

## Section 6011.—General Requirement of Return, Statement, or List

26 CFR 1.6011-4T: Requirements of statement disclosing participation in certain transactions by corporate taxpayers (Temporary).

T.D. 8877

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

#### Tax Shelter Disclosure Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations requiring certain corporate taxpayers to file a statement with their Federal corporate income tax return under section 6011(a). The temporary regulations affect corporations participating in certain reportable transactions. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in REG-103735-00, page 770.

DATES: *Effective date.* These temporary regulations are effective for Federal corporate income tax returns filed after February 28, 2000.

*Applicability date.* For dates of applicability, see §1.6011-4T(g) of these regulations.

FOR FURTHER INFORMATION CONTACT: Richard Castanon, (202) 622-3080, or Mary Beth Collins, (202) 622-3070, (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

#### Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of

Management and Budget under control number 1545-1685. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking REG-103735-00, page 770.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Background

The Treasury Department and the IRS are concerned about the proliferation of corporate tax shelters. These temporary regulations are intended to provide the Service with early notification of large corporate transactions with characteristics that may be indicative of such tax shelter activity.

Accordingly, this document amends 26 CFR part 1 regarding the general filing requirement for persons required to file a return for a taxable year with respect to a tax imposed under section 11. Section 6011(a) provides that any person made liable for any tax imposed by the Internal Revenue Code (Code), or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary of the Treasury.

#### Explanation of Provisions

##### *I. Disclosure Statement Required for Certain Corporate Taxpayers*

The temporary regulations provide that every person that is required to file a return for a taxable year with respect to any tax imposed under section 11 (corporate taxpayers) and that has participated in a reportable transaction shall attach a disclosure statement to its return for each taxable

year for which the taxpayer's Federal income tax liability is affected by its participation in the reportable transaction. In addition, a copy of the disclosure statement must be sent to the IRS in Washington, DC for the first taxable year for which the transaction is disclosed on the taxpayer's Federal income tax return. The temporary regulations outline the form and content of the disclosure statement and also provide an example of the statement.

Where the temporary regulations require a taxpayer to attach a disclosure statement to its return, the information required to be set forth thereon is a required part of the return to the same extent as information required pursuant to prescribed forms. See §1.6011-1. Therefore, when a taxpayer verifies its return, which includes a declaration that the return is complete, a taxpayer affirms that it has accurately made all disclosures required by these temporary regulations.

In the event of an underpayment attributable to a reportable transaction, a taxpayer's failure to satisfy the disclosure requirements of the temporary regulations may affect its exposure to penalties under sections 6662 and 6663 of the Code. Section 6664(c)(1) provides that such penalties may not be imposed with respect to any portion of a taxpayer's underpayment "if it is shown that there was a reasonable cause for such portion *and* that the taxpayer acted in good faith with respect to such portion." (Emphasis added.) Whether a taxpayer is considered to have satisfied the requirements of section 6664(c)(1) is determined on a case-by-case basis, taking into account all pertinent facts and circumstances. See §1.6664-4(b)(1).

The fact that a professional tax advisor has advised a taxpayer that its return position is more likely than not the proper tax treatment is not necessarily sufficient to satisfy the requirements of section 6664(c)(1). If a taxpayer has an underpayment attributable to its participation in a reportable transaction that has not been properly disclosed on its return, the nondisclosure could indicate that the taxpayer has not acted in "good faith" with respect to the underpayment, even if the taxpayer's return position has sufficient legal justification to meet the minimum requirements of section 6664(c)(1). In such a case, the determination of whether a taxpayer has acted in "good faith" will

depend on all of the facts and circumstances, including the reason or reasons why the taxpayer failed to make the required disclosure.

## II. Reportable Transactions

The temporary regulations define two categories of reportable transactions. The first category includes certain types of transactions identified by the Treasury and the Service as tax avoidance transactions. The second category includes transactions that warrant further scrutiny because they possess certain identified characteristics that are common in corporate tax shelters.

The regulations require disclosure only for large transactions that provide tax savings in excess of certain dollar thresholds (the projected tax effect test). In addition, the regulations contain exceptions to ensure that normal business transactions are not subject to disclosure. The fact that a transaction is reportable or not reportable under these regulations shall not affect the legal determination whether the tax benefits claimed with respect to the transaction are allowable.

