

Part III - Administrative, Procedural, and Miscellaneous

Listed Transactions

Notice 2003-76

This notice updates the list of transactions that have been determined by the Internal Revenue Service to be "listed transactions" for purposes of § 1.6011-4(b)(2) of the Income Tax Regulations and § 301.6111-2(b)(2) of the Procedure and Administration Regulations. This notice restates the list of "listed transactions" in Notice 2001-51, 2001-2 C.B. 190, and updates the list by adding transactions identified as "listed transactions" in notices and other guidance released subsequent to August 2, 2001.

Transactions that are the same as or substantially similar to transactions described in the list below have been determined by the Service to be tax avoidance transactions and are "listed transactions" for purposes of § 1.6011-4(b)(2) and § 301.6111-2(b)(2). As a result, taxpayers may need to disclose their participation in these listed transactions as prescribed in § 1.6011-4, and promoters (or other persons responsible for registering tax shelter transactions) may need to register these transactions under § 301.6111-2. In addition, material advisors must maintain lists of investors and other information with respect to these listed transactions pursuant to § 301.6112-1.

(1) Rev. Rul. 90-105, 1990-2 C.B. 69 (transactions in which taxpayers claim deductions for contributions to a qualified cash or deferred arrangement or matching contributions to a defined contribution plan where the contributions are attributable to compensation earned by plan participants after the end of the taxable year (identified as "listed transactions" on February 28, 2000)). See also Rev. Rul. 2002-46, 2002-29 I.R.B. 117 (result is the same, and transactions are substantially similar, even though the contributions are designated as satisfying a liability established before the end of the taxable year), modified by Rev. Rul. 2002-73, 2002-45 I.R.B. 805;

(2) Notice 95-34, 1995-1 C.B. 309 (certain trust arrangements purported to qualify as multiple employer welfare benefit funds exempt from the limits of §§ 419 and 419A of the Internal Revenue Code (identified as "listed transactions" on February 28, 2000)). See also § 1.419A(f)(6)-1 of the Income Tax Regulations (10 or more employer plans);

(3) Transactions described in Part II of Notice 98-5, 1998-1 C.B. 334 (transactions in which the reasonably expected economic profit is insubstantial in comparison to the value of the expected foreign tax credits (identified as “listed transactions” on February 28, 2000));

(4) Transactions substantially similar to those at issue in ASA Investering Partnership v. Commissioner, 201 F.3d 505 (D.C. Cir. 2000), and ACM Partnership v. Commissioner, 157 F.3d 231 (3d Cir. 1998) (transactions involving contingent installment sales of securities by partnerships in order to accelerate and allocate income to a tax-indifferent partner, such as a tax-exempt entity or foreign person, and to allocate later losses to another partner (identified as “listed transactions” on February 28, 2000));

(5) Treas. Reg. § 1.643(a)-8 (transactions involving distributions described in § 1.643(a)-8 from charitable remainder trusts (identified as “listed transactions” on February 28, 2000));

(6) Notice 99-59, 1999-2 C.B. 761 (transactions involving the distribution of encumbered property in which taxpayers claim tax losses for capital outlays that they have in fact recovered (identified as “listed transactions” on February 28, 2000)). See also Treas. Reg. § 1.301-1(g);

(7) Treas. Reg. § 1.7701(l)-3 (transactions involving fast-pay arrangements as defined in § 1.7701(l)-3(b) (identified as “listed transactions” on February 28, 2000));

(8) Rev. Rul. 2000-12, 2000-1 C.B. 744 (certain transactions involving the acquisition of two debt instruments the values of which are expected to change significantly at about the same time in opposite directions (identified as “listed transactions” on February 28, 2000));

(9) Notice 2000-44, 2000-2 C.B. 255 (transactions generating losses resulting from artificially inflating the basis of partnership interests (identified as “listed transactions” on August 11, 2000)). See also § 1.752-6T of the temporary Income Tax Regulations and §§ 1.752-1(a) and 1.752-7 of the proposed Income Tax Regulations;

(10) Notice 2000-60, 2000-2 C.B. 568 (transactions involving the purchase of a parent corporation's stock by a subsidiary, a subsequent transfer of the purchased parent stock from the subsidiary to the parent's employees, and the eventual liquidation or sale of the subsidiary (identified as “listed transactions” on November 16, 2000));

