

# Instructions for Form 8918

(Rev. December 2011)

## Material Advisor Disclosure Statement



Department of the Treasury  
Internal Revenue Service

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

### What's New

The IRS has created a page on [irs.gov](http://irs.gov) for information about Form 8918 and its instructions, at [www.irs.gov/form8918](http://www.irs.gov/form8918). Information about any future developments affecting Form 8918 (such as legislation enacted after we release it) will be posted on that page.

### General Instructions

#### Purpose of Form

Material advisors to any reportable transaction must disclose certain information about the reportable transaction by filing a Form 8918 with the IRS. Form 8918 replaces Form 8264, which was previously used by material advisors for disclosure.

Material advisors who file a Form 8918 will receive a reportable transaction number from the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor. See *Who is a Material Advisor* below. Every taxpayer who has participated in a reportable transaction (see *What is a Reportable Transaction*, later) must also disclose the transaction on Form 8886, Reportable Transaction Disclosure Statement. For more information, see Form 8886 and the Instructions for Form 8886.

#### Who Must File?

Generally, every material advisor to a reportable transaction is required to file Form 8918. A material advisor can be an individual, trust, estate, partnership, or corporation. You are not required to file Form 8918 unless a taxpayer to whom or for whose benefit you provided the tax statement (defined below) entered into the reportable transaction. If you provide a tax statement to another material advisor, you are not required to file Form 8918 unless the reportable transaction is entered into by a taxpayer to whom or for whose benefit that material advisor provided the tax statement.

#### Who is a Material Advisor?

You are a material advisor to a transaction if you:

- Provide any material aid, assistance, or advice with respect to the organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and
- You directly or indirectly receive or expect to receive gross income in excess

of the threshold amount (defined below) for the material aid, assistance, or advice.

You provide material aid, assistance, or advice with respect to the organizing, managing, promoting, selling, implementing, insuring, or carrying out any transaction if you make or provide a tax statement to or for the benefit of:

- A taxpayer who either is required to disclose the transaction under section 6011 because the transaction is a listed transaction or a transaction of interest, or would have been required to disclose the transaction under section 6011 if the transaction had become a listed transaction or a transaction of interest within the period of limitations;
- A taxpayer who you know is or reasonably expect to be required to disclose the transaction under Regulations section 1.6011-4 because the transaction is or is reasonably expected to become a reportable transaction other than a listed transaction or transaction of interest;
- A material advisor who is required to disclose the transaction under section 6111 because the transaction is a listed transaction or a transaction of interest; or
- A material advisor who you know is or reasonably expect to be required to disclose the transaction under section 6111 because the transaction is or is reasonably expected to become a reportable transaction other than a listed transaction or transaction of interest.

**Tax statement.** Generally, a tax statement is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction. A tax statement includes tax result protection that insures some or all of the tax benefits of a reportable transaction. Tax result protection includes insurance company and other third party products commonly described as tax result insurance. For more information, see Regulations section 301.6111-3(b)(2)(ii).

**Threshold amount.** The threshold amount of gross income is \$50,000 for a reportable transaction that provides substantially all of the tax benefits to individuals (looking through any partnerships, S corporations, or trusts). The determination of whether substantially all of the tax benefits from a reportable transaction are provided to individuals is based on all the facts and circumstances. Generally, if 70% or more of the tax benefits (defined later) from a reportable transaction are provided to individuals (looking through any

partnerships, S corporations, or trusts) then substantially all of the tax benefits will be considered to be provided to individuals.

For all other transactions, the threshold amount is \$250,000. For listed transactions, the threshold amounts are reduced from \$50,000 to \$10,000 and from \$250,000 to \$25,000. For transactions of interest, the threshold amounts may be reduced as identified in the published guidance describing the transaction. Determine the threshold amount separately for each reportable transaction. The threshold amount must be met independently for each transaction that is a reportable transaction and aggregation of fees among reportable transactions is not required.

