	325	.019599985	350	.021123494
301	.018139556	326	.019660882	351	.021184481
302	.018200366	327	.019721782	352	.021245472
303	.018261179	328	.019782686	353	.021306467
304	.018321995	329	.019843594	354	.021367466
305	.018382816	330	.019904505	355	.021428468
306	.018443640	331	.019965420	356	.021489474
307	.018504467	332	.020026338	357	.021550484
308	.018565299	333	.020087261	358	.021611497
309	.018626133	334	.020148186	359	.021672514
310	.018686972	335	.020209116	360	.021733534
311	.018747814	336	.020270049	361	.021794558
312	.018808660	337	.020330985	362	.021855586
313	.018869509	338	.020391926	363	.021916617
314	.018930362	339	.020452870	364	.021977652
315	.018991219	340	.020513817	365	.022038691
316	.019052079	341	.020574769	366	.022099733
317	.019112943	342	.020635723	367	.022160779
318	.019173811	343	.020696682	368	.022221829
319	.019234682	344	.020757644	369	.022282882
320	.019295557	345	.020818610	370	.022343939
				371	.022404999

## Section 1035.—Certain Exchanges of Insurance Policies

26 CFR 1.1035-1: Certain exchanges of insurance policies.

(Also Part I, §§ 72, 1031)

**Tax-free exchange of annuity contracts.** This ruling states that the transfer of an entire annuity contract into another pre-existing annuity contract qualifies as a tax-free exchange and defines the basis and investment in the contract for the surviving contract.

### Rev. Rul. 2002-75

#### ISSUES

Is the taxpayer's assignment of an entire annuity contract to a second insurance company, which then deposits the cash surrender value of the assigned annuity contract into a pre-existing annuity contract owned by the same taxpayer, and issued by the second insurance company, a tax-free exchange under § 1035? What is the basis under § 1035 and the investment in the surviving contract under § 72 after the transfer?

#### FACTS

A owns Contract B, an annuity contract issued by Company B, and Contract C, an annuity contract issued by Company C. A is the obligee for both contracts. A seeks to consolidate Contract B and Contract C. A assigns Contract B to Company C. Company B transfers the entire cash surrender value of Contract B directly to Company C. Company C includes the transferred cash surrender value of Contract B in Contract C. A will not receive any of the cash surrender value of Contract B that is transferred to Company C and deposited into Contract C. No other consideration will be paid by A in this transaction. The terms of Contract C are unchanged by this transaction, and Contract B terminates.

#### LAW AND ANALYSIS

Section 1035(a)(3) provides that no gain or loss shall be recognized on the exchange of an annuity contract for an annuity contract. Section 1.1035-1 of the Income Tax Regulations provides that the exchange,

without recognition of gain or loss, of an annuity contract for another annuity contract under § 1035(a)(3) is limited to cases where the same person or persons are the obligee or obligees under the contract received in the exchange as under the original contract.

The legislative history of § 1035 states that exchange treatment is appropriate for "individuals who have merely exchanged one insurance policy for another better suited to their needs and who have not actually realized gain." H.R. Rep. No. 1337, 83d Cong., 2d Sess. 81 (1954).

Section 1035(d)(2) cross-references § 1031 for the rules to determine the basis of property acquired in a § 1035 exchange. Section 1031(d) provides that property acquired in a § 1035 exchange has the same basis as that of the property exchanged, decreased by the amount of any money received by the taxpayer and increased by any gain (or decreased by any loss) recognized by the taxpayer on the exchange.

Section 1.1031(d)-1 provides, in part, that in a § 1035 exchange the basis of the property acquired is the same as the basis of the property transferred by the taxpayer with proper adjustments to the date of the exchange.

Section 72 governs the federal tax treatment of distributions from an annuity contract. For purposes of determining income, gain, or loss from an annuity contract, § 72 contains two special definitions of investment in the contract. When amounts received are not annuity payments, § 72(e)(6) defines the investment in the contract. For purposes of § 72(b), which applies to annuity payments, § 72(c)(1) defines the investment in the contract in a similar, but not identical, manner.

After completion of the transaction, A owns only Contract C, which has been increased in value to reflect the cash surrender value transferred into it from Contract B. A had no access to the cash surrender value transferred in the exchange. Therefore, this transaction is treated as an exchange that is tax-free under § 1035.

As a result of the application of § 1035(d), A's basis in Contract B is included in A's basis in Contract C immediately after the exchange, and under § 72(c)(1) and § 72(e)(6), A's investment

in Contract B is included in A's investment in Contract C immediately after the exchange.

#### HOLDINGS

(1) The assignment by A of Contract B to Company C for consolidation with pre-existing Contract C is a tax-free exchange under § 1035.

(2) After the assignment, pursuant to § 1035, A's basis in Contract C immediately after the exchange equals the sum of A's basis in Contract B and A's basis in Contract C immediately prior to the exchange.

(3) After the assignment, A's investment in Contract C under § 72 equals the sum of A's investment in Contract B and A's investment in Contract C immediately prior to the exchange.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Ann H. Logan of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact her at (202) 622-3970 (not a toll-free call).

## Section 1092.—Straddles

26 CFR 1.1092(c)-1: Qualified covered call options.

(Also § 263; 1.1092(c)-2; 1.1092(c)-3; 1.1092(c)-4.)

**Effect of collars on qualified covered calls.** Guidance is provided under section 1092 of the Code regarding the effect of collars upon qualified covered call options.

### Rev. Rul. 2002-66

#### ISSUE

If the grantor of a qualified covered call option holds a put option on the same underlying equity, is the straddle consisting of the underlying equity and the written call option part of a larger straddle and therefore not excluded from straddle treatment by § 1092(c)(4)(A) of the Internal Revenue Code?

## FACTS

In each of the following situations, assume that:

1) at the time the call option is written and at the time the put option is acquired, there is an inverse relationship between the value of the underlying equity and the value of each option position;

2) as a result of the magnitude of the inverse relationships, each option position substantially diminishes the risk arising from holding the equity;

3) The acquisition of the put option substantially diminishes the risk of loss with respect to the combined position consisting of the equity and the qualified covered call option on that equity; and

4) the call option is a qualified covered call option under § 1092(c)(4)(B).

*Situation 1.* On August 1, 2002, A purchases 100 shares of Corporation X stock for \$100 per share, writes a 12-month call option on 100 shares of X stock with a strike price of \$110, and purchases a 12-month put option on 100 shares of X stock with a strike price of \$100.

*Situation 2.* On September 3, 2002, B purchases 100 shares of Corporation Y stock for \$102 per share. On September 6, 2002, when the fair market value of Y stock is \$100, B writes a 12-month call option for 100 shares of Y stock with a strike price of \$110 and purchases a 12-month put option on 100 shares of Y stock with a strike price of \$100.

*Situation 3.* On October 1, 2002, C purchases 100 shares of Corporation Z stock for \$102 per share. On October 3, 2002, when the fair market value of Z stock is \$100, C writes a 12-month call option on 100 shares of Z stock with a strike price of \$110. On December 2, 2002, when the fair market value of the Z stock remains \$100, C purchases a 12-month put option on 100 shares of Z stock with a strike price of \$100.

## LAW AND ANALYSIS

Section 1092(a) limits the recognition of losses on one or more positions in a straddle to the amount by which the losses exceed the unrecognized gain in any offsetting positions in that straddle. Section 1092(c) defines a straddle as offsetting positions with respect to personal property, and § 1092(d)(3) treats stock as personal prop-

erty if the stock is a position in the straddle and an option on that stock or on substantially identical stock or securities is an offsetting position in that straddle.

Section 1092(c)(4)(A) provides that a straddle will not be treated as a straddle for purposes of §§ 1092 or 263(g) if:

(i) all of the offsetting positions making up any straddle consist of one or more qualified covered call options and the stock to be purchased from the taxpayer under such options, and

(ii) such straddle is not part of a larger straddle. The two clauses of § 1092(c)(4)(A) work together to delineate the scope of the exemption from straddle treatment provided by § 1092(c)(4). Clause (i) requires that, in order to obtain this exemption with respect to a given straddle, the straddle must consist only of one or more qualified covered call options and the stock to be purchased from the taxpayer under the options. Even if this requirement is satisfied, however, clause (ii) precludes the exemption from applying if the taxpayer holds at least one other position (*i.e.*, a position other than qualified covered call options and the stock to be purchased thereunder) that, when considered together with the stock and qualified covered call options described in clause (i), creates a larger straddle.

Neither the statutory language nor the legislative history of § 1092(c)(4) defines the term “part of a larger straddle.” Section 1092(a)(2)(B)(iii) uses the same phrase in the definition of an identified straddle but does not define the term “larger straddle.” The legislative history to § 1092(a)(2)(B)(iii) also does not define the term but does state that “[i]n addition, an identified straddle cannot constitute part of a larger straddle (for example, a butterfly).” S. Rep. No. 144, 97<sup>th</sup> Cong., 1<sup>st</sup> Sess. 148 (1981), 1981–2 C.B. 412, 471. An example of a “butterfly” is a commodity straddle consisting of a 5 unit short position expiring in May 2002, a 10 unit long position expiring in June 2002, and a 5 unit short position expiring in July 2002. The relationship among the three positions in a butterfly is explained in *Leslie v. Commissioner*, T.C. Memo 1996–86, *aff’d*, 146 F.3d 643 (9<sup>th</sup> Cir. 1998), *cert. denied*, 525 U.S. 1071 (1999):

The center position or body of a butterfly spread is twice as large as either wing, and the time periods for the delivery of the commodity from the first

wing to the body and from the body to the second wing are equal. Essentially, a butterfly spread creates two spreads, one bullish and one bearish. Thus, a butterfly spread presents less chance of either an adverse or a favorable spread movement and is, therefore, less likely to result in a different loss or gain than an ordinary straddle.

The 1981 legislative history to § 1092(a)(2)(B)(iii), while not directly applicable to § 1092(c)(4), supports the treatment of a qualified covered call option as being “part of a larger straddle” if the taxpayer holds one or more additional positions that substantially diminish the risk of holding the equity by itself and the risk of the combination of holding the equity and writing the qualified covered call option.

The legislative history of the qualified covered call option exception to § 1092 straddle treatment does not clarify the meaning of the phrase “larger straddle” but does discuss considerations underlying the decision to create the exemption. The report of the House Committee on Ways and Means contains this explanation:

One widely used investment strategy that would be affected by the extension of the straddle rules to stock options and stock involves writing call options on stock owned by the taxpayer. The committee believes that it may be appropriate to exempt these transactions where they are undertaken primarily to enhance the taxpayer’s investment return on the stock and not to reduce the taxpayer’s risk of loss on the stock.

H. R. Rep. No. 432, 98<sup>th</sup> Cong., 2d Sess. 1266 (1984).

In the three situations described above, the presence of a purchased put substantially reduces the taxpayer’s risk of loss with respect to the stock, and also reduces any potential for enhancing the taxpayer’s investment return through premium income. In each of the three situations, the put option protects against a decrease in the value of the stock below the exercise price of the put option and also reduces the impact of changes in the value of the stock through the inverse relationship between the value of the stock and the value of the put option. Both factors substantially diminish the risk of loss with respect to the holding of the stock by itself and the risk of loss with

respect to the combination of the stock and the written qualified covered call option. In addition, when the owner of the stock acquires the put, the amount of the premium received from the call option is offset, in whole or in part, by the amount of the premium paid for the put option, thus reducing any potential enhancement of investment return on the stock resulting from the receipt of the call option premium. In effect, when the writer of the call option purchases the put, the writer gives up potential enhancement of return on investment to acquire additional risk protection.

Accordingly, in each of the three situations described above, the presence of the purchased put causes the stock and the qualified covered call option to constitute part of a larger straddle within the meaning of § 1092(c)(4)(A).

#### HOLDINGS

*Situation 1.* All of the positions in X stock are treated as part of a larger straddle. Section 1092(c)(4) does not apply to any of the positions in X stock.

*Situation 2.* All of the positions in Y stock are part of a larger straddle beginning on September 6, 2002. Section 1092(c)(4) does not apply to any of the positions in Y stock beginning on that date.

*Situation 3.* Prior to December 2, 2002, the combination of the qualified covered call option and the underlying shares are not treated as a straddle for purposes of §§ 1092 and 263(g). However, beginning on December 2, 2002, all of the positions in Z stock are part of a larger straddle, and § 1092(c)(4), therefore, does not apply to any of the positions in Z stock beginning on that date.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Pamela Lew of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact Pamela Lew at (202) 622-3950 (not a toll-free call).

### Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

**Federal rates; adjusted federal rates; adjusted federal long-term rate and the**

**long-term exempt rate.** For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for November 2002.

#### Rev. Rul. 2002-74

This revenue ruling provides various prescribed rates for federal income tax purposes for November 2002 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2002-74 TABLE 1

Applicable Federal Rates (AFR) for November 2002

*Period for Compounding*

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-Term</i>				
AFR	1.82%	1.81%	1.81%	1.80%
110% AFR	2.00%	1.99%	1.99%	1.98%
120% AFR	2.18%	2.17%	2.16%	2.16%
130% AFR	2.36%	2.35%	2.34%	2.34%
<i>Mid-Term</i>				
AFR	3.06%	3.04%	3.03%	3.02%
110% AFR	3.37%	3.34%	3.33%	3.32%
120% AFR	3.68%	3.65%	3.63%	3.62%
130% AFR	3.99%	3.95%	3.93%	3.92%
150% AFR	4.61%	4.56%	4.53%	4.52%
175% AFR	5.39%	5.32%	5.29%	5.26%
<i>Long-Term</i>				
AFR	4.60%	4.55%	4.52%	4.51%
110% AFR	5.07%	5.01%	4.98%	4.96%
120% AFR	5.53%	5.46%	5.42%	5.40%
130% AFR	6.01%	5.92%	5.88%	5.85%

REV. RUL. 2002-74 TABLE 2				
Adjusted AFR for November 2002				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	1.64%	1.63%	1.63%	1.62%
Mid-term adjusted AFR	2.82%	2.80%	2.79%	2.78%
Long-term adjusted AFR	4.31%	4.26%	4.24%	4.22%

REV. RUL. 2002-74 TABLE 3	
Rates Under Section 382 for November 2002	
Adjusted federal long-term rate for the current month	4.31%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.63%

REV. RUL. 2002-74 TABLE 4	
Appropriate Percentages Under Section 42(b)(2) for November 2002	
Appropriate percentage for the 70% present value low-income housing credit	7.89%
Appropriate percentage for the 30% present value low-income housing credit	3.38%

REV. RUL. 2002-74 TABLE 5	
Rate Under Section 7520 for November 2002	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	3.6%

### Section 1288.—Treatment of Original Issue Discounts on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2002. See Rev. Rul. 2002-74, page 814.

### Section 6011.—General Requirement of Return, Statement, or List

26 CFR 1.6011-4T: Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).

### T.D. 9017

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 20, 25, 31, 53, 54, 56, and 301

### Tax Shelter Disclosure Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These temporary regulations modify the rules relating to the filing by certain taxpayers of a disclosure statement with their Federal tax returns under section 6011(a) and include conforming changes to the rules relating to the registration of confidential corporate tax shelters under section 6111(d). These regulations affect taxpayers participating in reportable transactions and persons responsible for registering confidential corporate tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rule-making on this subject on page 832 in this issue of the Bulletin.



**DATES: *Effective Date:*** These temporary regulations are effective January 1, 2003.

***Applicability date:*** For dates of applicability, see § 1.6011-4T(h), § 20.6011-4T(b), § 25.6011-4T(b), § 31.6011-4T(b), § 53.6011-4T(b), § 54.6011-4T(b), § 56.6011-4T(b), and § 301.6111-2T(h).

**FOR FURTHER INFORMATION CONTACT:** Tara P. Volungis, Danielle M. Grimm, or Charlotte Chyr, 202-622-3070 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### **Paperwork Reduction Act**

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control numbers 1545-1685 and 1545-1687. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### **Background**

This document amends 26 CFR parts 1 and 301 to provide modified rules relating to the disclosure of reportable transactions by certain taxpayers on their Federal income tax returns under section 6011 and

includes conforming changes to the rules regarding the registration of confidential corporate tax shelters under section 6111. This document also amends 26 CFR parts 20, 25, 31, 53, 54, and 56 to provide rules for purposes of estate, gift, employment, and pension and exempt organizations excise taxes requiring the disclosure of listed transactions by certain taxpayers on their Federal tax returns under section 6011.

On February 28, 2000, the IRS issued temporary and proposed regulations regarding sections 6011 and 6111 (T.D. 8877, 2000-1 C.B. 747; REG-103735-00, 2000-1 C.B. 770; T.D. 8876, 2000-1 C.B. 753; REG-110311-98, 2000-1 C.B. 767) (the February 2000 regulations). The February 2000 regulations were published in the **Federal Register** (65 FR 11205, 65 FR 11269; 65 FR 11215, 65 FR 11272) on March 2, 2000. On August 11, 2000, the IRS issued temporary and proposed regulations modifying the rules under sections 6011 and 6111 (T.D. 8896, 2000-2 C.B. 249; REG-103735-00, REG-110311-98, 2000-2 C.B. 258) (the August 2000 regulations). The August 2000 regulations were published in the **Federal Register** (65 FR 49909, 65 FR 49955) on August 16, 2000. On August 2, 2001, the IRS issued temporary and proposed regulations modifying the rules under sections 6011 and 6111 (T.D. 8961, 2001-2 C.B. 194; REG-103735-00, REG-110311-98, 2001-2 C.B. 204) (the August 2001 regulations). The August 2001 regulations were published in the **Federal Register** (66 FR 41133, 66 FR 41169) on August 7, 2001. On June 14, 2002, the IRS issued temporary and proposed regulations modifying the rules under sections 6011 and 6111 (T.D. 9000, 2002-28 I.R.B. 87; REG-103735-00, REG-110311-98, 2002-28 I.R.B. 109) (the June 2002 regulations). The June 2002 regulations were published in the **Federal Register** (67 FR 41324, 67 FR 41362) on June 18, 2002.

The rules under sections 6011, 6111, and 6112 for disclosure, registration, and list maintenance are intended to provide the IRS and Treasury with information needed to evaluate potentially abusive transactions. The IRS and Treasury have considered and evaluated compliance with those rules, and have determined that certain additional changes to the current temporary and proposed regulations are necessary to improve compliance and to carry out the purposes

of sections 6011, 6111, and 6112. On March 20, 2002, Treasury released its Plan to Combat Abusive Tax Avoidance Transactions (PO-2018), which describes changes to the rules under sections 6011, 6111, and 6112 that will establish a more effective disclosure regime and improve compliance. See <http://www.treas.gov/press/releases/po2018.htm>.

The amended temporary regulations under section 6011 revise the categories of transactions that must be disclosed on returns. Certain conforming changes are being made to the temporary regulations under section 6111. Concurrent with these amended temporary regulations under sections 6011 and 6111, the IRS and Treasury are publishing elsewhere in this issue of the Bulletin temporary regulations under section 6112. The amendments to the temporary regulations under section 6112 generally require organizers and sellers (material advisors) to maintain lists of persons for transactions required to be registered under section 6111 and for reportable transactions subject to disclosure under § 1.6011-4T, 20.6011-4T, 25.6011-4T, 31.6011-4T, 53.6011-4T, 54.6011-4T, or 56.6011-4T.

Pending legislation would modify section 6111 to require registration of transactions that are required to be disclosed under section 6011. The IRS and Treasury intend to revise the regulations under section 6111 when such legislation is enacted.

### **Explanation of Provisions**

#### *1. In General*

Section 1.6011-4T generally provides that certain taxpayers must disclose their direct or indirect participation in reportable transactions when they file their Federal income tax returns. Under the current temporary regulations, in the case of a partnership or an S corporation that participates in a listed transaction, that partnership or S corporation must disclose its participation and the partners and shareholders also must disclose their participation in the listed transaction. A reportable transaction is either: (1) a listed transaction, or (2) a transaction that meets two of five characteristics, satisfies a projected tax effect test, and does not satisfy any of the exceptions provided in the regulations. The IRS and Treasury have found that taxpayers are interpreting the five characteris-

tics in an overly narrow manner and are interpreting the exceptions in an overly broad manner.

These new temporary regulations provide more objective rules. The regulations redefine a reportable transaction as a transaction that satisfies any one of six categories of transactions. The regulations also eliminate the projected tax effect test and the general exceptions. The six categories of reportable transactions are: listed transactions, confidential transactions, transactions with contractual protection, loss transactions, transactions with a significant book-tax difference, and transactions involving a brief asset holding period. Further, the new temporary regulations require disclosure of participation in reportable transactions by all direct and indirect participants. Disclosure must be made on Form 8886, "Reportable Transaction Disclosure Statement", which will be available when these regulations become effective.

A provision has been added to § 1.6011-4T allowing taxpayers to request a ruling as to whether a transaction must be disclosed under § 1.6011-4T. 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, individual ruling under § 1.6011-4T, or otherwise, that the transaction is not subject to the disclosure requirements of § 1.6011-4T. While some exceptions to the disclosure requirements are included in these regulations, the IRS and Treasury specifically request comments on particular types of transactions that should be either treated as not subject to the disclosure requirements of § 1.6011-4T or excluded from an individual category of reportable transaction.

The major changes to the categories of reportable transactions are discussed below.

### 2. Confidential Transactions

A confidential transaction is a transaction that is offered under conditions of confidentiality, unless the presumption in the regulations regarding written authorization to disclose the structure and tax aspects of the transaction is satisfied. These regulations clarify, however, that the presumption is available only in cases in which

the written authorization to disclose is effective without limitation of any kind from the commencement of discussions.

### 3. Loss Transactions

A loss transaction is any transaction resulting in, or that is reasonably expected to result in, a loss under section 165 of at least: \$10 million in any single taxable year or \$20 million in any combination of taxable years for corporations; \$5 million in any single taxable year or \$10 million in any combination of taxable years for partnerships or S corporations, whether or not any losses flow through to one or more partners or shareholders; \$2 million in any single taxable year or \$4 million in any combination of taxable years for individuals or trusts, whether or not any losses flow through to one or more beneficiaries; and \$50,000 in any single taxable year for individuals or trusts, whether or not the loss flows through from an S corporation or partnership, if the loss arises with respect to a section 988 transaction (as defined in section 988(c)(1) relating to foreign currency transactions). In determining the monetary thresholds, the amount of a section 165 loss is adjusted for any salvage value and for any insurance or other compensation received. However, a section 165 loss does not take into account offsetting gains or other income or limitations.

A section 165 loss includes an amount deductible by virtue of a provision that treats a transaction as a sale or other disposition, or otherwise results in a deduction under section 165. A section 165 loss includes, for example, a loss resulting from a sale or exchange of a partnership interest under section 741 and a loss resulting from a section 988 transaction. Under these regulations, casualty losses and losses resulting from involuntary conversions are not subject to the disclosure requirements under § 1.6011-4T.

The IRS and Treasury also are considering adding two other exceptions. One exception would be for losses resulting from a sale of securities on an established securities market within the meaning of § 1.7701-1(b), but only if the amount of basis used in computing the amount of the loss is equal to the amount of cash paid by the taxpayer for the securities. The other potential exception would be for losses

claimed under section 475(a) or section 1296(a). The IRS and Treasury specifically request comments on whether these or other exceptions should be added to the regulations.

### 4. Transactions with a Significant Book-Tax Difference

A transaction with a significant book-tax difference is a transaction where the treatment for Federal income tax purposes of any item or items from the transaction differs, or is reasonably expected to differ, by more than \$10 million on a gross basis from the treatment of the item or items for book purposes in any taxable year. When making this determination, offsetting items are not netted for either tax or book purposes. Book income is determined by applying U.S. generally accepted accounting principles (GAAP) for worldwide income.

This category of transaction generally applies to taxpayers that are reporting companies under the Securities Exchange Act of 1934 (15 USCS 78a) (and related business entities) and to business entities that have \$100 million or more in gross assets. Specific rules are provided for taxpayers that file consolidated returns, foreign persons, disregarded entities, partnerships, and shareholders of certain foreign corporations. For example, where a taxpayer is considered to participate in a transaction indirectly through a partnership or foreign corporation, items from the transaction that otherwise may be considered items of the partnership or foreign corporation (for tax or book purposes) are treated as items of the taxpayer (to the extent of the taxpayer's allocable share). The mere fact that an item may be reported by different persons for tax and book purposes (e.g., on the taxpayer's U.S. tax return and on the entity's books and records), without more, is not considered a significant book-tax difference in such cases. Instead, the taxpayer must test such items for a book-tax difference in the same manner as items from a transaction in which the taxpayer participated directly.

The regulations provide various exceptions for this category of transaction. The IRS and Treasury specifically request comments on the exceptions and whether other exceptions should be provided.

## 5. Transactions Involving a Brief Asset Holding Period

A transaction involving a brief asset holding period is a transaction resulting in, or that is reasonably expected to result in, 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 less than 45 days. For purposes of determining the holding period, the principles in section 246(c)(3) and (c)(4) apply.

## 6. Application of Section 6011 to Estate, Gift, Employment, and Pension and Exempt Organizations Excise Taxes

A listed transaction that involves Federal estate, gift, employment, or pension or exempt organizations excise taxes must be disclosed in accordance with published guidance identifying such transaction as a listed transaction.

### Effective Date

These regulations apply to transactions entered into on or after January 1, 2003.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Drafting Information

The principal authors of these regulations are Tara P. Volungis, Danielle M. Grimm, and Charlotte Chyr, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, 25, 31, 53, 54, 56, and 301 are amended as follows:

### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.6011-4T is revised to read as follows:

#### § 1.6011-4T Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).

(a) *In general.* Every taxpayer that has participated, directly or indirectly, in a reportable transaction within the meaning of paragraph (b) of this section must attach to its return for the taxable year described in paragraph (e) of this section a disclosure statement in the form prescribed by paragraph (d) of this section. The fact that a transaction is a reportable transaction shall not affect the legal determination of whether the taxpayer's treatment of the transaction is proper.

