

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

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(b) *Effective date.* This section applies to listed transactions entered into on or after January 1, 2003. Upon the publication of final regulations, this section will apply to transactions of interest entered into on or after November 2, 2006.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 301**

[REG-103039-05]

RIN 1545-BE26

**AJCA Modifications to the Section 6111 Regulations**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** This document contains proposed regulations under section 6111 of the Internal Revenue Code which provide the rules relating to the disclosure of reportable transactions by material advisors. These regulations affect material advisors responsible for disclosing reportable transactions under section 6111 and material advisors responsible for keeping lists under section 6112.

**DATES:** Written or electronic comments and requests for a public hearing must be received by January 31, 2007.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-103039-05), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-103039-05), Courier's Desk, Internal Revenue Service, Crystal Mall 4 Building, 1901 S. Bell St., Arlington, VA, or sent electronically, via the IRS Internet site at <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-103039-05).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations,

Tara P. Volungis or Charles Wien, 202-622-3070; concerning the submissions of comments and requests for hearing, Kelly Banks, 202-622-0392 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document proposes to amend 26 CFR part 301 by providing rules relating to the disclosure of reportable transactions by material advisors under section 6111.

The American Jobs Creation Act of 2004, Public Law 108-357, 118 Stat. 1418, (AJCA) was enacted on October 22, 2004. Section 815 of the AJCA amended section 6111 to require each material advisor with respect to any reportable transaction to make a return (in such form as the Secretary may prescribe) setting forth: (1) Information identifying and describing the transaction; (2) information describing any potential tax benefits expected to result from the transaction; and (3) such other information as the Secretary may prescribe. Section 6111(a), as amended, also provides that the return must be filed not later than the date specified by the Secretary. Section 6111(b)(1), as amended, provides a definition for the term material advisor and includes as part of that definition a requirement that the material advisor derive certain threshold amounts of gross income that the Secretary may prescribe. The AJCA amendments to section 6111 also authorize the Secretary to prescribe regulations that provide: (1) That only one person shall be required to meet the requirements of section 6111(a) in cases in which two or more persons would otherwise be required to meet such requirements; (2) exemptions from the requirements of section 6111; and (3) rules as may be necessary or appropriate to carry out the purposes of section 6111. Section 815 of the AJCA is effective for transactions with respect to which material aid, assistance, or advice is provided after October 22, 2004.

Prior to these amendments, section 6111(a) required an organizer of a tax shelter to register the tax shelter with the Secretary not later than the day on which interests in the tax shelter were first offered for sale. Under former section 6111(c), the term tax shelter was defined as any investment with respect to which any person could reasonably infer from the representations made or to be made, in connection with the offering for sale of interests in the investments that the tax shelter ratio for any investor as of the close of any of the first five years ending after the date on which the investment was offered for sale may have been greater than two to

one and which was: (1) Required to be registered under a Federal or State law regulating securities; (2) sold pursuant to an exemption from registration requiring the filing of a notice with a Federal or State agency regulating the offering or sale of securities; or (3) a substantial investment (the aggregate amount which may have been offered for sale exceeded \$250,000 and the expected involvement of five or more investors). Under former section 6111(d), for purposes of section 6111(a), the term tax shelter included any entity, plan, arrangement or transaction; (1) A significant purpose of the structure of which is the avoidance or evasion of Federal income tax for a direct or indirect participant which is a corporation; (2) which is offered to any potential participant under conditions of confidentiality; and (3) for which the tax shelter promoters may receive fees in excess of \$100,000 in the aggregate.

In response to the AJCA, the IRS and Treasury Department issued interim guidance on section 6111 in Notice 2004-80, 2004-2 C.B. 963; Notice 2005-17, 2005-1 C.B. 606; Notice 2005-22, 2005-1 C.B. 756; and Notice 2006-6, 2006-5 I.R.B. 385 (see § 601.601(d)(2)). The IRS and Treasury Department have received various comments and questions regarding the application of section 6111. Consequently, the IRS and Treasury Department propose new rules relating to the disclosure of reportable transactions by material advisors under section 6111.

