

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

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

T.D. 9000

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 301

Modification of Tax Shelter Rules III

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: These regulations modify the rules relating to the filing by certain taxpayers of a statement with their Federal income tax returns under section 6011(a) and the registration of confidential corporate tax shelters under section 6111(d). These rules also affect the list maintenance requirement under section 6112. These regulations affect taxpayers participating in certain reportable transactions, persons responsible for registering confidential corporate tax shelters, and persons responsible for maintaining lists of investors in potentially abusive tax shelters. The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking (REG-103735-00; REG-110311-98) on this subject on page 109 of this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective June 14, 2002.

Applicability Date: For dates of applicability, see § 1.6011-4T(g) and § 301.6111-2T(h).

FOR FURTHER INFORMATION CONTACT: Danielle M. Grimm or Tara P. Volungis, 202-622-3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these regulations have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduc-

tion Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1685.

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

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

Background

This document amends 26 CFR parts 1 and 301 to provide modified rules relating to the disclosure of reportable transactions by certain individuals, trusts, partnerships, S corporations, and other corporations on their Federal income tax returns under section 6011 and the registration of confidential corporate tax shelters under section 6111.

On February 28, 2000, the IRS issued temporary and proposed regulations regarding section 6011 (T.D. 8877, 2000-1 C.B. 747; REG-103735-00, 2000-1 C.B. 770), section 6111 (T.D. 8876, 2000-1 C.B. 753; REG-110311-98, 2000-1 C.B. 767), and section 6112 (T.D. 8875, 2000-1 C.B. 761; REG-103736-00, 2000-1 C.B. 768) (collectively, the February regulations). The February regulations were published in the **Federal Register** (65 FR 11205, 65 FR 11215, 65 FR 11211) on March 2, 2000. On August 11, 2000, the IRS issued temporary and proposed regulations regarding sections 6011, 6111, and 6112 (T.D. 8896, 2000-2 C.B. 249; REG-103735-00, REG-110311-98, REG-103736-00, 2000-2 C.B. 258) (collectively, the August 2000 regulations). The August 2000 regulations were published in the **Federal Register** (65 FR 49909) on August 16, 2000, modifying the February regulations. On August 2, 2001, the IRS issued temporary and proposed regulations regarding sections 6011, 6111, and 6112 (T.D. 8961, 2001-35 I.R.B. 194; REG-103735-00, REG-110311-98, REG-103736-00, 2001-35 I.R.B. 204) (collectively, the August 2001 regulations). The August 2001 regulations were published in the **Federal Register** (66 FR

41133) on August 7, 2001, further modifying the February 2000 regulations.

The rules under sections 6011, 6111, and 6112 are designed to provide the IRS and Treasury with information needed to evaluate potentially abusive transactions. The IRS and Treasury have considered and evaluated compliance with the disclosure, registration, and list maintenance requirements under sections 6011, 6111, and 6112 and have determined that certain additional changes to the temporary and proposed regulations are necessary to improve compliance with the regulations and to carry out the purposes of sections 6011, 6111, and 6112. The IRS and Treasury continue to evaluate all the comments and recommendations received. Moreover, the IRS and Treasury intend to make substantial additional changes to the rules under sections 6011, 6111, and 6112 in order to establish a more effective disclosure regime and to improve compliance as announced in Treasury's Plan to Combat Abusive Tax Avoidance Transactions (PO-2018), released on March 20, 2002. See <http://www.treas.gov/press/releases/po2018.htm>.

Explanation of Provisions

1. Application of § 1.6011-4T to Individuals, Trusts, Partnerships, and S Corporations

Section 1.6011-4T generally provides that certain corporate taxpayers must disclose their participation in listed and other reportable transactions that meet the projected tax effect test by attaching a written statement to their Federal income tax returns. It has been determined that a number of these transactions are entered into by noncorporate taxpayers. Accordingly, in order to obtain information regarding potentially abusive transactions entered into by noncorporate taxpayers, the requirement to disclose under § 1.6011-4T is extended to individuals, trusts, partnerships, and S corporations that participate, directly or indirectly, in listed transactions. Thus, if a partnership or an S corporation participates in a listed transaction, that partnership or S corporation must disclose its participation under § 1.6011-4T and the partners and shareholders of the partnership or S corporation, respectively, also must disclose their participation under § 1.6011-4T. The IRS

and Treasury plan to extend in future guidance the requirement to disclose under § 1.6011-4T to other reportable transactions entered into by individuals, trusts, partnerships, and S corporations.