(b) *Reportable transactions*—(1) *In general.* A reportable transaction is a transaction described in any of the paragraphs (b)(2) through (7) of this section. The term *transaction* includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan, and any series of substantially similar transactions entered into in the same taxable year. There are six categories of reportable transactions: listed transactions, confidential transactions, transactions with contractual protection, loss transactions, transactions with a significant book-tax difference, and transactions involving a brief asset holding period.

(2) *Listed transactions.* A listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

(3) *Confidential transactions*—(i) *In general.* A confidential transaction is a trans-

action that is offered under conditions of confidentiality. All the facts and circumstances relating to the transaction will be considered when determining whether a transaction is offered under conditions of confidentiality, including the prior conduct of the parties. If a taxpayer's disclosure of the structure or tax aspects of the transaction is limited in any way by an express or implied understanding or agreement with or for the benefit of any person who makes or provides a statement, oral or written, (or for whose benefit a statement is made or provided) as to the potential tax consequences that may result from the transaction, a transaction is considered offered under conditions of confidentiality, whether or not such understanding or agreement is legally binding. A transaction also will be considered offered under conditions of confidentiality if the taxpayer knows or has reason to know that the taxpayer's use or disclosure of information relating to the structure or tax aspects of the transaction is limited in any other manner (such as where the transaction is claimed to be proprietary or exclusive) for the benefit of any person, other than the taxpayer, who makes or provides a statement, oral or written, (or for whose benefit a statement is made or provided) as to the potential tax consequences that may result from the transaction.

(ii) *Privilege.* A taxpayer's privilege to maintain the confidentiality of a communication relating to a reportable transaction in which the taxpayer might participate or has agreed to participate, including a taxpayer's confidential communication with the taxpayer's attorney, is not itself a condition of confidentiality.

(iii) *Securities law exception.* A transaction is not considered offered under conditions of confidentiality if disclosure of the structure or tax aspects of the transaction is subject to restrictions reasonably necessary to comply with federal or state securities laws and such disclosure is not otherwise limited.

(iv) *Presumption.* Unless the facts and circumstances indicate otherwise, a transaction is not considered offered under conditions of confidentiality if every person who makes or provides a statement, oral or written, (or for whose benefit a statement is made or provided) as to the potential tax consequences that may result from the transaction, provides express written authoriza-

tion to the taxpayer permitting the taxpayer (and each employee, representative, or other agent of such taxpayer) to disclose to any and all persons, without limitation of any kind, the structure and tax aspects of the transaction, and all materials of any kind (including opinions or other tax analyses) that are provided to the taxpayer related to such structure and tax aspects. This presumption is available only in cases in which the written authorization to disclose is effective without limitation of any kind from the commencement of discussions.

(4) *Transactions with contractual protection.* A transaction with contractual protection is a transaction for which the taxpayer has obtained or been provided with contractual protection against the possibility that part or all of the intended tax consequences from the transaction will not be sustained, including, but not limited to, rescission rights, the right to a full or partial refund of fees paid to any person, fees that are contingent on the taxpayer's realization of tax benefits from the transaction, insurance protection with respect to the tax treatment of the transaction, or a tax indemnity or similar agreement (other than a customary indemnity provided by a principal to the transaction that did not participate in the promotion or offering of the transaction to the taxpayer). Notwithstanding the foregoing, a transaction will not be considered to have contractual protection solely because the issuer of a debt instrument agrees to pay additional interest to compensate the holder of such debt instrument for withholding tax imposed on interest paid on the debt instrument, or because the requirement to pay such additional interest entitles the issuer to redeem the debt instrument.

(5) *Loss transactions*—(i) *In general.* A loss transaction is any transaction resulting in, or that is reasonably expected to result in, a taxpayer claiming a loss under section 165 of at least—

(A) \$10 million in any single taxable year or \$20 million in any combination of taxable years for corporations;

(B) \$5 million in any single taxable year or \$10 million in any combination of taxable years for partnerships or S corporations, whether or not any losses flow through to one or more partners or shareholders;

(C) \$2 million in any single taxable year or \$4 million in any combination of tax-

able years for individuals or trusts, whether or not any losses flow through to one or more beneficiaries; or

(D) \$50,000 in any single taxable year for individuals or trusts, whether or not the loss flows through from an S corporation or partnership, if the loss arises with respect to a section 988 transaction (as defined in section 988(c)(1) relating to foreign currency transactions).

(ii) *Section 165 loss.* (A) For purposes of this section, in determining the thresholds in paragraph (b)(5)(i) of this section, the amount of a section 165 loss is adjusted for any salvage value and for any insurance or other compensation received. See § 1.165-1(c)(4). However, a section 165 loss does not take into account offsetting gains or other income or limitations. For example, a section 165 loss does not take into account the limitation in section 165(d) (relating to wagering losses) or the limitations in sections 165(f), 1211, and 1212 (relating to capital losses).

(B) For purposes of this section, a section 165 loss includes an amount deductible by virtue of a provision that treats a transaction as a sale or other disposition, or otherwise results in a deduction under section 165. A section 165 loss includes, for example, a loss resulting from a sale or exchange of a partnership interest under section 741 and a loss resulting from a section 988 transaction.

(iii) *Exceptions.* Transactions that result in the following losses under section 165 are not loss transactions under this paragraph (b)(5)—

(A) A loss from fire, storm, shipwreck, or other casualty, or from theft, as defined in section 165(c)(3); or

(B) A loss from a compulsory or involuntary conversion as described in section 1231(a)(3)(A)(ii) and section 1231(a)(4)(B).

(6) *Transactions with a significant book-tax difference*—(i) *In general.* A transaction with a significant book-tax difference is a transaction where the treatment for Federal income tax purposes of any item or items from the transaction differs, or is reasonably expected to differ, by more than \$10 million on a gross basis from the treatment of the item or items for book purposes in any taxable year. For purposes of this determination, offsetting items shall not be netted for either tax or book purposes. For purposes of this paragraph (b)(6), book income is determined by applying U.S. gen-

erally accepted accounting principles (GAAP) for worldwide income. Adjustments to any reserve for taxes are disregarded for purposes of determining the book-tax difference.

(ii) *Applicability*—(A) *In general.* This paragraph (b)(6) applies only to—

(1) Taxpayers that are reporting companies under the Securities Exchange Act of 1934 (15 USCS 78a) and related business entities (as described in section 267(b) or 707(b)); or

(2) Business entities that have \$100 million or more in gross assets (the assets of all related business entities (as defined in section 267(b) or 707(b)) must be aggregated).

(B) *Consolidated returns.* For purposes of this paragraph (b)(6), in the case of taxpayers that are members of a group of affiliated corporations filing a consolidated return, transactions solely between or among members of the group will be disregarded. Moreover, where two or more members of the group participate in a transaction that is not solely between or among members of the group, items shall be aggregated (as if such members were a single taxpayer), but any offsetting items shall not be netted.

(C) *Foreign persons.* In the case of a taxpayer that is a foreign person (other than a foreign corporation that is treated as a domestic corporation for Federal tax purposes under section 269B, 953(d), 1504(d) or any other provision of the Internal Revenue Code), only assets that are U.S. assets under § 1.884-1(d) shall be taken into account for purposes of paragraph (b)(6)(ii)(A)(2) of this section, and only transactions that give rise to income that is effectively connected with the conduct of a trade or business within the United States (or to losses, expenses, or deductions allocated or apportioned to such income) shall be taken into account for purposes of this paragraph (b)(6).

(D) *Owners of disregarded entities.* In the case of an eligible entity that is disregarded as an entity separate from its owner for Federal tax purposes, items of income, loss, expense, or deduction that otherwise are considered items of the entity for book purposes shall be treated as items of its owner, and items arising from transactions between the entity and its owner shall be disregarded, for purposes of this paragraph (b)(6).

(E) *Partners of partnerships.* In the case of a taxpayer that is a member or a partner of an entity that is treated as a partnership for Federal tax purposes, items of income, loss, expense, or deduction that are allocable to the taxpayer for Federal tax purposes but otherwise are considered items of the entity for book purposes shall be treated as items of the taxpayer, for purposes of this paragraph (b)(6).

(F) *Shareholders of certain foreign corporations.* To the extent that a taxpayer is considered under paragraph (c)(3)(ii) of this section to have indirectly participated in a transaction to which a foreign corporation is a direct party, all items from the transaction that otherwise are considered items of the foreign corporation for Federal tax purposes or book purposes shall be considered items of the taxpayer for purposes of this paragraph (b)(6).

(iii) *Exceptions.* Items listed in paragraphs (b)(6)(iii)(A) through (M) of this section are not items for which reporting is required under this paragraph (b)(6).

(A) Items to the extent a book loss or expense is reported before or without a loss or deduction for Federal income tax purposes.

(B) Items to the extent income or gain for Federal income tax purposes is reported before or without book income or gain.

(C) Depreciation, depletion, and amortization relating solely to differences in methods, lives (for example, useful lives, recovery periods), or conventions.

(D) Bad debts or cancellation of indebtedness income.

(E) Federal, state, local, and foreign taxes.

(F) Compensation of employees and independent contractors, including stock options and pensions.

(G) Items that for Federal tax purposes cannot be deducted or capitalized, such as certain payments for meals and entertainment, and certain fines and penalties.

(H) Charitable contributions of cash or tangible property.

(I) Tax exempt interest, including municipal bond interest.

(J) Dividends, including amounts treated as dividends under section 78, distributions of previously taxed income under sections 959 and 1293, and income inclusions under sections 551, 951, and 1293.

(K) Items resulting from transactions under section 1033.

(L) Gains and losses arising under section 475 or section 1296.

(M) Section 481 adjustments.

(7) *Transactions involving a brief asset holding period.* A transaction involving a brief asset holding period is a transaction resulting in, or that is reasonably expected to result in, 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 less than 45 days. For purposes of determining the holding period, the principles in section 246(c)(3) and (c)(4) apply.

(8) *Exceptions—(i) In general.* A transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction under paragraphs (b)(2) through (7) of this section, if the Commissioner makes a determination, by published guidance, individual ruling under paragraph (f) of this section, or otherwise, that the transaction is not subject to the reporting requirements of this section.

(ii) *Special rules for RICs.* For purposes of this section, a regulated investment company as defined in section 851 is not required to disclose transactions described in paragraph (b)(5) or (6) of this section.

(c) *Definitions.* For purposes of this section, the following terms are defined as follows:

(1) *Taxpayer.* The term *taxpayer* means any person described in section 7701(a)(1), including S corporations. The term *taxpayer* also includes, unless specifically provided elsewhere in this section, an affiliated group of corporations that joins in the filing of a consolidated return under section 1501.

(2) *Corporation.* When used specifically in this section, the term *corporation* means an entity that is required to file a return for a taxable year on any 1120 series form, or successor form, excluding S corporations.

(3) *Indirect participation—(i) In general.* A taxpayer will have indirectly participated in a reportable transaction if the taxpayer's Federal tax liability is affected (or in the case of a partnership or an S corporation, if a partner's or shareholder's Federal tax liability is reasonably expected to be affected) by the transaction even if the taxpayer is not a direct party to the transaction (e.g., the taxpayer participates as a

partner in a partnership, as a shareholder in an S corporation, or through a trust or a controlled entity). Moreover, a taxpayer will have indirectly participated in a reportable transaction if the taxpayer knows or has reason to know that the tax benefits claimed from the taxpayer's transaction are derived from a reportable transaction.

(ii) *Shareholders of foreign corporations—(A) In general.* A taxpayer that is a shareholder in a foreign corporation will not be considered to have participated indirectly in a transaction to which the foreign corporation is a direct party merely because the taxpayer is a shareholder in the foreign corporation unless the taxpayer is a *reporting shareholder* (as defined in paragraph (c)(3)(ii)(B) of this section) and the transaction either is described in any of the paragraphs (b)(2) through (5) or in paragraph (b)(7) of this section, or reduces or eliminates an income inclusion that otherwise would be required under section 551, 951, or 1293.

(B) *Reporting shareholder.* For purposes of paragraph (c)(3)(ii)(A) of this section, the term *reporting shareholder* means a United States shareholder (as defined in section 551(a)) in a foreign personal holding company (as defined in section 552), a United States shareholder (as defined in section 951(b)) in a controlled foreign corporation (as defined in section 957), or a 10 percent shareholder (by vote or value) of a qualified electing fund (as defined in section 1295).

(iii) *Example.* The following example illustrates the provisions of paragraph (c)(3)(i) of this section:

*Example* Notice 95-53, 1995-2 C.B. 334 (see § 601.601(d)(2) of this chapter), describes a lease stripping transaction in which one party (the transferor) assigns the right to receive future payments under a lease of tangible property and receives consideration which the transferor treats as current income. The transferor later transfers the property subject to the lease in a transaction intended to qualify as a substituted basis transaction, for example, a transaction described in section 351. In return, the transferor receives stock (with low value and high basis) from the transferee corporation. The transferee corporation claims the deductions associated with the high basis property subject to the lease. The transferor and transferee corporation have directly participated in the listed transaction. If the transferor subsequently transfers the high basis/low value stock to a taxpayer in another transaction intended to qualify as a substituted basis transaction and the taxpayer uses the stock to generate a loss, and if the taxpayer knows or has reason to know that the tax loss claimed was derived from the lease stripping transaction, then the taxpayer is indirectly participating in a reportable transaction. Ac-

cordingly, the taxpayer must disclose the reportable transaction and the manner of the taxpayer's indirect participation in the reportable transaction under the rules of this section.

