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Instructions for Form 8886-T

(Rev. March 2007)



Department of the Treasury
Internal Revenue Service

Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction

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

General Instructions

Purpose of Form

Certain tax-exempt entities are required to file Form 8886-T to disclose information for each prohibited tax shelter transaction to which the entity was a party. See *Prohibited Tax Shelter Transaction* below for a definition of a prohibited tax shelter transaction. See *Party to a Prohibited Tax Shelter Transaction* below to determine if you were a party to a prohibited tax shelter transaction. See Notice 2006-65, 2006-31 I.R.B. 102 and Notice 2007-18, 2007-9 I.R.B. 608 for more information.

Generally, you must file a separate Form 8886-T for each prohibited tax shelter 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.

Although a single initial disclosure is required, you must file a follow-up Form 8886-T if there is a change in the identity of the parties to a prohibited tax shelter transaction.

The fact that a transaction must be reported on this form does not mean the tax benefits from the transaction will be disallowed. However, you may be subject to an excise tax on income from the transaction. For more information, see the instruction for Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code.

A taxable party to a prohibited tax shelter transaction must provide a statement to any tax-exempt entity (as defined below) party to that transaction disclosing that the transaction is a prohibited tax shelter transaction.

Who Must File

Certain tax-exempt entities that are a party to a prohibited tax shelter transaction must file Form 8886-T. The following tax-exempt entities are subject to these disclosure requirements.

- An organization described in section 501(c) or 501(d).
- A state, a possession of the United States, or the District of Columbia, or a political subdivision of a state or possession of the United States.
- An Indian tribal government.
- A plan described in section 401(a) which includes a trust exempt from tax under section 501(a).
- An annuity plan described in section 403(a) or annuity contract described in section 403(b).
- A qualified tuition program described in section 529.

- An eligible deferred compensation plan described in section 457(b) which is maintained by an employer described in section 457(e)(1)(A).
- An individual retirement account.
- An individual retirement annuity.
- An archer MSA.
- A custodial account treated as an annuity contract under section 403(b)(7)(A).
- A Coverdell education savings account.
- A health savings account.

For more information about the tax-exempt entities that are subject to this disclosure rule, see Notice 2006-65, 2006-31 I.R.B. 102.

Non-plan entity. If the entity is a non-plan entity, this disclosure rule applies to the entity. Form 8886-T must be filed by the entity level.

Plan entity. If the entity is a plan entity, this disclosure rule applies to the trustee(s) of the entity. If the entity is a fully self-directed qualified plan, IRA, or other savings arrangement, this disclosure rule applies to the beneficiary who approved or caused the entity to be a party to a prohibited tax shelter transaction.

Party to a Prohibited Tax Shelter Transaction

A tax-exempt entity is a party to a tax shelter transaction if it:

- facilitates the transaction by reason of its tax-exempt, tax indifferent, or tax-favored status, or,
- is identified in published guidance, by type, class or role, as a party to a prohibited tax shelter transaction.

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.

Prohibited Tax Shelter Transaction

Prohibited tax shelter transactions include transactions that are identified by the Internal Revenue Service (IRS) as potentially abusive "listed" tax avoidance transactions and reportable transactions that are confidential transactions or transactions with contractual protection.

Listed transactions. This category includes transactions that are 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 2004-67, 2004-41 I.R.B. 600
- Notice 2005-13, 2005-9 I.R.B. 630

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 in the above notices and rulings 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 2004-67, 2004-41 I.R.B. 600, at www.irs.gov/pub/irs-irbs/irb04-41.pdf.

Confidential transactions. This category includes transactions that are offered under conditions of confidentiality and for which an advisor receives a minimum fee (defined below). A transaction is considered to be offered under conditions of confidentiality if the advisor places a limitation on 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. See Regulations section 1.6011-4(b)(3) for more information.

Minimum fee. For a corporation, or a partnership or trust in which all of the owners or beneficiaries are corporations, the minimum fee is \$250,000. For all others, the minimum fee is \$50,000. The minimum fee includes all fees paid directly or indirectly for the tax strategy, advice or analysis of the transaction (whether or not related to the tax consequences of the transaction), implementation and documentation of the transaction, and tax preparation fees to the extent they exceed customary return preparation fees. Fees do not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction.

