



Tax Shelters:  
Form 8886 and Form 8918,  
Reportable Transaction  
and Material Advisor  
Disclosure Statements,  
Filing Tips

# Reportable Transactions

- Listed Transactions
- Confidential Transactions
- Transactions with Contractual Protection
- Loss Transactions
- Transactions of Interest



# When & How to File

- Form 8886
- All years of Participation in transaction
- Attach to tax return
- First year, with Office of Tax Shelter Analysis (OTSA)



# Complete Disclosure

- Describe the specific transaction
- Describe any tax result protection
- Tax treatment and potential tax benefits
- Involved Parties



# Penalties

- IRC 6707A
  - Listed \$100k Natural Person, \$200k others
  - Non-Listed \$10k Natural Person, \$50k others
- IRC 6662A
  - 20% or 30% of understatement
- IRC 6707A(e)
  - Report to SEC



# What is new?

- 6011 Regulations
- 6707A Regulations
- Transactions of Interest
- Listed Transactions
- Form Changes



# Material Advisors

- Provide material advice, etc. with respect to a reportable transaction
- Directly or indirectly derive gross income greater than:
  - Listed - \$10,000 (natural person) or \$25,000 (others)
  - Non-listed - \$50,000 (natural person) or \$250,000 for others





# Material Advisor General Rules

- Each material advisor must file a return setting forth information:
  - identifying and describing the transaction
  - describing any potential expected tax benefits
  - as prescribed by the Secretary.
- Investors and advisors must now disclose.





# Filing Requirements

- File Form 8918 (replaces Form 8264) with OTSA
- Due by the last day of the month following the end of the quarter in which the advisor becomes a material advisor and
- Must be complete filing



# Penalty for Failure to Disclose - § 6707

- \$50,000 for reportable transactions
- If listed, greater of \$200,000 or 50% of gross income derived by the material advisor.
- If listed and failure was intentional, the greater of \$200,000 or 75% of gross income derived by the material advisor.





# Penalty for Failure to Maintain Lists - § 6708

\$10,000/day penalty may be imposed if you are required to:

- Maintain a list of advisees with respect to each transaction and
- Fail to make the list available upon written request to the IRS within 20 business days

# Questions???

[irs.tax.shelter.hotline@irs.gov](mailto:irs.tax.shelter.hotline@irs.gov)

or

(866)775-7474 (toll free)