(4) *Substantially similar.* The term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax consequences and that 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. The following examples illustrate situations where a transaction is the same as or substantially similar to a listed transaction under paragraph (b)(2) of this section. (Such transactions may also be reportable transactions under paragraphs (b)(3) through (7) of this section.) The following examples illustrate the provisions of this paragraph (c)(4):

*Example 1.* Notice 2000-44, 2000-2 C.B. 255 (see § 601.601(d)(2) of this chapter), sets forth a listed transaction involving offsetting options transferred to a partnership where the taxpayer claims basis in the partnership for the cost of the purchased options but does not adjust basis under section 752 as a result of the partnership's assumption of the taxpayer's obligation with respect to the options. Transactions using short sales, futures, derivatives or any other type of offsetting obligations to inflate basis in a partnership interest would be the same as or substantially similar to the transaction described in Notice 2000-44. Moreover, use of the inflated basis in the partnership interest to diminish gain that would otherwise be recognized on the transfer of a partnership asset would also be the same as or substantially similar to the transaction described in Notice 2000-44.

*Example 2.* Notice 2001-16, 2001-1 C.B. 730 (see § 601.601(d)(2) of this chapter), sets forth a listed transaction involving a seller (X) who desires to sell stock of a corporation (T), an intermediary corporation (M), and a buyer (Y) who desires to purchase the assets (and not the stock) of T. M agrees to facilitate the sale to prevent the recognition of the gain that T would otherwise report. Notice 2001-16 describes M as a member of a consolidated group that has a loss within the group or as a party not subject to tax. Transactions utilizing different intermediaries to prevent the recognition of gain would be the same as or substantially similar to the transaction described in Notice 2001-16. An example is a transaction in which M is a corporation that does not file a consolidated return but which buys T stock, liquidates T, sells assets of T to Y, and offsets the gain recognized on the sale of those assets with currently generated losses.

(d) *Form and content of disclosure statement.* The IRS will release Form 8886, "Reportable Transaction Disclosure Statement" (or a successor form), for use by taxpayers in accordance with this paragraph (d).

A taxpayer required to file a disclosure statement under this section must file a completed Form 8886 in accordance with the instructions to the form. The form must be attached to the appropriate tax returns as provided in paragraph (e) of this section. If a copy of a disclosure statement is required to be sent to the Office of Tax Shelter Analysis (OTSA) under paragraph (e) of this section, it must be sent to: Internal Revenue Service LM:PFTG:OTSA, Large & Mid-Size Business Division, 1111 Constitution Ave., NW, Washington, DC 20224, or to such other address as provided by the Commissioner.

(e) *Time of providing disclosure—(1) In general.* The disclosure statement for a reportable transaction must be attached to the taxpayer's Federal income tax return for each taxable year for which the taxpayer's Federal income tax liability is affected by the taxpayer's participation in the transaction. In addition, a copy of the disclosure statement must be sent to OTSA at the same time that any disclosure statement is first filed with the taxpayer's Federal income tax return. If a reportable transaction results in a loss which is carried back to a prior year, the disclosure statement for the reportable transaction must be attached to the taxpayer's application for tentative refund or amended Federal income tax return for that prior year. In the case of a taxpayer that is a partnership or S corporation, the disclosure statement for a reportable transaction must be attached to the partnership's or S corporation's Federal income tax return for each taxable year ending with or within the taxable year of any partner or shareholder whose income tax liability is affected or is reasonably expected to be affected by the partnership's or S corporation's participation in the transaction. If a transaction becomes a reportable transaction (e.g., the transaction subsequently becomes one identified in published guidance as a listed transaction described in paragraph (b)(2) of this section, or there is a change in facts affecting the expected Federal income tax effect of the transaction such that the transaction is reportable under any of the paragraphs (b)(5) through (7)) on or after the date the taxpayer has filed the return for the first taxable year for which the transaction affected the taxpayer's or a partner's or a shareholder's Federal income tax liability, the disclosure statement must be filed as an

attachment to the taxpayer's Federal income tax return next filed after the date the transaction becomes a reportable transaction (whether or not the transaction affects the taxpayer's or any partner's or shareholder's Federal income tax liability for that year). The taxpayer must disclose the transaction in the time and manner provided for under the provisions of this section regardless of whether the taxpayer also plans to disclose the transaction under other published guidance, for example, Rev. Proc. 94-69, 1994-2 C.B. 804 (see § 601.601(d)(2) of this chapter).

(2) *Example.* The following example illustrates the application of this paragraph (e):

*Example.* In January of 2003, F, a domestic calendar year corporation, enters into a transaction that F reasonably expects will result in an \$8 million section 165 loss in a single year and a \$15 million section 165 loss over a combination of years. Assume that the transaction is not a transaction described in any of the paragraphs (b)(2) through (7) of this section, and, therefore, is not a reportable transaction under paragraph (b) of this section. On March 1, 2005, the IRS publishes a notice identifying the transaction as a listed transaction described in paragraph (b)(2) of this section. Thus, upon issuance of the notice, the transaction becomes a reportable transaction described in paragraph (b) of this section. F is required to file Form 8886 for the transaction as an attachment to F's next filed Federal income tax return. If F's 2004 Federal income tax return has not been filed on or before the date the Service identifies the transaction as a listed transaction, the disclosure statement must be attached to F's 2004 return and at that time a copy of the form must be sent to OTSA.

(f) *Rulings and protective disclosures—*

(1) *Requests for ruling.* If a taxpayer is uncertain whether a transaction must be disclosed under this section, that taxpayer may, on or before the date that disclosure would otherwise be required under this section, submit a request to the IRS for a ruling as to whether the transaction is subject to the disclosure requirements of this section. If the request fully discloses all relevant facts relating to the transaction, the potential obligation of that taxpayer to disclose the transaction will be suspended during the period that the ruling request is pending and, if the IRS subsequently concludes that the transaction is a reportable transaction subject to disclosure under this section, until the 60th day after the issuance of the ruling (or, if the request is withdrawn, 60 days after the date that the request is withdrawn).

(2) *Protective disclosures.* If a taxpayer is uncertain whether a transaction must be disclosed under this section, the taxpayer

may disclose the transaction in accordance with the requirements of this section, and indicate on the disclosure statement that the taxpayer is uncertain whether the transaction is required to be disclosed under this section and that the disclosure statement is being filed on a protective basis.

(g) *Retention of documents.* The taxpayer must retain a copy of all documents and other records related to a transaction subject to disclosure under this section that are material to an understanding of the facts of the transaction, the expected tax treatment of the transaction, or the taxpayer's decision to participate in the transaction. Such documents must be retained until the expiration of the statute of limitations applicable to the final taxable year for which disclosure of the transaction was made in accordance with the requirements of this section. (This document retention requirement is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) Such documents generally include, but are not limited to, the following: marketing materials related to the transaction; written analyses used in decision-making related to the transaction; correspondence and agreements between the taxpayer and any advisor, lender, or other party to the reportable transaction that relate to the transaction; documents discussing, referring to, or demonstrating the tax benefits arising from the reportable transaction; and documents, if any, referring to the business purposes for the reportable transaction.

(h) *Effective dates.* This section applies to Federal income tax returns filed after February 28, 2000. However, paragraphs (a) through (g) of this section apply to transactions entered into on or after January 1, 2003. The rules that apply with respect to transactions entered into on or before December 31, 2002, are contained in § 1.6011-4T in effect prior to January 1, 2003 (see 26 CFR part 1 revised as of April 1, 2002, and 2002-28 I.R.B. 90 (see § 601.601(d)(2) of this chapter)).

#### PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 3. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 4. Section 20.6011-4T is added to read as follows:

#### § 20.6011-4T Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).

(a) *In general.* If a transaction is identified as a "listed transaction" as defined in § 1.6011-4T of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an estate tax under chapter 11 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

#### PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 6. Section 25.6011-4T is added to read as follows:

#### § 25.6011-4T Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).

(a) *In general.* If a transaction is identified as a "listed transaction" as defined in § 1.6011-4T of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves a gift tax under chapter 12 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

#### PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Par. 7. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 8. Section 31.6011-4T is added to read as follows:

#### § 31.6011-4T Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).

(a) *In general.* If a transaction is identified as a "listed transaction" as defined in § 1.6011-4T of this chapter by the Com-

missioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

#### PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 9. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805

Par. 10. Section 53.6011-4T is added to read as follows:

#### § 53.6011-4T Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).

(a) *In general.* If a transaction is identified as a "listed transaction" as defined in § 1.6011-4T of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an excise tax under chapter 42 of subtitle D of the Internal Revenue Code (relating to private foundations and certain other tax-exempt organizations), the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

#### PART 54—PENSION EXCISE TAXES

Par. 11. The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 12. Section 54.6011-4T is added to read as follows:

#### § 54.6011-4T Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).

(a) *In general.* If a transaction is identified as a "listed transaction" as defined in § 1.6011-4T of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an excise tax under chapter 43 of subtitle D of the Internal Revenue Code (relating to qualified

pension, etc., plans), the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

#### PART 56—PUBLIC CHARITY EXCISE TAXES

Par. 13. The authority citation for part 56 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 14. Section 56.6011-4T is added to read as follows:

§ 56.6011-4T *Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).*

(a) *In general.* If a transaction is identified as a “listed transaction” as defined in § 1.6011-4T of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an excise tax under chapter 41 of subtitle D of the Internal Revenue Code (relating to public charities), the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

#### PART 301—PROCEDURE AND ADMINISTRATION

Par. 15. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 16. Section 301.6111-2T is amended as follows:

1. Paragraphs (a)(3) and (b)(3)(i) are revised.

2. Paragraph (c)(3) is amended by adding a sentence at the end of the paragraph.

3. Paragraph (h) is amended by revising the paragraph heading and removing the third sentence through the last sentence and adding two new sentences in their place.

The revisions and additions read as follows:

§ 301.6111-2T *Confidential corporate tax shelters (temporary).*

(a) \* \* \*

(3) For purposes of this section, references to the term “transaction” include all of the factual elements relevant to the ex-

pected tax treatment of any investment, entity, plan, or arrangement, and include any series of steps carried out as part of a plan. For purposes of this section, the term “substantially similar” includes any transaction that is expected to obtain the same or similar types of tax consequences and that 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 registration. For examples, see § 1.6011-4T(c)(4) of this chapter.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) The potential participant is expected to participate in the transaction in the ordinary course of its business in a form consistent with customary commercial practice (a transaction involving the acquisition, disposition, or restructuring of a business, including the acquisition, disposition, or other change in the ownership or control of an entity that is engaged in a business, or a transaction involving a recapitalization or an acquisition of capital for use in the taxpayer’s business, shall be considered a transaction carried out in the ordinary course of a taxpayer’s business); and

\* \* \* \* \*

(c)

(3) \* \* \* This presumption is available only in cases in which the written authorization to disclose is effective without limitation of any kind from the commencement of discussions.

\* \* \* \* \*

(h) *Effective dates.* \* \* \* However, paragraphs (a)(3), (b)(3)(i), and (c)(3) of this section apply to confidential corporate tax shelters in which any interests are offered for sale on or after January 1, 2003. The rules that apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000, and on or before December 31, 2002, are contained in § 301.6111-2T in effect prior to January 1, 2003 (see 26 CFR part 301 revised as of April 1, 2002, and 2002-28 I.R.B. 91 (see § 601.601(d)(2) of this chapter)).

Robert E. Wenzel,  
*Deputy Commissioner  
of Internal Revenue.*

Approved October 15, 2002.

Pamela F. Olson,  
*Assistant Secretary of the Treasury.*

(Filed by the Office of the Federal Register on October 17, 2002, 3:10 p.m., and published in the issue of the Federal Register for October 22, 2002, 67 F.R. 64799)

### Section 6112.—Organizers and Sellers of Potentially Abusive Tax Shelters Must Keep Lists of Inventors

301.6112-1T: *Requirement to prepare, maintain, and furnish lists with respect to potentially abusive tax shelters (temporary).*

T.D. 9018

#### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

### Requirement to Maintain a List of Investors in Potentially Abusive Tax Shelters

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These temporary regulations relate to the preparation, maintenance, and furnishing of lists of persons in potentially abusive tax shelters under section 6112. These regulations apply to organizers and sellers of potentially abusive tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject on page 834 of this Bulletin.

DATES: *Effective Date:* These temporary regulations are effective January 1, 2003.

*Applicability date:* For dates of applicability, see § 301.6112-1T(j).

FOR FURTHER INFORMATION CONTACT: Charlotte Chyr, Tara P. Volungis, or Danielle M. Grimm, 202-622-3070 (not a toll-free number).



## SUPPLEMENTARY INFORMATION:

### Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1686. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in this issue of the Bulletin.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

This document amends 26 CFR part 301 regarding the requirement to maintain lists of persons for potentially abusive tax shelters under section 6112. Section 6708 provides penalties for failing to maintain a list under section 6112.

