

made a constructive sale of the appreciated financial position if the taxpayer acquires the same or substantially identical property.

ANALYSIS

Situation 1

Pursuant to § 1.1233-1(a)(1), the Short Sale is not consummated until the XYZ stock is delivered to close the Short Sale. Although *T* is treated as having acquired the XYZ stock on the trade date (*see* Rev. Rul. 66-97; *see also* Rev. Rul. 93-84), the XYZ stock will not be delivered to close the Short Sale until January 4 of Year 2. Therefore, *T* does not realize the loss on the Short Sale until January 4 of Year 2.

Situation 2

As in *Situation 1*, *T* is treated as having acquired the XYZ stock on the trade date, December 31 of Year 1. *See* Rev. Rul. 66-97; *see also* Rev. Rul. 93-84. At that time, unlike in *Situation 1*, the price of XYZ stock has decreased. Therefore, the value of *T*'s Short Sale has increased, and *T* holds an appreciated financial position within the meaning of § 1259(b)(1), that is, the short position. Section 1259(b)(3). Section 1259(c)(1)(D) provides that if a taxpayer holds an appreciated financial position that is a short sale, the acquisition of the same or substantially identical stock is a constructive sale transaction. Therefore, *T* has entered into a constructive sale transaction by acquiring the same or substantially identical stock as the stock underlying the Short Sale. Pursuant to § 1259(a)(1), *T* realizes gain on the Short Sale on December 31 of Year 1.

HOLDING

(1) In *Situation 1*, *T* realizes the loss on the Short Sale on January 4 of Year 2, the date the Short Sale is closed by delivery of the stock.

(2) In *Situation 2*, *T* has constructively sold the Short Sale on December 31 of Year 1. *T* realizes gain in Year 1 as if *T* had sold, assigned, or otherwise terminated the Short Sale at its fair market value on December 31 of Year 1.

DRAFTING INFORMATION

The principal author of this revenue ruling is Kate Sleeth of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact Ms. Sleeth at (202) 622-3920 (not a toll-free call).

Section 1502.—Regulations (Consolidated Returns).

26 CFR 1.1502-77.—Agent for the group.

26 CFR 1.1502-77A.—Common parent agent for subsidiaries applicable for consolidated return years beginning before June 28, 2002.

The revenue procedure provides instructions relating to the determination of a substitute agent to act on behalf of a consolidated group, pursuant to section 1.1502-77(d) or section 1.1502-77A(d). Procedures are provided for automatic approval of requests by a terminating common parent to designate its qualifying successor as substitute agent. *See* §§ 1.1502-77(d) and 1.1502-77A(d), and Rev. Proc. 2002-43, page 99.

Section 4975.—Tax On Prohibited Transactions

26 CFR 54.4975-1: General rules relating to excise tax on prohibited transactions.

Rev. Rul. 2002-43

ISSUE

When a loan from a qualified plan that is a prohibited transaction spans successive taxable years, and thus constitutes multiple prohibited transactions, and during those years the first tier prohibited transaction excise tax rate under § 4975 of the Internal Revenue Code changes, how is the excise tax computed?

FACTS

X, Inc., is a Subchapter C corporation that sponsors Plan Y, a calendar year profit sharing plan qualified under § 401(a) of the Internal Revenue Code. Plan Y's plan year is the calendar year. On April 1, 1997, individual B, a disqualified person with respect to Plan Y, obtained a two-year loan in the amount of \$10,000 from Plan Y's tax-exempt trust.

The loan was secured solely by B's account balance in Plan Y. At the time of the loan, B's account balance was \$12,000. According to the terms of the loan, B was to make substantially equal payments of principal and interest to Plan Y's trust on the first business day of every calendar quarter. The interest rate of the loan was 11%, compounded annually, which was equal to or greater than a fair market rate of interest for such a loan at that time. B made no payments on the loan until December 31, 1999, at which time B repaid the loan, including principal and accrued interest. The repayment constituted a "correction" within the meaning of § 4975(f)(5) of the Code. None of the Forms 5500 that were filed for Plan Y for 1997, 1998, or 1999 reflected a loan to B.

LAW AND ANALYSIS

Section 4975(a) of the Internal Revenue Code provides that an excise tax is imposed as a result of each prohibited transaction on any disqualified person who participates in the prohibited transaction (other than a fiduciary acting only as such). Section 4975(c)(1)(B) of the Code defines the term "prohibited transaction" as including any direct or indirect lending of money or other extension of credit between a plan and a disqualified person.