The first category of reportable transactions includes any transaction that is the same as or substantially similar to one of the specified types of tax avoidance transactions that the IRS has identified by published guidance as a listed transaction for purposes of section 6011 and that is expected to reduce the taxpayer's Federal income tax liability by more than \$1 million in any single taxable year or by a total of more than \$2 million for any combination of taxable years. However, a listed transaction is not treated as a reportable transaction if it has affected the taxpayer's Federal income tax liability as reported on any tax return filed on or before February 28, 2000.

The second category of reportable transactions includes transactions entered into after February 28, 2000, that are expected to reduce a taxpayer's Federal income tax liability by more than \$5 million in any single taxable year or by a total of more than \$10 million for any combination of taxable years and that have at least two of the following characteristics:

(A) The taxpayer has participated in the transaction under conditions of confidentiality (as defined in §301.6111-2T(c)).

(B) The taxpayer has obtained or been provided with contractual protection against the possibility that part or all of

the intended tax benefits from the transaction will not be sustained, including, but not limited to, rescission rights, the right to a full or partial refund of fees paid to any person, fees that are contingent on the taxpayer's realization of tax benefits from the transaction, insurance protection with respect to the tax treatment of the transaction, or a tax indemnity or similar agreement (other than a customary indemnity provided by a principal to the transaction that did not participate in the promotion of the transaction to the taxpayer).

(C) The taxpayer's participation in the transaction was promoted, solicited, or recommended by one or more persons who have received or are expected to receive fees or other consideration with an aggregate value in excess of \$100,000, and such person or persons' entitlement to such fees or other consideration was contingent on the taxpayer's participation in the transaction.

(D) The expected treatment of the transaction for Federal income tax purposes in any taxable year differs or is expected to differ by more than \$5 million from the treatment of the transaction for purposes of determining book income as taken into account on the schedule M-1 (or comparable schedule) on the taxpayer's Federal corporate income tax return for the same period.

(E) The transaction involves the participation of a person that the taxpayer knows or has reason to know is in a Federal income tax position that differs from that of the taxpayer (such as a tax exempt entity or a foreign person), and the taxpayer knows or has reason to know that such difference in tax position has permitted the transaction to be structured on terms that are intended to provide the taxpayer with more favorable Federal income tax treatment than it could have obtained without the participation of such person (or another person in a similar tax position).

(F) The expected characterization of any significant aspect of the transaction for Federal income tax purposes differs from the expected characterization of such aspect of the transaction for purposes of taxation of any party to the transaction in another country.

However, a transaction that has at least two of the foregoing characteristics is not a reportable transaction if any of the following conditions is satisfied—

(A) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that it would have participated in the same transaction on substantially the same terms irrespective of the expected Federal income tax benefits;

(B) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that there is a long-standing and generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are allowable under the Code for substantially similar transactions;

(C) The taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction; or

(D) The transaction is identified in published guidance as being excepted from disclosure.

A transaction involving the acquisition, disposition, or restructuring of a business, including the acquisition, disposition, or other change in the ownership or control of an entity that is engaged in a business, or a transaction involving a recapitalization or an acquisition of capital for use in the taxpayer's business, shall be considered a transaction carried out in the ordinary course of a taxpayer's business.

## III. Record Retention

The taxpayer must retain all documents related to a transaction subject to disclosure under this section until the expiration of the statute of limitations for the first taxable year for which a disclosure statement is filed with its tax return. (This obligation is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) Such documents include, but are not limited to, the following: all marketing materials related to the transaction; all written analyses used in decision-making related to the transaction; all correspondence and agreements related to the transaction between the taxpayer and any promoter, advisor, lender, or other

party to the reportable transaction; all documents discussing, referring to, or demonstrating the tax benefits arising from the reportable transaction; and all documents, if any, referring to the business purposes for the reportable transaction.

