

Conservation Easements

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A. *Monetization: Non-traditional*

1. Use of Deduction by Land Owner
 - (a) Valuation Issue (Example-\$10M deduction would require \$33M AGI)
 - (b) Land Rich—Cash/Income Poor--Inability to Utilize Deduction

2. Land Owner Need for Immediate Liquidity
 - (a) Lender Pressure – Recourse Land Loan
 - (b) Lot Purchaser Pressures – Amenity Package

3. Monetization as the Answer
 - (a) Admit investors into a partnership
 - (a) Investor receives K-1 showing investor's share of partnership results, including charitable deductions if the partnership makes a charitable contribution
 - (b) Investor funds used to satisfy debt, create working capital, fund capital improvements, **purchase ownership interests from existing owners**

B. Technical Issues and IRS Attacks

(a) General IRS Attacks Applicable to All Conservation Easements

1. Appraisal

- (a) Technical requirements of a qualified appraisal and a qualified appraiser (non-valuation)
- (b) Valuation (e.g. gravel case)—claimed FMV vs. prior purchase price
- (c) Invalid comparables
- (d) Comparable sale vs. discounted cash flow (subdivision model)
- (e) Invalid Assumptions e.g. demand, absorption, prices, discount rates or lack of support for assumptions
- (f) Methodology (present value factors).
- (g) **Support for HBU-marketing reports**
- (h) Geology reports

2. Should have used comparable sales of easements

- (a) How know if comparable?
- (b) Bargain Sales?

3. Unattainable Highest and Best Use

- (a) Property Tax Abatement Program (CUVA)
- (b) Rights donated were already precluded or legally required (Atlantic Station)
- (c) Outstanding mineral right claims
- (d) Title /survey matters—ingress/egress and definitive boundaries.
- (d) Zoning

4. Conservation purpose
 - (a) Lack of qualified conservation purpose (Atkinson golf course case)
 - (b) Insufficient documentation of conservation purpose(s) (Baseline study)
5. Retained rights are inconsistent with conservation purpose(s)
6. Lack of charitable intent (quid pro quo)
 - (a) Zoning exchange
 - (b) Enhancement of value of other property (interstate exchange)
7. Lack of perpetuity—prior liens and encumbrances
 - (a) Failure to subordinate mortgage/Inadequate subordination
 - (b) Incorrect allocation of proceeds upon extinguishment
 - (c) Donor and/or donee possesses right to terminate easement
 - (d) Conditioned on passing IRS muster
 - (e) Substitution of property or ability to modify easement **vs floating building sites**
 - (f) CUVA program
8. **Donee** status or inability to perform
 - (a) Charitable organization-501(c)(3)
 - (b) The **donee** possesses insufficient resources (personnel/funding) to defend the conservation easement in perpetuity

9. No contemporaneous written acknowledgment or Form 8283 or Deficient Form 8283 (no basis shown)
10. Amendment Clause

(b) IRS Attacks Applicable to Monetized Conservation Easements

1. Holding Period – need 1 year holding period
 - (a) Individual owner/single member LLC
 - (b) Sale of Property vs. Sale of Membership Interests
 - Disguised Sales
 - (c) Sources and Uses of Funds
 - Internal use vs. putting in land owner pocket
 - (d) Technical Termination

2. Partnership and Partner Status
 - (a) Sharing of Economic Benefits
 - (b) Economic Asset
 - (c) Put/Call Options

3. Dealer Status
 - (a) Prior lot sales
 - (b) Bank Issues related to foreclosed property

4. Allocations
 - (a) Capital Accounts/704(b) Allocations Rules
 - (b) Purchase of Membership Interests to obtain Existing Capital Accounts

5. Economic Substance/Sham/Partnership Anti-abuse
 - (a) No economics to giving property away—Intent of Congress
 - (b) Compare: Individual/Existing Partners, Purchase with Philanthropic Motivation /Purchase Controlling Interest
 - (c) Holding Period Benefit
 - (d) Economic Asset
 - (e) Compare to Historic Credits and LIHTC Programs
 - (f) Short Period: Compare to 1970's Syndications; Short Period Expenses
 - (g) Overall Win/Win/Win
 - Land owner saved
 - Bank saved
 - Beautiful land conserved to fulfill statutory objective

C. Audit Defense Reserve

D. Tax Opinions

- (a) *Impact of Notice 2017-10.*

E. LTA Advisory

F. Notice 2017-10 Filing Requirements and Compliance

- (a) *Due Dates*
- (b) *Penalties*

Note: Form 8886 (Rev. March 2011) begins on the next page.

The zip code for where to file separately an exact copy of the initial year filing of Form 8886 has changed from 84404 to 84201.

The complete address to which it should be mailed is:

Internal Revenue Service
OTSA Mail Stop 4915
1973 Rulon White Blvd.
Ogden, Utah 84201

Reportable Transaction Disclosure Statement

▶ **Attach to your tax return.**
 ▶ **See separate instructions.**

Name(s) shown on return (individuals enter last name, first name, middle initial) Identifying number

Number, street, and room or suite no.	City or town	State	ZIP code
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A If you are filing more than one Form 8886 with your tax return, sequentially number each Form 8886 and enter the statement number for this Form 8886 ▶ Statement number _____ of _____

B Enter the form number of the tax return to which this form is attached or related ▶ _____
 Enter the year of the tax return identified above ▶ _____
 Is this Form 8886 being filed with an amended tax return? ▶ Yes No

C Check the box(es) that apply (see instructions). Initial year filer Protective disclosure

1 a Name of reportable transaction

1 b Initial year participated in transaction **1 c** Reportable transaction or tax shelter registration number (see instructions)

2 Identify the type of reportable transaction. Check all boxes that apply (see instructions).
a Listed **c** Contractual protection **e** Transaction of interest
b Confidential **d** Loss

3 If you checked box 2a or 2e, enter the published guidance number for the listed transaction or transaction of interest ▶ _____

4 Enter the number of "same as or substantially similar" transactions reported on this form ▶ _____

5 If you participated in this reportable transaction through a partnership, S corporation, trust, and foreign entity, check the applicable boxes and provide the information below for the entity(s) (see instructions). (Attach additional sheets, if necessary.)

a Type of entity	<input type="checkbox"/> Partnership	<input type="checkbox"/> Trust	<input type="checkbox"/> Partnership	<input type="checkbox"/> Trust
	<input type="checkbox"/> S corporation	<input type="checkbox"/> Foreign	<input type="checkbox"/> S corporation	<input type="checkbox"/> Foreign
b Name	_____			
c Employer identification number (EIN), if known	_____			
d Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received)	_____			

6 Enter below the name and address of each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. (Attach additional sheets, if necessary.)

a Name	Identifying number (if known)	Fees paid	State	ZIP code
Number, street, and room or suite no.	City or town	\$		
b Name	Identifying number (if known)	Fees paid		
Number, street, and room or suite no.	City or town	\$		

7 Facts

a Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

- Deductions Exclusions from gross income Absence of adjustments to basis Tax Credits
- Capital loss Nonrecognition of gain Deferral
- Ordinary loss Adjustments to basis Other _____

b Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

8 Identify all individuals and entities involved in the transaction that are tax-exempt, foreign, or related. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each individual or related entity, explain how the individual or entity is related. Attach additional sheets, if necessary.

a Type of individual or entity: Tax-exempt Foreign Related

Name	Identifying number
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Address

Description

b Type of individual or entity: Tax-exempt Foreign Related

Name	Identifying number
------	--------------------

Address

Description

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Instructions for Form 8886

(Rev. March 2011)

Reportable Transaction Disclosure Statement



Department of the Treasury
Internal Revenue Service

Section references are to the Internal Revenue Code unless otherwise noted.

What's New

New rules apply to penalties assessed under section 6707A after December 31, 2006. See *Penalties* on page 4 for details.

General Instructions

Purpose of Form

Use Form 8886 to disclose information for each reportable transaction in which you participated. See *Participation in a Reportable Transaction*, below, to determine if you participated in a reportable transaction. For more information on the disclosure rules, see Regulations section 1.6011-4.

Generally, you must file a separate Form 8886 for each reportable transaction. However, you may report more than one transaction on one form if the transactions are the same or substantially similar. See the definition of substantially similar below.

The fact that a transaction must be reported on this form does not mean the tax benefits from the transaction will be disallowed.

Prohibited tax shelter transactions.

Generally, the term "prohibited tax shelter transaction" means listed transactions, transactions with contractual protection, or confidential transactions. See the definition of these categories below. There may be additional disclosure requirements for tax-exempt entities with respect to these types of transactions. If you are a tax-exempt entity and you are a party to a prohibited tax shelter transaction, you may be required to file Form 8886-T, Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction, in addition to filing Form 8886. For more information, see the Instructions for Form 8886-T.

Definitions

Transaction

A transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement and it includes

any series of steps carried out as part of a plan.

Substantially Similar

A transaction is substantially similar to another transaction if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. See Regulations section 1.6011-4(c)(4) for examples.

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.

Tax Structure

The tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed federal income tax treatment of the transaction.