Section 4975(d)(1) provides a statutory exemption for a loan made to a disqualified person who is a participant or beneficiary of the plan if such loan (1) is available to all such participants or beneficiaries on a reasonably equivalent basis; (2) is not made available to highly compensated employees (within the meaning of § 414(q)) in an amount greater than the amount made available to other employees; (3) is made in accordance with specific provisions regarding such loans set forth in the plan; (4) bears a reasonable rate of interest; and (5) is adequately secured.

Under section 102(a) of Reorganization Plan No. 4 of 1978 (43 F. R. 47713, October 17, 1978, 1979-1 C.B. 480), the Secretary of Labor has the authority to issue regulations interpreting § 4975(d)(1) of the Code and the parallel provision in section 408(b)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Under 29 C.F.R. 2550.408b-1(f)(2) of the Department of Labor's

regulations, a loan secured solely by more than 50 percent of the present value of a participant's vested accrued benefit is not adequately secured for purposes of determining whether the loan is exempt from the prohibited transaction excise tax.

Section 1453(a) of the Small Business Job Protection Act of 1996 increased the first tier excise tax rate of § 4975(a) of the Code from 5% to 10% of the amount involved for each year in the taxable period for prohibited transactions occurring after August 20, 1996. Section 1074(a) of the Taxpayer Relief Act of 1997 increased the first tier excise tax rate to 15% of the amount involved for each year in the taxable period for prohibited transactions occurring after August 5, 1997. Section 4975(f)(2) of the Code defines the term "taxable period" as the period beginning with the date on which the prohibited transaction occurs and ending on the earliest of (1) the date of the

mailing of a statutory notice of deficiency, (2) the date on which the first tier excise tax is assessed, or (3) the date on which correction of the prohibited transaction is completed. Section 4975(f)(4) defines the term "amount involved," with respect to a prohibited transaction, as the greater of (1) the amount of money and the fair market value of the other property given or (2) the amount of money and the fair market value of the other property received in such transaction. For purposes of the first tier excise tax, the fair market value is determined as of the date on which the prohibited transaction occurs.

Section 141.4975-13 of the Temporary Pension Excise Tax Regulations provides that until superseded by permanent regulations under paragraphs (4) and (5) of § 4975(f) of the Code, § 53.4941(e)-1 of the Foundation Excise Tax Regulations will be controlling to the extent those regulations describe terms appearing both

in § 4941(e) and § 4975(f). The term "amount involved" appears in both § 4941(e) and § 4975(f).

Section 53.4941(e)-1(b)(2)(ii) of the Foundation Excise Tax Regulations provides that, where the transaction involves the use of money, the amount involved is the greater of the amount paid for such use or the fair market value of such use for the period for which the money or other property is used and the amount involved is determined for the entire period that the money is used. In addition, § 53.4941(e)-1(e)(1) provides that, in the instance of a prohibited transaction that is a loan, an additional prohibited transaction is deemed to occur on the first day of each taxable year in the taxable period after the taxable year in which the loan occurred.

The interest amount for each year under the facts described above is computed as follows:

Year	Principal	Rate	Time	Interest Amount
1997 (4/1-12/31)	\$10,000.00	11.00%	275/365 year	\$ 828.77
1998	\$10,828.77	11.00%	1 year	1,191.16
1999	12,019.93	11.00%	1 year	1,322.19

Under the facts described above, and applying the rule in § 53.4941(e)-1(e)(1), there are three prohibited transactions that result from this loan. The first prohibited transaction occurs on the date of the loan (April 1, 1997), the second prohibited transaction occurs on January 1, 1998 (the first day of the next taxable year) and the third prohibited transaction occurs on January 1, 1999. The taxable period for each of these prohibited transactions begins on the date that the prohibited transaction occurs (April 1, 1997, for the first prohibited transaction, January 1, 1998, for the second prohibited transaction, and January 1, 1999, for the third prohibited transaction). The taxable periods for all three prohibited transactions end on the date on which the prohibited transactions were corrected (December 31, 1999). The amount involved for each prohibited transaction is the interest amount, as computed in the preceding table, for the first taxable year in the taxable period for that prohibited transaction. Therefore, the first-tier prohibited transaction excise tax for each prohibited transaction is computed as follows:

Year	1st Prohibited Transaction Excise Tax	2nd Prohibited Transaction Excise Tax	3rd Prohibited Transaction Excise Tax
1997	\$ 828.77 x .10 = \$ 82.88	-----	-----
1998	828.77 x .10 = 82.88	\$1,191.16 x .15 = \$178.67	-----
1999	828.77 x .10 = <u>82.88</u>	1,191.16 x .15 = <u>178.67</u>	\$1,322.19 x .15 = <u>\$198.33</u>
1st tier tax	\$248.64	\$357.34	\$198.33

Total for All Prohibited Transactions = \$804.31.

HOLDING

When a loan from a qualified plan that is a prohibited transaction spans successive taxable years, and thus constitutes multiple prohibited transactions, and during those years the first tier prohibited transaction excise tax rate changes, the first tier excise tax liability for each prohibited transaction is the sum of the products resulting from multiplying the amount involved for each year in the taxable period for that prohibited transaction by the excise tax rate in effect at the beginning of that taxable period.

Drafting Information

The principal author of this revenue ruling is Michael Rubin of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday. Mr. Rubin can be reached at 1-202-283-9888 (not a toll-free number).

Section 4980F.—Failure of Applicable Plans Reducing Benefit Accruals to Satisfy Notice Requirements

Whether the notice required by section 4980F of the Code and section 204(h) ERISA, as amended, must be provided to the affected individuals in a money purchase pension plan that is merged or converted into a profit-sharing plan. See Rev. Rul. 2002-42, page 76.

Section 6011.—General Requirement of Return, Statement, or List

26 CFR 1.6011-4T: Requirement of statement disclosing participation in certain transactions by taxpayers (Temporary).

T.D. 9000

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 301

Modification of Tax Shelter Rules III

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: These regulations modify the rules relating to the filing by certain taxpayers of a statement with their Federal income tax returns under section 6011(a) and the registration of confidential corporate tax shelters under section 6111(d). These rules also affect the list maintenance requirement under section 6112. These regulations affect taxpayers participating in certain reportable transactions, persons responsible for registering confidential corporate tax shelters, and persons responsible for maintaining lists of investors in potentially abusive tax shelters. The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking (REG-103735-00; REG-110311-98) on this subject on page 109 of this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective June 14, 2002.

Applicability Date: For dates of applicability, see § 1.6011-4T(g) and § 301.6111-2T(h).

FOR FURTHER INFORMATION CONTACT: Danielle M. Grimm or Tara P. Volungis, 202-622-3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these regulations have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduc-

tion Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1685.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document amends 26 CFR parts 1 and 301 to provide modified rules relating to the disclosure of reportable transactions by certain individuals, trusts, partnerships, S corporations, and other corporations on their Federal income tax returns under section 6011 and the registration of confidential corporate tax shelters under section 6111.

On February 28, 2000, the IRS issued temporary and proposed regulations regarding section 6011 (T.D. 8877, 2000-1 C.B. 747; REG-103735-00, 2000-1 C.B. 770), section 6111 (T.D. 8876, 2000-1 C.B. 753; REG-110311-98, 2000-1 C.B. 767), and section 6112 (T.D. 8875, 2000-1 C.B. 761; REG-103736-00, 2000-1 C.B. 768) (collectively, the February regulations). The February regulations were published in the **Federal Register** (65 FR 11205, 65 FR 11215, 65 FR 11211) on March 2, 2000. On August 11, 2000, the IRS issued temporary and proposed regulations regarding sections 6011, 6111, and 6112 (T.D. 8896, 2000-2 C.B. 249; REG-103735-00, REG-110311-98, REG-103736-00, 2000-2 C.B. 258) (collectively, the August 2000 regulations). The August 2000 regulations were published in the **Federal Register** (65 FR 49909) on August 16, 2000, modifying the February regulations. On August 2, 2001, the IRS issued temporary and proposed regulations regarding sections 6011, 6111, and 6112 (T.D. 8961, 2001-35 I.R.B. 194; REG-103735-00, REG-110311-98, REG-103736-00, 2001-35 I.R.B. 204) (collectively, the August 2001 regulations). The August 2001 regulations were published in the **Federal Register** (66 FR