**Explanation of Provisions**

*A. In General*

These proposed regulations are being issued concurrently with proposed regulations under § 301.6112-1 and § 1.6011-4 published elsewhere in the **Federal Register**. Under these proposed regulations, each material advisor with respect to any reportable transaction (as defined in § 1.6011-4(b)(1)) must file a return by the date prescribed in the regulations. For this purpose, a person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount for the material aid, assistance, or advice. A person provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any transaction if the person makes or provides a tax statement to or for the benefit of certain

persons. The IRS and Treasury Department also may identify other types or classes of persons as material advisors in published guidance.

Further, these proposed regulations provide that the threshold amount of gross income that a person may derive, directly or indirectly, for providing any material aid, assistance or advice is \$50,000 in the case of a reportable transaction, substantially all of the tax benefits from which are provided to natural persons (\$10,000 in the case of a listed transaction). This threshold amount of gross income is increased to \$250,000 in any other case (\$25,000 in the case of a listed transaction). For transactions of interest, the IRS and Treasury Department also may identify reduced threshold amounts in published guidance. A person will be treated as becoming a material advisor when all of the following events have occurred (in no particular order): (A) The person provides material aid, assistance or advice; (B) the person directly or indirectly derives gross income in excess of the threshold amount; and (C) the transaction is entered into by the taxpayer.

The disclosure statement for a reportable transaction must be filed by the last day of the month that follows the end of the calendar quarter in which the advisor became a material advisor with respect to the reportable transaction. Form 8918, "Material Advisor Disclosure Statement," will be published for use by material advisors to disclose reportable transactions and will supersede the Form 8264 which is currently being used for material advisor disclosures. The IRS will issue a reportable transaction number to material advisors who file the Form 8918. Material advisors must provide the reportable transaction number issued by the IRS to persons to whom the material advisor makes or provides tax statements with respect to the transaction. Public comment on the Form 8918 will be solicited in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

#### *B. Incomplete Disclosure Statements*

Persons who file incomplete disclosures under section 6111 are subject to penalties under section 6707. The proposed regulations include clarifying language to the regulation reminding taxpayers that for a disclosure to be considered complete, the information provided on Form 8918 must describe the expected tax treatment and all potential tax benefits expected to result from the transaction, describe any tax result protection with

respect to the transaction, and identify and describe the transaction in sufficient detail for the IRS to be able to understand the tax structure of the reportable transaction and the identity of the material advisor(s). An incomplete form containing a statement that information will be provided upon request is not considered a complete disclosure statement.

#### *C. Tax Result Protection*

Previous comments to the regulations under § 1.6011-4 stated that it is inappropriate to require reporting of transactions under the contractual protection filter of § 1.6011-4(b)(4) for which the taxpayer obtains tax result protection (sometimes referred to as "tax result insurance") because numerous legitimate business transactions with tax indemnities would be subject to reporting. The IRS and Treasury Department removed tax result protection from that category of reportable transaction but cautioned that if the IRS and Treasury Department became aware of abusive transactions utilizing tax result protection, the issue would be reconsidered.

The IRS and Treasury Department have since become aware of taxpayers who have obtained tax result protection for the tax benefits of a listed transaction from a third party provider. In the AJCA, Congress expressed concern about tax result protection for reportable transactions and included insuring in the list of activities added to the statutory language under section 6111. The IRS, Treasury Department, and Congress have an interest in learning more about the insuring of reportable transactions. Accordingly, while a transaction will not be a reportable transaction simply because there is tax result protection for the transaction, tax result protection provided for a reportable transaction may subject a person to the material advisor disclosure rules under section 6111 because a tax statement includes third party tax result protection that insures the tax benefits of a reportable transaction.