#### IV. Effective Date

The temporary regulations apply to Federal corporate income tax returns filed after February 28, 2000.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the persons responsible for filing the statement required by these regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

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#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for

part 1 is amended by adding an entry in numerical order to read in part as follows: Authority: 26 U.S.C. 7805 \* \* \*

Section 1.6011-4T also issued under 26 U.S.C. 6001 and 6011(a). \* \* \*

Par. 2. Section 1.6011-4T is added to read as follows:

*§1.6011-4T Requirement of statement disclosing participation in certain transactions by corporate taxpayers (Temporary).*

(a) *In general.* Every taxpayer that is required to file a return for a taxable year with respect to a tax imposed under section 11 and that has participated, directly or indirectly, in a reportable transaction within the meaning of paragraph (b) of this section must attach to its return for the taxable year described in paragraph (d) of this section a disclosure statement in the form prescribed by paragraph (c) of this section. For this purpose, a taxpayer will have indirectly participated in a transaction if its Federal income tax liability is affected by the transaction even if it is not a direct party to the transaction (e.g., it participates through a partnership or through a controlled entity). A separate disclosure statement is required for each reportable transaction. The fact that a taxpayer files a disclosure statement for a reportable transaction shall not affect the legal determination whether the tax benefits claimed with respect to the transaction are allowable.

(b) *Definition of reportable transaction—(1) In general.* A reportable transaction is a transaction that is described in either paragraph (b)(2) or (3) of this section and that meets the projected tax effect test in paragraph (b)(4) of this section. The term *transaction* includes all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, and includes any series of related steps carried out as part of a pre-arranged plan and any series of substantially similar transactions entered into in the same taxable year.

(2) *Listed transactions.* A transaction is described in this paragraph (b)(2) if the transaction is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guid-

ance as a listed transaction for purposes of section 6011. However, a listed transaction is not treated as a reportable transaction if it has affected the taxpayer's Federal income tax liability as reported on any tax return filed on or before February 28, 2000. The fact that a transaction becomes a listed transaction does not imply that the transaction was not otherwise a reportable transaction prior thereto.

(3) *Other reportable transactions—(i) In general.* Except as provided in paragraph (b)(3)(ii) of this section, a transaction is described in this paragraph (b)(3) if it is entered into after February 28, 2000, and has at least two of the following characteristics:

(A) The taxpayer has participated in the transaction under conditions of confidentiality (as defined in §301.6111-2T(c)).

(B) The taxpayer has obtained or been provided with contractual protection against the possibility that part or all of the intended tax benefits from the transaction will not be sustained, including, but not limited to, rescission rights, the right to a full or partial refund of fees paid to any person, fees that are contingent on the taxpayer's realization of tax benefits from the transaction, insurance protection with respect to the tax treatment of the transaction, or a tax indemnity or similar agreement (other than a customary indemnity provided by a principal to the transaction that did not participate in the promotion of the transaction to the taxpayer).

(C) The taxpayer's participation in the transaction was promoted, solicited, or recommended by one or more persons who have received or are expected to receive fees or other consideration with an aggregate value in excess of \$100,000, and such person or persons' entitlement to such fees or other consideration was contingent on the taxpayer's participation in the transaction.

(D) The expected treatment of the transaction for Federal income tax purposes in any taxable year differs or is expected to differ by more than \$5 million from the treatment of the transaction for purposes of determining book income as taken into account on the schedule M-1 (or comparable schedule) on the taxpayer's Federal corporate income tax return for the same period.

(E) The transaction involves the participation of a person that the taxpayer



knows or has reason to know is in a Federal income tax position that differs from that of the taxpayer (such as a tax exempt entity or a foreign person), and the taxpayer knows or has reason to know that such difference in tax position has permitted the transaction to be structured on terms that are intended to provide the taxpayer with more favorable Federal income tax treatment than it could have obtained without the participation of such person (or another person in a similar tax position).

(F) The expected characterization of any significant aspect of the transaction for Federal income tax purposes differs from the expected characterization of such aspect of the transaction for purposes of taxation of any party to the transaction in another country.

(ii) *Exceptions.* A transaction is not a reportable transaction under paragraph (b)(3) of this section if paragraph (b)(3)(ii)(A), (B), (C), or (D) of this section is satisfied.

(A) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that it would have participated in the same transaction on substantially the same terms irrespective of the expected Federal income tax benefits.

(B) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that there is a long-standing and generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are allowable under the Internal Revenue Code (Code) for substantially similar transactions.

(C) The taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. Such a determination must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into

account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, authoritative administrative guidance, and judicial decisions that establish principles of general application in the tax law (e.g., *Gregory v. Helvering*, 293 U.S. 465 (1935)).