2. Indirect Participants

Section 1.6011-4T makes reference to taxpayers who participate directly or indirectly in reportable transactions. In order to obtain information about potentially abusive transactions entered into by taxpayers, the IRS and Treasury have provided clarification regarding indirect participation in a reportable transaction. A taxpayer will have indirectly participated in a reportable transaction if the taxpayer knows or has reason to know that the tax benefits claimed from the taxpayer's transaction are derived from a reportable transaction. However, this clarification does not imply that a taxpayer's participation in a transaction did not otherwise qualify as indirect participation in a reportable transaction for purposes of § 1.6011-4T, as in effect prior to June 14, 2002.

For example, Notice 95-53 (1995-2 C.B. 334), describes a lease stripping transaction in which one party (the transferor) assigns the right to receive future payments under a lease of tangible property and receives consideration which the transferor treats as current income. The transferor later transfers the property subject to the lease in a transaction intended to qualify as a substituted basis transaction, for example, a transaction described in section 351. In return, the transferor receives stock (with low value and high basis) from the transferee corporation. The transferee corporation claims the deductions associated with the high basis property subject to the lease. The transferor and transferee corporation have directly participated in the listed transaction. If the transferor subsequently transfers the high basis/low value stock to a taxpayer in another transaction intended to qualify as a substituted basis transaction and the taxpayer uses the stock to generate a loss, and if the taxpayer knows or has reason to know that the tax loss claimed was derived from the lease stripping transaction, then the taxpayer is indirectly participating in a reportable transaction. Accordingly, the taxpayer must disclose the reportable transaction and the

manner of the taxpayer's indirect participation in the reportable transaction under the provisions of § 1.6011-4T.

3. Substantially Similar Transactions

Sections 1.6011-4T and 301.6111-2T make reference to *substantially similar* transactions. Some taxpayers and promoters have applied the *substantially similar* standard in an overly narrow manner to avoid disclosure. For instance, some taxpayers and promoters have made subtle and insignificant changes to a listed transaction in order to claim that their transactions are not subject to disclosure. Others have taken the position that their transaction is not substantially similar to a listed transaction because they have an opinion concluding that their transaction is proper. The IRS and Treasury believe that these interpretations are improper. Accordingly, the regulations are modified in § 1.6011-4T and § 301.6111-2T to clarify that the term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax benefits and that is either factually similar or based on the same or similar tax strategy. Further, the term *substantially similar* must be broadly construed in favor of disclosure. This modification does not imply that a transaction was not otherwise the same as or substantially similar to a listed transaction prior to this modification.

For example, Notice 2000-44, 2000-2 C.B. 255, sets forth a listed transaction involving offsetting options transferred to a partnership where the taxpayer claims basis in the partnership for the cost of the purchased options but does not reduce basis under section 752 as a result of the partnership's assumption of the taxpayer's obligation with respect to the options. Transactions using short sales, futures, derivatives or any other type of offsetting obligations to inflate basis in a partnership interest would be the same as or substantially similar to the transaction described in Notice 2000-44. Moreover, use of the inflated basis in the partnership interest to diminish gain that would otherwise be recognized on the transfer of a partnership asset would also be the same as or substantially similar to the transaction described in Notice 2000-44.