#### *D. Designation Agreements*

The proposed regulations include a provision allowing designation agreements for disclosure of reportable transactions similar to the provision in the current regulations under § 301.6112-1 that allows material advisors to have a designation agreement authorizing one material advisor to maintain a list of investors in the transaction. However, parties to the designation agreement may still be liable for the penalty under section 6707

if the designated material advisor fails to disclose the reportable transaction under section 6111.

#### *E. Post-Filing Advice*

The current regulations under § 301.6112-1 provide that a person will not be considered to be a material advisor with respect to a transaction if that person does not make or provide a tax statement regarding the transaction until after the first tax return reflecting tax benefit(s) of the transaction is filed with the IRS. The IRS and Treasury Department, however, believe that a person should be considered a material advisor for certain post-filing advice. Consequently, the proposed rule provides that the exception will not apply to a person who makes a tax statement with respect to the transaction if it is expected that the taxpayer will file a supplemental or amended return reflecting additional tax benefits from the transaction.

#### *F. Protective Disclosures*

The IRS receives disclosures filed on a protective basis from persons claiming that the transactions are not subject to disclosure under section 6111. Some of those disclosures fail to provide the IRS with the information requested under sections 6111 and 6112 and the regulations thereunder that would enable the IRS to make a determination as to whether the transaction is subject to disclosure. Consequently, the IRS and Treasury Department have added clarifying language in the proposed regulation that allows protective disclosures to be filed in situations where a person is unsure of whether the transaction should be disclosed under section 6111. However, the disclosure is effective only if the rules of § 301.6111-3 and § 301.6112-1 are followed.

#### *G. Tolling Provision*

In response to comments that asked whether the tolling provisions of § 1.6011-4(f) would apply to requests from a potential material advisor for a letter ruling under section 6111, Notice 2005-22 provided that, until further guidance is issued, if an advisor submits a request for a letter ruling on or before the date the return under section 6111 is due and fully discloses all relevant facts relating to the transaction, the obligation of the potential material advisor to disclose the transaction will be suspended as provided in § 1.6011-4(f). The IRS and Treasury Department believe that removing the tolling provision will promote effective tax administration. Consequently, these proposed regulations do not include a provision to toll the time for providing

disclosure when a potential material advisor requests a ruling on a transaction. Potential material advisors may request a ruling under section 6111 on a transaction under the regular procedures for requesting a ruling, provided the ruling request is not factual or hypothetical, but the time for providing disclosure under section 6111 will not be tolled. The temporary regulations issued concurrently with these proposed regulations supersede the tolling provision in Notice 2005-22, effective for all ruling requests received on or after November 1, 2006.

#### H. Effective Date

Generally, when these proposed regulations become final, they will apply to transactions with respect to which a material advisor makes a tax statement on or after the date the regulations are published as final regulations in the **Federal Register**. However, upon publication the final regulations will apply to transactions of interest entered into on or after November 2, 2006 with respect to which a material advisor makes a tax statement under § 301.6111-3 on or after November 2, 2006.

#### 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, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. The return referenced in these regulations will be made available for public comment in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). 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 Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules, how they can be made easier to

understand, and the administrability of the rules in the proposed regulations. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that submits timely written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### Drafting Information

The principal authors of these regulations are Tara P. Volungis and Charles Wien, 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

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 is proposed to be 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 301.6111-3 is added to read as follows:

#### § 301.6111-3 Disclosure of reportable transactions.

(a) *In general.* Each material advisor, as defined in paragraph (b) of this section, with respect to any reportable transaction, as defined in § 1.6011-4(b) of this chapter, must file a return as described in paragraph (d) of this section by the date described in paragraph (e) of this section.

(b) *Material advisor*—(1) *In general.* A person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount as defined in paragraph (b)(3) of this section for the material aid, assistance, or advice. 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.

