§ 301.6011(g)-1 Disclosure by taxable party to the tax-exempt entity.

(a) Requirement of disclosure—(1) In general. Except as provided in paragraph (d)(2) of this section, any taxable party (as defined in paragraph (c) of this section) to a prohibited tax shelter transaction (as defined in section 4965(e) and §53.4965–3 of this chapter) must disclose by statement to each tax-exempt entity (as defined in section 4965(c) and §53.4965–2 of this chapter) that the taxable party knows or has reason to know is a party to such transaction (as defined in paragraph (b) of this section) that the transaction is a prohibited tax shelter transaction.

(2) Determining whether a taxable party knows or has reason to know. Whether a taxable party knows or has reason to know that a tax-exempt entity is a party to a prohibited tax shelter transaction is based on all the facts and circumstances. If the taxable party knows or has reason to know that a prohibited tax shelter transaction involves a tax-exempt, tax indifferent or tax-favored entity, relevant factors for determining whether the taxable party knows or has reason to know that a specific tax-exempt entity is a party to the transaction include—

(i) The extent of the efforts made to determine whether a tax-exempt entity is facilitating the transaction by reason of its tax-exempt, tax indifferent or tax-favored status (or is identified in published guidance, by type, class or role, as a party to the transaction), the extent of the efforts made to determine the identity of the tax-exempt entity.

(b) Definition of tax-exempt party to a prohibited tax shelter transaction. For purposes of section 6011(g), a tax-exempt entity is a party to a prohibited tax shelter transaction if the entity is defined as such under §53.4965–4 of this chapter.

(c) Definition of taxable party—(1) In general. For purposes of this section, the term taxable party means—

(i) A person who has entered into and participates or expects to participate in the transaction under §§1.6011–4(c)(3)(i)(A), (B), or (C), 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter; or

(ii) A person who is designated as a taxable party by the Secretary in published guidance.

(2) Special rules—(i) Certain listed transactions. If a transaction that was otherwise not a prohibited tax shelter transaction becomes a listed transaction after the filing of a person’s tax return (including an amended return) reflecting either tax consequences or a tax strategy described in the published guidance listing the transaction (or a tax benefit derived from tax consequences or a tax strategy described in the published guidance listing the transaction), the person is a taxable party beginning on the date the transaction is described as a listed transaction in published guidance.

(ii) Persons designated as non-parties. Published guidance may identify which persons, by type, class or role, will not be treated as a party to a prohibited tax shelter transaction for purposes of section 6011(g).

(d) Time for providing disclosure statement—(1) In general. A taxable party to a prohibited tax shelter transaction must make the disclosure required by this section to each tax-exempt entity that the taxable party knows or has reason to know is a party to the transaction within 60 days after the last to occur of—

(i) The date the person becomes a taxable party to the transaction within the meaning of paragraph (c) of this section;
(i) The date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction within the meaning of paragraph (b) of this section; or

(ii) The date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction within the meaning of paragraph (b) of this section on or before the first date on which the transaction is required to be disclosed by the person under §§1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter.

(3) Disclosure is not required with respect to any prohibited tax shelter transaction entered into by a tax-exempt entity on or before May 17, 2006.

(e) Frequency of disclosure. One disclosure statement is required per tax-exempt entity per transaction. See paragraph (h) of this section for rules relating to designation agreements.

(f) Form and content of disclosure statement. The statement disclosing to the tax-exempt entity that the transaction is a prohibited tax shelter transaction must be a written statement that—

(1) Identifies the type of prohibited tax shelter transaction (including the published guidance citation for a listed transaction); and

(2) States that the tax-exempt entity’s involvement in the transaction may subject either it or its entity manager(s) or both to excise taxes under section 4965 and to disclosure obligations under section 6033(a) of the Internal Revenue Code.

(g) To whom disclosure is made. The disclosure statement must be provided—

(1) In the case of a non-plan entity as defined in §53.4965–2(b) of this chapter, to:

(i) Any entity manager of the tax-exempt entity with authority or responsibility similar to that exercised by an officer, director or trustee of an organization; or

(ii) If a person described in paragraph (g)(1)(i) of this section is not known, to the primary contact on the transaction.

(2) In the case of a plan entity as defined in §53.4965–2(c) of this chapter, including a fully self-directed qualified plan, IRA, or other savings arrangement, to any entity manager of the plan entity who approved or otherwise caused the entity to become a party to the prohibited tax shelter transaction.

(h) Designation agreements. If more than one taxable party is required to disclose a prohibited tax shelter transaction under this section, the taxable parties may designate by written agreement a single taxable party to disclose the transaction. The transaction must then be disclosed in accordance with this section. The designation of one taxable party to disclose the transaction does not relieve the other taxable parties of their obligation to disclose the transaction to a tax-exempt entity that is a party to the transaction in accordance with this section, if the designated taxable party fails to disclose the transaction to the tax-exempt entity in a timely manner.

(i) Penalty for failure to provide disclosure statement. See section 6707A for the penalty applicable to the failure to disclose a prohibited tax shelter transaction in accordance with this section.

(j) Effective date/applicability date. This section will apply with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

[T.D. 9492, 75 FR 38709, July 6, 2010]

Income Tax Returns

§ 301.6012–1 Persons required to make returns of income.

For provisions with respect to persons required to make returns of income, see §§1.6012–1 to 1.6012–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6013–1 Joint returns of income tax by husband and wife.

For provisions with respect to joint returns of income tax by husband and wife, see §§1.6013–1 to 1.6013–7, inclusive, of this chapter (Income Tax Regulations).