On February 28, 2000, the IRS issued temporary and proposed regulations regarding section 6112 (T.D. 8875, 2000–1 C.B. 761; REG–103736–00, 2000–1 C.B. 768). The February regulations were published in the **Federal Register** (65 FR 11211; 65 FR 11271) on March 2, 2000. On August 11, 2000, the IRS issued temporary and proposed regulations regarding section 6112 (T.D. 8896, 2000–2 C.B. 249; REG–103736–00, 2000–2 C.B. 258). The August 2000 regulations were published in the **Federal Register** (65 FR 49909; 65 FR 49955) on August 16, 2000, modifying the previous regulations.

The list maintenance rules under section 6112, along with the rules relating to disclosure of reportable transactions under section 6011 and the rules for registration of tax shelters under section 6111, are intended to provide the IRS and Treasury with information needed to evaluate potentially abusive transactions. The IRS and Treasury have considered and evaluated compliance with these rules and have determined that certain additional changes to the current temporary and proposed regulations are necessary to improve compliance and to carry out the purposes of sections 6011, 6111, and 6112. On March 20, 2002, Treasury released its Plan to Combat Abusive Tax Avoidance Transactions (PO–2018), which describes changes to the rules under sections 6011, 6111, and 6112 that will establish a more effective disclosure regime and improve compliance. See <http://www.treas.gov/press/releases/po2018.htm>.

These amendments to the temporary regulations under section 6112 generally require organizers and sellers (material advisors) to maintain lists of persons for transactions required to be registered under section 6111 and for reportable transactions defined in § 1.6011–4T(b) of the Income Tax Regulations.

Concurrent with these amended temporary regulations under section 6112, the IRS and Treasury are publishing elsewhere in this issue of the Bulletin amended temporary regulations under section 6011. The amended temporary regulations under section 6011 revise the categories of transactions that must be disclosed on returns.

Pending legislation would modify section 6111 to require registration of transactions that are required to be disclosed under section 6011. The IRS and Treasury intend to revise the regulations under section 6111 when such legislation is enacted.

### Explanation of Provisions

#### A. Potentially Abusive Tax Shelter

Section 6112 provides that any person who organizes or sells any interest in a potentially abusive tax shelter must maintain a list identifying each person who was sold an interest in such shelter and containing any other information required by regulations. A potentially abusive tax shelter under section 6112 includes any tax shelter that is required to be registered with the

IRS as a tax shelter under section 6111, and any transaction that has a potential for tax avoidance or evasion.

Under these regulations, a transaction has the potential for tax avoidance or evasion if it is a listed transaction or if a potential material advisor, at the time the transaction is entered into, knows or has reason to know that the transaction is otherwise a reportable transaction as defined in § 1.6011–4T. For purposes of section 6112, listed transactions that involve Federal estate, gift, employment, and pension and exempt organizations excise taxes are also potentially abusive tax shelters that require list maintenance. If a transaction that involves Federal income taxes becomes a listed transaction on or after January 1, 2003, it is a potentially abusive tax shelter for purposes of section 6112 and, whether or not the material advisor is already required to maintain a list, the material advisor must begin, at the time of listing, to include on the list those persons who acquired an interest in the transaction after February 28, 2000.

#### B. Organizer and Seller (Material Advisor)

The regulations provide that a person is an organizer of, or a seller of any interest in, a transaction that is a potentially abusive tax shelter if that person is a material advisor with respect to that transaction. In general, a material advisor is any person who (i) receives, or expects to receive, at least a minimum fee in connection with a transaction that is a potentially abusive tax shelter, and (ii) who makes or provides any statement, oral or written, to any person as to the potential tax consequences of that transaction. The Internal Revenue Service and Treasury are considering whether the minimum fee requirement should be eliminated with respect to listed transactions.

The minimum fee is \$250,000 for a transaction that is a potentially abusive tax shelter if all persons who acquire an interest, directly or indirectly, in the transaction are corporations (other than S corporations). The minimum fee for any other transaction that is a potentially abusive tax shelter is \$50,000. In calculating the minimum fee, each transaction that is a potentially abusive tax shelter is evaluated separately to determine whether the minimum fee threshold is satisfied with re-

spect to that particular transaction. If the minimum fee threshold is satisfied with respect to one transaction that is a potentially abusive tax shelter, but not with respect to another separate transaction (whether or not it is substantially similar), a person is a material advisor with respect to only the transaction for which the minimum fee threshold is satisfied. Accordingly, the list required to be maintained includes only those persons who are participants in the transaction for which the minimum fee threshold is satisfied.

### C. *Preparing, Maintaining and Furnishing Lists*

In general, a material advisor must prepare and maintain a separate list of persons for each transaction that is a potentially abusive tax shelter. However, to ensure that the IRS is able to identify all of the persons who are participants in potentially abusive tax shelters that are substantially similar, the regulations further provide that the material advisor must keep one list for all transactions that are substantially similar and are potentially abusive tax shelters.

Any person to whom a material advisor makes or provides a statement, oral or written, as to the potential tax consequences of a transaction that is a potentially abusive tax shelter must be included on a list if the material advisor knows or has reason to know that the person, or any related party, participated or will participate in the transaction. A person (including any related party) is treated as having participated in a transaction that is a potentially abusive tax shelter if the material advisor knows or has reason to know that the person sold or transferred, or will sell or transfer to another person (subsequent participant) an interest in that type of transaction that, if entered into, would be a potentially abusive tax shelter. The material advisor also must list any subsequent participant if the material advisor knows or has reason to know the identity of that subsequent participant and the material advisor knows or reasonably expects that the subsequent participant will participate in, or sell or transfer to another subsequent partici-

pant an interest in that type of transaction that, if entered into, would be a potentially abusive tax shelter.

The required list must be maintained for ten years following the date on which the material advisor last made a statement, oral or written, as to the potential tax consequences that may result from the transaction that is a potentially abusive tax shelter. If a material advisor that is an entity dissolves or liquidates before the expiration of the ten-year period, the person responsible under state law for winding up the affairs of the material advisor is (or if state law does not specify any person, then each of the directors of the corporation, the general partners of the partnership, or the trustees, owners, or members of the entity are) responsible for preparing, maintaining, and furnishing the list, unless the dissolved or liquidated entity submits the list to the Office of Tax Shelter Analysis (OTSA) within 60 days after the dissolution or liquidation. The responsible person must also provide notice to OTSA of such dissolution or liquidation within 60 days after the dissolution or liquidation.

Each material advisor must, upon written request by the IRS, furnish the list of persons to the IRS within 20 business days after the date of the request. The list may be furnished to the IRS in any form that enables the IRS to determine without undue delay or difficulty the information required to be contained in the list.

As a general rule, the name of a participant in a transaction that is a potentially abusive tax shelter is not protected by either the attorney-client privilege or by the tax practitioner privilege under section 7525. No participant in a transaction that is a potentially abusive tax shelter should have a reasonable expectation of confidentiality with respect to that person's identity. Moreover, a claim of privilege that is not based on a reasonable belief that the privilege applies may subject the material advisor to penalties under section 6708.

### D. *Substantially Similar Transactions*

For purposes of section 6112, a substantially similar transaction includes any transaction that is expected to obtain the

same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of a transaction is not relevant to the determination of whether that transaction is the same as or substantially similar to another transaction. Further, the term *substantially similar* must be broadly construed in favor of list maintenance.

### E. *Effective Date*

These amended temporary regulations apply to transactions that are potentially abusive tax shelters entered into, or interests acquired therein, on or after January 1, 2003. However, these regulations shall apply to any transaction that was entered into, or in which an interest was acquired, after February 28, 2000, if the transaction becomes a listed transaction as defined in § 1.6011-4T on or after January 1, 2003, and is subject to disclosure under § 1.6011-4T.

### **Special Analysis**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### **Drafting Information**

The principal authors of these regulations are Charlotte Chyr, Tara P. Volungis, and Danielle M. Grimm, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

### PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 301.6112-1T is revised to read as follows:

*§ 301.6112-1T Requirement to prepare, maintain, and furnish lists with respect to potentially abusive tax shelters (temporary).*

(a) *In general.* Each organizer and seller, as described in paragraph (c) of this section, of a transaction that is a potentially abusive tax shelter, as described in paragraph (b) of this section, shall prepare and maintain a list of persons in accordance with paragraph (e) of this section and upon request shall furnish such list to the Internal Revenue Service in accordance with paragraph (g) of this section.

(b) *Potentially abusive tax shelters.* For purposes of this section, a potentially abusive tax shelter is any transaction that is a section 6111 tax shelter, as described in paragraph (b)(1) of this section, or that has a potential for tax avoidance or evasion, as described in paragraph (b)(2) of this section. The term “transaction” includes all of the factual elements relevant to support the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan.

(1) *Transaction that is a section 6111 tax shelter.* A section 6111 tax shelter is any transaction that is required to be registered with the Internal Revenue Service under section 6111, regardless of whether that tax shelter is properly registered pursuant to section 6111.

(2) *Transaction that has a potential for tax avoidance or evasion.* A transaction that has a potential for tax avoidance or evasion is any transaction that is a listed transaction as defined in § 1.6011-4T of this chapter and is subject to disclosure under § 1.6011-4T, 20.6011-4T, 25.6011-4T, 31.6011-4T, 53.6011-4T, 54.6011-4T, or 56.6011-4T of this chapter, or any trans-

action that a potential material advisor knows or has reason to know, at the time the transaction is entered into or an interest is acquired, meets one of the categories of a reportable transaction under § 1.6011-4T(b)(3) through (7) of this chapter.

(i) The determination of whether a transaction has the potential for tax avoidance or evasion does not depend upon whether the transaction is properly disclosed pursuant to § 1.6011-4T, 20.6011-4T, 25.6011-4T, 31.6011-4T, 53.6011-4T, 54.6011-4T, or 56.6011-4T of this chapter.

(ii) If a transaction becomes a listed transaction as defined in § 1.6011-4T of this chapter and is subject to disclosure under § 1.6011-4T of this chapter, after the transaction is entered into or an interest in the transaction is acquired, this section shall apply with respect to any interests acquired after February 28, 2000. If a transaction becomes a listed transaction as defined in § 1.6011-4T of this chapter and is subject to disclosure under § 20.6011-4T, 25.6011-4T, 31.6011-4T, 53.6011-4T, 54.6011-4T, or 56.6011-4T of this chapter, after the transaction is entered into or an interest in the transaction is acquired, this section shall apply with respect to any interests acquired on or after January 1, 2003.

(c) *Organizer and seller—(1) In general.* A person is an organizer of, or a seller of an interest in, a transaction that is a potentially abusive tax shelter if that person is a material advisor, as described in paragraph (c)(2) of this section, with respect to that transaction.

(2) *Material advisor.* A material advisor is any person who (or through its employees, shareholders, partners, or agents) receives, or expects to receive, at least a minimum fee, as defined in paragraph (c)(3) of this section, in connection with a transaction that is a potentially abusive tax shelter and who makes or provides any statement, oral or written, to any person as to the potential tax consequences of that transaction. A person shall be treated as a material advisor if that person forms or avails of an entity with the purpose of avoiding the rules of section 6111 or 6112 or the penalties under section 6707 or 6708.

(3) *Minimum fee—(i) In general.* For purposes of this paragraph (c), the minimum fee is \$250,000 for a transaction that is a potentially abusive tax shelter if all persons who acquire an interest, directly or in-

directly, are corporations (other than S corporations), and \$50,000 for any other transaction that is a potentially abusive tax shelter.

(ii) *Determination of fees.* In determining whether the minimum fee threshold is satisfied, all fees for advice (whether or not tax advice) regarding, or for implementation of, a transaction that is a potentially abusive tax shelter are taken into account. For purposes of this section, fees include consideration in whatever form paid, whether in cash or in kind, and whether paid or denominated as fees for tax advice or for some other function such as the preparation of documentation or tax return preparation. The Internal Revenue Service will scrutinize carefully all of the facts and circumstances in determining whether consideration received in connection with a transaction that is a potentially abusive tax shelter constitutes fees for purposes of this section.

(d) *Definitions.* For purposes of this section, the following terms are defined as follows:

(1) *Interest.* The term *interest* includes, but is not limited to, any right to participate in a transaction by reason of a partnership interest, a shareholder interest, or a beneficial interest in a trust; any interest in property (including a leasehold interest); the entry into a leasing arrangement or a consulting, management or other agreement for the performance of services; or any interest in any other investment, entity, plan, or arrangement. The term *interest* includes any interest that purportedly entitles the direct or indirect holder of the interest to any tax consequence (including, but not limited to, a deduction, loss, or adjustment to tax basis in an asset) arising from the transaction. An *interest* also includes the receipt of information or services regarding the organization or structure of the transaction if the information or services are relevant to the potential tax consequences of the transaction.

(2) *Substantially similar.* The term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax consequences and that 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 trans-

action. Further, the term *substantially similar* must be broadly construed in favor of list maintenance.

(3) *Person*. The term *person* means any person described in section 7701(a)(1), including an affiliated group of corporations that join in the filing of a consolidated return under section 1501.

(4) *Related party*. A person is a related party with respect to another person if such person bears a relationship to such other person described in section 267 or 707.

(e) *Preparation and maintenance of lists*—(1) *In general*. A separate list of persons must be prepared and maintained for each transaction that is a potentially abusive tax shelter. However, one list must be maintained for substantially similar transactions that are potentially abusive tax shelters.