(2) *Material aid, assistance, or advice*—(i) *In general.* Except as provided in paragraph (b)(5) of this section, a person provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any transaction if the person makes or provides a tax statement to or for the benefit of—

(A) A taxpayer who either is required to disclose the transaction 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 because the transaction is a listed transaction or a transaction of interest, or would have been required to disclose the transaction 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 if the transaction had become a listed transaction or a transaction of interest within the period of limitations in § 1.6011-4(e) of this chapter;

(B) A taxpayer who the potential material advisor knows is or reasonably expects to be required to disclose the transaction under § 1.6011-4 of this chapter because the transaction is or is reasonably expected to become a transaction described in § 1.6011-4(b)(3) through (5) or (7) of this chapter;

(C) A material advisor who is required to disclose the transaction under this section because it is a listed transaction or a transaction of interest; or

(D) A material advisor who the potential material advisor knows is or reasonably expects to be required to disclose the transaction under this section because the transaction is or is reasonably expected to become a transaction described in § 1.6011-4(b)(3) through (5) or (7) of this chapter.

(ii) *Tax statement*—(A) *In general.* A tax statement is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in § 1.6011-4(b)(2) through (7) of this chapter. A tax statement under this section includes tax result protection that insures some or all of the tax benefits of a reportable transaction.

(B) *Confidential transactions.* A statement relates to a tax aspect of a transaction that causes it to be a confidential transaction if the statement concerns a tax benefit related to the transaction and either the taxpayer's disclosure of the tax treatment or tax structure of the transaction is limited in the manner described in § 1.6011-4(b)(3) of this chapter by or for the

benefit of the person making the statement, or the person making the statement knows the taxpayer's disclosure of the tax structure or tax aspects of the transaction is limited in the manner described in § 1.6011-4(b)(3) of this chapter.

(C) *Transactions with contractual protection.* A statement relates to a tax aspect of a transaction that causes it to be a transaction with contractual protection if the statement concerns a tax benefit related to the transaction and either—

(1) The taxpayer has the right to a full or partial refund of fees paid to the person making the statement or the fees are contingent in the manner described in § 1.6011-4(b)(4) of this chapter; or

(2) The person making the statement knows or has reason to know that the taxpayer has the right to a full or partial refund of fees (described in § 1.6011-4(b)(4)(ii) of this chapter) paid to another if all or part of the intended tax consequences from the transaction are not sustained or that fees (as described in § 1.6011-4(b)(4)(ii) of this chapter) paid by the taxpayer to another are contingent on the taxpayer's realization of tax benefits from the transaction in the manner described in § 1.6011-4(b)(4) of this chapter.

(D) *Loss transactions.* A statement relates to a tax aspect of a transaction that causes it to be a loss transaction if the statement concerns an item that gives rise to a loss described in § 1.6011-4(b)(5) of this chapter.

(E) *Transactions involving a brief asset holding period.* A statement relates to a tax aspect of a transaction involving a brief asset holding period if the statement concerns an item that gives rise to a tax credit described in § 1.6011-4(b)(7) of this chapter.

(iii) *Special rules—(A) Capacity as an employee.* A material advisor generally does not include a person who makes a tax statement solely in the person's capacity as an employee, shareholder, partner or agent of another person. Any tax statement made by that person will be attributed to that person's employer, corporation, partnership or principal. However, 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.

(B) *Post-filing advice.* A person will not be considered to be a material advisor with respect to a transaction if that person does not make or provide a tax statement regarding the transaction until after the first tax return reflecting tax benefit(s) of the transaction is filed with the IRS. However, this exception

does not apply to a person who makes a tax statement with respect to the transaction if it is expected that the taxpayer will file a supplemental or amended return reflecting additional tax benefits from the transaction.

(C) *Publicly filed statements.* A tax statement with respect to a transaction that includes only information about the transaction contained in publicly available documents filed with the Securities and Exchange Commission no later than the close of the transaction will not be considered a tax statement to or for the benefit of a person described in paragraph (b)(2) of this section.