As another example, Notice 2001–16, 2001–1 C.B. 730, sets forth a listed transaction involving a seller (X) who desires to sell stock of a corporation (T), an intermediary corporation (M), and a buyer (Y) who desires to purchase the assets (and not the stock) of T. M agrees to facilitate the sale to prevent the recognition of the gain that T would otherwise report. Notice 2001–16 describes M as a member of a consolidated group that has a loss within the group or as a party not subject to tax. Transactions utilizing different intermediaries to prevent the recognition of gain would be the same as or substantially similar to the transaction described in Notice 2001–16. An example is a transaction in which M is a corporation that does not file a consolidated return but which buys T stock, liquidates T, sells assets of T to Y, and offsets the gain recognized on the sale of those assets with currently generated losses.

4. Projected Tax Effect Test for Listed Transactions

Section 1.6011–4T provides that a reportable transaction is a transaction that meets the projected tax effect test and is either a listed transaction or a transaction that has at least two of five specified characteristics. Under § 1.6011–4T, the projected tax effect test for listed transactions is met if the taxpayer reasonably estimates that the transaction will reduce the taxpayer’s Federal income tax liability by more than \$1 million in any single taxable year or by a total of more than \$2 million for any combination of taxable years in which the transaction is expected to have the effect of reducing the taxpayer’s Federal income tax liability. The IRS and Treasury have determined that the projected tax effect test for listed transactions results in inadequate disclosure. Accordingly, the projected tax effect test will no longer apply to listed transactions. Thus, any individual, trust, partnership, S corporation, or other corporation that participates in a listed transaction must report it under the provisions of § 1.6011–4T.

5. Time of Providing Disclosure

In general, the disclosure statement for a reportable transaction must be attached to the taxpayer’s Federal income tax

return for each taxable year for which the taxpayer’s Federal income tax liability is affected by the taxpayer’s participation in the transaction. In the case of a taxpayer that is a partnership or an S corporation, the disclosure statement for a listed transaction must be attached to the taxpayer’s Federal income tax return for each taxable year ending with or within the taxable year of any partner or shareholder whose income tax liability is affected or is reasonably expected to be affected by the partnership’s or the S corporation’s participation in the transaction. In addition, at the same time that the disclosure statement is first attached to the taxpayer’s Federal income tax return, the taxpayer must file a copy of that disclosure statement with the Office of Tax Shelter Analysis.

If a transaction becomes a reportable transaction (e.g., the transaction subsequently becomes one identified in published guidance as a listed transaction described in § 1.6011–4T(b)(2), or there is a change in facts affecting the expected Federal income tax effect of the transaction) on or after the date the taxpayer has filed the return for the first taxable year for which the transaction affected the taxpayer’s or a partner’s or a shareholder’s Federal income tax liability, the disclosure statement must be filed as an attachment to the taxpayer’s Federal income tax return next filed after the date the transaction becomes a reportable transaction (whether or not the transaction affects the taxpayer’s or any partner’s or shareholder’s Federal income tax liability for that year) and at that time a copy of that disclosure statement must be filed with the Office of Tax Shelter Analysis. Notwithstanding the effective date of these regulations, for purposes of § 1.6011–4T, as in effect prior to June 14, 2002, a corporate taxpayer was required to disclose a transaction that later became reportable on the corporation’s next filed Federal income tax return even if the transaction did not affect the corporation’s Federal income tax liability for that year.

Regardless of whether the taxpayer plans to disclose the transaction under other published guidance, for example, Rev. Proc. 94–69, 1994–2 C.B. 804, the taxpayer also must disclose the transaction in the time and manner provided for under the provisions of this regulation.

Notwithstanding the effective date of these regulations, a corporate taxpayer was required to disclose a transaction in the time and manner provided for in § 1.6011–4T in effect prior to June 14, 2002, regardless of whether the taxpayer planned to disclose the transaction under other published guidance.

Effective Dates

The regulations are applicable June 14, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the time required to prepare or retain the disclosure is minimal and will not have a significant impact on those small entities that are required to provide disclosure. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Danielle M. Grimm and Tara P. Volungis, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6011-4T is amended as follows:

1. The heading of § 1.6011-4T is amended by removing the language “corporate”.

2. The heading of paragraph (a) is revised.

3. Paragraph (a) is amended by adding “(1) *In general.*” after the heading.

4. Newly designated paragraph (a)(1) is amended by adding the language “corporate” before “taxpayer” in the first sentence, and by removing the second sentence and adding three new sentences in its place.