Who Must File

Any taxpayer, including an individual, trust, estate, partnership, S corporation, or other corporation, that participates in a reportable transaction and is required to file a federal tax return or information return must file Form 8886. However, a regulated investment company (RIC) (as defined in section 851) or an investment vehicle that is at least 95% owned by one or more RICs at all times during the course of a transaction is not required to file Form 8886 for any transaction other than a listed transaction (as defined below) or a transaction of interest (as defined on page 3).

Participation in a Reportable Transaction

A reportable transaction is a transaction described in one or more of the following categories.

Listed Transactions

A listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction. These transactions are identified by notice, regulation, or other form of published guidance as a listed transaction. For existing guidance see Notice 2009-59, 2009-31 I.R.B. 170, available at www.irs.gov/pub/irs-irbs/irb09-31.pdf. 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. The listed transactions will also be periodically updated in future issues of the Internal Revenue Bulletin. You can find a notice or ruling in the Internal Revenue Bulletin at www.irs.gov/pub/irs-irbs/irbXX-YY.pdf, where XX is the two-digit year and YY is the two-digit bulletin number. For example, you can find Notice 2009-59, 2009-31 I.R.B. 170, at www.irs.gov/pub/irs-irbs/irb09-31.pdf.

You have participated in a listed transaction if any of the following applies.

- Your tax return reflects tax consequences or a tax strategy described in published guidance that lists the transaction.
- You know or have reason to know that tax benefits reflected on your tax return are derived directly or indirectly from such tax consequences or tax strategy.
- You are in a type or class of individuals or entities that published guidance treats as participants in a listed transaction.

Exception. If you participated in a transaction that is the same as or substantially similar to the transaction described in Notice 2002-35, 2002-21 I.R.B. 992, available at www.irs.gov/pub/irs-irbs/irb02-21.pdf (tax avoidance using notional principal contracts) solely as a result of your direct or indirect interest in a pass-through entity, you are not required to disclose the transaction on Form 8886. For more information, see Notice 2006-16,

Confidential Transactions

A confidential transaction is a transaction that is offered to you or a related party (as described in section 267(b) or 707(b)) under conditions of confidentiality and for which you or a related party paid an advisor a minimum fee (defined below). A transaction is considered to be offered under conditions of confidentiality if the advisor places a limitation on your disclosure of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of the advisor's tax strategies. The transaction is treated as confidential even if the conditions of confidentiality are not legally binding on you. See Regulations section 1.6011-4(b)(3) for more information.

Minimum fee. For a corporation (excluding S corporations), or a partnership or trust in which all of the owners or beneficiaries are corporations (excluding S corporations), the minimum fee is \$250,000. For all others, the minimum fee is \$50,000.

The minimum fee includes all fees for a tax strategy, for advice (whether or not tax advice), or for the implementation of a transaction. Fees include payment 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. You are treated as paying fees to an advisor if you know or should know that the amount you pay will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. Fees do not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. The IRS will scrutinize all of the facts and circumstances in determining whether consideration received in connection with a confidential transaction constitutes fees. For purposes of determining the minimum fee, related parties (as described in section 267(b) or 707(b)) will be treated as the same individual or entity.

You have participated in a confidential transaction if your tax return reflects a tax benefit from the transaction and your disclosure of the tax treatment or tax structure of the transaction is limited as described above. If disclosure by a pass-through entity (partnership, S corporation, or trust) is limited, but disclosure by the

partner, shareholder, or beneficiary is not limited, then the pass-through entity (but not the partner, shareholder, or beneficiary) has participated in the confidential transaction.

Transactions With Contractual Protection

A transaction with contractual protection is a transaction for which you have, or a related party (as described in sections 267(b) or 707(b)) has, the right to a full refund or partial refund of fees if all or part of the intended tax consequences from the transaction are not sustained. It also includes a transaction for which fees are contingent on your realization of tax benefits from the transaction. For exceptions and other details, see Regulations section 1.6011-4(b)(4) and Rev. Proc. 2007-20, 2007-7 I.R.B. 517, available at www.irs.gov/pub/irs-irbs/irb07-07.pdf.

You have participated in a transaction with contractual protection if your tax return reflects a tax benefit from the transaction and, as described above, you have the right to a full or partial refund of fees or the fees are contingent. All facts and circumstances relating to the transaction will be considered when determining whether a fee is refundable or contingent, including the right to reimbursements of amounts that the parties to the transaction have not designated as fees or any agreement to provide services without compensation. If a pass-through entity (partnership, S corporation, or trust) has the right to a full or partial refund of fees or has a contingent fee arrangement, but the partner, shareholder, or beneficiary individually does not, then the pass-through entity (but not the partner, shareholder, or beneficiary) has participated in the transaction with contractual protection.

Loss Transactions

A loss transaction is a transaction that results in your claiming a loss under section 165 (described later) if the amount of the section 165 loss is as follows.

- For individuals, at least \$2 million in any single tax year or \$4 million in any combination of tax years. (At least \$50,000 for a single tax year if the loss arose from a section 988 transaction defined in section 988(c)(1) (relating to foreign currency transactions), whether or not the loss flows through from an S corporation or partnership).
- For corporations (excluding S corporations), at least \$10 million in any single tax year or \$20 million in any combination of tax years.

- For partnerships with only corporations (excluding S corporations) as partners (looking through any partners that are also partnerships), at least \$10 million in any single tax year or \$20 million in any combination of tax years, whether or not any losses flow through to one or more partners.
- For all other partnerships and S corporations, at least \$2 million in any single tax year or \$4 million in any combination of tax years, whether or not any losses flow through to one or more partners or shareholders.
- For trusts, at least \$2 million in any single tax year or \$4 million in any combination of tax years, whether or not any losses flow through to one or more beneficiaries. (At least \$50,000 for a single tax year if the loss arose from a section 988 transaction defined in section 988(c)(1) (relating to foreign currency transactions), whether or not the loss flows through from an S corporation or partnership).

Section 165 loss. For purposes of the above threshold amounts, a section 165 loss is adjusted for any salvage value and for any insurance or other compensation received. However, a section 165 loss does not take into account offsetting gains, other income, or limitations. The full amount of a loss is taken into account in the year it was sustained, regardless of whether all or part of the loss enters into the computation of a net operating loss under section 172 or a net capital loss under section 1212 that is a carryback or carryover to another year. A section 165 loss does not include any portion of a loss, attributable to a capital loss carryback or carryover from another year, that is treated as a deemed capital loss under section 1212.

In determining whether a transaction results in a taxpayer claiming a loss that meets the threshold amounts over a combination of tax years as described above, only losses claimed in the tax year that the transaction is entered into and the 5 succeeding tax years are combined.

The types of losses included in this category are section 165 losses, including amounts deductible under a provision that treats a transaction as a sale or other disposition or otherwise results in a deduction under section 165. However, this category does not include losses described in Rev. Proc. 2004-66, 2004-50 I.R.B. 966, available at www.irs.gov/pub/irs-irbs/irb04-50.pdf (or future published guidance).

You have participated in a loss transaction if your tax return reflects a section 165 loss that equals or exceeds the applicable threshold amount. If you are a partner, shareholder, or beneficiary of a pass-through entity

(partnership, S corporation, or trust), you have participated in a loss transaction if your tax return reflects a section 165 loss allocable to you from the pass-through entity (disregarding netting at the entity level) that equals or exceeds the applicable threshold amount. For this purpose, a tax return is deemed to reflect the full amount of the section 165 loss allocable to the taxpayer, regardless of whether all or part of the loss enters in the computation of a net operating loss under section 172 or net capital loss under section 1212 that the taxpayer may carry back or carry over to another year.

Transactions of Interest

A transaction of interest is a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a transaction of interest. It is a transaction that the IRS and Treasury Department believe has a potential for tax avoidance or evasion, but for which there is not enough information to determine if the transaction should be identified as a tax avoidance transaction. The requirement to disclose transactions of interest applies to transactions of interest entered into after November 1, 2006. For existing guidance, see Notice 2009-55, 2009-31 I.R.B. 170, available at www.irs.gov/pub/irs-irbs/irb09-31.pdf. The IRS may issue a new, or update the existing, notice, regulation, or other form of guidance that identifies a transaction as a transaction of interest.

You have participated in a transaction of interest if you are one of the types or classes of individuals or entities identified as participants in the transaction in the published guidance describing the transaction of interest.

Eliminated Categories

Transactions With a Significant Book-Tax Difference

The disclosure requirement for this category has been eliminated by Notice 2006-6, 2006-5 I.R.B. 385, available at www.irs.gov/pub/irs-irbs/irb06-05.pdf. Transactions with a significant book-tax difference are no longer reportable transactions. These transactions do not need to be disclosed on Form 8886. For more details, see Notice 2006-6.

If the significant book-tax difference transaction is also a transaction described in any of the remaining reportable transaction categories, the transaction must still be disclosed. For more information, see the instructions for line 2 on page 6.

However, Notice 2006-6 does not relieve taxpayers of any disclosure obligations for significant book-tax difference transactions that should have been disclosed on a return with a due date prior to January 6, 2006. If you are filing Form 8886 to disclose a transaction with a significant book-tax difference that was due prior to January 6, 2006, write "book-tax difference" in parentheses after the name of the transaction on line 1a. If any other disclosure category also applies, check the appropriate box(es) on line 2. For more information on book-tax difference transactions, see Regulations section 1.6011-4 in effect before August 3, 2007, and the instructions for Form 8886 for the year in which the transaction should have been disclosed.