(3) *Gross income derived for material aid, assistance, or advice—(i) Threshold amount—(A) In general.* The threshold amount of gross income is \$50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons (looking through any partnerships, S corporations, or trusts). For all other transactions, the threshold amount is \$250,000.

(B) *Listed transactions and transactions of interest.* For listed transactions described in §§ 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, the threshold amounts in paragraph (b)(3)(i)(A) of this section are reduced from \$50,000 to \$10,000 and from \$250,000 to \$25,000. For transactions of interest described in §§ 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, the threshold amounts in paragraph (b)(3)(i)(A) of this section may be reduced as identified in the published guidance describing the transaction.

(ii) *Gross income derived directly or indirectly for the material aid, assistance, or advice.* In determining the amount of gross income a person derives directly or indirectly for material aid, assistance, or advice, all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a reportable transaction are taken into account. Fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent return preparation fees are unreasonable in light of all of the facts and circumstances. A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction.

For example, a fee does not include reasonable charges for the use of capital or the sale or use of property. The IRS will scrutinize carefully all of the facts and circumstances in determining whether consideration received in connection with a reportable transaction constitutes gross income derived directly or indirectly for aid, assistance, or advice. For purposes of this section, the threshold amount must be met independently for each transaction that is a reportable transaction and aggregation of fees among transactions is not required.

(4) *Date a person becomes a material advisor—(i) In general.* A person will be treated as becoming a material advisor when all of the following events have occurred (in no particular order)—

(A) The person provides material aid, assistance or advice as described in paragraph (b)(2) of this section;

(B) The person directly or indirectly derives gross income in excess of the threshold amount as described in paragraph (b)(3) of this section; and

(C) The transaction is entered into by the taxpayer to whom or for whose benefit the person provided the tax statement, or in the case of a tax statement provided to another material advisor, when the transaction is entered into by a taxpayer to whom or for whose benefit that material advisor provided a tax statement.

(ii) *Determining if the taxpayer entered into the transaction.* Material advisors, including those who cease providing services before the time the transaction is entered into, must make reasonable and good faith efforts to determine whether the event described in paragraph (b)(4)(i)(C) of this section has occurred.

(iii) *Listed transactions and transactions of interest.* If a transaction that was not a reportable transaction is identified as a listed transaction or a transaction of interest in published guidance after the occurrence of the events described in paragraph (b)(4)(i) of this section, the person will be treated as becoming a material advisor on the date the transaction is identified as a listed transaction or a transaction of interest.

(5) *Other persons designated as material advisors.* Published guidance may identify other types or classes of persons as material advisors.

(c) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Reportable transaction.* The term *reportable transaction* is defined in § 1.6011-4(b)(1) of this chapter.

(2) *Listed transaction.* The term *listed transaction* is defined in § 1.6011-4(b)(2) of this chapter. *See also*

§§ 20.6011-4(a), 25.6011-4(a), 31.6011-4(a), 53.6011-4(a), 54.6011-4(a), or 56.6011-4(a) of this chapter.

(3) *Derive*. The term *derive* means receive or expect to receive.

(4) *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.

(5) *Substantially similar*. The term *substantially similar* is defined in § 1.6011-4(c)(4) of this chapter.

(6) *Tax*. The term *tax* means Federal tax.

(7) *Tax benefit*. A tax benefit includes deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as an entity exempt from Federal income taxation, and any other tax consequences that may reduce a taxpayer's Federal tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss, or credit.

(8) *Tax return*. The term *tax return* means a Federal tax return and a Federal information return.

(9) *Tax structure*. The tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed Federal tax treatment of the transaction.

(10) *Tax treatment*. The tax treatment of a transaction is the purported or claimed Federal tax treatment of the transaction.

(11) *Taxpayer*. The term *taxpayer* is defined in § 1.6011-4(c)(1) of this chapter.

(12) *Tax result protection*. The term *tax result protection* includes insurance company and other third party products commonly described as tax result insurance.