In figuring the amount of gross income you receive directly, or indirectly, for material aid, assistance, or advice, include all the following.

- Fees for a tax strategy.
- Fees for advice (whether or not tax advice).
- Fees for implementing the reportable transaction.

**Fees.** Fees include consideration in whatever form paid, whether in cash or in kind, for:

- Services to analyze the transaction (whether or not related to the tax consequences of the transaction),
- Services to implement the transaction,
- Services to document the transaction, and
- Services to prepare tax returns to the extent return preparation fees are unreasonable.

A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property.

The IRS will scrutinize carefully all of the facts and circumstances to determine if consideration received or expected to be received in connection with a reportable transaction is gross income received directly, or indirectly, for aid, assistance, or advice.

**Employee exception.** Generally, you are not considered to be a material advisor if you make a tax statement solely in your capacity as an employee, shareholder, partner, or agent of another person. In this case, any tax statement you make will be considered to be made by your employer, corporation, partnership, or principal.

However, you will be treated as a material advisor if you form or use an entity to avoid the rules of section 6111 or 6112 or the penalties under section 6707 or 6708.

#### **Date you became a material advisor.**

You are a material advisor when all of the following have occurred (in no particular order):

- You make a tax statement,
- You receive (or expect to receive) gross income in excess of the threshold amount, and
- The transaction is entered into by the taxpayer to whom or for whose benefit you provided the tax statement, or in the case of a tax statement provided to another material advisor, when the transaction is entered into by a taxpayer to whom or for whose benefit that material advisor provided a tax statement.

**Note.** If a transaction that was not a reportable transaction is identified as a listed transaction or a transaction of interest in published guidance after the occurrence of the 3 events described above, you will be treated as becoming a material advisor on the date the transaction is identified as a listed transaction or a transaction of interest.

You must make reasonable and good faith efforts to determine when the taxpayer entered into the transaction, even if you stop providing services before the taxpayer enters into the transaction.

**Post-filing advice.** You are not considered to be a material advisor concerning a transaction if you do not make or provide a tax statement about the transaction until after the first tax return reflecting tax benefit(s) of the transaction is filed with the IRS. This exception does not apply to you if it is expected the taxpayer will file a supplemental or amended return reflecting additional tax benefits from the transaction.

## **Definitions**

### **Transaction**

A transaction includes all of the relevant elements of the expected tax treatment of an 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 determine if the transaction is the same as or substantially similar to another transaction. The term substantially similar must be broadly construed in favor of disclosure. See Regulations section 1.6011-4(c)(4) for examples.

## **Tax Benefit**

A tax benefit includes deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as an entity exempt from federal income taxation, and any other tax consequences that may reduce a taxpayer's federal tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss or credit.

## **What is a Reportable Transaction?**

A reportable transaction is a transaction described in one or more of the following categories. See Regulations section 1.6011-4(b) for more information.

### **Listed Transactions**

A listed transaction is a transaction that is 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 2009-59, 2009-31 I.R.B. 170

For updates to this list go to the IRS web page at [www.irs.gov/businesses/corporations](http://www.irs.gov/businesses/corporations) and click on *Abusive Tax Shelters and Transactions*. The IRS may issue new or update the existing notice, regulation, or other form of guidance that identifies 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](http://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 2009-59, 2009-31 I.R.B. 170, at [www.irs.gov/pub/irs-irbs/irb09-31.pdf](http://www.irs.gov/pub/irs-irbs/irb09-31.pdf).

### **Confidential Transactions**

A confidential transaction is a transaction that is offered to a taxpayer or related party (as described in section 267(b) or 707(b)) under conditions of confidentiality and for which the taxpayer (or related party) paid an advisor a minimum fee (defined below).

A transaction is considered to be offered under conditions of confidentiality if the advisor who is paid a minimum fee places a limitation on the 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 on the taxpayer. See Regulations section 1.6011-4(b)(3) for more information.

