

Instructions for Form 8886-T



Department of the Treasury
Internal Revenue Service

(September 2007)

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 (defined below) are required to file Form 8886-T to disclose information with respect to each prohibited tax shelter transaction to which the entity is a party. See *Prohibited tax shelter transaction* below. See *Party to a prohibited tax shelter transaction* below to determine if the tax-exempt entity is a party to a prohibited tax shelter transaction. See Temporary Regulations section 1.6033-5T for more information. Form 8886-T is available for public inspection.

A separate Form 8886-T must be filed for each prohibited tax shelter transaction.

In addition to filing Form 8886-T, a tax-exempt entity and/or entity manager(s) may be liable for excise taxes in connection with the prohibited tax shelter transaction. For more information, see the instructions for Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code, and the Instructions for Form 5330, Return of Excise Taxes Related to Employee Benefit Plans.

A taxable party to a prohibited tax shelter transaction must provide a statement to any tax-exempt entity that is party to the transaction that the transaction is a prohibited tax shelter transaction. See *Tax-exempt entity* below.

If a tax-exempt entity participates in any reportable transaction (defined in Regulations section 1.6011-4), the tax-exempt entity also may be required to file Form 8886, Reportable Transaction Disclosure Statement. For more information, see the Instructions for Form 8886.

Frequency of disclosure. A single disclosure is required for each prohibited tax shelter transaction.

Who Must File

If the tax-exempt entity is a non-plan entity (defined below), Form 8886-T

must be filed by the entity. If the tax-exempt entity is a plan entity (defined below), Form 8886-T must be filed by the entity manager (defined on page 2).

Note. If the entity is a fully self-directed qualified plan, IRA, or other savings arrangement, the entity manager is the plan participant, beneficiary, or owner who approved or caused the entity to be a party to the prohibited tax shelter transaction.

Definitions

Tax-exempt entity. A tax-exempt entity is an entity which is **either** a plan entity (defined below) **or** a non-plan entity (defined below).

Non-plan entity. Non-plan entities are tax-exempt entities described in section 4965(c)(1), (c)(2), or (c)(3). The following tax-exempt entities are non-plan entities:

- An organization described in section 501(c) or 501(d).
- Entities described in section 170(c) including a state, a possession of the United States, the District of Columbia, or a political subdivision of a state or possession of the United States (but not including the United States).
- An Indian tribal government.

See Temporary Regulations section 1.6033-5T for more information.

Plan entity. Plan entities are tax-exempt entities described in section 4965(c)(4), (c)(5), (c)(6), or (c)(7). The following tax-exempt entities are plan entities:

- 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) that is maintained by a governmental employer described in section 457(e)(1)(A).
- An individual retirement account.
- An individual retirement annuity.

- An Archer medical savings account.
- A custodial account treated as an annuity contract under section 403(b)(7)(A).
- A Coverdell education savings account.
- A health savings account. See Temporary Regulations section 1.6033-5T for more information.

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

- Facilitates the transaction by reason of its tax-exempt, tax indifferent or tax-favored status;
- Enters into a listed transaction and the tax-exempt entity's return (original or amended) reflects a reduction or elimination of liability for applicable federal employment, excise, or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction; or
- Is identified in published guidance, by type, class or role, as a party to a prohibited tax shelter transaction.

Prohibited tax shelter transaction.

Generally, a prohibited tax shelter transaction is a transaction that is a listed transaction (including subsequently listed transaction), a confidential transaction, or a transaction with contractual protection. See definitions of these terms on pages 1 and 2.

Note. In general, if the IRS determines by published guidance that a transaction will be excluded from the definition of listed transaction, confidential transaction, or transaction with contractual protection, the transaction will not be considered a prohibited tax shelter transaction.

Listed transaction. A listed transaction is a transaction that is the same as or substantially similar to any of the types of transactions that the IRS has determined to be a tax avoidance transaction and 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; and
- Notice 2007-57, 2007-29 I.R.B. 87.

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 IRS may issue new or update the existing notice, regulation, announcement, or other forms of published guidance that identify transactions as listed transactions. 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.

Subsequently listed transaction.

A subsequently listed transaction is a transaction that is identified in published guidance as a listed transaction after the tax-exempt entity has entered into the transaction and that was not a confidential transaction or transaction with contractual protection at the time the entity entered into the transaction. See section 4965(e)(2) for more information.

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.

Confidential transaction. A confidential transaction is a transaction this is offered under conditions of confidentiality and for which a minimum fee (defined below) was paid. 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 (looking through any partners or beneficiaries that are themselves partners or trusts), 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.

Transaction with contractual protection. A transaction with contractual protection is a transaction for which a participant (or related party as defined under section 267(b) or 707(b)) 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) and Rev. Proc. 2007-20, 2007-7 I.R.B. 517.

Entity manager. In the case of a plan entity, entity manager means the person who approves or otherwise causes the tax-exempt entity to be a party to the prohibited tax shelter transaction. See section 4965(d)(2).

Recordkeeping

The entity or entity manager must keep a copy of all documents and other records related to a prohibited tax shelter transaction. See Regulations section 1.6001-1(c) and 53.6001-1 for more details.

When To File

General rules. Generally, the due date for filing Form 8886-T depends on whether the tax-exempt entity is a party to a prohibited tax shelter transaction to reduce its own federal tax liability or, alternatively, whether it is a party to such a transaction to facilitate the transaction by reason of

its tax-exempt, tax indifferent, or tax-favored status.