(13) *Transaction of interest*. The term *transaction of interest* is defined in § 1.6011-4(b)(6) of this chapter. *See also* §§ 20.6011-4(a), 25.6011-4(a), 31.6011-4(a), 53.6011-4(a), 54.6011-4(a), or 56.6011-4(a) of this chapter.

(d) *Form and content of material advisor's disclosure statement*—(1) *In general*. A material advisor required to file a disclosure statement under this section must file a completed Form 8918, "Material Advisor Disclosure Statement" (or successor form) in accordance with this paragraph (d) and the instructions to the form. To be considered complete, the information provided on the form must describe the expected tax treatment and all potential tax benefits expected to result from the transaction, describe any tax result protection with respect to the

transaction, and identify and describe the transaction in sufficient detail for the IRS to be able to understand the tax structure of the reportable transaction and the identity of the material advisor(s). An incomplete form containing a statement that information will be provided upon request is not considered a complete disclosure statement. A material advisor may file a single form for substantially similar transactions. An amended form must be filed if information previously provided is no longer accurate, if additional information that was not disclosed becomes available, or if there are material changes to the transaction. A material advisor is not required to file an additional form for each additional taxpayer that enters into the same or substantially similar transaction. If the form is not completed in accordance with the provisions in this paragraph (d) and the instructions to the form, the material advisor will not be considered to have complied with the disclosure requirements of this section.

(2) *Reportable transaction number*. The IRS will issue to a material advisor a reportable transaction number with respect to the disclosed reportable transaction. Receipt of a reportable transaction number does not indicate that the disclosure statement is complete, nor does it indicate that the transaction has been reviewed, examined, or approved by the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors to whom the material advisor makes or provides tax statements. The reportable transaction number must be provided at the time the transaction is entered into, or, if the transaction is entered into prior to the material advisor receiving the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

(e) *Time of providing disclosure*. The material advisor's disclosure statement for a reportable transaction must be filed with the Office of Tax Shelter Analysis (OTSA) by the last day of the month that follows the end of the calendar quarter in which the advisor became a material advisor with respect to the reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. The disclosure statement must be sent to OTSA at the address provided in the instructions for Form 8918 (or a successor form).

(f) *Designation agreements*. If more than one material advisor is required to disclose a reportable transaction under this section, the material advisors may

designate by written agreement a single material advisor to disclose the transaction. The transaction must be disclosed by the last day of the month following the end of the calendar quarter that includes the earliest date on which a material advisor who is a party to the agreement became a material advisor with respect to the transaction as described in paragraph (b)(4) of this section. The designation of one material advisor to disclose the transaction does not relieve the other material advisors of their obligation to disclose the transaction to the IRS in accordance with this section, if the designated material advisor fails to disclose the transaction to the IRS in a timely manner.

(g) *Protective disclosures*. If a potential material advisor is uncertain whether a transaction must be disclosed under this section, the advisor may disclose the transaction in accordance with the requirements of this section and comply with all the provisions of this section, and indicate on the disclosure statement that the disclosure statement is being filed on a protective basis. The IRS will not treat disclosure statements filed on a protective basis any differently than other disclosure statements filed under this section. For a protective disclosure to be effective, the advisor must comply with the regulations under this section and § 301.6112-1 by providing to the IRS all information requested by the IRS under these sections.

(h) [The text of the proposed § 301.6111-3(h) is the same as the text for § 301.6111-3T(h) published elsewhere in this issue of the **Federal Register**].

(i) *Effective date*—(1) *In general*. In general, this section applies to transactions with respect to which a material advisor makes a tax statement on or after the date these regulations are published as final regulations in the **Federal Register**. However, upon the publication of final regulations, this section will apply to transactions of interest entered into on or after November 2, 2006 with respect to which a material advisor makes a tax statement under § 301.6111-3 on or after November 2, 2006.

(2) [The text of the proposed § 301.6111-3(i)(2) is the same as the text for § 301.6111-3T(i)(2) published elsewhere in this issue of the **Federal Register**].

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

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