(D) The transaction is identified in published guidance as being excepted from disclosure under this section.

(iii) *Ordinary course of business.* For purposes of paragraphs (b)(3)(ii)(A) and (B) of this section, a transaction involving the acquisition, disposition, or restructuring of a business, including the acquisition, disposition, or other change in the ownership or control of an entity that is engaged in a business, or a transaction involving a recapitalization or an acquisition of capital for use in the taxpayer's business, shall be considered a transaction carried out in the ordinary course of a taxpayer's business.

(4) *Projected tax effect—(i) In general.* A transaction described in paragraph (b)(2) of this section meets the projected tax effect test if, at the time the taxpayer enters into the transaction or at any time thereafter, the taxpayer reasonably estimates that the transaction will reduce the taxpayer's Federal income tax liability by more than \$1 million in any single taxable year or by a total of more than \$2 million for any combination of taxable years in which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability. A transaction described in paragraph (b)(3) of this section meets the projected tax effect test if, at the time the taxpayer enters into the transaction or at any time thereafter, the taxpayer reasonably estimates that the transaction will reduce the taxpayer's Federal income tax liability by more than \$5 million in any single taxable year or by a total of more than \$10 million for any combination of taxable years in which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability. For purposes of this paragraph (b)(4), a transaction will be treated as reducing a taxpayer's Federal income tax liability for a taxable year if, and to the extent that, disallowance of the tax treatment claimed or expected to be claimed would result in an increase in the taxpayer's Federal income tax liability for that year. These dollar thresholds may be

adjusted pursuant to forms prescribed for reporting under this section and the instructions to such forms.

(ii) *Estimation of projected tax effect.* A taxpayer's estimate of the effect of a transaction on its Federal income tax liability shall take into account all projected Federal income tax consequences of the transaction, including all deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, and any other tax consequences that may reduce the taxpayer's Federal income tax liability by affecting the timing, character, or source of any item of income, gain, deduction, loss, or credit. The estimate shall not take into account the potential Federal income tax effect of any other transaction or transactions that the taxpayer might have entered into if the taxpayer had not entered into the transaction in question. Gross income may not be taken into account if the elements of the transaction that result in the creation of the gross income are not necessary to achieve the intended tax results of the transaction, whether or not these elements are an integral part of the transaction. For example, gross income may not be taken into account to the extent that it would have been reasonably possible for the taxpayer to have participated in the transaction in a manner that would have been expected to produce less gross income without a commensurate effect on the other tax consequences of the transaction. In addition, gain on property that the taxpayer acquired independent of its participation in the transaction may not be taken into account.

(5) *Examples.* The following examples illustrate the application of paragraph (b) of this section. Assume, for purposes of these examples, that the transactions are not the same as or substantially similar to any of the types of transactions that the IRS has identified as listed transactions under section 6011 and, thus, are not described in paragraph (b)(2) of this section. The examples are as follows:

*Example 1.* In March of 2000, C, a domestic corporation, invests \$100 million to purchase certain financial instruments the terms of which have been structured to enable the holder to claim a deductible tax loss upon the disposition of one or more of the instruments a short time after acquisition while deferring gain on the retained instruments. C purchased the instruments on the recommendation of X, which is expected to receive direct or indirect com-

pensation in excess of \$100,000 contingent on C's purchase. C disposes of certain of the financial instruments in November of 2000, and reports a loss from the disposition of those financial instruments on its 2000 Federal corporate income tax return which reduces its reported Federal income tax liability by more than \$5 million. That loss is not reflected on C's income statement for purposes of determining book income as taken into account on the schedule M-1 on C's Federal corporate income tax return. Further, C is unable to reasonably determine that it would have entered into the transaction irrespective of the Federal income tax benefits, or that the transaction is a customary form of transaction giving rise to tax consequences for which there is a long-standing and generally accepted understanding that such tax consequences are allowable under the Code for similar transactions, or that the Commissioner would have no reasonable basis to deny the claimed loss. The transaction involving C's purchase and disposition of the financial instruments has the characteristics described in paragraphs (b)(3)(i)(C) and (D) of this section. None of the exceptions in paragraph (b)(3)(ii) of this section applies. Therefore, the transaction involving C's purchase and disposition of the financial instruments is a reportable transaction because it is described in paragraph (b)(3) of this section.