(11) Notice 2000-61, 2000-2 C.B. 569 (transactions purporting to apply § 935 to Guamanian trusts (identified as “listed transactions” on November 21, 2000));

(12) Notice 2001-16, 2001-1 C.B. 730 (transactions involving the use of an intermediary to sell the assets of a corporation (identified as “listed transactions” on January 18, 2001));

(13) Notice 2001-17, 2001-1 C.B. 730 (transactions involving a loss on the sale of stock acquired in a purported § 351 transfer of a high basis asset to a corporation and the corporation's assumption of a liability that the transferor has not yet taken into account for federal income tax purposes (identified as “listed transactions” on January 18, 2001));

(14) Notice 2001-45, 2001-2 C.B. 129 (certain redemptions of stock in transactions not subject to U.S. tax in which the basis of the redeemed stock is purported to shift to a U.S. taxpayer (identified as “listed transactions” on July 26, 2001));

(15) Notice 2002-21, 2002-1 C.B. 730 (transactions involving the use of a loan assumption agreement to inflate basis in assets acquired from another party to claim losses (identified as “listed transactions” on March 18, 2002));

(16) Notice 2002-35, 2002-1 C.B. 992 (transactions involving the use of a notional principal contract to claim current deductions for periodic payments made by a taxpayer while disregarding the accrual of a right to receive offsetting payments in the future (identified as “listed transactions” on May 6, 2002));

(17) Notice 2002-50, 2002-2 C.B. 98 (transactions involving the use of a straddle, a tiered partnership structure, a transitory partner, and the absence of a § 754 election to claim a permanent non-economic loss (identified as “listed transactions” on June 25, 2002)); Notice 2002-65, 2002-2 C.B. 690 (transactions involving the use of a straddle, an S corporation or a partnership, and one or more transitory shareholders or partners to claim a loss while deferring an offsetting gain are substantially similar to transactions described in Notice 2002-50); and Notice 2003-54, 2003-33 I.R.B. 363 (transactions involving the use of economically offsetting positions, one or more tax indifferent parties, and the common trust fund accounting rules of § 584 to allow a taxpayer to claim a noneconomic loss are substantially similar to transactions described in Notice 2002-50 and Notice 2002-65);

(18) Rev. Rul. 2002-69, 2002-2 C.B. 760, modifying and superseding Rev. Rul. 99-14, 1999-1 C.B. 835 (transactions in which a taxpayer purports to lease property and then purports to immediately sublease it back to the lessor (that is, lease-in/lease-out or LILO transactions) (identified as “listed transactions” on February 28, 2000));

(19) Notice 2002-70, 2002-2 C.B. 765 (transactions involving reinsurance arrangements between a taxpayer and the taxpayer's own reinsurance company that is subject to little or no federal income tax (identified as "listed transactions" on October 15, 2002));

(20) Rev. Rul. 2003-6, 2003-3 I.R.B. 286 (certain arrangements involving the transfer of employee stock ownership plans (ESOPs) that hold stock in an S corporation for the purpose of claiming eligibility for the delayed effective date of § 409(p) (identified as "listed transactions" on December 17, 2002));

(21) Notice 2003-22, 2003-18 I.R.B. 851 (certain arrangements involving leasing companies that have been used to avoid or evade federal income and employment taxes (identified as "listed transactions" on April 4, 2003));

(22) Notice 2003-24, 2003-18 I.R.B. 853 (certain arrangements that purportedly qualify as collectively-bargained welfare benefit funds excepted from the account limits of §§ 419 and 419A (identified as "listed transactions" on April 11, 2003));

(23) Notice 2003-47, 2003-30 I.R.B. 132 (transactions involving compensatory stock options and related persons to avoid or evade federal income and employment taxes (identified as "listed transactions" on July 1, 2003)); and

(24) Notice 2003-55, 2003-34 I.R.B. 395 (transactions in which one participant claims to realize rental or other income from property or service contracts and another participant claims the deductions related to that income (often referred to as "lease strips"), modifying and superceding Notice 95-53, 1995-2 C.B. 334 (identified as "listed transactions" on February 28, 2000)).

Notice 2001-51 is supplemented and superseded. For updates to this list go to the IRS web page at www.irs.gov/businesses/corporations and click on Abusive Tax Shelters and Transactions. Notices and other published guidance will still be used to identify transactions that have been determined by the Service to be "listed transactions."

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