Transactions With a Brief Asset Holding Period

The disclosure requirement for this category has been eliminated for transactions entered into on or after August 3, 2007. However, this does not relieve taxpayers of any disclosure obligations for brief asset holding transactions that were entered into before August 3, 2007. The rules for brief asset holding period reportable transactions entered into before August 3, 2007, are contained in Regulations section 1.6011-4 in effect prior to August 3, 2007.

This category includes transactions that result in your claiming a tax credit (including a foreign tax credit) of more than \$250,000 if the asset giving rise to the credit was held by you for 45 days or less. For purposes of determining the holding period of the asset, the principles of section 246(c)(3) and (c)(4) apply. Disregard any transactions generating a foreign tax credit for withholding taxes or other taxes imposed on a dividend that are not disallowed under section 901(k) (including transactions eligible for the exception for security dealers under section 901(k)(4)). See Rev. Proc. 2004-68, 2004-50 I.R.B. 969, available at www.irs.gov/pub/irs-irbs/irb04-50.pdf, for a list of exceptions for this category of reportable transaction.

Exceptions to Reportable Transaction Categories, Published Guidance

A transaction is not considered a reportable transaction if the IRS makes a determination in published guidance that it is not subject to the reporting requirements. For more information see Rev. Proc. 2004-66; Rev. Proc. 2004-67, 2004-50 I.R.B. 967, available at www.irs.gov/pub/irs-irbs/irb04-50.pdf; Rev. Proc. 2004-68; and Rev. Proc.

2007-20. The IRS may also determine by individual letter ruling that an individual letter ruling request satisfies the reporting requirements. See *Request for Ruling* below for more information on submitting a letter ruling request.

Shareholders of Foreign Corporations

Special rules apply to determine whether a reporting shareholder of a foreign corporation participated in a reportable transaction. A reporting shareholder means a U.S. shareholder in a controlled foreign corporation, or a 10% shareholder (by vote or value) of a qualified electing fund. For all categories of reportable transactions except transactions of interest, a reporting shareholder participates in a reportable transaction if the foreign corporation would be considered to participate in the transaction if it were a domestic corporation filing a tax return reflecting items from the transaction. A reporting shareholder of a foreign corporation participates in a transaction of interest if the published guidance identifying the transaction includes the reporting shareholder among the types or classes of individuals or entities identified as participants. See Regulations section 1.6011-4(c)(3)(i)(G) for details.

Request for Ruling

You may request a ruling from the IRS to determine whether a transaction must be disclosed. The request for a ruling must be submitted to the IRS by the date Form 8886 would otherwise be required to be filed. See Regulations section 1.6011-4(f). For more information on requesting a ruling, see Rev. Proc. 2011-1, 2011-1 I.R.B. 1, available at www.irs.gov/pub/irs-irbs/irb11-01.pdf, or subsequent IRS guidance. The potential obligation of the taxpayer to disclose the transaction will not be suspended during the period that the ruling request is pending.

Recordkeeping

You must keep a copy of all documents and other records related to a reportable transaction. See Regulations section 1.6011-4(g) for more details.

When and How To File

Attach Form 8886 to your income tax return or information return (including a partnership, S corporation, or trust return), including amended returns, for each tax year in which you participated in a reportable transaction. If a reportable transaction results in a loss or credit carried back to a prior tax year, attach Form 8886 to an application for tentative refund (Form

1045 or 1139) or amended return for the carryback years.

Also file separately. If this is an initial year filing of Form 8886, send an exact copy of the form to the Office of Tax Shelter Analysis at the following address when you file the form with your tax return:

Internal Revenue Service
OTSA Mail Stop 4915
1973 North Rulon White Blvd.
Ogden, Utah 84404

If you file your income tax return electronically, the copy sent to OTSA must show exactly the same information, word for word, provided with the electronically filed return and it must be provided on the official IRS Form 8886 or an exact copy of the form. If you use a computer-generated or substitute Form 8886, it must be an exact copy of the official IRS form. See the instructions for your income tax return for information on electronic filing and substitute forms.

Special Filing Rules

60-day OTSA Extension

If you are a partner in a partnership, shareholder in an S corporation, or beneficiary of a trust who receives a timely Schedule K-1 less than 10 calendar days before your return due date (including extensions) and, based on receipt of the timely Schedule K-1, you determine that you participated in a reportable transaction, Form 8886 will not be considered late if you file Form 8886 with OTSA within 60 days after the due date of your return including extensions.

Designation as a Listed Transaction and/or Transaction of Interest After Filing Tax Return

If a transaction becomes a listed transaction or a transaction of interest after you file a tax return (including an amended return) reflecting your participation in the listed transaction or transaction of interest and before the running of the period of limitations for assessment of tax for any tax year in which you participated in the listed transaction or transaction of interest, then you must file Form 8886 according to the following rules.

- **Listed Transaction entered into before August 3, 2007.** If you entered into a transaction before August 3, 2007, that later becomes a listed transaction, then you must attach Form 8886 to the first tax return you file after the date the transaction became a listed transaction. Also file Form 8886 with OTSA as provided in *Also file separately*, above.

- **Listed Transaction entered into after August 2, 2007.** If you entered into a transaction after August 2, 2007, that later becomes a listed transaction, then you must file Form 8886 with OTSA within 90 days after the date on which the transaction became a listed transaction.

- **Transaction of Interest entered into after November 1, 2006.** If you entered into a transaction after November 1, 2006, that later becomes a transaction of interest, then you must file Form 8886 with OTSA within 90 days after the date on which the transaction became a transaction of interest.

However, the published guidance under which the transaction becomes a listed transaction or transaction of interest may also provide the time for filing Form 8886. You must file Form 8886 in the time and in the manner stated above regardless of whether you participated in the transaction in the year in which the transaction became a listed transaction or transaction of interest.

Subsequent Loss Transactions

If a transaction becomes a loss transaction because the losses equal or exceed the threshold amounts described above in *Loss Transactions* on page 2, Form 8886 must be filed as an attachment to your income tax return or information return for the first tax year in which the threshold amount is reached and to any subsequent income tax return or information return that reflects any amount of section 165 loss from the transaction.

Multiple Disclosures

If you are required to file Form 8886, you must do so regardless of whether you also plan to disclose the transaction under other published guidance, for example, Regulations section 1.6662-3(c)(2).

Penalties

There is a monetary penalty under section 6707A for the failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction. Generally, the penalty for failure to include information with respect to a reportable transaction is 75% of the reduction in the tax reported on the income tax return as a result of participation in the transaction or that would result if the transaction were respected for federal tax purposes, but not less than \$5,000 in the case of an individual and \$10,000 in any other case. The annual maximum penalty for failure to disclose a reportable transaction, other than a listed transaction, cannot exceed

\$10,000 in the case of an individual, and \$50,000 in any other case. The maximum annual penalty for failure to include information with respect to a listed transaction is \$100,000 in the case of an individual and \$200,000 in any other case. This penalty is in addition to any other penalty that may be imposed. For information, see section 6707A; Notice 2005-11, 2005-7 I.R.B. 493, available at www.irs.gov/pub/irs-irbs/irb05-07.pdf; and Rev. Proc. 2007-21, 2007-9 I.R.B. 613, available at www.irs.gov/pub/irs-irbs/irb07-09.pdf.

If you have a reportable transaction understatement, an accuracy-related penalty may be imposed under section 6662A. This penalty applies to the amount of the understatement that is attributable to any listed transaction and any reportable transaction (other than a listed transaction) with a significant tax avoidance purpose. The penalty increases for transactions that are not disclosed on Form 8886 in accordance with these instructions. If the transaction is not disclosed and a reportable transaction understatement exists, you may not have a reasonable cause and good faith defense under section 6664(d) with respect to the accuracy-related penalty under section 6662A. For more information, see section 6662A and Notice 2005-12, 2005-7 I.R.B. 494, available at www.irs.gov/pub/irs-irbs/irb05-07.pdf.

A penalty under section 6707A is assessed for each failure by any individual or entity required to file a Form 8886 if the individual or entity (a) fails to attach Form 8886 to the appropriate original, amended return, or application for tentative refund, (b) fails to file the form with OTSA, if required, or (c) files a form that fails to include all the information required (or includes incorrect information). The Form 8886 must be completed in its entirety with all required attachments to be considered complete. Do not enter "Information provided upon request" or "Details available upon request," or any similar statement in the space provided. Inclusion of any such statements subjects you to penalty under sections 6707A and 6662A.