*Example 2.* In the year 2001, D, a domestic corporation, completes construction of an office building to be used in its business. After completion of the building but before D files its tax return for the year 2001, it is approached by Y, a professional services organization, which advises D that Y has developed a set of programs that will enable D to maximize its depreciation deductions with respect to the building and the related furniture and fixtures. Y allows D to review Y's programs subject to D's agreement that it will not use any portion of the programs in establishing its depreciation accounts for Federal tax purposes unless it pays Y a fee of \$150,000. In addition, D makes a commitment to Y that it will not divulge any information relating to the programs to any person, whether or not D decides to use the programs. D agrees to use Y's programs for purposes of computing its depreciation allowances for 2001 and later taxable years. D expects its use of the programs to reduce its Federal income tax liability by more than \$10 million over the life of the building. However, D reasonably determines that it would have constructed and owned the office building in the same manner irrespective of the enhanced depreciation that it expects to derive from the use of Y's programs. Therefore, regardless of whether D's depreciation deductions on the building may be subject to disallowance, the transaction encompassing the construction of the building and the use of Y's programs is not a reportable transaction by reason of the exception under paragraph (b)(3)(ii)(A) of this section.

*Example 3.* E is a domestic corporation, which is a calendar year taxpayer. E is engaged in the leasing business. In 2001, E enters into a large number of substantially similar arrangements described in paragraph (b)(3)(i) of this section under which it acquires and leases tangible personal property to U.S. persons who use such property in their businesses. E treats the leases as leases for Federal income tax purposes and as loans for financial accounting purposes. During the first three taxable years in which the leases are in effect, E reasonably expects that its reported taxable income will be more than \$30 million lower than it would be if the leases were treated as loans for Federal income tax purposes, giving rise to a total expected reduction of E's Federal income tax liability for those years in excess of \$10 million. E cannot conclude that it would have entered into the leases on substantially the same terms irrespective of the expected Federal income tax benefits, nor can it conclude that the Commissioner would have no reasonable basis to deny its tax treatment of the leases. However, E does reasonably determine that the terms of the leases are consistent with customary commercial form in the leasing industry, and that there is a long-standing and generally accepted understanding that the combination of Federal income tax consequences it is claiming with respect to the leases are allowable under the Code for similar transactions. The substantially similar leases would be treated for purposes of this section as a single transaction that would satisfy the projected tax effect test described in paragraph (b)(4) of this section. However, the leases would not be a reportable transaction by reason of the exception under paragraph (b)(3)(ii)(B) of this section.

(c) *Form and content of disclosure statement.* (1) The disclosure statement for each reportable transaction must include the information required by paragraph (c)(1)(i) through (c)(1)(vi) of this section and shall be presented in a format (preferably no longer than one page) similar to that shown in the *Example* in paragraph (c)(2) of this section or on such form as may be prescribed for use under this section.

(i) The name, if any, by which the transaction is known or commonly referred to by the taxpayer; if no name exists, provide a short-hand designation of this transaction to distinguish it from other reportable transactions in which the taxpayer may have participated (or may participate in the future).

(ii) A statement indicating whether, to

the best knowledge of the taxpayer, the transaction has been registered as a tax shelter under section 6111. If the transaction has been registered as a tax shelter under section 6111, indicate whether Form 8271, "Investor Reporting of Tax Shelter Registration Number", has been filed with the taxpayer's return and provide the registration number, if any, that has been assigned to the tax shelter.

(iii) A brief description of the principal elements of the transaction that give rise to the expected tax benefits.

(iv) A brief description of the expected tax benefits of the transaction (e.g., loss deductions, interest deductions, rental deductions, foreign tax credits, etc.).

(v) An identification of each taxable year (including prior taxable years) for which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability and an estimate (which may be rounded to the nearest \$1 million) of the amount by which the transaction is expected to reduce the taxpayer's Federal income tax liability for each such taxable year.

(vi) The names and addresses of any parties who promoted, solicited, or recommended the taxpayer's participation in the transaction and who had a financial interest, including the receipt of fees, in the taxpayer's decision to participate.

