§ 53.4965–3 Prohibited tax shelter transactions.  
(a) In general. Under section 4965(e), the term prohibited tax shelter transaction means—  
(1) Listed transactions within the meaning of section 6707A(c)(2), including subsequently listed transactions described in paragraph (b) of this section; and  
(2) Prohibited reportable transactions, which consist of the following reportable transactions within the meaning of section 6707A(c)(1)—  
(i) Confidential transactions, as described in §1.6011–4(b)(3) of this chapter; or  
(ii) Transactions with contractual protection, as described in §1.6011–4(b)(4) of this chapter.  
(b) Subsequently listed transactions. A subsequently listed transaction for purposes of section 4965 is a transaction that is identified by the Secretary as a listed transaction after the tax-exempt entity has entered into the transaction and that was not a prohibited reportable transaction (within the meaning of section 4965(e)(1)(C) and paragraph (a)(2) of this section) at the time the entity entered into the transaction.  
(c) Cross-reference. The determination of whether a transaction is a listed transaction or a prohibited reportable transaction for section 4965 purposes shall be made under the law applicable to section 6707A(c)(1) and (c)(2) of this chapter.  
(d) Effective/applicability dates. See §53.4965–9 for the discussion of the relevant effective and applicability dates.  
[T.D. 9492, 75 FR 38702, July 6, 2010]  
§ 53.4965–4 Definition of tax-exempt party to a prohibited tax shelter transaction.  
(a) In general. For purposes of sections 4965 and 6033(a)(2), a tax-exempt entity is a party to a prohibited tax shelter transaction if the entity—  
(1) Facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax indifferent or tax-favored status; or  
(2) Is identified in published guidance, by type, class or role, as a party to a prohibited tax shelter transaction.  
(b) Published guidance may identify which tax-exempt entities, by type, class or role, will not be treated as a party to a prohibited tax shelter transaction.  
(c) Example. The following example illustrates the principle of paragraph (a)(1) of this section:  
Example. A tax-exempt entity enters into a transaction (Transaction A) with an S corporation. Transaction A is the same as or substantially similar to the transaction identified by the Secretary as a listed transaction in Notice 2004–30 (2004–1 CB 828). The tax-exempt entity’s role in Transaction A is similar to the role of the tax-exempt party, as described in Notice 2004–30. Under the terms of the transaction, as described in Notice 2004–30, the tax-exempt entity receives the S corporation stock and purports to aid the S corporation and its shareholders in avoiding taxable income. The tax-exempt entity facilitates Transaction A by reason of its tax-exempt, tax indifferent or tax-favored status. Accordingly, the tax-exempt entity is a party to Transaction A for purposes of sections 4965 and 6033(a)(2).  
[§601.601(d)(2)(i)(b) of this chapter.]  
(d) Effective/applicability dates. See §53.4965–9 for the discussion of the relevant effective and applicability dates.  
[T.D. 9492, 75 FR 38702, July 6, 2010]  
§ 53.4965–5 Entity managers and related definitions.  
(a) Entity manager of a non-plan entity—(1) In general. Under section 4965(d)(1), an entity manager of a non-plan entity is—  
(i) A person with the authority or responsibility similar to that exercised by an officer, director, or trustee of an organization (that is, the non-plan entity); and  
(ii) With respect to any act, the person who has final authority or responsibility (either individually or as a member of a collective body) with respect to such act.  
(2) Definition of officer. For purposes of paragraph (a)(1)(i) of this section, a person is considered to be an officer of the non-plan entity (or to have similar authority or responsibility) if the person—  
(i) Is specifically designated as such under the certificate of incorporation, by-laws, or other constitutive documents of the non-plan entity; or