If you are required to pay a penalty under section 6707A or section 6662A, you may be required to disclose them on reports filed with the Securities and Exchange Commission. If you do not disclose these penalties, you may incur additional penalties under section 6707A(e). For more information, see section 6707A(e) and Rev. Proc. 2005-51, 2005-33 I.R.B. 296, available at www.irs.gov/pub/irs-irbs/irb05-33.pdf, amplified by Rev. Proc. 2007-25,

Previously Undisclosed Listed Transactions

If you are required to disclose a listed transaction and fail to do so within the time and manner prescribed under section 6011 and the related regulations, then under section 6501(c)(10) the period to assess any tax with respect to the listed transaction will be extended beyond the normal assessment period until one year after the earlier of either:

- The date you disclose the transaction by filing Form 8886 in the manner prescribed in Rev. Proc. 2005-26, 2005-17 I.R.B. 965, available at www.irs.gov/pub/irs-irbs/irb05-17.pdf (or subsequently published guidance), or
- The date that a material advisor provides the information required under section 6112 in response to a request by the IRS under section 6112.

Section 6501(c)(10) is effective for tax years with respect to which the limitations period on assessment did not expire prior to October 22, 2004. Section 6501(c)(10) does not revive an assessment period that expired prior to October 22, 2004. For more information, see Rev. Proc. 2005-26.

If you are filing Form 8886 to disclose a previously undisclosed listed transaction for purposes of section 6501(c)(10), submit the form and a cover letter to the Internal Revenue Service Center where your original tax return was filed. Write across the top of page 1 of each Form 8886 the following statement: "Section 6501(c)(10) Disclosure" followed by the tax year and tax return to which the disclosure statement applies. For example, if the Form 8886 relates to your Form 1040 for the 2002 tax year, you must include the following statement: "Section 6501(c)(10) Disclosure; 2002 Form 1040" on the form. The cover letter must identify the tax return to which the disclosure statement relates and include the following statement signed under penalties of perjury by the taxpayer and, if applicable, the paid preparer of Form 8886: "Under penalties of perjury, I declare that I have examined this reportable transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement is true, correct, and complete. Declaration of preparer (other than the taxpayer) is based on all information of which the preparer has any knowledge." Separate Forms 8886 and separate cover letters must be submitted for each tax year for which you participated in the undisclosed listed transaction. You must also submit

a copy of the form and cover letter simultaneously to OTSA at the OTSA address indicated on page 4. See Rev. Proc. 2005-26 for additional guidance.

Specific Instructions

How To Complete Form 8886

In order to be considered complete, Form 8886 must be completed in its entirety with all required attachments. 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 identify all parties involved in the transaction. A Form 8886 containing a statement that information will be provided upon request is not considered a complete disclosure statement. If Form 8886 is not completed in accordance with these instructions and Regulations section 1.6011-4, you will not be considered to have complied with the disclosure requirements. If you receive one or more reportable transaction numbers for a reportable transaction, you must include the reportable transaction numbers on Form 8886.

If the information required exceeds the space provided, complete as much information as possible in the available space and attach the remaining information on additional sheets. The additional sheets must be in the same order as the lines to which they correspond. You must also include your name and identifying number at the top of each additional sheet. Do not write "See Attached" on the form and provide all the information on an attached statement.

Item A

If you file more than one Form 8886 with your return, sequentially number each of these forms and enter the statement number for this Form 8886 (for example, statement number 1 of 3).

Item B

Enter the form number and year of the tax return with which this Form 8886 is filed (for example, Form 1040). If the tax return has a calendar tax year, enter the year shown on the return (for example, 2007). If it is a fiscal year return, enter the date the fiscal year

ends using the MM/DD/YYYY format (for example, 06/30/2008).

Item C

Check all the box(es) that apply.

Initial year filer. If this is the first year that you are filing a Form 8886 to disclose this transaction, check this box and file a duplicate copy of the form with OTSA (see *When and How To File* above).

Protective disclosure. You may indicate that you are filing on a protective basis by checking this box (under the option provided in Regulations section 1.6011-4(f)). Generally, the IRS will not treat a Form 8886 filed on a protective basis any differently than other Forms 8886. An incomplete form containing a statement that information will be provided on request is not a complete disclosure statement. For a protective disclosure to be effective, you must properly complete and file Form 8886 and provide all required information. See *How To Complete Form 8886* above.

Line 1a

Enter the name, if any, by which the transaction is known or commonly referred to. If no name exists, provide a short identifying description of this transaction that distinguishes it from other reportable transactions in which you have participated (or may participate in the future). If you are reporting more than one transaction and the transactions have different names, enter all names in the space provided. If additional space is needed, write "See Additional List" and attach a list.

If you are filing Form 8886 to disclose a transaction with a significant book-tax difference that was due prior to January 6, 2006, write "book-tax difference" in parentheses after the name of the transaction on line 1a. If any other disclosure category also applies, check the appropriate box(es) on line 2.

Line 1b

Enter the first year that you participated in this transaction in year format (YYYY). If you are reporting for more than one transaction, enter all initial years in the space provided. If additional space is needed, write "See Additional List" and attach a list.

Note. This may not be the same as the year for which you are disclosing a reportable transaction.

Line 1c

Enter the 9 digit and/or 11 digit number provided to you. This number may be

referred to as a registration number or reportable transaction number and may begin with the letters "MA." Reportable transactions can have more than one number. If you have more than one number for this transaction, include all numbers in the space provided. If additional space is needed, write "See Additional List" and attach a list.

Reportable transaction numbers (formerly known as tax shelter registration numbers or registration numbers) are issued to material advisors who file a statement disclosing a reportable transaction under section 6111. Material advisors are required to provide this number to investors/ advisees.

Line 2

Check the box(es) for all categories that apply to the transaction being reported. The reportable transaction categories are described under *Participation in a Reportable Transaction* on page 1.

Note. The category for significant book-tax difference transactions has been eliminated by Notice 2006-6. Transactions with a significant book-tax difference that would have been required to be disclosed after January 5, 2006, are no longer reportable transactions.

However, if the transaction is also a transaction described in any of the remaining reportable transaction categories, it must still be disclosed and the box for all appropriate categories (that is, a, b, c, d, or e) must be checked.

For more details, see *Transactions With a Significant Book-Tax Difference* on page 3 and Notice 2006-6.

Note. The category for brief-asset holding period has been eliminated for transactions entered into on or after August 3, 2007. However, this does not relieve taxpayers of any disclosure obligations for brief asset holding transactions that were entered into before August 3, 2007. The rules for brief asset holding period reportable transactions entered into before August 3, 2007, are contained in Regulations section 1.6011-4 in effect prior to August 3, 2007. For more details, see *Transactions With a Brief Asset Holding Period* on page 3.



If the transaction is a listed transaction or transaction of interest, you must check the listed transaction box or transaction of interest box in addition to any others that may apply.

Line 3

Identify the notice, revenue ruling, regulation, announcement, or other

published guidance that identified the transaction as a listed transaction or a transaction of interest. For listed transactions, identify the guidance as shown in Notice 2009-59, or later IRS guidance.

Line 4

Do not report more than one transaction on this form unless the transactions are the same or substantially similar. See *Substantially Similar* on page 1.

Line 5

If you participated in the transaction through other entities, indicate whether each entity is a partnership, S corporation, or trust. In addition, if the entity is foreign, check the box for "Foreign." On line 5b, provide the full name of the entity. On line 5c, enter the entity's EIN (if known). Use hyphens when entering the EIN. On line 5d, enter the date you received the Schedule K-1 from the entity. Enter "none" if Schedule K-1 was not received. If you are reporting more than one entity, use a separate column for each entity. Attach additional sheets for more than two entities.

Line 6

Enter the name, address, and social security number (SSN) or EIN (if known) for each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. Also, enter the approximate fees paid to each of the individuals or entities. These fees include payment in whatever form, whether in cash or in kind, for a tax strategy or for advice (whether or not tax advice). Fees also include consideration for services to:

- Analyze the transaction (whether or not related to the tax consequences of the transaction),
- Implement the transaction,
- Document the transaction, or
- Prepare tax returns to the extent the return preparation fees are unreasonable.

You are also treated as paying fees to an advisor if you know or should know that an amount you paid will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction.

Line 7a

Please check the box representing the type of tax benefit the transaction will

reflect on your tax return. There may be more than one tax benefit to your transaction. A tax benefit includes but is not limited to the following: deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or 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 income tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss, or credit. Check the "Other" box for tax benefits not specifically identified by a box and identify the tax benefits in the space provided (for example, status as an entity exempt from federal income taxation). If you need more space, follow the instructions under *How To Complete Form 8886* on page 5.

Line 7b

Describe the reportable transaction you entered into and the relevant facts and tax benefits for all affected years that caused the transaction to be reportable. Describe each step of the transaction including all information known to you. Include in your description other parties to the transaction and, if known, assumptions of liabilities or other obligations, satisfaction of liabilities or obligations, sales of property or interests in property, the formation and dissolution of entities, and any agreements between or among parties to the transaction. Also describe any tax result protection with respect to the transaction. The term "tax result protection" includes insurance company and other third party products commonly described as tax result insurance. Include, if known, the relevant dates and the amounts involved in the steps described. Amounts involved include cash, fair market value of property or services transferred or acquired, adjustments to basis, valuation of notes, obligations, shares, or other securities. Describe, if known, the relationship between the steps of the transaction and how each step relates to why the transaction is reportable. Your description should include the relevance, if known, of any party (including but not limited to participants in the transaction) listed in line 8.

Describe the economic and business reasons for the transaction and its structure. Describe market or business conditions creating the tax benefit(s) or consequence(s) and the transaction's financial reporting if known.