5. Paragraphs (a)(2) and (a)(3) are added.

6. Paragraph (b)(1) is amended by revising the first sentence.

7. Paragraphs (b)(1)(i) and (b)(1)(ii) are added.

8. Paragraph (b)(4)(i) is amended by removing the first sentence.

9. Paragraph (b)(5) *Example 3* is amended by revising the seventh sentence.

10. Paragraphs(c)(1)(iii) and (c)(1)(v) are revised.

11. Paragraph (c)(2) *Example* is amended by adding the language “*Example.*” after “of this section:” in the first sentence and by adding “as in effect at that time.” to the end of the third sentence.

12. Paragraph (d)(1) is revised.

13. Paragraph (e) is amended by removing the language “corporation’s” in the first sentence and adding “taxpayer’s” in its place.

14. Paragraph (g) is revised.

The revisions and additions read as follows:

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

(a) *Disclosure requirement*—(1) *In general.* * * * Every individual, trust, partnership, and S corporation that has participated, directly or indirectly, in a reportable transaction within the meaning of paragraph (b)(2) of this section must attach to its return for the taxable year

described in paragraph (d) of this section a disclosure statement in the form prescribed by paragraph (c) of this section. For this purpose, a taxpayer will have indirectly participated in a reportable transaction if the taxpayer’s Federal income tax liability is affected (or in the case of a partnership or an S corporation, if a partner’s or shareholder’s Federal income tax liability is reasonably expected to be affected) by the transaction even if the taxpayer is not a direct party to the transaction (*e.g.*, the taxpayer participates as a partner in a partnership, as a shareholder in an S corporation, or through a controlled entity). Moreover, a taxpayer will have indirectly participated in a reportable transaction if the taxpayer knows or has reason to know that the tax benefits claimed from the taxpayer’s transaction are derived from a reportable transaction. * * *

(2) *Example of indirect participation.* Notice 95-53, 1995-2 C.B. 334, (see § 601.601(d)(2) of this chapter), describes a lease stripping transaction in which one party (the transferor) assigns the right to receive future payments under a lease of tangible property and receives consideration which the transferor treats as current income. The transferor later transfers the property subject to the lease in a transaction intended to qualify as a substituted basis transaction, for example, a transaction described in section 351. In return, the transferor receives stock (with low value and high basis) from the transferee corporation. The transferee corporation claims the deductions associated with the high basis property subject to the lease. The transferor and transferee corporation have directly participated in the listed transaction. If the transferor subsequently transfers the high basis/low value stock to a taxpayer in another transaction intended to qualify as a substituted basis transaction and the taxpayer uses the stock to generate a loss, and if the taxpayer knows or has reason to know that the tax loss claimed was derived from the lease stripping transaction, then the taxpayer is indirectly participating in a reportable transaction. Accordingly, the taxpayer must disclose the reportable transaction and the manner of the taxpayer’s indirect participation in the reportable transaction under the rules of this section.

(3) *Definition of taxpayer.* For purposes of paragraphs (b)(3) and (4) of this section, the term *taxpayer* means a corporation required to file a return under section 11, 594, 801, or 831. For all other purposes of this section, the term *taxpayer* also includes an individual, trust, partnership, or S corporation.

(b) *Definition of reportable transaction*—(1) *In general.* A reportable transaction is either a transaction that is described in paragraph (b)(2) of this section, or is a transaction that is described in paragraph (b)(3) of this section and that meets the projected tax effect test in paragraph (b)(4) of this Section. * * *

(i) *Definition of substantially similar.* For purposes of this section, the term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax benefits and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion concluding that the tax benefits from the taxpayer’s transaction are allowable is not relevant to the determination of whether the taxpayer’s transaction is the same as or substantially similar to a listed transaction. Further, the term *substantially similar* must be broadly construed in favor of disclosure.

