

Instructions for Form 8918, Material Advisor Disclosure Statement (Rev. September 2007)

Purpose: This is the first circulated draft of the Instructions for Form 8918 (Rev. September 2007) for your review and comments. See below for a discussion of the major changes.

TPCC Meeting: None, but one may be arranged if requested.

Prior Version: Form 8918 revises and supersedes Form 8264, Application for Registration of a Tax Shelter (March 2004). The Instructions for Form 8264 (Rev. March 2004) are available at:

<http://www.irs.gov/pub/irs-pdf/i8264.pdf>

Form: Form 8918 (Rev. September 2007) was circulated earlier at:

http://taxforms.web.irs.gov/Products/Drafts/2007-2/07f8918_d1.pdf

Other Products: Circulations of draft tax forms, instructions, notices, and publications are posted at:

http://taxforms.web.irs.gov/draft_products.html

Comments: Please email, fax, call, or mail any comments by September 17, 2007, to Anthony Ferrise at the address listed below and to the reviewer, Daniel Brooks at Daniel.V.Brooks@irs.gov.

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Major Changes

1. The American Jobs Creation Act of 2004, Public Law 108-357, 118 Stat. 1418, (AJCA) was enacted on October 22, 2004. Section 815 of the AJCA amended section 6111 to require each material advisor with respect to any reportable transaction to make a return (in such form as the Secretary may prescribe) setting forth: (1) information identifying and describing the transaction; (2) information describing any potential tax benefits expected to result from the transaction; and (3) such other information as the Secretary may prescribe.
2. Prior to these amendments, section 6111(a) required an organizer of a tax shelter to register the tax shelter with the Secretary not later than the day on which interests in the tax shelter were first offered for sale.

3. In response to the AJCA, on July 31, 2007 the IRS issued final regulations relating to this form in Treasury Decisions 9350, 9351 and 9352. Form 8918 is being promulgated pursuant to the AJCA and guidance issued thereunder.
4. Among other things, the final regulations add a new category of reportable transactions (transactions of interest) and delete transactions with a “significant book-tax difference” from the category of reportable transactions. Because these changes to the reportable transaction categories were effective August 3, 2007, we have added the transactions of interest category to the instruction discussion of reportable transactions. We have retained the reference to significant book-tax difference category discussion in the instructions because of significant box-tax difference transactions that may have to be reported after August 2, 2007.
5. The instructions also provide a discussion of the list maintenance requirements for material advisors found in section 6112 and Regulations section 301.6112-1.