(2) *Persons required to be included on lists*. (i) A material advisor is required to list each person to whom the material advisor makes or provides a statement, oral or written, as to the potential tax consequences of a transaction that is a potentially abusive tax shelter, if the material advisor knows or has reason to know that the person or any related party participated in or will participate in the transaction (or a substantially similar transaction that is a potentially abusive tax shelter).

(ii) A material advisor shall treat a person (including any related party) as having participated in a transaction that is a potentially abusive tax shelter if the material advisor knows or has reason to know that the person sold or transferred, or will sell or transfer, to another person (subsequent participant) an interest in that type of transaction that, if entered into, would be a potentially abusive tax shelter. The material advisor also must list any subsequent participant if the material advisor knows or has reason to know the identity of that subsequent participant, and the material advisor knows or reasonably expects that the subsequent participant will participate in, or sell or transfer to another subsequent participant an interest in that type of transaction that, if entered into, would be a potentially abusive tax shelter.

(iii) The following examples illustrate the provisions of this section:

*Example 1*. An investment firm provides a statement describing the potential tax consequences of a type of transaction to three taxpayers: Corporation X, Corporation Y, and Corporation Z. Each taxpayer agrees to pay the investment firm \$300,000 in con-

nection with the transaction, and each taxpayer engages in a separate transaction (transaction X, transaction Y, and transaction Z, respectively). At the time the transactions are entered into, the investment firm knows, or has reason to know, that the transactions will result in a single taxable year loss of \$9 million for Corporation X, \$15 million for Corporation Y, and \$12 million for Corporation Z. The transactions do not satisfy the definitions of a reportable transaction under § 1.6011-4T(b)(2), (3), (4), (6) or (7) of this chapter. All the persons who acquired an interest directly or indirectly in the transactions are C corporations.

(i) *Transaction X*. At the time transaction X is entered into, the investment firm does not know, or have reason to know, that the transaction is a reportable transaction, because the \$9 million loss does not satisfy the \$10 million threshold under § 1.6011-4T(b)(5) of this chapter (relating to loss transactions). Accordingly, transaction X is not a potentially abusive tax shelter. The investment firm is not required to maintain a list with respect to transaction X.

(ii) *Transactions Y and Z*. The investment firm satisfies the three requirements for being a material advisor with respect to transaction Y and with respect to transaction Z. First, both of the transactions are potentially abusive tax shelters with respect to the investment firm because the investment firm knows, or has reason to know, at the time the transactions are entered into, that the losses for each of Corporation Y and Z are expected to exceed the \$10 million threshold and, thus, the transactions are reportable transactions under § 1.6011-4T(b)(5) of this chapter (relating to loss transactions). Second, the investment firm provides a statement as to the potential tax consequences of the transactions. Third, the investment firm receives \$300,000 in connection with each transaction, which exceeds the minimum fee with respect to each transaction (\$250,000). Accordingly, the investment firm must maintain a list with respect to transactions Y and Z. Because transactions Y and Z are based on the same or similar tax strategy, transactions Y and Z are substantially similar transactions, and the investment firm must keep one list with respect to both transactions. The list must contain information about Corporation Y and Corporation Z (see paragraph (e)(2)(i) of this section).

*Example 2*. (i) Corporation M provides a statement to Corporation N describing the potential tax consequences of a type of transaction. Corporation N pays Corporation M \$90,000 for the information about that type of transaction. Corporation M knows that Corporation N will sell the information to Taxpayer O (a corporation) and Taxpayer P (an individual), and reasonably expects Taxpayer O and Taxpayer P to participate in transactions of the type that Corporation M described to Corporation N. Corporation N, in turn, provides a statement as to the potential tax consequences of that type of transaction to Taxpayer O and Taxpayer P. Each taxpayer agrees to pay Corporation N \$80,000 in connection with their respective transactions, and each taxpayer engages in a separate transaction (transaction O and transaction P, respectively). At the time the transactions are entered into, both Corporation M and Corporation N know, or have reason to know, that the transactions are reportable transactions under § 1.6011-4T(b) of this chapter. All the persons who acquire an interest directly or indirectly in transaction O are C corporations.

(ii) Corporation N is not a material advisor with respect to transaction O because Corporation N receives only \$80,000 in connection with transaction O, which is less than the minimum fee for that transaction (\$250,000). Corporation N is a material advisor with respect to transaction P. First, at the time transaction P is entered into, Corporation N knows, or has reason to know, that transaction P is a reportable transaction and, thus, is a potentially abusive tax shelter. Second, Corporation N provides a statement as to the potential tax consequences of transaction P. Third, Corporation N receives \$80,000 in connection with transaction P, which exceeds the minimum fee for that transaction (\$50,000). Accordingly, Corporation N must keep a list with respect to transaction P. The list must contain information about Taxpayer P (see paragraph (e)(2)(ii) of this section).

(iii) Corporation M is not a material advisor with respect to transaction O because Corporation M receives only \$90,000 in connection with transaction O, which is less than the minimum fee for that transaction (\$250,000). Corporation M is a material advisor with respect to transaction P. First, at the time transaction P is entered into, Corporation M knows, or has reason to know, that transaction P is a reportable transaction and, thus, is a potentially abusive tax shelter. Second, Corporation M provides a statement as to the potential tax consequences of transaction P, and Corporation M receives \$90,000 in connection with transaction P, which exceeds the minimum fee for that transaction (\$50,000). Accordingly, Corporation M must keep a list with respect to transaction P. The list must contain information about Corporation N (see paragraph (e)(2)(ii) of this section) and Taxpayer P (see paragraph (e)(2)(ii) of this section).

(3) *Contents*—(i) *In general*. Each list must contain the following information—

(A) The name of each transaction that is a potentially abusive tax shelter and the registration number, if any, obtained under section 6111;

(B) The TIN (as defined in section 7701(a)(41)), if any, of each transaction;

(C) The name, address, and TIN of each person required to be on the list;

(D) If applicable, the number of units (*i.e.*, percentage of profits, number of shares, etc.) acquired by each person required to be included on the list;

(E) The date on which each interest was acquired;

(F) The amount invested in each transaction by each person required to be included on the list;

(G) A detailed description of each transaction that describes both the structure and its expected tax consequences;

(H) A summary or schedule of the tax consequences that each person is intended or expected to derive from participation in each transaction, if known by the material advisor;

(I) Copies of any additional written materials, including tax analyses or opinions, relating to each transaction that have been shown or provided to any person who acquired or may acquire an interest in the transactions, or to their representatives, tax advisors, or agents, by the material advisor or any related party or agent of the material advisor; and

(J) For each person, if the interest in the transaction was not acquired from the material advisor maintaining the list, the name of the person from whom the interest was acquired.

(ii) *Claims of privilege.* In any case in which an attorney or federally authorized tax practitioner within the meaning of section 7525 is required to maintain a list with respect to a transaction that is a potentially abusive tax shelter, and that person has a reasonable belief that information required to be disclosed under this paragraph (e)(3) is protected by the attorney-client privilege or by the confidentiality privilege of section 7525(a), the attorney or federally authorized tax practitioner must still maintain the list of persons pursuant to the requirements of this section. When the list is requested by the Internal Revenue Service, as provided in paragraph (g) of this section, the material advisor may assert a privilege claim subject to the requirements of this paragraph (e)(3)(ii).

(A) The claimed privilege must be supported by a statement that is signed by the attorney or federally authorized tax practitioner under penalties of perjury, must identify and describe (as set forth in paragraph (e)(3)(ii)(B) of this section) the nature of each document or category of information that is not produced which will allow the Service to determine the applicability of the privilege or protection claimed, without revealing the privileged information itself, and must include the following representations with respect to each document or category of information for which the privilege is claimed—

(1) Specifically represent that the information was a confidential practitioner-client communication and, in the case of information which a federally authorized tax practitioner claims is privileged under section 7525, that the omitted information was not part of tax advice that constituted the promotion of the direct or indirect participation of a corporation in any tax shelter (as defined in section 662(d)(2)(iii)); and

(2) Specifically represent that to the best of such person's knowledge and belief, all others in possession of the omitted information did not disclose the omitted information to any person whose receipt of such information would result in a waiver of the privilege.

(B) Identification and description of a document or category of information includes, but is not limited to—

(1) The date appearing on such document or, if it has no date, the date or approximate date that such document was created;

(2) The general nature, description and purpose of such document and the identity of the person who signed such document, and, if it was not signed, the identity of each person who prepared it; and

(3) The identity of each person to whom such document was addressed and the identity of each person, other than such addressee, to whom such document, or a copy thereof, was given or sent.

(f) *Retention of lists.* Each material advisor must maintain the list described in paragraph (e) of this section for ten years following the date on which the material advisor last made a statement, oral or written, as to the potential tax consequences of the transaction. If the material advisor required to prepare, maintain, and furnish the list is a corporation, partnership, or other entity (entity) that has dissolved or liquidated before completion of the ten-year period, the person responsible under state law for winding up the affairs of the entity must prepare, maintain and furnish the list on behalf of the entity, unless the entity submits the list to the Office of Tax Shelter Analysis (OTSA) within 60 days after the dissolution or liquidation. If state law does not specify any person as responsible for winding up the affairs, then each of the directors of the corporation, the general partners of the partnership, or the trustees, owners, or members of the entity are responsible for preparing, maintaining and furnishing the list on behalf of the entity, unless the entity submits the list to the Office of Tax Shelter Analysis (OTSA) within 60 days after the dissolution or liquidation. The responsible person must also provide notice to OTSA of such dissolution or liquidation within 60 days after the dissolution or liquidation. The list and the notice provided to OTSA may be sent to: Internal Revenue Service, LM:PFTG:OTSA,

Large & Mid-Size Business Division, 1111 Constitution Ave., NW, Washington, DC 20224, or to such other address as provided by the Commissioner.

(g) *Furnishing of lists.* Each material advisor and person responsible for maintaining a list of persons must, upon written request by the Internal Revenue Service, furnish the list to the Internal Revenue Service within 20 business days after the date of the request. The request is not required to be in the form of an administrative summons. The list may be furnished to the Internal Revenue Service on paper, card file, magnetic media, or in any other form, provided the method of furnishing the list enables the Internal Revenue Service to determine without undue delay or difficulty the information required in paragraph (e)(3) of this section.

(h) *Designation agreements.* If more than one material advisor is required to maintain a list of persons, in accordance with paragraph (e) of this section, for a potentially abusive tax shelter, the material advisors may designate by written agreement a single material advisor to maintain the list or a portion of the list. The designation of one material advisor to maintain the list does not relieve the other material advisors from their obligation to furnish the list to the Internal Revenue Service in accordance with paragraph (g) of this section. The fact that a material advisor is unable to obtain the list from any designated material advisor, the fact that any designated material advisor did not maintain a list, or the fact that the list maintained by any designated material advisor is not complete, will not relieve any material advisor from the requirements of this section.

(i) *Procedure for obtaining rulings.* A person may submit a request to the Internal Revenue Service for a ruling as to whether a transaction is a potentially abusive tax shelter for purposes of this section and whether that person is a material advisor with respect to that transaction. If the request fully discloses all relevant facts relating to the transaction (including all facts relevant to the person's relationship to such transaction), then the requirement to maintain a list shall be suspended for that person during the period that such ruling request is pending and for 60 days thereafter; however, if it is ultimately determined that the transaction is a potentially abusive tax shelter, the pendency of such

a ruling request shall not affect the requirement to maintain the list, nor shall it affect the persons required to be included on the list (including persons who acquired interests in the potentially abusive tax shelter prior to and during the pendency of the ruling request), or the other information required to be included as part of the list.

(j) *Effective date.* This section applies to any transaction that is a potentially abusive tax shelter entered into, or any interest acquired therein, on or after January 1, 2003. However, this section shall apply to any transaction that was entered into, or in which an interest was acquired, after February 28, 2000, if the transaction becomes a listed transaction as defined in § 1.6011-4T of this chapter on or after January 1, 2003, and is subject to disclosure under § 1.6011-4T of this chapter. Otherwise, the rules that apply with respect to any other transaction that is a potentially abusive tax shelter entered into, or any interest acquired therein, on or before De-

ember 31, 2002, are contained in § 301.6112-1T in effect prior to December 31, 2002 (see 26 CFR part 301 revised as of April 1, 2002).

Robert E. Wenzel,  
*Deputy Commissioner  
of Internal Revenue.*

Approved October 15, 2002.

Pamela F. Olson,  
*Assistant Secretary of the Treasury.*

(Filed by the Office of the Federal Register on October 17, 2002, 3:10 p.m., and published in the issue of the Federal Register for October 22, 2002, 67 F.R. 64807)

## Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2002. See Rev. Rul. 2002-74, page 814.

## Section 7701.—Definitions

*26 CFR 301.7701-3: Classification of certain business entities.*

How do taxpayers treat, for federal tax purposes, an entity that is owned solely by a husband and wife as community property under the laws of a state, a foreign country, or a possession of the United States? See Rev. Proc. 2002-69, page 831.

## Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2002. See Rev. Rul. 2002-74, page 814.

