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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-103736-00]

RIN 1545-AX79

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

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 the rules and regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations 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. 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.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

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.