If you checked box 2b, explain how your disclosure of information concerning the transaction was limited

(for example, by contract or verbal agreement) and the nature and extent of the disclosure limitations. See Regulations section 1.6011-4(b)(3) for more details.

If you checked box 2c, describe the terms of the contractual protection. See Regulations section 1.6011-4(b)(4) for more details.

If you checked box 2d, explain how you calculated the basis of the asset for which there was a loss.

If you need more space, follow the instructions under *How To Complete Form 8886* on page 5.

Line 8

List all individuals involved in the transaction. List all tax-exempt, foreign, or related entities involved in the transaction. Check the applicable box(es) for the type of entity. Attach additional sheets where appropriate. Provide all information, including the name, EIN or SSN (include hyphens), and address, if known.

Include a brief description of each listed individual's and each entity's

involvement in the transaction (purchaser, lender, seller, broker, etc.). Provide the country of incorporation or existence for each foreign entity, if known. Describe the relationship between you and any related entity and between or among any related entities (as described in section 267(b) or 707(b)).

Paperwork Reduction Act Notice.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved

under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Recordkeeping	10 hr., 16 min.
Learning about the law or the form	4 hr., 50 min.
Preparing, copying, assembling, and sending the form to the IRS	6 hr., 25 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *When and How To File* on page 3.

Note: Form 8886 (Rev. March 2011) begins on the next page.

The zip code for where to file separately an exact copy of the initial year filing of Form 8886 has changed from 84404 to 84201.

The complete address to which it should be mailed is:

Internal Revenue Service

OTSA Mail Stop 4915

1973 Rulon White Blvd.

Ogden, Utah 84201

Reportable Transaction Disclosure Statement

▶ **Attach to your tax return.**
 ▶ **See separate instructions.**

Name(s) shown on return (individuals enter last name, first name, middle initial) Identifying number

Number, street, and room or suite no.	City or town	State	ZIP code
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A If you are filing more than one Form 8886 with your tax return, sequentially number each Form 8886 and enter the statement number for this Form 8886 ▶ Statement number _____ of _____

B Enter the form number of the tax return to which this form is attached or related ▶ _____
 Enter the year of the tax return identified above ▶ _____
 Is this Form 8886 being filed with an amended tax return? ▶ Yes No

C Check the box(es) that apply (see instructions). Initial year filer Protective disclosure

1 a Name of reportable transaction

1 b Initial year participated in transaction **1 c** Reportable transaction or tax shelter registration number (see instructions)

2 Identify the type of reportable transaction. Check all boxes that apply (see instructions).
a Listed **c** Contractual protection **e** Transaction of interest
b Confidential **d** Loss

3 If you checked box 2a or 2e, enter the published guidance number for the listed transaction or transaction of interest ▶ _____

4 Enter the number of "same as or substantially similar" transactions reported on this form ▶ _____

5 If you participated in this reportable transaction through a partnership, S corporation, trust, and foreign entity, check the applicable boxes and provide the information below for the entity(s) (see instructions). (Attach additional sheets, if necessary.)

a Type of entity	<input type="checkbox"/> Partnership	<input type="checkbox"/> Trust	<input type="checkbox"/> Partnership	<input type="checkbox"/> Trust
	<input type="checkbox"/> S corporation	<input type="checkbox"/> Foreign	<input type="checkbox"/> S corporation	<input type="checkbox"/> Foreign
b Name	_____			
c Employer identification number (EIN), if known	_____			
d Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received)	_____			

6 Enter below the name and address of each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. (Attach additional sheets, if necessary.)

a Name	Identifying number (if known)	Fees paid	State	ZIP code
Number, street, and room or suite no.	City or town	\$		
b Name	Identifying number (if known)	Fees paid		
Number, street, and room or suite no.	City or town	\$		

7 Facts

a Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

- Deductions Exclusions from gross income Absence of adjustments to basis Tax Credits
- Capital loss Nonrecognition of gain Deferral
- Ordinary loss Adjustments to basis Other _____

b Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

8 Identify all individuals and entities involved in the transaction that are tax-exempt, foreign, or related. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each individual or related entity, explain how the individual or entity is related. Attach additional sheets, if necessary.

a Type of individual or entity: Tax-exempt Foreign Related

Name	Identifying number
------	--------------------

Address _____

Description _____

b Type of individual or entity: Tax-exempt Foreign Related

Name	Identifying number
------	--------------------

Address _____

Description _____

Note: *Instructions for Form 8918 (Rev. January 2017) begins on the next page.*

The zip code for where to file the completed Form 8918 has changed from 84404 to 84201.

The complete address to which it should be mailed is:

Internal Revenue Service
OTSA Mail Stop 4915
1973 Rulon White Blvd.
Ogden, Utah 84201



Instructions for Form 8918

(Rev. January 2017)

Material Advisor Disclosure Statement

(For use with Form 8918 (Rev. December 2011) or later revision)

Section references are to the Internal Revenue Code unless otherwise noted.

What's New

The IRS has created a page on IRS.gov for information about Form 8918 and its instructions, at www.irs.gov/form8918. Information about any future developments affecting Form 8918 (such as legislation enacted after we release it) will be posted on that page.

Future revisions of Form 8918. The IRS will revise the December 2011 version of Form 8918 only when necessary. Continue to use the 2011 version of Form 8918 until a new revision is issued.

General Instructions

Purpose of Form

Material advisors to any reportable transaction must disclose certain information about the reportable transaction by filing a Form 8918 with the IRS. Form 8918 replaces Form 8264, which was previously used by material advisors for disclosure.

Material advisors who file a Form 8918 will receive a reportable transaction number from the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor. See [Who Is a Material Advisor](#) below. Every taxpayer who has participated in a reportable transaction (see [What Is a Reportable Transaction](#), later) must also disclose the transaction on Form 8886, Reportable Transaction Disclosure Statement. For more information, see Form 8886 and the Instructions for Form 8886.

Who Must File?

Generally, every material advisor to a reportable transaction is required to file Form 8918. A material advisor can be an individual, trust, estate, partnership, or corporation. You are not required to file Form 8918 unless a taxpayer to whom or for whose benefit you provided the [tax statement](#) (defined below) entered into the reportable transaction. If you provide a tax statement to another material advisor, you are not required to file Form 8918 unless the reportable transaction is entered into by a taxpayer to whom or for whose benefit that material advisor provided the tax statement.

Who Is a Material Advisor?

You are a material advisor to a transaction if you:

- Provide any material aid, assistance, or advice with respect to the organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and
- You directly or indirectly receive or expect to receive gross income in excess of the [threshold amount](#) (defined below) for the material aid, assistance, or advice.

You provide material aid, assistance, or advice with respect to the organizing, managing, promoting, selling, implementing, insuring, or carrying out any transaction if you make or provide a tax statement to or for the benefit of:

- A taxpayer who either is required to disclose the transaction under section 6011 because the transaction is a listed transaction or a transaction of interest, or would have been required to disclose the transaction under section 6011 if the transaction had become a listed transaction or a transaction of interest within the period of limitations;
- A taxpayer who you know is or reasonably expect to be required to disclose the transaction under Regulations section 1.6011-4 because the transaction is or is reasonably expected to become a reportable transaction other than a listed transaction or transaction of interest;
- A material advisor who is required to disclose the transaction under section 6111 because the transaction is a listed transaction or a transaction of interest; or
- A material advisor who you know is or reasonably expect to be required to disclose the transaction under section 6111 because the transaction is or is reasonably expected to become a reportable transaction other than a listed transaction or transaction of interest.

Tax statement. Generally, 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. A tax statement includes tax result protection that insures some or all of the tax benefits of a reportable transaction.

Tax result protection Tax result protection includes insurance company and other third party products commonly described as tax result insurance. For

more information, see Regulations sections 301.6111-3(b)(2)(ii)(A) and 301.6111-3(c)(12).

Threshold amount. The threshold amount of gross income is \$50,000 for a reportable transaction that provides substantially all of the tax benefits to individuals (looking through any partnerships, S corporations, or trusts). The determination of whether substantially all of the tax benefits from a reportable transaction are provided to individuals is based on all the facts and circumstances. Generally, if 70% or more of the [tax benefits](#) (defined later) from a reportable transaction are provided to individuals (looking through any partnerships, S corporations, or trusts) then substantially all of the tax benefits will be considered to be provided to individuals.

For all other transactions, the threshold amount is \$250,000. For listed transactions, the threshold amounts are reduced from \$50,000 to \$10,000 and from \$250,000 to \$25,000. For transactions of interest, the threshold amounts may be reduced as identified in the published guidance describing the transaction. Determine the threshold amount separately for each reportable transaction. The threshold amount must be met independently for each transaction that is a reportable transaction and aggregation of fees among reportable transactions is not required.

In figuring the amount of gross income you receive directly, or indirectly, for material aid, assistance, or advice, include all the following.

- Fees for a tax strategy.
- Fees for advice (whether or not tax advice).
- Fees for implementing the reportable transaction.

Fees. 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),
- Services to implement the transaction,
- Services to document the transaction, and
- Services to prepare tax returns to the extent return preparation fees are unreasonable.