**Minimum fee.** For a corporation (excluding S corporations), or a partnership or trust in which all of the owners or beneficiaries are corporations (excluding S corporations), the minimum

fee is \$250,000. For all others, the minimum fee is \$50,000.

The minimum fee includes all fees for a tax strategy, for advice (whether or not tax advice), or for the implementation of a transaction. Fees include payment in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent return preparation fees are unreasonable. A taxpayer is treated as paying fees to an advisor if the taxpayer knows or should know that the amount it pays will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. Fees do not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. The IRS will scrutinize all of the facts and circumstances in determining whether consideration received in connection with a confidential transaction constitutes fees. For purposes of determining the minimum fee, related parties (as described in section 267(b) or 707(b)) will be treated as the same individual or entity.

### **Transactions With Contractual Protection**

A transaction with contractual protection is a transaction for which the taxpayer, or a related party (as described in sections 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 taxpayer's 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, which provides a list of exceptions for this type of reportable transaction.

### **Loss Transactions**

A loss transaction is a transaction that results in the taxpayer claiming a loss under section 165 (described later) if the amount of the section 165 loss is as follows.

- For individuals, at least \$2 million in any single tax year or \$4 million in any combination of tax years. (At least \$50,000 for a single tax year if the loss arose from a section 988 transaction defined in section 988(c)(1) (relating to foreign currency transactions), whether or not the loss flows through from an S corporation or partnership).
- For corporations (excluding S corporations), at least \$10 million in any single tax year or \$20 million in any combination of tax years.
- For partnerships with only corporations (excluding S corporations) as partners (looking through any partners that are also partnerships), at least \$10 million in any single tax year or \$20 million in any combination of tax years, whether or not

any losses flow through to one or more partners.

- For all other partnerships and S corporations, at least \$2 million in any single tax year or \$4 million in any combination of tax years, whether or not any losses flow through to one or more partners or shareholders.
- For trusts, at least \$2 million in any single tax year or \$4 million in any combination of tax years, whether or not any losses flow through to one or more beneficiaries. (At least \$50,000 for a single tax year if the loss arose from a section 988 transaction defined in section 988(c)(1) (relating to foreign currency transactions), whether or not the loss flows through from an S corporation or partnership).

**Section 165 loss.** For this purpose, a section 165 loss is adjusted for any salvage value and for any other insurance compensation received. However, a section 165 loss does not include offsetting gains, other income or limitations. The full amount of a section 165 loss is included in the year it occurred, regardless of whether all or part of it is included in computing a net operating loss (under section 172) or a net capital loss (under section 1212) that is a carryback or carryover to another year. A section 165 loss does not include any portion of a loss attributable to a capital loss carryback or carryover from another year that is treated as a deemed capital loss under section 1212.

To determine if a transaction results in a taxpayer claiming a loss that meets the threshold amounts over a combination of tax years, only losses claimed in the tax year the transaction is entered into and the 5 succeeding tax years are combined.

The types of losses included in this category are section 165 losses (including amounts deductible under a provision that treats a transaction as a sale or other disposition or otherwise results in a deduction under section 165). However, this category does not include losses described in Rev. Proc. 2004-66, 2004-50 I.R.B. 966 (or future published guidance).

### Transactions of Interest

A transaction of interest is a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a transaction of interest. It is a transaction that the IRS and Treasury Department believe has a potential for tax avoidance or evasion, but for which there is not enough information to determine if the transaction should be identified as a tax avoidance transaction. The requirement to disclose transactions of interest applies to transactions of interest entered into after November 1, 2006. For existing guidance, see Notice 2009-55, 2009-31 I.R.B. 170. The IRS may issue new or update the existing notice, regulation, or other form of guidance that identifies a transaction as a transaction of interest.