- In the case of a tax-exempt entity that is a party to a prohibited tax shelter transaction because it facilitates the transaction by reason of its tax-exempt, tax indifferent, or tax-favored status, Form 8886-T must be filed on or before May 15 of the year following the close of the calendar year during which the tax-exempt entity entered into the prohibited tax shelter transaction. See Temporary Regulations section 1.6033-5T(e) for more details.

- In the case of a tax-exempt entity that became a party to a prohibited tax shelter transaction that is a listed transaction to reduce or eliminate its own tax liability, Form 8886-T must be filed on or before the date the first tax return (whether an original or an amended return) is filed on which the tax-exempt entity reflects a reduction or elimination of its liability for applicable federal employment, excise, or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in published guidance that lists the transaction. See Temporary Regulations section 1.6033-5T(e) for more details.

Entities identified as a party to a prohibited tax shelter transaction by published guidance. In the case of a tax-exempt entity that becomes a party to a prohibited tax shelter transaction because it is identified in published guidance by type, class, or roles as a party to a prohibited tax shelter transaction, the published guidance will specify the due date of Form 8886-T.

Subsequently listed transaction. In the case of a tax-exempt entity that is a party to a prohibited tax shelter transaction because the transaction was subsequently listed, Form 8886-T must be filed by May 15 of the year following the close of the calendar year during which the transaction was identified as a listed transaction. See Temporary Regulations section 1.6033-5T(e) for more details.

Special transition rules. In the case of a tax-exempt entity that entered into a prohibited tax shelter transaction after May 17, 2006, but before January 1, 2007, and that is a party to the transaction by reason of its tax-exempt, tax indifferent, or tax-favored status, Form 8886-T is due on or before November 5, 2007.

In the case of a tax-exempt entity that entered into a listed transaction

after May 17, 2006, but before January 1, 2007, to reduce its own federal tax liability, Form 8886-T is due on or before the later of November 5, 2007, or the date the first tax return (whether an original or an amended return) is filed reflecting a reduction or elimination of the tax-exempt entity's liability for applicable federal employment, excise, or unrelated business income taxes derived directly or indirectly from tax consequences or tax strategy described in published guidance that lists the transaction.

No disclosure is required for any prohibited tax shelter transaction entered into by a tax-exempt entity on or before May 17, 2006. Although there is no disclosure requirement for transactions entered into before May 18, 2006, certain tax-exempt entities may be liable for an excise tax. See Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code and accompanying instructions.

Where To File

Send the return to the:

Department of the Treasury
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 entity manager specifying a future date by which the required disclosure must be filed. If there is a failure 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. In the case of a non-plan entity (defined on page 1), the penalty is imposed on the tax-exempt entity. In the case of a plan entity (defined on page 1), the penalty is imposed on the entity manager. See section 6652(c) for more information.

A penalty is assessed to the tax-exempt entity (for a non-plan entity) or to the entity manager (for a

plan entity) for each failure to timely file Form 8886-T in accordance with its instructions and Temporary Regulations section 1.6033-5T. 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 the tax-exempt entity (for a non-plan entity) or the entity manager (for a plan entity) to penalty. See section 6652(c) for more information.

Public Inspection

A completed Form 8886-T is available for public inspection as required under section 6104(b).

Specific Instructions

Name and Address

Enter the name and address of the tax-exempt 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 and address should be the same as shown on other forms filed with the IRS.

Employer Identification Number (EIN)

Enter the employer identification number of the tax-exempt entity. In the case of a fully self-directed qualified plan, or an IRA (or other savings arrangement) that does not have and is not required to obtain an EIN, leave the EIN box blank. Do not enter a social security number.

Who Must Sign

Non-plan entity. The director, trustee, officer, or other official authorized to sign for the non-plan entity (defined on page 1) must sign Form 8886-T.

Plan entity. For plan entities (defined on page 1), the entity manager (defined on page 2) must sign Form 8886-T.

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 that is a party to a prohibited tax shelter transaction.

Line 2

Check the box for all categories that apply to the transaction being reported. The categories of prohibited tax shelter transactions (listed, confidential, and transaction with contractual protection) are described on pages 1 and 2. Do not report more than one transaction on this form. If the transaction is substantially similar to a listed transaction, check the box next to "listed transaction." See *Substantially similar* on page 2. If you checked the listed transaction box, you must also identify the transaction on 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" on line 2, provide a brief identifying description of the listed transaction and identify the notice, revenue ruling, regulation (for example, Regulations section 1.643(a)-8 or Notice 2003-81 modified and supplemented by Notice 2007-71, 2007-35 I.R.B. 472), announcement, or other published guidance that identified the listed transaction. See the notices below or later IRS guidance identifying listed transactions.

- Notice 2004-67, 2004-41 I.R.B. 600;
- Notice 2005-13, 2005-9 I.R.B. 630; and
- Notice 2007-57, 2007-29 I.R.B. 87.

Line 4

Provide the complete names and addresses of all other parties

(whether taxable or tax-exempt) to the transaction, if known. If you need additional space, attach separate sheets. At the top of each additional sheet, write "Line 4" and enter the tax-exempt entity's name and identifying number.

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 1545-0074 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	4 hr., 4 min.
Learning about the law or the form	3 hr., 16 min.
Preparing, copying, assembling, and sending the form to the IRS	3 hr., 28 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-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where To File*, on page 3.