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Transactions with contractual protection.

This category includes transactions for which a participant 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 realization of tax benefits from the transaction. For exceptions and other details, see Regulations section 1.6011-4(b)(4).

Exception.

Published guidance. A transaction is not considered a prohibited tax shelter transaction if the IRS makes a determination in published guidance that it is not subject to the reporting requirements. The IRS may also determine by individual letter ruling that an individual letter ruling request satisfies the reporting requirements. However, an individual letter ruling may be relied upon only by the taxpayer who requested the individual letter ruling. This includes a transaction that would otherwise be included in any of the above reportable transaction categories.

Request for ruling. You may request a ruling from the IRS to determine whether a specific transaction is a prohibited tax shelter transaction. The request for a ruling must be submitted to the IRS by the date Form 8886-T would otherwise be required to be filed. See Rev. Proc. 2007-1, 2007-1 I.R.B. 1, or subsequent IRS guidance for more details. The potential obligation of the taxpayer to disclose the transaction under this section 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

The due date for Form 8886-T is May 15th of the year after the year in which you entered the transaction. If the regular due date falls on a Saturday, Sunday, or legal holiday, file by the next business day. For example, you must file Form 8886-T no later than May 15, 2008 for transactions you entered into during 2007.

Special transition rule. If you became a party to a prohibited tax shelter transaction after May 17, 2006, and before January 1, 2007, the due date for filing Form 8886-T is XXXXXXX, 2007.

Send the return to the:

Internal Revenue Service Center
Ogden, UT 84201-0027

Penalties

There is a monetary penalty under section 6652(c) for the failure to disclose information required under section 6033(a)(2) with respect to a prohibited tax shelter transaction. The penalty for failure to include information with respect to a prohibited tax shelter transaction is \$100 for each day during which such failure continues, not to exceed \$50,000 for each required disclosure. In addition, the IRS is authorized to make a written demand on the entity or

manager specifying a future date by which the required disclosure must be filed. If you fail to comply with this demand, there is an additional penalty in the amount of \$100 per day after the expiration of the time specified in the demand, not to exceed \$10,000 for each required disclosure.

A penalty is assessed for each failure to file a Form 8886-T, if you (a) fail to file the form by the due date, or (b) file a form that fails to include all the information required (or includes incorrect information). Form 8886-T 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. See section 6652(c) and Notice 2006-65, 2006-31 I.R.B. 102 for more information.

Name, Address, etc.

Enter the name, address, and employer identification number of the entity. Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address, show the P.O. box number instead of the street address. The name, address and employer identification number should be the same as shown on other forms filed with the IRS.

Signature and Verification

The director, trustee, officer, or other authorized official must sign Form 8886-T.

Also, a person with a valid power of attorney may sign for the entity. Include a copy of the power of attorney with the return.

Specific Instructions

How To Complete Form 8886-T

In order to be considered complete, Form 8886-T must be completed in its entirety with all required attachments. Do not simply write "See Attached." 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 the entity name and identifying number at the top of each additional sheet.

Line 1

Check the box which indicates the type of tax-exempt entity.

Line 2

Check the box for all categories that apply to the transaction being reported. The categories of prohibited tax shelter transactions are described under *Party to a Tax Shelter Transaction* on page 1. Do not report more than one transaction on this

form unless the transactions are the same or substantially similar. See the definition of substantially similar on page 1. If the transaction was substantially similar to a listed transaction, check the box next to "listed transaction." If you checked the listed transaction box, you must also identify the transaction in line 3.



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

Line 3

If you selected "listed transaction" in line 2, provide a brief identifying description of the listed transaction and identify the notice, revenue ruling, or regulation (for example, Regulations section 1.634(a)-8 or Notice 2002-70) that identified the listed transaction as shown in Notice 2004-67 or later IRS guidance.

Line 4

Provide the complete names and addresses of all other parties to the transaction, if known. If you need additional space, attach a separate sheets identifying your entity name and employer identification number and the line to which the sheet refers.

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 XXXX-XXXX 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	X hr., XX min.
Learning about the law or the form	X hr., XX min.
Preparing, copying, assembling, and sending the form to the IRS	X hr., XX 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-6406, Washington, DC 20224. Do not send the form to this address. Instead, see *When and How To File*, earlier.