(ii) *Examples.* The following examples illustrate situations where a transaction is the same as or substantially similar to a listed transaction:

Example 1. Notice 2000-44, 2000-2 C.B. 255, (see § 601.601(d)(2) of this chapter), sets forth a listed transaction involving offsetting options transferred to a partnership where the taxpayer claims basis in the partnership for the cost of the purchased options but does not reduce basis under section 752 as a result of the partnership’s assumption of the taxpayer’s obligation with respect to the options. Transactions using short sales, futures, derivatives or any other type of offsetting obligations to inflate basis in a partnership interest would be the same as or substantially similar to the transaction described in Notice 2000-44. Moreover, use of the inflated basis in the partnership interest to diminish gain that would otherwise be recognized on the transfer of a partnership asset would also be the same as or substantially similar to the transaction described in Notice 2000-44.

Example 2. Notice 2001-16, 2001-1 C.B. 730, (see § 601.601(d)(2) of this chapter), sets forth a listed transaction involving a seller (X) who desires to sell stock of a corporation (T), an intermediary corporation (M), and a buyer (Y) who desires to purchase the assets (and not the stock) of T. M agrees to facilitate the sale to prevent the recognition of the gain that T would otherwise report. Notice 2001-16 describes M as a member of a consolidated group that has a loss within the group or

as a party not subject to tax. Transactions utilizing different intermediaries to prevent the recognition of gain would be the same as or substantially similar to the transaction described in Notice 2001-16. An example is a transaction in which M is a corporation that does not file a consolidated return but which buys T stock, liquidates T, sells assets of T to Y, and offsets the gain recognized on the sale of those assets with currently generated losses.

* * * * *

(5) * * *

Example 3. * * * However, E does reasonably determine that the terms of the leases are consistent with customary commercial form in the leasing industry, and that there is a generally accepted understanding that the combination of Federal income tax consequences it is claiming with respect to the leases are allowable under the Internal Revenue Code for substantially similar transactions. * * *

* * * * *

(c) * * *(1) * * *

(iii) A brief description of the principal elements of the transaction that give rise to the expected tax benefits, including the manner of the taxpayer's direct or indirect participation in the transaction.

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(v) An identification of each taxable year (including prior taxable years) for which the transaction is expected to have the effect of reducing the Federal income tax liability of the taxpayer, or of any partner or shareholder of the taxpayer, and an estimate of the amount by which the transaction is expected to reduce the Federal income tax liability of the taxpayer, or of any partner or shareholder of the taxpayer, for each such taxable year.

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(d) *Time of providing disclosure*—(1) *In general.* The disclosure statement for a reportable transaction must be attached to the taxpayer's Federal income tax return for each taxable year for which the taxpayer's Federal income tax liability is affected by the taxpayer's participation in the transaction. In the case of a taxpayer that is a partnership or an S corporation, the disclosure statement for a listed transaction must be attached to the taxpayer's Federal income tax return for each taxable year ending with or within the taxable year of any partner or shareholder whose income tax liability is affected or is reasonably expected to be affected by the partnership's or the S corporation's

participation in the transaction. In addition, at the same time that any disclosure statement is first attached to the taxpayer's Federal income tax return, the taxpayer must file a copy of that disclosure statement with the Office of Tax Shelter Analysis (OTSA) at: Internal Revenue Service LM:PFTG:OTSA, Large & Mid-Size Business Division, 1111 Constitution Ave., NW, Washington, DC 20224. Regardless of whether the taxpayer plans to disclose the transaction under other published guidance, for example, Rev. Proc. 94-69, 1994-2 C.B. 804, (see § 601.601(d)(2) of this chapter), the taxpayer also must disclose the transaction in the time and manner provided for under the provisions of this section. If a transaction becomes a reportable transaction (e.g., the transaction subsequently becomes one identified in published guidance as a listed transaction described in (b)(2) of this section, or there is a change in facts affecting the expected Federal income tax effect of the transaction) on or after the date the taxpayer has filed the return for the first taxable year for which the transaction affected the taxpayer's or a partner's or a shareholder's Federal income tax liability, the disclosure statement must be filed as an attachment to the taxpayer's Federal income tax return next filed after the date the transaction becomes a reportable transaction (whether or not the transaction affects the taxpayer's or any partner's or shareholder's Federal income tax liability for that year). If a disclosure statement is required as an attachment to a Federal income tax return that is filed after June 14, 2002, but on or before 180 days after June 14, 2002, the taxpayer must either attach the disclosure statement to the return, or file the disclosure statement as an amendment to the return no later than 180 days after June 14, 2002.

