

Effective Date of Regulations Under Sections 6011 and 6112

Notice 2003-11

SECTION 1. BACKGROUND

In Treasury Decisions 9017 and 9018, as published in the Federal Register on October 22, 2002 (2002-45 I.R.B. 815 [67 F.R. 64799]; 2002-45 I.R.B. 823 [67 F.R. 64807]) (October 2002 temporary regulations), the Department of the Treasury (Treasury) and the Internal Revenue Service (Service) issued comprehensive amendments to the rules under § 1.6011-4T of the temporary Income Tax Regulations and § 301.6112-1T of the temporary Procedure and Administrative Regulations, and made corresponding amendments to § 301.6111-2T. See 2002-45 I.R.B. 815 and 823. These amendments related primarily to the disclosure of reportable transactions under § 6011 of the Internal Revenue Code and the list maintenance requirements for potentially abusive tax shelters under § 6112. Specifically, Treasury and the Service revised and clarified the definition of “reportable transaction” and the definition of “organizer and seller” to ensure that the Service receives the information needed to evaluate certain types of potentially abusive transactions and to improve compliance.

The October 2002 temporary regulations generally are effective for transactions entered into on or after January 1, 2003. Taxpayers are not required to disclose reportable transactions as defined under the October 2002 temporary disclosure regulations until the time they file their tax return reporting those transactions. However, under the October 2002 temporary list maintenance regulations, material advisors have an immediate obligation to maintain lists with respect to reportable transactions.

Treasury and the Service have received numerous comments relating to the October 2002 temporary disclosure regulations and the October 2002 temporary list maintenance regulations. Treasury and the Service are currently reviewing these comments. In particular, Treasury and the Service are reviewing the comments that provide suggested clarifications to the rules

pertaining to who must disclose transactions. In addition, Treasury and the Service are considering clarifications as to the persons required to maintain lists and the persons who must be included on lists.

Treasury and the Service also are reviewing the comments relating to the reportable transaction categories of loss transactions and transactions with a significant book-tax difference. More generally, Treasury and the Service are considering how the rules in the October 2002 temporary regulations can be revised to exclude transactions for which disclosure and maintenance of information under §§ 6011 and 6112 may be unnecessary, while preserving the ability of Treasury and the Service to obtain information about potentially abusive transactions. Treasury and the Service intend to publish final regulations in February 2003.

SECTION 2. EFFECTIVE DATE FOR THE DISCLOSURE REGULATIONS UNDER § 6011

Treasury and the Service intend to revise the disclosure regulations under § 6011 to reflect the consideration of the comments received. Although the October 2002 temporary disclosure regulations under § 6011 will continue to apply to transactions entered into on or after January 1, 2003, the revised regulations under § 6011 will permit taxpayers who entered into transactions on or after January 1, 2003, and before the filing date of the revised regulations, to elect to apply the revised regulations instead of the October 2002 temporary disclosure regulations.

SECTION 3. EFFECTIVE DATE FOR THE LIST MAINTENANCE REGULATIONS UNDER § 6112

In order to provide necessary clarification to the October 2002 temporary list maintenance regulations, Treasury and the Service will change the effective date of the October 2002 temporary list maintenance regulations under § 6112 to the date the revised regulations under § 6112 are filed. Except as provided below, the list maintenance requirements under § 6112 will not apply to transactions entered into on or after January 1, 2003, and before the filing date of the revised regulations under § 6112. The

delayed effective date, however, will not apply to listed transactions or transactions that are § 6111 shelters as defined in § 301.6112-1T(b)(1) of the October 2002 temporary regulations.

SECTION 4. CONTACT INFORMATION

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