## Part III. Administrative, Procedural, and Miscellaneous

### 2003 Limitations Adjusted As Provided in Section 415(d), etc.<sup>1</sup>

#### Notice 2002-71

Section 415 of the Internal Revenue Code (the Code) provides for dollar limitations on benefits and contributions under qualified retirement plans. Section 415 also requires that the Commissioner annually adjust these limits for cost-of-living increases. Other limitations applicable to deferred compensation plans are also affected by these adjustments. Many of the limitations will not change for 2003. For most of the limitations, the increase in the cost-of-living index fell below the statutory thresholds that would otherwise trigger their adjustment. However, several of these limitations, set by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), are scheduled to increase at the beginning of 2003. For example, under EGTRRA, the limitation under § 402(g)(1) of the Code on the exclusion for elective deferrals described in § 402(g)(3) is increased from \$11,000 to \$12,000. This limitation affects elective deferrals to § 401(k) plans and to the Federal Government's Thrift Savings Plan, among other plans.

#### *Cost-of-Living limits for 2003*

Effective January 1, 2003, the limitation on the annual benefit under a defined benefit plan under § 415(b)(1)(A) remains unchanged at \$160,000. For participants who separated from service before January 1, 2003, the limitation for defined benefit plans under § 415(b)(1)(B) is computed by multiplying the participant's compensation limitation, as adjusted through 2002, by 1.0159.

The limitation for defined contribution plans under § 415(c)(1)(A) remains unchanged at \$40,000.

The Code provides that various other dollar amounts are to be adjusted at the same time and in the same manner as the dollar limitation of § 415(b)(1)(A). These dollar amounts and the adjusted amounts are as follows:

The annual compensation limit under §§ 401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii) remains unchanged at \$200,000.

The dollar limitation under § 416(i)(1)(A) (i) concerning the definition of key employee in a top-heavy plan remains unchanged at \$130,000.

The dollar amount under § 409(o)(1)(C) (ii) for determining the maximum account balance in an employee stock ownership plan subject to a 5-year distribution period is increased from \$800,000 to \$810,000, while the dollar amount used to determine the lengthening of the 5-year distribution period remains unchanged at \$160,000.

The limitation used in the definition of highly compensated employee under § 414(q)(1)(B) remains unchanged at \$90,000.

The annual compensation limitation under § 401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost-of-living adjustments to the compensation limitation under the plan under § 401(a)(17) to be taken into account, is increased from \$295,000 to \$300,000.

The compensation amount under § 408(k)(2)(C) regarding simplified employee pensions (SEPs) remains unchanged at \$450.

The compensation amounts under § 1.61-21(f)(5)(i) of the Income Tax Regulations concerning the definition of "control employee" for fringe benefit valuation purposes remains unchanged at \$80,000. The compensation amount under § 1.61-21(f)(5)(iii) remains unchanged at \$160,000.

#### *Limitations specified by statute*

The Code, as amended by EGTRRA, specifies the applicable dollar amount for a particular year for certain limitations. These applicable dollar amounts are as follows:

The limitation under § 402(g)(1) on the exclusion for elective deferrals described in § 402(g)(3) is increased from \$11,000 to \$12,000.

The limitation under § 408(p)(2)(E) regarding SIMPLE retirement accounts is increased from \$7,000 to \$8,000.

The limitation on deferrals under § 457(e)(15) concerning deferred compensation plans of state and local governments and tax-exempt organizations is increased from \$11,000 to \$12,000.

The dollar limitation under § 414(v)(2)(B)(i) for catch-up contributions to an applicable employer plan other than a plan described in § 401(k)(11) or 408(p) for individuals aged 50 or over is increased from \$1,000 to \$2,000. The dollar limitation under § 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in § 401(k)(11) or 408(p) for individuals aged 50 or over is increased from \$500 to \$1,000.

Administrators of defined benefit or defined contribution plans that have received favorable determination letters should not request new determination letters solely because of yearly amendments to adjust maximum limitations in the plans.

#### **Drafting Information**

The principal author of this notice is John Heil of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding the data in this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free call) between the hours of 8 a.m. and 6:30 p.m. Eastern time Monday through Friday. For information regarding the methodology used at arriving at the data in this notice, please contact Mr. Heil at 1-202-283-9888 (not a toll-free call).

<sup>1</sup> Based on News Release IR-2002-111 dated October 18, 2002.

## Rev. Proc. 2002-69

### SECTION 1. PURPOSE

The Treasury Department and the Internal Revenue Service have become aware that taxpayers are unsure of the classification for an entity that is owned solely by a husband and wife as community property under the laws of a state, a foreign country, or a possession of the United States. To alleviate this uncertainty and in the interest of administrative simplicity, this revenue procedure provides that the Internal Revenue Service will respect a taxpayer's treatment of these entities as either disregarded entities or partnerships.

This revenue procedure provides guidance on the classification for federal tax purposes of a qualified entity (described in section 3.02 of this revenue procedure) that is owned solely by a husband and wife as community property under the laws of a state, a foreign country, or a possession of the United States.

### SECTION 2. BACKGROUND

Section 301.7701-1(a)(1) states that the Code prescribes the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

Section 301.7701-1(b) provides that the classification of organizations that are recognized as separate entities is determined under §§ 301.7701-2, 301.7701-3, and 301.7701-4 unless a provision of the Code provides for special treatment of that organization.

Section 301.7701-2(a) defines the term "business entity" as any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Code. A business entity with two or more members is classified for federal

tax purposes as either a corporation or a partnership. A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.

### SECTION 3. SCOPE

.01 *In General.* This revenue procedure provides guidance on the classification for federal tax purposes of a qualified entity (described in section 3.02 of this revenue procedure).

.02 *Qualified Entity.* A business entity is a qualified entity if:

(1) The business entity is wholly owned by a husband and wife as community property under the laws of a state, a foreign country, or a possession of the United States;

(2) No person other than one or both spouses would be considered an owner for federal tax purposes; and

(3) The business entity is not treated as a corporation under § 301.7701-2.

### SECTION 4. APPLICATION

.01 If a qualified entity (as described in section 3.02 of this revenue procedure), and the husband and wife as community property owners, treat the entity as a disregarded entity for federal tax purposes, the Internal Revenue Service will accept the position that the entity is a disregarded entity for federal tax purposes.

.02 If a qualified entity (as described in section 3.02 of this revenue procedure), and the husband and wife as community property owners, treat the entity as a partnership for federal tax purposes and file the appropriate partnership returns, the Internal Revenue Service will accept the position that the entity is a partnership for federal tax purposes.

.03 A change in reporting position will be treated for federal tax purposes as a conversion of the entity.

### SECTION 5. EFFECTIVE DATE

This revenue procedure is effective on the date published in the Internal Revenue Bulletin.

### SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Laura Nash of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Ms. Nash or Ms. Rebekah Myers at (202) 622-3050 (not a toll-free call).



## Part IV. Items of General Interest

### Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations; Notice of Public Hearing

### Tax Shelter Disclosure Statements

**REG-103735-00; REG-154117-02; REG-154116-02; REG-154115-02; REG-154429-02; REG-154423-02; REG-154426-02; REG-110311-98**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations; notice of public hearing.

SUMMARY: These proposed rules provide the public with additional guidance needed to comply with the disclosure rules under section 6011(a). The rules also make conforming changes to the registration requirements under section 6111(d). The proposed rules affect taxpayers participating in certain reportable transactions. On page 815 of this Bulletin, the IRS is issuing temporary regulations that modify the rules relating to the requirement that certain taxpayers file a statement with their Federal tax returns under section 6011(a) for certain transactions, including transactions involving Federal income, estate, gift, employment, and pension or exempt organizations excise taxes. The temporary regulations also make conforming changes to the rules relating to the registration of tax shelters under section 6111(d). The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests to speak and outlines of topics to be discussed at the public hearing scheduled for December 11, 2002, at 10 a.m., must be received by December 2, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU, (REG-103735-00; REG-154117-02; REG-154116-02; REG-154115-02; REG-154429-02; REG-154423-02; REG-154426-02; REG-

110311-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-103735-00; REG-154117-02; REG-154116-02; REG-154115-02; REG-154429-02; REG-154423-02; REG-154426-02; REG-110311-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs). The public hearing will be held in room 6718, Internal Revenue Building, 1111 Constitution Ave., NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tara P. Volungis, Danielle M. Grimm, or Charlotte Chyr, 202-622-3080 (not a toll-free number); concerning submissions, Sonya Cruse, 202-622-7180 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by December 23, 2002. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 1.6011-4T(a), (d), (e), (f), and (g), and in § 301.6111-2T(b), (e), and (f). This information is required to provide the IRS with notice of transactions that are potentially abusive. This information will be used to ensure compliance with the Federal tax laws. The collections of information are mandatory. The likely respondents and recordkeepers are individuals, business or other for-profit institutions, and small businesses or organizations.

The burden for the collection of information in § 1.6011-4T will be reflected on Form 8886, "Reportable Transaction Disclosure Statement". The burden for the collection of information in § 301.6111-2T is reflected on Form 8264, "Application for Registration of a Tax Shelter".

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Background

The temporary regulations amend the rules in 26 CFR parts 1, 20, 25, 31, 53, 54, and 56 regarding the filing and records requirements of certain taxpayers under section 6011. The temporary regulations also amend the rules in 26 CFR part 301 regarding the registration of confidential corporate tax shelters under section 6111. The text of the temporary regulations also serves as the text of these proposed regulations.

The preamble to the temporary regulations explains the regulations.

### Special Analyses

It has been determined that these notices of proposed rulemaking are not significant regulatory actions as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the time required to prepare or retain the disclosure or registration is not lengthy and will not have a significant impact on those small entities that are required to provide disclosure or to register. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these notices of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 11, 2002, beginning at 10 a.m. in room 6718 of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing

starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 606.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 2, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal authors of these regulations are Tara P. Volungis, Danielle M. Grimm, and Charlotte Chyr, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

### Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301, which were proposed to be amended at 67 FR 41362 (June 18, 2002), are proposed to be further amended and 26 CFR parts 20, 25, 31, 53, 54, and 56 are proposed to be amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:  
Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.6011-4, as proposed to be added at 66 FR 41169 (August 7, 2001) and amended at 67 FR 41362 (June 18, 2002), is revised to read as follows:

*§ 1.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.*

[The text of the revision of this proposed section is the same as the text of the

revision of § 1.6011-4T published elsewhere in this issue of the **Federal Register**.]

#### PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 3. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 4. Section 20.6011-4 is added to read as follows:

*§ 20.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.*

[The text of this proposed section is the same as the text of § 20.6011-4T published elsewhere in this issue of the **Federal Register**.]

#### PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 6. Section 25.6011-4 is added to read as follows:

*§ 25.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.*

[The text of this proposed section is the same as the text of § 25.6011-4T published elsewhere in this issue of the **Federal Register**.]

#### PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 7. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 8. Section 31.6011-4 is added to read as follows:

*§ 31.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.*

[The text of proposed section is the same as the text of § 31.6011-4T published elsewhere in this issue of the **Federal Register**.]

## PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 9. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 53.6011-4 is added to read as follows:

*§ 53.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.*

[The text of this proposed section is the same as the text of § 53.6011-4T published elsewhere in this issue of the **Federal Register**.]

## PART 54—PENSION EXCISE TAXES

Par. 11. The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 12. Section 54.6011-4 is added to read as follows:

*§ 54.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.*

[The text of this proposed section is the same as the text of § 54.6011-4T published elsewhere in this issue of the **Federal Register**.]

## PART 56—PUBLIC CHARITY EXCISE TAXES

Par. 13. The authority citation for part 56 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 14. Section 56.6011-4 is added to read as follows:

*§ 56.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.*

[The text of this proposed section is the same as the text of § 56.6011-4T published elsewhere in this issue of the **Federal Register**.]

## PART 301—PROCEDURE AND ADMINISTRATION

Par. 15. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 301.6111-2 also issued under 26 U.S.C. 6111. \* \* \*

Par. 16. Section 301.6111-2, as proposed to be added at 66 FR 41169 (August 7, 2001) and amended at 67 FR 41363 (June 18, 2002), is amended as follows:

1. Paragraphs (a)(3) and (b)(3)(i) are revised.

2. Paragraph (c)(3) is amended by adding a sentence at the end of the paragraph.

3. Paragraph (h) is amended by revising the paragraph heading and removing the third sentence through the last sentence and adding two new sentences in their place.

The revisions and additions read as follows:

*§ 301.6111-2 Confidential corporate tax shelters.*

[The text of the amendments to this proposed section is the same as the text of the amendments to § 301.6111-2T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,  
Deputy Commissioner  
of Internal Revenue.

(Filed by the Office of the Federal Register on October 17, 2002, 3:10 p.m., and published in the issue of the Federal Register for October 22, 2002, 67 F.R. 64840)

## Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations; Notice of Public Hearing

### Requirement to Maintain a List of Investors in Potentially Abusive Tax Shelters

**REG-103736-00**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations; notice of public hearing.

SUMMARY: These proposed rules relate to the preparation, maintenance, and furnishing of lists of persons in potentially abusive tax shelters under section 6112. These regulations apply to sellers and organizers, collectively known as material advisors, of potentially abusive tax shelters. In

this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9018) modifying the rules relating to the list maintenance requirements under section 6112. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests to speak and outlines of topics to be discussed at the public hearing scheduled for December 11, 2002, at 10 a.m., must be received by December 2, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-103736-00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-103736-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs). The public hearing will be held in room 6718, Internal Revenue Building, 1111 Constitution Ave., NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charlotte Chyr, Tara P. Volungis, or Danielle M. Grimm, 202-622-3080 (not a toll-free number); concerning submissions, Sonya Cruse, 202-622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information

should be received by December 23, 2002. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 301.6112-1T(a), (e), (f) and (i). This information is required to comply with the list maintenance requirement of section 6112. Section 6708 provides penalties for failing to maintain a list under section 6112. This information will be used to ensure compliance with the Federal tax laws. The collections of information are mandatory. The likely respondents and recordkeepers are individuals, business or other for-profit and not for-profit institutions, and small businesses or organizations.