## Eliminated Categories

**Transactions With a Brief Asset Holding Period.** The disclosure requirement for this category has been eliminated for transactions entered into on or after August 3, 2007. However, this does not relieve taxpayers of any disclosure obligations for brief asset holding transactions that were entered into before August 3, 2007. The rules for brief asset holding period reportable transactions entered into before August 3, 2007, are contained in Regulations section 1.6011-4 in effect prior to August 3, 2007.

**Transactions With a Significant Book-Tax Difference.** The disclosure requirement for this category has been eliminated. Transactions with a significant book-tax difference that would have been required to be disclosed with returns due on dates (including extensions) after January 5, 2006, are no longer reportable transactions.

However, this does not relieve taxpayers of any disclosure obligations for significant book-tax difference transactions that should have been disclosed on a return with a due date prior to January 6, 2006. For more details, see Notice 2006-6, 2006-5 I.R.B. 385, and Rev. Proc. 2004-67, 2004-50 I.R.B. 966.

### Exceptions to Reportable Transaction Categories, Published Guidance

A transaction is not considered a reportable transaction if the IRS makes a determination in published guidance that it is not subject to the reporting requirements. For more information, see the following.

- Rev. Proc. 2007-20, 2007-7 I.R.B. 517;
- Rev. Proc. 2004-66, 2004-50 I.R.B. 966;
- Rev. Proc. 2004-67, 2004-50 I.R.B. 967; and
- Rev. Proc. 2004-68, 2004-50 I.R.B. 969.

The IRS may also determine by individual letter ruling that an individual letter ruling request satisfies the reporting requirements. See *Request for Ruling*, below, for more details on submitting a letter ruling request.

### Request for Ruling

You may request a ruling from the IRS to determine whether a specific transaction is a reportable transaction. The potential obligation of a material advisor and the taxpayer to disclose the transaction will not be suspended during the period that the ruling request is pending. Therefore, even if you have a ruling request with the IRS, you must still complete and file this form in order to avoid potential penalties. See Rev. Proc. 2011-1, 2011-1 I.R.B. 1 for information on ruling requests.

### When To File

The material advisor's disclosure statement must be filed with the Office of Tax Shelter Analysis (OTSA) by the last

day of the month that follows the end of the calendar quarter in which the advisor became a material advisor with respect to the reportable transaction or in which circumstances occur to require an amended disclosure statement. See *Date you became a material advisor*, earlier.

### Where To File

In order to file, mail your completed Form 8918 to:

Internal Revenue Service  
OTSA Mail Stop 4916  
1973 North Rulon White Blvd.  
Ogden, Utah 84404

### Furnishing a Reportable Transaction Number

Receipt of a reportable transaction number does not indicate that the IRS has reviewed, examined, or approved the transaction.

Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor. The reportable transaction number must be provided when the transaction is entered into, or, if the transaction is entered into before the material advisor received the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

### Requirement To Keep Lists

Generally, a material advisor must maintain a list identifying each entity or individual with respect to who the advisor acted as a material advisor with respect to a reportable transaction. A material advisor is not required to identify an entity or individual on the list if the entity or individual entered into a listed transaction or a transaction of interest more than 6 years before the transaction was identified in published guidance as a listed transaction or a transaction of interest.

A separate list must be prepared and maintained for each transaction or group of substantially similar transactions. The list must be maintained for 7 years following the earlier of the date on which the material advisor last made a tax statement relating to the transaction, or the date the transaction was last entered into, if known. Upon IRS' written request, each material advisor who is responsible for maintaining a list must furnish the list to the IRS. The list must be maintained in a form that enables the IRS to determine without undue delay or difficulty the information required to be maintained for each list. See Regulations section 301.6112-1 for more information.

**Note.** The IRS does not require you to submit detailed information with this form with respect to the requirement to keep lists. However, to assist you in maintaining these lists, we anticipate that an electronic worksheet will be provided in the near future on [www.irs.gov](http://www.irs.gov).