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 to determine if consideration received or expected to be received in connection with a reportable transaction is gross income received directly, or indirectly, for aid, assistance, or advice.

Employee exception. Generally, you are not considered to be a material advisor if you make a tax statement solely in your capacity as an employee, shareholder, partner, or agent of another person. In this case, any tax statement you make will be considered to be made by your employer, corporation, partnership, or principal.

However, you will be treated as a material advisor if you form or use an entity to avoid the rules of section 6111 or 6112 or the penalties under section 6707 or 6708.

Date you became a material advisor. You are a material advisor when all of the following have occurred (in no particular order).

- You make a tax statement,
- You receive (or expect to receive) gross income in excess of the threshold amount, and
- The transaction is entered into by the taxpayer to whom or for whose benefit you 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.

Note. 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 3 events described above, you will be treated as becoming a material advisor on the date the transaction is identified as a listed transaction or a transaction of interest.

You must make reasonable and good faith efforts to determine when the taxpayer entered into the transaction, even if you stop providing services before the taxpayer enters into the transaction.

Post-filing advice. You are not considered to be a material advisor concerning a transaction if you do not make or provide a tax statement about the transaction until after the first tax return reflecting tax benefit(s) of the transaction is filed with the IRS. This exception does not apply to you if it is expected the taxpayer will file a supplemental or amended return reflecting additional tax benefits from the transaction.

Definitions

Transaction

A transaction includes all factual elements relevant to the expected tax treatment of an investment, entity, plan, or arrangement and it includes any series of steps carried out as part of a plan.

Substantially Similar

A transaction is substantially similar to another transaction if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy.

Receipt of an opinion regarding the tax consequences of the transaction is not relevant to determine if the transaction is the same as or substantially similar to another transaction. The term substantially similar must be broadly construed in favor of disclosure. See Regulations section 1.6011-4(c)(4) for examples.

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.

What Is a Reportable Transaction?

A reportable transaction is a transaction described in one or more of the following categories. See Regulations section 1.6011-4(b) for more information.

Listed Transactions

A listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction.

These transactions are identified by notice, regulation, or other form of published guidance as a listed transaction. See Notice 2009-59 for guidance.

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*. The IRS may issue new or update the existing notice, regulation, or other form of guidance that

identifies transactions as listed transactions.

Confidential Transactions

A confidential transaction is a transaction that is offered to a taxpayer or related party (as described in section 267(b) or 707(b)) under conditions of confidentiality and for which the taxpayer (or related party) paid an advisor a [minimum fee](#) (defined below).

A transaction is considered to be offered under conditions of confidentiality if the advisor who is paid a minimum fee places a limitation on the disclosure of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of the advisor's tax strategies. The transaction is treated as confidential even if the conditions of confidentiality are not legally binding on the taxpayer. See Regulations section 1.6011-4(b)(3) for more information.

Minimum fee. For a corporation (excluding S corporations), or a partnership or trust in which all of the owners or beneficiaries are corporations (excluding S corporations), the minimum fee is \$250,000. For all others, the minimum fee is \$50,000.

The minimum fee includes all fees for a tax strategy, for advice (whether or not tax advice), or for the implementation of a transaction. Fees include payment 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, and for services to document the transaction, and for services to prepare tax returns to the extent return preparation fees are unreasonable. A taxpayer is treated as paying fees to an advisor if the taxpayer knows or should know that the amount it pays will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. Fees do not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. The IRS will scrutinize all of the facts and circumstances in determining whether consideration received in connection with a confidential transaction constitutes fees. For purposes of determining the minimum fee, related parties (as described in section 267(b) or 707(b)) will be treated as the same individual or entity.

Transactions With Contractual Protection

A transaction with contractual protection is a transaction for which the taxpayer, or a related party (as described in sections

267(b) or 707(b)), has the right to a full refund or partial refund of fees if all or part of the intended tax consequences from the transaction are not sustained. It also includes a transaction for which fees are contingent on the taxpayer's realization of tax benefits from the transaction. For exceptions and other details, see Regulations section 1.6011-4(b)(4) and Rev. Proc. 2007-20, which provides a list of exceptions for this type of reportable transaction.

Loss Transactions

A loss transaction is a transaction that results in the taxpayer claiming a [loss under section 165](#) (described later) if the amount of the section 165 loss is as follows.

- For individuals, at least \$2 million in any single tax year or \$4 million in any combination of tax years. (At least \$50,000 for a single tax year if the loss arose from a section 988 transaction defined in section 988(c)(1) (relating to foreign currency transactions), whether or not the loss flows through from an S corporation or partnership).
- For corporations (excluding S corporations), at least \$10 million in any single tax year or \$20 million in any combination of tax years.
- For partnerships with only corporations (excluding S corporations) as partners (looking through any partners that are also partnerships), at least \$10 million in any single tax year or \$20 million in any combination of tax years, whether or not any losses flow through to one or more partners.
- For all other partnerships and S corporations, at least \$2 million in any single tax year or \$4 million in any combination of tax years, whether or not any losses flow through to one or more beneficiaries. (At least \$50,000 for a single tax year if the loss arose from a section 988 transaction defined in section 988(c)(1) (relating to foreign currency transactions), whether or not the loss flows through from an S corporation or partnership).

Section 165 loss. For this purpose, a section 165 loss is adjusted for any salvage value and for any other insurance compensation received. However, a section 165 loss does not include offsetting gains, other income or limitations. The full amount of a section 165 loss is included in the year it occurred, regardless of whether all or part of it is included in computing a net operating loss (under section 172) or a net capital loss

(under section 1212) that is a carryback or carryover to another year. A section 165 loss does not include any portion of a loss attributable to a capital loss carryback or carryover from another year that is treated as a deemed capital loss under section 1212.

To determine if a transaction results in a taxpayer claiming a loss that meets the threshold amounts over a combination of tax years, only losses claimed in the tax year the transaction is entered into and the 5 succeeding tax years are combined.

The types of losses included in this category are section 165 losses (including amounts deductible under a provision that treats a transaction as a sale or other disposition or otherwise results in a deduction under section 165). However, this category does not include losses described in Rev. Proc. 2013-11 (or future published guidance).

Transactions of Interest

A transaction of interest is a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a transaction of interest. It is a transaction that the IRS and Treasury Department believe has a potential for tax avoidance or evasion, but for which there is not enough information to determine if the transaction should be identified as a tax avoidance transaction. The requirement to disclose transactions of interest applies to transactions of interest entered into after November 1, 2006. For existing guidance, see Notice 2009-55. The IRS may issue new or update the existing notice, regulation, or other form of guidance that identifies a transaction as a transaction of interest. See Notice 2016-66 for recent guidance.

Eliminated Categories

Transactions with a brief asset holding period. The disclosure requirement for this category has been eliminated for transactions entered into after August 2, 2007. However, this does not relieve taxpayers of any disclosure obligations for brief asset holding transactions that were entered into before August 3, 2007. The rules for brief asset holding period reportable transactions entered into before August 3, 2007, are contained in Regulations section 1.6011-4 in effect prior to August 3, 2007.

Transactions with a significant book-tax difference. The disclosure requirement for this category has been eliminated. Transactions with a significant book-tax difference that would have been required to be disclosed with returns due on dates (including extensions) after

January 5, 2006, are no longer reportable transactions.

However, this does not relieve taxpayers of any disclosure obligations for significant book-tax difference transactions that should have been disclosed on a return with a due date prior to January 6, 2006. For more details, see Notice 2006-06.

Exceptions to Reportable Transaction Categories, Published Guidance

A transaction is not considered a reportable transaction if the IRS makes a determination in published guidance that it is not subject to the reporting requirements. For more information, see the following.

- Rev. Proc. 2007-20;
- Rev. Proc. 2013-11;
- Rev. Proc. 2004-67; and
- Rev. Proc. 2004-68.

The IRS may also determine by individual letter ruling that an individual letter ruling request satisfies the reporting requirements. See [Request for Ruling](#) below for more details on submitting a letter ruling request.

Request for Ruling

You may request a ruling from the IRS to determine whether a specific transaction is a reportable transaction. The potential obligation of a material advisor and the taxpayer to disclose the transaction will not be suspended during the period that the ruling request is pending. Therefore, even if you have a ruling request with the IRS, you must still complete and file this form in order to avoid potential penalties. See Rev. Proc. 2017-1 for information on ruling requests.

When To File

The material advisor's disclosure statement 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 circumstances occur to require an amended disclosure statement. See [Date you became a material advisor.](#), earlier.

Where To File

In order to file, mail your completed Form 8918 to:

Internal Revenue Service
OTSA Mail Stop 4915
1973 North Rulon White Blvd.
Ogden, Utah 84404

Furnishing a Reportable Transaction Number

Receipt of a reportable transaction number does not indicate that the IRS has reviewed, examined, or approved the transaction.

Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor. The reportable transaction number must be provided when the transaction is entered into, or, if the transaction is entered into before the material advisor received the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

Requirement to Keep Lists

Generally, a material advisor must maintain a list identifying each entity or individual with respect to whom the advisor acted as a material advisor with respect to a reportable transaction. A material advisor is not required to identify an entity or individual on the list if the entity or individual entered into a listed transaction or a transaction of interest more than 6 years before the transaction was identified in published guidance as a listed transaction or a transaction of interest. A separate list must be prepared and maintained for each transaction or group of substantially similar transactions.