* * * * *

(g) *Effective date.* This section applies to Federal income tax returns filed after February 28, 2000. However, paragraphs (a)(1), (a)(2), (a)(3), (b)(1), (b)(4)(i), (b)(5) *Example 3*, (c)(1)(iii), (c)(1)(v), (c)(2) *Example*, (d)(1), and (e) of this section apply to any transaction entered into on or after January 1, 2001, unless such transaction is reported on a tax return of the taxpayer that is filed on or before

June 14, 2002. Taxpayers may rely on the rules in paragraphs (a)(1), (a)(2), (a)(3), (b)(1), (b)(4)(i), (b)(5) *Example 3*, (c)(1)(iii), (c)(1)(v), (c)(2) *Example*, (d)(1), and (e) of this section for Federal income tax returns filed after February 28, 2000. Otherwise, the rules that apply with respect to transactions entered into before January 1, 2001, and with respect to any transaction entered into on or after January 1, 2001, and reported on a tax return of the taxpayer that is filed on or before June 14, 2002, are contained in § 1.6011-4T in effect prior to June 14, 2002, (see 26 CFR part 1 revised as of April 1, 2002).

Par. 3. In § 1.6031(a)-1, paragraph(a)(1) is amended by adding a sentence to the end of the paragraph to read as follows:

§ 1.6031(a)-1 Return of partnership income.

(a) * * *

(1) * * * For the rules requiring the disclosure of certain transactions, see § 1.6011-4T.

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Par. 4. In § 1.6037-1, paragraph (c) is amended by adding a sentence to the end of the paragraph to read as follows:

§ 1.6037-1 Return of electing small business corporation.

* * * * *

(c) * * * For the rules requiring the disclosure of certain transactions, see § 1.6011-4T.

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PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 6. Section 301.6111-2T is amended as follows:

1. Paragraph (a)(3) is amended by adding four sentences to the end of the paragraph.

2. The paragraph heading for (h) is revised and the entire text after the second sentence is removed and four new sentences are added in their place.

The revision and additions read as follows:

§ 301.6111-2T Confidential corporate tax shelters (Temporary).

(a) * * *

(3) * * * For purposes of this section, the term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax benefits and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion concluding that the tax benefits from the taxpayer's transaction are allowable is not relevant to the determination of whether the taxpayer's transaction is the same as or substantially similar to a listed transaction. Further, the term *substantially similar* must be

broadly construed in favor of disclosure. For examples, see § 1.6011-4T(b)(1)(ii) of this chapter.

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(h) *Effective dates.* * * * However, paragraph (a)(3) of this section applies to confidential corporate tax shelters in which any interests are offered for sale after June 14, 2002. The rule in paragraph (a)(3) of this section may be relied upon for confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000. Otherwise, the rules that apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000,

and on or before June 14, 2002, are contained in this § 301.6111-2T in effect prior to June 14, 2002. (See 26 CFR part 301 revised as of April 1, 2002).

Robert E. Wenzel,
*Deputy Commissioner
of Internal Revenue.*

Approved June 11, 2002.

Pamela F. Olson,
*Acting Assistant Secretary
of the Treasury.*

(Filed by the Office of the Federal Register on June 14, 2002, 11:32 a.m., and published in the issue of the Federal Register for June 18, 2002, 67 F.R. 41324)