Continue to monitor this website for future updates. You may need to keep additional records for accounting or state income tax purposes.

**Contents of the list.** Each list must contain the following.

1. An itemized statement containing:
  - a. The name of each reportable transaction, the citation to the notice number or published guidance number identifying the transaction if the transaction is a listed transaction or transaction of interest, and the reportable transaction number obtained under section 6111;
  - b. The name, address, and identifying number of each individual or entity required to be included on the list;
  - c. The date on which each individual or entity entered into the reportable transaction, if known;
  - d. The amount invested in the reportable transaction by each individual or entity, if known;
  - e. A summary or schedule of the tax treatment that each individual or entity is intended or expected to derive from participation in the reportable transaction; and
  - f. The name of each other material advisor to the transaction, if known.
2. A detailed description of the reportable transaction that describes both the tax structure and the purported tax treatment.
3. A copy of any designation agreement to which the material advisor is a party. See *Line 5* for more information.
4. Copies of any additional written materials, including tax analyses or opinions, relating to each reportable transaction that are material to an understanding of the intended tax treatment or tax structure of that transaction that the material advisor or any related party or agent of the material advisor has shown or provided to any individual or entity (or to their representatives, tax advisors, or agents) who acquired or may acquire an interest in the transaction. However, you are not required to retain earlier drafts of a document if you retain a copy of the final document (or, if there is no final document, the most recent draft of the document) and the final document (or most recent draft) contains all the information in the earlier drafts of such document that is material to an understanding of the purported tax treatment or the tax structure of the transaction.

**Dissolution or liquidation of material advisor.** Generally, if a material advisor dissolves or liquidates before completion of the 7 year list maintenance period, the person responsible under state law for winding up the entity's affairs must prepare, maintain, and furnish each component of the list on behalf of the entity, unless the entity submits the list to OTSA within 60 days after the dissolution

or liquidation. See Regulations section 301.6112-1(d) for more information.

## Penalties

### Penalty For Failure To Furnish Information Regarding Reportable Transactions

A penalty may be imposed if you are required to file Form 8918 and you fail to file the return on or before the due date, or file false or incomplete information about a reportable transaction.

The penalty is \$50,000 for reportable transactions other than listed transactions. The penalty imposed for listed transactions is the greater of:

- \$200,000, or
- 50 percent of the gross income from providing aid, assistance, or advice about the listed transaction before the date the return is filed. If the failure is intentional, the percentage is 75%.

For more information, see section 6707. Form 8918 must be completed in its entirety with all required attachments to be considered complete. Stating that "Information will be provided upon request" or that "Details are available upon request," or any similar statement in the space provided, is not considered a description and may cause your disclosure statement to be treated as incomplete.

**Note.** Rev. Proc. 2007-21, 2007-9 I.R.B. 613 provides guidance for requesting rescission of certain penalty assessments under sections 6707 or 6707A with respect to a nonlisted reportable transaction.

### Penalty For Failure To Maintain Required Lists

A penalty may be imposed if you are required to maintain a list under section 6112(a) and you fail to make the list available upon written request to the IRS.

The penalty is \$10,000 for each day of the failure after the date the list is required to be made available. The penalty may be assessed for failure to maintain the list in a form that enables the IRS to determine without undue delay or difficulty the information required.

### Other Penalties

An additional civil penalty under section 6700 may be imposed if you directly or indirectly organize, participate in the sale of, or promote an abusive tax shelter and you cause other parties to make or furnish either:

- False or fraudulent statements as to any material matter, or
- Gross valuation overstatements as to any material matter.

For false or fraudulent statement violations, the penalty is 50 percent of the gross income from the activity. For gross valuation overstatement violations, the penalty is the lesser of \$1,000 or 100% of the gross income derived (or to be derived) from the activity.

Penalties may also be imposed if you knowingly aid and abet in the understatement of the tax liability of another person. The penalty is \$1,000 (\$10,000 for corporate tax returns and documents).