(2) *Example.* The following example illustrates the application of paragraph (c) of this section: In January of 1999, X, a domestic corporation which is a calendar year taxpayer, entered into an arrangement under which it purported to lease a building owned and occupied by the government of a municipality located in foreign country W and lease the building back to the municipal government. X determines that the transaction is a reportable transaction described in paragraph (b)(1) of this section because it is described in paragraph (b)(2) of this section and satisfies the projected tax effect test in paragraph (b)(4) of this section. As of February 28, 2000, X had not filed its 1999 Federal corporate income tax return. The following form of disclosure statement would satisfy the requirements described in paragraph (c)(1) of this section.

**DISCLOSURE STATEMENT FOR REPORTABLE TRANSACTION**

Corporation X  
(address)

(EIN)

**1. Identification of transaction:** LILO–Country W

**2. Registration status under section 6111:** Not registered

**3. Description of transaction:** We leased a building from a municipality in W. We made an advance payment of rent of \$89 million. The lease term is 34 years. The foreign municipality subleased the asset back from us for a term of 20 years. The foreign municipality has the option, at the end of the sublease term, to buy out our interest for \$50 million. Our advance lease payment has been financed with a bank loan of \$60 million. The foreign municipality placed \$75 million of the advance rental payment in special accounts to satisfy the sublease and buyout obligations.

**4. Principal tax benefits:** Deductions for rental and interest payments in excess of income from leaseback rental payments

**5. Estimates of expected reduction of Federal income tax liability for affected taxable years:** 1999-2002, \$5 million per year; 2003-2013, \$4 million per year; and 2014-2017, \$3 million per year.

**6. Promoters:**  
   Financial Institution Y  
   (address)  
   (telephone number)  
  
   Professional Service Firm Z  
   (address)  
   (telephone number)

(d) *Time of providing disclosure*—(1) *In general.* The disclosure statement for a reportable transaction shall be attached to the taxpayer’s Federal corporate income tax return for each taxable year for which the taxpayer’s Federal income tax liability is affected by its participation in the transaction. In addition, at the same time that the disclosure statement is first attached to the taxpayer’s Federal income tax return, a copy of that disclosure statement must be sent to: Internal Revenue Service LM:PF, Large & Mid-Size Business Division, 1111 Constitution Ave., N.W., Washington, DC 20224. If a transaction becomes a reportable transaction on or after the date the taxpayer has filed its return for the first taxable year for which the transaction affected the taxpayer’s Federal income tax liability (e.g., there is a change in facts affecting the expected Federal income tax effect of the transaction, or the transaction subsequently becomes one identified in published guidance as a listed transaction described in (b)(2) of this section), the disclosure statement shall be filed as an attachment to the taxpayer’s Federal corporate income tax return next filed after the date the transaction becomes a reportable transaction. If a disclosure statement is required as an attachment to a Federal corporate income tax return that is filed earlier than 180 days after February 28, 2000, the taxpayer may either attach the disclosure statement to the return, or file the disclosure statement as an amendment to the return no later than 180 days after February 28, 2000.

(2) *Example.* The following example illustrates the application of this paragraph (d): In December of 2000, F, a domestic corporation which is a calendar year taxpayer, enters into a transaction described in

paragraph (b)(3) of this section but not described in paragraph (b)(2) of this section. At the time F enters into the transaction and thereafter, F reasonably estimates that the transaction will reduce F’s Federal income tax liability by \$2 million in any single taxable year and by a total of \$8 million for any combination of taxable years in which the transaction is expected to have the effect of reducing F’s Federal income tax liability. Consequently, the transaction does not meet the projected tax effect test described in paragraph (b)(4) of this section for transactions described in paragraph (b)(3) of this section. On March 1, 2002, the IRS publishes a notice identifying the transaction as a listed transaction described in paragraph (b)(2) of this section. Thus, upon issuance of the notice, the transaction becomes a transaction described in paragraph (b)(2) of this section. As a result of the lower dollar thresholds of the projected tax effect test with respect to transactions described in (b)(2) of this section, the transaction meets the projected tax effect test in paragraph (b)(4) of this section. Consequently, the transaction becomes a reportable transaction described in paragraph (b)(1) of this section, and F is required to file a disclosure statement meeting the requirements of paragraph (c)(1) of this section for the transaction as an attachment to F’s next filed Federal corporate income tax return. If F’s 2001 return has not been filed on or before the date the Service identifies the transaction as a listed transaction, the disclosure statement must be attached to F’s 2001 return.