Estimated total annual reporting and/or recordkeeping burden: 15,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 100 hours.

Estimated number of respondents and/or recordkeepers: 150.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue

law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### **Background**

The temporary regulations amend 26 CFR part 301 regarding rules relating to the list maintenance requirements under section 6112. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the number of respondents is small, those persons responsible for maintaining the list described in the regulations are principally sophisticated businesses, including accounting firms and law firms and very few respondents, if any, are likely to be small businesses. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 11, 2002, beginning at 10 a.m.,

in room 6718 of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 606.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 2, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### **Drafting Information**

The principal authors of these regulations are Charlotte Chyr, Tara P. Volungis, and Danielle M. Grimm, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 301, which was proposed to be amended at 65 FR 49955 (August 16, 2000), is proposed to be further amended as follows:

#### **PART 301—PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 301.6112-1 also issued under 26 U.S.C. 6112. \* \* \*

Par. 2. Section 301.6112-1, as proposed to be amended at 65 FR 49957 (August 16, 2000), is revised to read as follows:

*§ 301.6112-1 Requirement to prepare, maintain, and furnish lists with respect to potentially abusive tax shelters.*

[The text of the revision of this proposed section is the same as the text of the amendments to § 301.6112-1T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,  
*Deputy Commissioner  
of Internal Revenue.*

(Filed by the Office of the Federal Register on October 17, 2002, 3:10 p.m., and published in the issue of the Federal Register for October 22, 2002, 67 F.R. 64842)

## **Request for Comments Regarding Application for Recognition of Exemption Under Section 501(c)(3) of the Code**

### **Announcement 2002-103**

The Internal Revenue Service (IRS) is revising Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, and *Instructions for Form 1023*. To ensure that this process considers the needs of all who have an interest in the application filed by organizations to obtain recognition of exemption from federal income tax under § 501(c)(3) of the Internal Revenue Code, we are seeking comments from exempt organizations, practitioners, state regulators, vendors, and others.

This Announcement corrects Announcement 2002-92, 2002-41 I.R.B. 709, by amending the electronic email address to which comments may be sent.

#### **BACKGROUND**

In order to be recognized as exempt from federal income tax under § 501(a) as an organization described in § 501(c)(3), the law requires that most organizations submit an application with a detailed statement of their proposed activities sufficient to establish that they qualify for exemption. This draft application and accompanying instructions takes into consideration

this requirement and comments we previously received from those involved in the application process with suggestions for improvements.

#### **REQUEST FOR PUBLIC COMMENT**

The IRS requests comments from exempt organizations, practitioners, and all interested stakeholders on proposed revisions to the current Form 1023 and Instructions. The proposed revisions have been posted on the IRS website, at [www.irs.gov/eo](http://www.irs.gov/eo).

Interested parties should provide a statement explaining their interest in the Form 1023 and any information that will be useful in revising it. We are particularly interested in comments that address the following:

1. Ease of comprehension,
2. Customer burden,
3. Technical accuracy, and
4. Sufficiency of information requested.

Public comments should be submitted in writing on or before December 2, 2002, to the following address:

Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224  
Attn: Amy Henchey — Form 1023  
Announcement  
T:EO:CEO

Comments may also be sent via electronic mail to [tege.eo2@irs.gov](mailto:tege.eo2@irs.gov).

#### **DRAFTING INFORMATION**

The principal author of this announcement is Amy Henchey of Exempt Organizations. For further information regarding this announcement, contact Amy Henchey at (202) 283-8856 or Cindy Westcott at (513) 263-3519 (not toll-free calls).

### **Foundations Status of Certain Organizations**

#### **Announcement 2002-104**

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in

the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

*Former Public Charities.* The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

A Charitable Team "A.C.T.", Austin, TX  
ADRA Institute, Inc., Boston, MA  
Afryqah, Ltd., Great Falls, VA  
Agape Love Family Association ALFA, Ltd., Rosedale, NY  
Agred Foundation, Shreveport, LA  
All One Family International, Chico, CA  
Aluminum Anonymous, Inc., Chesapeake City, MD  
American Russian Center for Culture Preservation, Inc., Brooklyn, NY  
Americas Foundation for Education and Culture, Palo Alto, CA  
Anoka Electric Trust, Inc., Anoka, MN  
Aquarius International Village Water Project, Davis, CA  
Bear Creek Soccer Association, Inc., Wilkes-Barre, PA  
Big Air BMX, Inc., Garden City, KS  
Booneville Education Foundation, Inc., Booneville, AR  
Boys & Girls Clubs of Greeneville/Greene County, Greeneville, TN  
Broken Tree One Room Cosmos School House Research Initiative, Inc., Kintnersville, PA  
Bus and Motorcoach Research and Education Institute, Alexandria, VA  
Callaway Youth Association in the Arts, Atlanta, GA  
Caloosa Humane Society, Inc., Labelle, FL  
Cama Beach Institute, Seattle, WA  
Cancer Research Coalition, Inc., Bethesda, MD  
Catskill Revitalization Corporation, Inc., Endowment Fund, Stamford, NY  
Central American Library Association, Clifton, NJ  
Central California Consulting Corporation, Inc., Stockton, CA  
Citywide Resources for Children, Inc., Brooklyn, NY  
College Assistance Foundation, Kirkland, WA

College of Ophthalmic Somatology, Anaheim, CA  
 College Park Idlewild Community Progress, Raleigh, NC  
 Comforting Arms Society, Pittsburg, CA  
 Commonsense Advocates for Road Safety, Inc., Philadelphia, PA  
 Concerned Organizations and Parents for Education, Canton, MS  
 Coreworks, Inc., Raleigh, NC  
 Cover the Earth Ministry, Jamestown, NC  
 Crisp Foundation, Los Angeles, CA  
 Dalyn Enterprises, Inc., Aurora, CO  
 Dover Education Enterprises, Inc., Dover, PA  
 El-Elohim Foundation, Inc., Lilburn, GA  
 ENZI Foundation, Claremont, CA  
 Excellence 2000, Inc., Dallas, TX  
 Eye Research Center, Inc., Palm Harbor, FL  
 Flonzie B. Wright Scholarship Fund, Inc., Germantown, OH  
 Fourth Ward Community Coalition Community Development Corporation, Houston, TX  
 Fresh Start House, Moreno, CA  
 Friends of Greenwood Cemetery, Dallas, TX  
 Gateway Exhibits Organization, St. Louis, MO  
 Genesis Project, Chicago, IL  
 George B. Lockwood Center for Family Life, Long Island City, NY  
 Globalearn, Los Gatos, CA  
 God's Exploits, Inc., Houston, TX  
 Good Shepherds Animal Assisted Therapy, Mena, AR  
 Greater Works Community Outreach, Yeadon, PA  
 Green Oak Ranch, San Marcos, CA  
 Healthcare Values Foundation, Dallas, TX  
 Help 100, Inc., Fishers, IN  
 Hou-Dal Affordable Housing Corporation, Lancaster, TX  
 Houston Citizens Arts & Science Group, Houston, TX  
 Innovative Job Training & Development Center, Marietta, GA  
 Institute of Health Research, Summit, NJ  
 Interactive Ministry Experience, Inc., Smyrna, GA  
 International City Housing and Development Corporation, Los Angeles, CA  
 Iowa Public Health Foundation, Des Moines, IA  
 Khan Economic Development, Inc., Pompano Beach, FL  
 KIDDO Corp., Clifton, NJ  
 Koroko International, Inc., New York, NY  
 Lawton Community Theater Foundation, Inc., Oklahoma City, OK  
 Lewis T. Preston Education Program for Girls, Inc., Newark, DE  
 Lindseys Back to Basics Youth Education Center, Herndon, VA  
 Little Rascals Preschool, Inc., Walnut Ridge, AR  
 Louisiana Band of Choctaw Indians, Inc., Baker, LA  
 Lutheran Youth Soccer Association, St. Charles, MO  
 Many Waters Media Ministries, Pahrump, NV  
 Mathias Scholarship Fund, Carlinville, IL  
 Maumee Valley-Wabash & Erie Canal Historical Society, Incorporated, Woodburn, IN  
 Merritt Tutorial Services, Castro Valley, CA  
 Metropolitan Foundation for Aging, St. Paul, MN  
 Microcredit Loan Fund, Inc., Sausalito, CA  
 Midlands Community Foundation, Papillion, NE  
 Mindship International, Orono, ME  
 Momoko Ito Foundation, San Francisco, CA  
 Mountain Hearthstone, Inc., Atlanta, GA  
 Mountaintop Retreat Center, Ltd., Minneapolis, MN  
 MSDB Cultural Society, Inc., Brooklyn, NY  
 N His Love Creations, Hawthorne, CA  
 Na Pu Lei O Likolehua, Honolulu, HI  
 Narrow Way, Inc., Forney, TX  
 National Junior Golf Foundation, Tallahassee, FL  
 Native American Education, Ltd., Bixby, OK  
 New Beginnings Industries, Inc., Lake Elsinore, CA  
 Newport Christian Fellowship, Corona del Mar, CA  
 Northern Cedar Community Betterment Foundation, Hartington, NE  
 Northlake Tenant Council, Bothell, WA  
 Nuwarlee Relief Service, Inc., East Stroudsburg, PA  
 Oakley Community Development Corporation, Columbus, OH  
 Omega Community Development Corporation, Dayton, OH  
 One Way Out Productions, Inc., Venice, CA  
 Operation Brotherhood Foundation, Inc., Bloomfield, NJ  
 Original King Kids of America, Inc., Arlington, TX  
 Ornate Fund, Spokane, WA  
 Other's, Inc., Boston, MA  
 PDG Consulting Services, Memphis, TN  
 Philanthropic Association of Volunteers With Expertise, San Francisco, CA  
 Philo Dough, Inc., Los Angeles, CA  
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 Port Aransas Boatmen's Endowed Scholarship Fund, Inc., Port Aransas, TX  
 Preserving Tolerance, Inc., Washington, DC  
 Quantum Systems Research, Inc., Houston, TX  
 RECDA, Inc., New York, NY  
 Red Road Foundation, Inc., North Conway, NH  
 Resilience Insights, Saugus, CA  
 Rocket Institute, Kansas City, MO  
 Ronny Spillers Evangelistic Ministries, Inc., Rex, GA  
 Rosalie Osias Foundation for the Advancement of Women, Inc., Great Neck, NY  
 Rose Sosin and Martin Sosin Family Foundation, Santa Monica, CA  
 Royslyn Homes, Inc., Sacramento, CA  
 S.L. Jones Community Outreach Center, Inc., Detroit, MI  
 S.W. Region EMS and Trauma Care Council, Vancouver, WA  
 Safe Choice for the Permian Basin, Inc., Midland, TX  
 San Juan Oaks Foundation, Hollister, CA  
 Sandbox Open Arts, Incorporated, Brooklyn, NY  
 Sanger School Foundation, Inc., Waco, TX  
 Showbands Unlimited, Monroe, LA  
 Sierra Club Fund, San Francisco, CA  
 Solving, Inc., Portland, OR  
 SP-CE, Inc., New York, NY  
 Stowe Perpetual Gifts Fund, Inc., Stowe, VT  
 Support our Schools, Inc., St. Paul, MN  
 Survival MIKVA TIKVA Hope MIKVA Outreach Global Programs, Inc., Brooklyn, NY  
 Systems of Human Resources, Inc., Patchogue, NY  
 Tabernacle of Faith Community Development Corporation, Inc., Ft. Lauderdale, FL  
 Tattnall County Family Connection, Inc., Reidville, GA  
 Total Access, Inc., Woodbridge, NJ  
 Trinity Booster Club, Chicago, IL  
 United Music Ministries of God, Inc., Cranbury, NJ  
 Universal Care for the Handicapped, Brooklyn, NY  
 Urban Community of Economic Growth & Development, Inc., Far Rockaway, NY

Viva Conservation Foundation, Inc.,  
Fort Myers, FL  
Warren W. Buck Scholarship Foundation,  
Inc., Memphis, TN  
Wells Extension Resident Management  
Organization, Chicago, IL  
Wepts, Inc., Houston, TX  
Willingboro-Fort Dix-McGuire  
Foundation, Inc., Willingboro, NJ  
Windhollow Foundation, Inc.,  
Frederick, MD

Word Hunger, Inc., Fayetteville, AR  
Youth Foundation for World Peace,  
Washington, DC  
Youth, Inc., Newton, NJ

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised clas-

sification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it

applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.

E.O.—Executive Order.  
ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign Corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.

PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.  
PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statements of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.



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