Criminal penalties for failure to file on time and for filing a false or fraudulent return are provided by sections 7203, 7206, and 7207.

## Specific Instructions

### How To Complete Form 8918

In order to be considered complete, Form 8918 must be completed in its entirety with all required attachments. To be considered complete, the information provided on the form must describe the expected tax treatment and all potential tax benefits expected to result from the transaction, describe any tax result protection with respect to the transaction, and identify and describe the transaction in sufficient detail for the IRS to be able to understand the tax structure of the reportable transaction. A Form 8918 containing a statement that information will be provided upon request is not considered a complete disclosure statement.

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 your name and identifying number at the top of each additional sheet. Do not write "See Attached" on the form and provide all the information on an attached statement.

### Material Advisor Identifying Information

**Individuals.** If the material advisor is an individual, enter the first name, middle initial (if any), and last name; the social security number; the phone number, and the complete address.

**Entities.** If the material advisor is an entity, enter the full name of the entity as shown on its income tax return, the employer identification number, and the complete address. See *Item A* for contact information.

### Item A

**Contact information.** If the material advisor is an entity, list the name of a contact person along with a contact telephone number. If the material advisor is an individual, you may disregard this line.

### Item B

**Protective disclosure.** Indicate if you are filing on a protective basis by checking the appropriate box. If you are uncertain if a transaction must be disclosed, check the "Yes" box and disclose the transaction in accordance with these instructions.

On line 6a, you must explain why you are filing the disclosure on a protective basis. Generally, the IRS will not treat disclosure statements filed on a protective basis any differently than other disclosure statements filed on Form 8918. An incomplete form containing a statement that information will be provided on request is not a complete disclosure statement. For a protective disclosure to be effective, you must properly complete Form 8918 and provide all required information. See *How to Complete Form 8918*, earlier, for more information.

### Item C

Answer "Yes" if this is the original Form 8918 for this reportable transaction. If this is an amendment to a previously filed Form 8918 for the reportable transaction, answer "No" and enter the reportable transaction number previously provided for the reportable transaction by the IRS.

The reportable transaction number is a 9-digit or 11-digit number and was formerly known as a tax shelter registration number or registration number.


**Amended statement.** An amended statement must be filed if information previously provided is no longer accurate, if additional information that was not disclosed becomes available, or if there are material changes to the transaction.

### Line 1

Enter the name, if any, by which the transaction is known or commonly referred to by either yourself or published guidance. If no name exists, provide a short identifying description of this transaction that distinguishes it from other reportable transactions in which you have participated (or may participate in the future). Do not report more than one transaction on this form unless the transactions are the same or substantially similar. See *Substantially Similar*, earlier.

### Line 2

Check the box(es) for all categories that apply to the transaction being reported. The reportable transaction categories are described under *What is a Reportable Transaction*, earlier.

 *If the transaction is a listed transaction, you must check the listed transaction box in addition to any others that apply.*

### Line 3

Identify the notice, revenue ruling, regulation (for example, Regulations section 1.643(a)-8 or Notice 2003-81, 2003-51 I.R.B. 1 modified and supplemented by Notice 2007-71, 2007-35 I.R.B. 472), announcement, or other published guidance that identified the transaction as a listed transaction or transaction of interest. For listed transactions, identify the guidance as shown in Notice 2009-59, 2009-31 I.R.B. 170 or later IRS guidance.

### Line 4


Enter the latest of the following dates.

- The date you made a tax statement with regard to the transaction.
- The date you received or had an expectation that you would receive gross income in excess of the threshold amount (defined earlier).
- The date the transaction was entered into by the taxpayer.
- The date the transaction became a listed transaction or transaction of interest.

The latest of these dates is the date you became a material advisor. See *Date you became a material advisor*, earlier.