The list must be maintained for 7 years following the earlier of the date on which the material advisor last made a tax statement relating to the transaction, or the date the transaction was last entered into, if known. Upon IRS's written request, each material advisor who is responsible for maintaining a list must furnish the list to the IRS. The list must be maintained in a form that enables the IRS to determine without undue delay or difficulty the information required to be maintained for each list. See Regulations section 301.6112-1 for more information.

Note. Go to www.irs.gov and search for "Office of Tax Shelter Analysis" for more guidance.

Contents of the list. Each list must contain the following.

1. An itemized statement containing:
 - a. The name of each reportable transaction, the citation to the notice number or published guidance number identifying the transaction if the transaction is a listed transaction or transaction of interest, and the reportable transaction number obtained under section 6111;

- b. The name, address, and identifying number of each individual or entity required to be included on the list;

- c. The date on which each individual or entity entered into the reportable transaction, if known;

- d. The amount invested in the reportable transaction by each individual or entity, if known;

- e. A summary or schedule of the tax treatment that each individual or entity is intended or expected to derive from participation in the reportable transaction; and

- f. The name of each other material advisor to the transaction, if known.

2. A detailed description of the reportable transaction that describes both the tax structure and the purported tax treatment.

3. A copy of any designation agreement to which the material advisor is a party. See [Line 5](#) for more information.

4. Copies of any additional written materials, including tax analyses or opinions, relating to each reportable transaction that are material to an understanding of the intended tax treatment or tax structure of that transaction that the material advisor or any related party or agent of the material advisor has shown or provided to any individual or entity (or to their representatives, tax advisors, or agents) who acquired or may acquire an interest in the transaction. However, you are not required to retain earlier drafts of a document if you retain a copy of the final document (or, if there is no final document, the most recent draft of the document) and the final document (or most recent draft) contains all the information in the earlier drafts of such document that is material to an understanding of the purported tax treatment or the tax structure of the transaction.

Dissolution or liquidation of material advisor. Generally, if a material advisor dissolves or liquidates before completion of the 7-year list maintenance period, the person responsible under state law for winding up the entity's affairs must prepare, maintain, and furnish each component of the list on behalf of the entity, unless the entity submits the list to OTSA within 60 days after the dissolution or liquidation. See Regulations section 301.6112-1(d) for more information.

Penalties

Penalty for Failure To Furnish Information Regarding Reportable Transactions

A penalty may be imposed if you are required to file Form 8918 and you fail to

file the return on or before the due date, or file false or incomplete information about a reportable transaction.

The penalty is \$50,000 for reportable transactions other than listed transactions. The penalty imposed for listed transactions is the greater of:

- \$200,000, or
- 50 percent of the gross income from providing aid, assistance, or advice about the listed transaction before the date the return is filed. If the failure is intentional, the percentage is 75%.

For more information, see section 6707. Form 8918 must be completed in its entirety with all required attachments to be considered complete. Stating that "Information will be provided upon request" or that "Details are available upon request," or any similar statement in the space provided, is not considered a description and may cause your disclosure statement to be treated as incomplete.

Note. See Rev. Proc. 2007-21, superseded by T.D. 9686 and updated by Announcement 2016-01. See Regulations section 301.6707-1 for more information.

Penalty for Failure To Maintain Required Lists

A penalty may be imposed if you are required to maintain a list under section 6112(a) and you fail to make the list available upon written request to the IRS within 20 days after the date of the request.

The penalty is \$10,000 for each calendar day of the failure after the 20th business day after the date of the request. The penalty may be assessed for failure to maintain the list in a form that enables the IRS to determine without undue delay or difficulty the information required.

Other Penalties

An additional civil penalty under section 6700 may be imposed if you directly or indirectly organize, participate in the sale of, or promote an abusive tax shelter and you make or furnish or cause other parties to make or furnish either:

- False or fraudulent statements as to any material matter, or
- Gross valuation overstatements as to any material matter.

For false or fraudulent statement violations, the penalty is 50% of the gross income from the activity. For gross valuation overstatement violations, the penalty is the lesser of \$1,000 or 100% of the gross income derived (or to be derived) from the activity.

Penalties may also be imposed under section 6701 if you knowingly aid and abet in the understatement of the tax liability of another person. The penalty is \$1,000 (\$10,000 for corporate tax returns and documents).

Criminal penalties for failure to file on time and for filing a false or fraudulent return are provided by sections 7203, 7206, and 7207.

Specific Instructions

How To Complete Form 8918

In order to be considered complete, Form 8918 must be completed in its entirety with all required attachments. 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. A Form 8918 containing a statement that information will be provided upon request is not considered a complete disclosure statement.

If the information required exceeds the space provided, complete as much information as possible in the available space and attach the remaining information on additional sheets. The additional sheets must be in the same order as the lines to which they correspond. You must also include your name and identifying number at the top of each additional sheet. Do not write "See Attached" on the form and provide all the information on an attached statement.

Material Advisor Identifying Information

Individuals. If the material advisor is an individual, enter the first name, middle initial (if any), and last name; the social security number; the phone number; and the complete address.

Entities. If the material advisor is an entity, enter the full name of the entity as shown on its income tax return, the employer identification number, and the complete address. See *Item A* for contact information.

Item A

Contact information. If the material advisor is an entity, list the name of a contact person along with a contact telephone number. If the material advisor is an individual, you may disregard this line.

Item B

Protective disclosure. Indicate if you are filing on a protective basis by checking the appropriate box. If you are uncertain if a transaction must be disclosed, check the "Yes" box and disclose the transaction in accordance with these instructions.

On line 6a, you must explain why you are filing the disclosure on a protective basis. Generally, the IRS will not treat disclosure statements filed on a protective basis any differently than other disclosure statements filed on Form 8918. An incomplete form containing a statement that information will be provided on request is not a complete disclosure statement. For a protective disclosure to be effective, you must properly complete Form 8918 and provide all required information. See [How To Complete Form 8918](#), earlier, for more information.

Item C

Answer "Yes" if this is the original Form 8918 for this reportable transaction. If this is an amendment to a previously filed Form 8918 for the reportable transaction, answer "No" and enter the reportable transaction number previously provided for the reportable transaction by the IRS.


Amended statement. An amended statement 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.

Line 1

Enter the name, if any, by which the transaction is known or commonly referred to by either yourself or published guidance. If no name exists, provide a short identifying description of this transaction that distinguishes it from other reportable transactions in which you have participated (or may participate in the future). Do not report more than one transaction on this form unless the transactions are the same or substantially similar. See [Substantially Similar](#), earlier.

Line 2

Check the box(es) for all categories that apply to the transaction being reported. The reportable transaction categories are described under [What Is a Reportable Transaction](#), earlier.

 *If the transaction is a listed transaction, you must check the listed transaction box in addition to any others that apply.*

Line 3

Identify the notice, revenue ruling, regulation (for example, Notice 2003-81, modified and supplemented by Notice 2007-71), announcement, or other

published guidance that identified the transaction as a listed transaction or transaction of interest. For listed transactions, identify the guidance as shown in Notice 2009-59 or later IRS guidance.


Line 4

Enter the latest of the following dates.

- The date you made a tax statement with regard to the transaction.
- The date you received or had an expectation that you would receive gross income in excess of the threshold amount (defined earlier).
- The date the transaction was entered into by the taxpayer.
- The date the transaction became a listed transaction or transaction of interest. The latest of these dates is the date you became a material advisor. See [Date you became a material advisor](#), earlier.

Line 5

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 to the transaction.

 *The designation of one material advisor to disclose the transaction does not relieve the other material advisors of the obligation to disclose the transaction to the IRS in accordance with these instructions, if the designated material advisor fails to disclose the transaction to the IRS in a timely manner.*

Line 6a

Provide a concise statement indicating your role as a material advisor to this transaction. See [Who Is a Material Advisor](#), earlier. If you are filing a protective disclosure, you must explain why you believe you are not a material advisor. If you need more space, follow the instructions under [How To Complete Form 8918](#), earlier.

Lines 7a and 7b

Check the box(es) for all categories that apply to the transaction being reported. Indicate the related parties that are needed and how they are related. Indicate the role of tax-exempt entities if they are required for the transaction. In addition, if a foreign entity is required, indicate how and why the foreign entity is used, along with which country is used if a particular country is required for the transaction. If you need more space, follow the

instructions under [How To Complete Form 8918](#), earlier.

Line 9

Identify the types of financial instruments required by the transaction (loan, stocks, bonds, notes, original issue discounts, domestic and foreign currency agreements, swaps, futures, notional principal contracts, options, input or risk hedges, etc.). If you need more space, follow the instructions under [How To Complete Form 8918](#), earlier.

Line 10

Check all the boxes that apply for the tax benefits expected from the transaction. 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. Check the "Other" box for tax benefits not specifically described by a box and identify the tax benefit(s) in the space provided. If you need more space, follow the instructions under [How To Complete Form 8918](#), earlier.

Line 13

Describe all of the relevant facts about the reportable transaction including the following.

