

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, 301.6111-3, 301.6112-1.)

Rev. Proc. 2008-20

SECTION 1. PURPOSE

This revenue procedure provides guidance relating to the obligation of material advisors to prepare and maintain lists with respect to reportable transactions under § 6112 of the Internal Revenue Code. In particular, this revenue procedure allows material advisors to use a form available on the Internal Revenue Service website for the purpose of maintaining the itemized statement component of the list under § 6112. See § 301.6112-1(b)(3)(i) of the Procedure and Administration Regulations. The form is not required to be used by a material advisor in order for that material advisor to comply

with the requirements of § 301.6112-1, but is offered as an option for maintaining the list.

SECTION 2. BACKGROUND

Section 6112, as amended by the American Jobs Creation Act of 2004, P.L. 108-357, 188 Stat. 1418, requires that each material advisor with respect to any reportable transaction shall maintain (in such manner as the Secretary may by regulations prescribe) a list identifying each person with respect to whom the advisor acted as a material advisor with respect to the transaction and containing other information as the Secretary may by regulations require. Under § 301.6112-1(a), material advisors are required to prepare and maintain a list as described in the regulations and are required to furnish the list to the IRS upon written request by the IRS. For reportable transactions for which a material advisor makes a tax statement on or after August 3, 2007 (and transactions of interest entered into by a taxpayer on or after November 2, 2006, with respect to which a material advisor makes a tax statement on or after November 2, 2006), the list must include three components: an itemized statement, a detailed description of the transaction, and copies of certain documents. Section 301.6112-1(b)(3). If any component of the list is not in a form that enables the IRS to determine without undue delay or difficulty the required information, the material advisor will not be considered to have complied with the list maintenance provisions in § 6112 and § 301.6112-1. Section 301.6112-1(e)(1). Section 6708(a) provides that if any person who is required to maintain a list fails to make the list available to the IRS within 20 business days after the date of the written request, the person shall pay a penalty of

\$10,000 for each day of the failure after the expiration of the 20th business day.

Section 301.6112-1(b)(1) states that the Commissioner in his discretion may provide in published guidance a form or method for maintaining and/or furnishing the list. The IRS has received requests to provide an optional format for the itemized statement component of the list. Consequently, under the authority of the regulations, this revenue procedure allows material advisors to use the form published on the IRS website for the purpose of maintaining the itemized statement. The form should simplify the method of list maintenance with respect to the itemized statement and reduce the burden on material advisors trying to comply with the regulations.

SECTION 3. SCOPE

This revenue procedure applies to material advisors who are required to maintain lists under § 6112.

SECTION 4. APPLICATION

.01 In general. Each material advisor, with respect to any reportable transaction, is required to prepare and maintain separate lists for each reportable transaction. For reportable transactions for which a material advisor makes a tax statement on or after August 3, 2007 (and transactions of interest entered into by a taxpayer on or after November 2, 2006, with respect to which a material advisor makes a tax statement on or after November 2, 2006), each list must include three components: an itemized statement, a detailed description of the transaction, and copies of certain documents. Section 301.6112-1(b)(3). The list must be furnished to the IRS upon written request in a form that enables the IRS to determine without undue delay or difficulty the information

required in § 301.6112-1(b). In order to be in a position to timely produce the list required to be maintained under § 301.6112-1, the list should be maintained and updated on an ongoing basis, rather than compiled after the IRS makes a written request for the list. Because the list must be furnished to the IRS in a form that enables the IRS to determine without undue delay or difficulty the information required, the list should be organized in a manner in which the three components of the list are maintained together in a coherent and logical manner. Furthermore, the IRS may make targeted list requests, for example, a request for a list on a specific transaction only, in addition to general list requests which ask for all the lists the material advisor is required to maintain under § 301.6112-1.

.02 Method of list preparation and maintenance.

(1) In general. At the material advisor's discretion, the material advisor may use the form associated with this revenue procedure, Form 13976, "Itemized Statement Component of Advisee List" (or successor form), located through the forms and publications resource page on the IRS website or located through <http://www.irs.gov/businesses/corporations/article/0,,id=97384,00.html>, for the purpose of preparing and maintaining the itemized statement component of the list with respect to a reportable transaction. The form contains spaces for all of the elements required by § 301.6112-1(b)(3)(i). Instructions for the use of the form also are available on the IRS website. A material advisor may use the form as a template for creating a similar form, including a spreadsheet, on a software program used by the material advisor.

(2) Use of the form is not required. Material advisors are not required to use the

form associated with this revenue procedure (or a similar form or spreadsheet) in order to comply with § 6112.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective May 1, 2008, the date this revenue procedure was released to the public.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Charles D. 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).