### Line 5

If more than one material advisor is required to disclose a reportable transaction under this section, the material advisors may designate by written agreement a single material advisor to disclose the transaction. The transaction must be disclosed by the last day of the month following the end of the calendar quarter that includes the earliest date on which a material advisor who is a party to the agreement became a material advisor to the transaction.

 *The designation of one material advisor to disclose the transaction does not relieve the other material advisors of the obligation to disclose the transaction to the IRS in accordance with these instructions, if the designated material advisor fails to disclose the transaction to the IRS in a timely manner.*

### Line 6a

Provide a concise statement indicating your role as a material advisor to this transaction. See *Who is a Material Advisor*, earlier. If you are filing a protective disclosure, you must explain why you believe you are not a material advisor. If you need more space, follow the instructions under *How to Complete Form 8918*, earlier.

### Lines 7a and 7b

Check the box(es) for all categories that apply to the transaction being reported. Indicate the related parties that are needed and how they are related. Indicate the role of tax-exempt entities if they are required for the transaction. In addition, if a foreign entity is required, indicate how and why the foreign entity is used, along with what country is used if a particular country is required for the transaction. If you need more space, follow the instructions under *How to Complete Form 8918*, earlier.

### Line 9

Identify the types of financial instruments required by the transaction (loan, stocks, bonds, notes, original issue discounts, domestic and foreign currency agreements, swaps, futures, notional

principal contracts, options, input or risk hedges, etc.). If you need more space, follow the instructions under *How to Complete Form 8918*, earlier.

### Line 10

Check all the boxes that apply for the tax benefits expected from the transaction. A tax benefit includes deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as an entity exempt from federal income taxation, and any other tax consequences that may reduce a taxpayer's federal tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss or credit. Check the "Other" box for tax benefits not specifically described by a box and identify the tax benefit(s) in the space provided. If you need more space, follow the instructions under *How to Complete Form 8918*, earlier.

### Line 13

Describe all of the relevant facts about the reportable transaction including the following.

1. Tax benefits causing the transaction to be reportable.
2. Years affected by the transaction.
3. Steps of the transaction including:
  - a. Agreements.
  - b. Property transfers and acquisitions.
  - c. Liability assumptions.
  - d. Obligation fulfillment.
  - e. Sales.
  - f. Entity formation or dissolution.
  - g. Other relevant events. Other relevant events may include but are not limited to tax result protection. Tax result protection includes insurance company and other third party products commonly described as tax result insurance.
4. Nature of the transaction (cash, loan, service, other).
5. Purpose of each step in accomplishing the tax benefits and consequences.
6. Where and how each party to the transaction (entered on lines 7a, 7b, and 8a and 8b) is used, including their roles.
7. The economic and business reasons for the transaction and its structure (describe market or business conditions creating the tax benefit or consequence and its financial reporting, if known).
8. How the financial instruments (entered on line 9) are used in the transaction.
9. How the Internal Revenue Code sections (entered on line 12) enable you to obtain the tax treatment.

If you need more space, follow the instructions under *How to Complete Form 8918*, earlier.



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**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws. We may give the information to the Department of Justice and to other federal agencies, as provided by law. We may give it to cities, states, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. A penalty may be imposed if you are required to file this return and fail to file by the due date or provide incomplete or false information.

Our authority to ask for information is section 6111 and its regulations, which require you to file a return or statement with us with respect to any reportable transaction for which you are a material advisor. Your response is mandatory under these sections. Section 6109 requires that you provide your identifying number on what you file. This is so we know who you are, and can process your return and other papers. You must fill in all parts of the tax form that apply to you.

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 average time is:

<b>Recordkeeping</b> .....	8 hr., 07min.
<b>Learning about the law or the form</b> .....	1 hr., 29min.
<b>Preparing, copying, assembling, and sending the form to the IRS</b> .....	1 hr., 41min.

If you have comments concerning the accuracy of this time estimate 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:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where To File*, earlier.

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