1. Tax benefits causing the transaction to be reportable.
2. Years affected by the transaction.
3. Steps of the transaction including:
 - a. Agreements.
 - b. Property transfers and acquisitions.
 - c. Liability assumptions.
 - d. Obligation fulfillment.
 - e. Sales.
 - f. Entity formation or dissolution.
 - g. Other relevant events. Other relevant events may include but are not limited to tax result protection. Tax result protection includes insurance company

and other third party products commonly described as tax result insurance.

4. Nature of the transaction (cash, loan, service, other).
5. Purpose of each step in accomplishing the tax benefits and consequences.
6. Where and how each party to the transaction (entered on lines 7a, 7b, and 8a and 8b) is used, including their roles.
7. The economic and business reasons for the transaction and its structure (describe market or business conditions creating the tax benefit or consequence and its financial reporting, if known).
8. How the financial instruments (entered on line 9) are used in the transaction.
9. How the Internal Revenue Code sections (entered on line 12) enable you to obtain the tax treatment.

If you need more space, follow the instructions under [How To Complete Form 8918](#), earlier.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws. We may give the information to the Department of Justice and to other federal agencies, as provided by law. We may give it to cities, states, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. A penalty may be imposed if you are required to file this return and fail to file by the due date or provide incomplete or false information.

Our authority to ask for information is section 6111 and its regulations, which require you to file a return or statement with us with respect to any reportable transaction for which you are a material advisor. Your response is mandatory under these sections. Section 6109 requires that you provide your identifying number on what you file. This is so we know who you are, and can process your return and other papers. You must fill in all parts of the tax form that apply to you.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	8 hr., 7 min.
Learning about the law or the form	3 hr., 4 min.
Preparing, copying, assembling, and sending the form to the IRS	3 hr., 20 min.

Comments. You can send us comments by going to www.irs.gov/formspubs, clicking on "More Information," and then clicking on "Give us feedback." You can also send your comments to the Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **DO NOT SEND THE FORM TO THIS ADDRESS.** Instead, see [Where To File](#), earlier.

Listing Notice--Syndicated Conservation Easement Transactions

Notice 2017-10

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) are aware that some promoters are syndicating conservation easement transactions that purport to give investors the opportunity to obtain charitable contribution deductions in amounts that significantly exceed the amount invested. This notice alerts taxpayers and their representatives that the transaction described in section 2 of this notice is a tax avoidance transaction and identifies this transaction, and substantially similar transactions, as listed transactions for purposes of § 1.6011-4(b)(2) of the Income Tax Regulations (Regulations) and §§ 6111 and 6112 of the Internal Revenue Code (Code). This notice also alerts persons involved with these transactions that certain responsibilities may arise from their involvement.

SECTION 1. BACKGROUND

Section 170(f)(3)(B)(iii) of the Code allows a deduction for a qualified conservation contribution. A qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. Section 170(h)(1) through (5); § 1.170A-14. A qualified real property interest includes a restriction, granted in perpetuity, on the use that may be made of real

property. Section 170(h)(2)(C). For purposes of this notice, a qualified real property interest is referred to as a conservation easement.

The Treasury Department and the IRS have become aware that some promoters are syndicating conservation easement transactions that purport to give investors the opportunity to claim charitable contribution deductions in amounts that significantly exceed the amount invested. In such a syndicated conservation easement transaction, a promoter offers prospective investors in a partnership or other pass-through entity (“pass-through entity”) the possibility of a charitable contribution deduction for donation of a conservation easement.

The promoters (i) identify a pass-through entity that owns real property, or (ii) form a pass-through entity to acquire real property. Additional tiers of pass-through entities may be formed. The promoters then syndicate ownership interests in the pass-through entity that owns the real property, or in one or more of the tiers of pass-through entities, using promotional materials suggesting to prospective investors that an investor may be entitled to a share of a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the investor’s investment. The promoters obtain an appraisal that purports to be a qualified appraisal as defined in § 170(f)(11)(E)(i) but that greatly inflates the value of the conservation easement based on unreasonable conclusions about the development potential of the real property. After an investor invests in the pass-through entity, either directly or through one or more tiers of pass-through entities, the pass-through entity donates a conservation

easement encumbering the property to a tax-exempt entity. Investors who held their direct or indirect interests in the pass-through entity for one year or less may rely on the pass-through entity's holding period in the underlying real property to treat the donated conservation easement as long-term capital gain property under § 170(e)(1). The promoter receives a fee or other consideration with respect to the promotion, which may be in the form of an interest in the pass-through entity. The IRS intends to challenge the purported tax benefits from this transaction based on the overvaluation of the conservation easement. The IRS may also challenge the purported tax benefits from this transaction based on the partnership anti-abuse rule, economic substance, or other rules or doctrines.

SECTION 2. FACTS

A transaction described in this section is a listed transaction. An investor receives promotional materials that offer prospective investors in a pass-through entity the possibility of a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the investor's investment. The promotional materials may be oral or written. For purposes of this notice, promotional materials include, but are not limited to, documents described in § 301.6112-1(b)(3)(iii)(B) of the Regulations. The investor purchases an interest, directly or indirectly (through one or more tiers of pass-through entities), in the pass-through entity that holds real property. The pass-through entity that holds the real property contributes a conservation easement encumbering the property to a tax-exempt entity and allocates, directly or

through one or more tiers of pass-through entities, a charitable contribution deduction to the investor. Following that contribution, the investor reports on his or her federal income tax return a charitable contribution deduction with respect to the conservation easement.

SECTION 3. LISTED TRANSACTIONS

Transactions entered into on or after January 1, 2010, that are the same as, or substantially similar to, the transaction described in section 2 of this notice are identified as “listed transactions” for purposes of § 1.6011-4(b)(2) and §§ 6111 and 6112 effective December 23, 2016. Persons entering into these transactions on or after January 1, 2010, must disclose the transactions as described in § 1.6011-4 for each taxable year in which the taxpayer participated in the transactions, provided that the period of limitations for assessment of tax has not ended on or before December 23, 2016. Material advisors, including appraisers, who make a tax statement on or after January 1, 2010, with respect to transactions entered into on or after January 1, 2010, have disclosure and list maintenance obligations under §§ 6111 and 6112. See §§ 301.6111-3, 301.6112-1.

For rules regarding the time for providing disclosure of a transaction described in this notice, see §§ 1.6011-4(e) and 301.6111-3(e). However, if, under § 1.6011-4(e)(1), a taxpayer is required to file a disclosure statement with respect to a transaction described in this notice after December 23, 2016, and prior to May 1, 2017, that disclosure statement will be considered to be timely filed if the taxpayer alternatively

files the disclosure with the Office of Tax Shelter Analysis by May 1 (because April 30 is a Sunday). In addition, for purposes of disclosure of transactions described in this notice, the 90-day period provided in § 1.6011-4(e)(2)(i) is extended to 180 days. Further, if under § 301.6111-3(e), a material advisor is required to file a disclosure statement with respect to the listed transaction described in this notice by January 31, 2017, that disclosure statement will be considered to be timely filed if the taxpayer files the disclosure with the Office of Tax Shelter Analysis by May 1, 2017 (because April 30 is a Sunday).

Independent of their classification as listed transactions, transactions that are the same as, or substantially similar to, the syndicated conservation easement transaction described in section 2 may already be subject to the requirements of §§ 6011, 6111, 6112, or the regulations thereunder. The transaction described in section 2 is identified as a listed transaction regardless of whether the transaction has the characteristics described in section 1 of this notice.

Whether a taxpayer has participated in the listed transaction described in section 2 of this notice will be determined under § 1.6011-4(c)(3)(i)(A). Participants include, but are not limited to, investors, the pass-through entity (any tier, if multiple tiers are involved in the transaction), or any other person whose tax return reflects tax consequences or a tax strategy described in section 2.

For purposes of this notice, a donee described in § 170(c) shall not be treated as a party to the transaction under § 4965 or a participant under § 1.6011-4.

Participants required to disclose these transactions under § 1.6011-4 who fail to do so will be subject to penalties under § 6707A. Participants required to disclose these transactions under § 1.6011-4 who fail to do so may also be subject to an extended period of limitations under § 6501(c)(10). Material advisors required to disclose these transactions under § 6111 who fail to do so may be subject to the penalty under § 6707. Material advisors required to maintain lists of investors under § 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) may be subject to the penalty under § 6708(a). In addition, the IRS may impose other penalties on persons involved in these transactions or substantially similar transactions, including the accuracy-related penalty under § 6662 or § 6662A, the § 6694 penalty for understatements of a taxpayer's liability by a tax return preparer, and the § 6695A penalty for certain valuation misstatements attributable to incorrect appraisals.

The Treasury Department and the IRS recognize that some taxpayers may have filed tax returns taking the position that they were entitled to the purported tax benefits of the type of transaction described in this notice. These taxpayers should take appropriate corrective action and ensure that their transactions are disclosed properly.

DRAFTING INFORMATION

The principal authors of this notice are Angella L. Warren and Maxine M. Woo-Garcia of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Ms. Warren at (202) 317-7003 (not a toll-free call) or Ms. Woo-Garcia at (202) 317-7011 (not a toll-free call).