

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: Part I, §§ 6011, 6111, 6112; 1.6011-4, 301.6112-1.)

Rev. Proc. 2007-20

SECTION 1. PURPOSE

This revenue procedure provides that certain transactions with contractual protection are not reportable transactions for purposes of the disclosure rules under § 1.6011-4(b)(4) of the Income Tax Regulations. However, these transactions may be reportable transactions for purposes of the disclosure rules under § 1.6011-4(b)(2), (b)(3), (b)(5), (b)(6), or (b)(7).

SECTION 2. BACKGROUND

.01 Section 1.6011-4 requires a taxpayer that participates in a reportable

transaction to disclose the transaction in accordance with the procedures provided in § 1.6011-4. Under § 1.6011-4(b), one category of reportable transaction is a transaction with contractual protection. A transaction with contractual protection is defined in § 1.6011-4(b)(4). Generally, a transaction with contractual protection is a transaction involving a fee that is refundable if all or part of the intended tax consequences from the transaction are not sustained or a transaction involving a fee that is contingent on the taxpayer's realization of the tax benefits from the transaction.

.02 Section 1.6011-4(b)(8)(i) provides that a transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of § 1.6011-4.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that may be required to disclose reportable transactions under § 6011, material advisors that may be required to disclose reportable transactions under § 6111, and material advisors that may be required to maintain lists under § 6112. This revenue procedure also applies for purposes of § 4965.

SECTION 4. APPLICATION

.01 In general. The definition of a transaction with contractual protection includes references to “tax consequences” and “tax benefits.” For purposes of § 1.6011-4, “tax” is defined as “Federal income tax.” § 1.6011-4(c)(5). Accordingly, § 1.6011-4(b)(4) does not apply to transactions in which the refundable or contingent fees are based on

the taxpayer's liability for taxes other than federal income taxes.

.02 Exceptions. The following transactions are not taken into account in determining whether a transaction is a transaction with contractual protection under § 1.6011-4(b)(4):

(1) Transactions in which the refundable or contingent fee is related to the work opportunity credit under § 51 of the Internal Revenue Code.

(2) Transactions in which the refundable or contingent fee is related to the welfare-to-work credit under § 51A.

(3) Transactions in which the refundable or contingent fee is related to the Indian employment credit under § 45A(a).

(4) Transactions in which the refundable or contingent fee is related to the low-income housing credit under § 42(a).

(5) Transactions in which the refundable or contingent fee is related to the new markets tax credit under § 45D(a).

(6) Transactions in which the refundable or contingent fee is related to the empowerment zone employment credit under § 1396(a).

(7) Transactions in which the refundable or contingent fee is related to the renewal community employment credit under § 1400H.

(8) Transactions in which the refundable or contingent fee is related to the employee retention credit under § 1400R(a), (b), or (c).

SECTION 5. EFFECT ON OTHER DOCUMENTS

This document modifies and supersedes Rev. Proc. 2004-65, 2004-2 C.B. 965.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective January 26, 2007, the date this revenue procedure was released to the public. The exceptions under section 4.02(1) through (3) apply to transactions that are entered into on or after January 1, 2003. The exceptions under section 4.02(4) through (8) apply to all transactions, regardless of when the transaction was entered into, that otherwise would have to have been disclosed under § 1.6011-4(b)(4) on or after January 1, 2006.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Charles Wien of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Mr. Wien at (202) 622-3070 (not a toll free call).