(e) *Retention of documents.* The taxpayer must retain all documents related to a transaction subject to disclosure under this section until the expiration of the statute of limitations applicable to the first taxable year for which disclosure of the transaction was made in accordance with the requirements of this section. (This document retention requirement is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) Such documents include, but are not limited to, the following: all marketing materials related to the transaction; all written analyses used in decision-making related to the trans-

action; all correspondence and agreements related to the transaction between the taxpayer and any promoter, advisor, lender, or other party to the reportable transaction; all documents discussing, referring to, or demonstrating the tax benefits arising from the reportable transaction; and all documents, if any, referring to the business purposes for the reportable transaction.

(f) *Affiliated groups.* For purposes of this section, an affiliated group of corporations that joins in the filing of a consolidated return under section 1501 shall be considered a single taxpayer.

(g) *Effective date.* This section applies to Federal corporate income tax returns filed after February 28, 2000. However, paragraph (e) of this section applies to documents and other records that the taxpayer acquires, prepares, or has in its possession on or after February 28, 2000. Par.

3. In §602.101, paragraph (b) is amended by adding an entry for §1.6011–4T to read in part as follows:

*§602.101 OMB Control numbers.*

\* \* \* \* \*

(b) \* \* \*

Charles O. Rossotti,  
*Commissioner of Internal Revenue.*

Approved February 23, 2000.

Jonathan Talisman,  
*Acting Assistant Secretary  
of the Treasury.*

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**Section 6111.— Registration of Tax Shelters**

*26 CFR 301.6111-2T: Confidential corporate tax shelters (Temporary).*

**T.D. 8876**

**DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
26 CFR Parts 301 and 602**

**Corporate Tax Shelter  
Registration**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations requiring the registration of confidential corporate tax shelters pursuant to section 6111(d) as amended by section 1028(a) of the Taxpayer Relief Act of 1997 (the Act). The temporary regulations affect persons responsible for registering confidential corporate tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in REG-110311-98, page 767.

DATES: *Effective date.* These temporary regulations are effective February 28, 2000.

*Applicability date.* For dates of applicability, see §301.6111-2T(h) of these regulations.

FOR FURTHER INFORMATION CONTACT: Richard Castanon, (202) 622-3080, or Mary Beth Collins, (202) 622-3070; concerning international issues Rebecca Rosenberg, (202) 622-3870 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

These regulations are being issued

without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1687. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

In enacting section 6111(d), Congress added confidential corporate tax shelters as a type of tax shelter that must be registered under section 6111. Congress intended the provision to improve tax compliance by giving the Treasury Department earlier notification of transactions that may not comport with Federal tax law and by discouraging taxpayers from entering into questionable transactions. See H.R. REP. NO. 148, 105th Cong., 1st Sess. 469 (1997); S. REP. NO. 33, 105th Cong., 1st Sess. 148 (1997).

Section 1028(e)(1) of the Act provides

that the registration requirements of section 6111 and the penalty provisions of section 6707 for failing to comply with the registration requirements apply to confidential corporate tax shelters in which interests are offered to potential participants after the IRS issues guidance on the registration requirements. These regulations provide the guidance necessary to activate the registration requirements of section 6111 and the penalty provisions of section 6707 for confidential corporate tax shelters.

These temporary regulations relate to disclosure obligations for tax shelter organizers and promoters under section 6111. Although the terms of section 6111(d)(1)(A), which are part of the definition of a confidential corporate tax shelter, are similar to the definition of tax shelter under section 6662(d)(2)(C)(iii), these temporary regulations are not intended to define a tax shelter for purposes of section 6662, which relates to the imposition of penalties.

**Explanation of Provisions**

*I. In General*

Under section 6111(d)(1) and the temporary regulations, a confidential corporate tax shelter is any entity, plan, arrangement, or transaction that satisfies the following three requirements: (1) a significant purpose of the structure of the transaction is the avoidance or evasion of Federal income tax for a direct or an indirect corporate participant; (2) the transaction is offered to any potential participant under conditions of confidentiality; and (3) the tax shelter promoters may receive fees in excess of \$100,000 in the aggregate.

*II. Significant Purpose of Tax Avoidance or Tax Evasion*

Under the temporary regulations, there are three categories of transactions for