



Requirements for Filing Form 8886 - Questions and Answers

#	Questions	Answers
1.	Who must file a Form 8886, Reportable Transaction Disclosure Statement?	Any taxpayer, including an individual, trust, estate, partnership, S corporation, or other corporation, that participates in a reportable transaction and is required to file a federal tax return or information return must file Form 8886 disclosing the transaction. The filing requirement applies whether or not another party, related or otherwise, has filed a disclosure for that transaction.

2.	How does a taxpayer disclose its participation in a reportable transaction?	<p>The taxpayer must attach a Form 8886 disclosure statement to each tax return reflecting participation in the reportable transaction. The taxpayer must also send a copy of the Form 8886 to the Office of Tax Shelter Analysis (OTSA). See Treasury Regulation § 1.6011-4(e)(1) and Form 8886 instructions. In addition, the taxpayer must file a disclosure statement if a transaction becomes a listed transaction or transaction of interest (TOI) after the filing of the taxpayer's tax return (including an amended return), if the period of limitation for assessment on the tax return has not expired. The Form 8886 must reflect either tax consequences or a tax strategy described in the published guidance listing the transaction or designating the transaction as a TOI. If a taxpayer entered into a transaction after August 2, 2007, and it later becomes a listed or TOI transaction, the taxpayer must file a disclosure with OTSA within 90 days after the date the transaction became a listed transaction or TOI. If a taxpayer entered into a transaction before August 3, 2007, and it later becomes a listed or TOI transaction, the taxpayer must attach a Form 8886 to its next filed tax return after the date the transaction became a listed transaction or TOI. See Treasury Regulation § 1.6011-4(e)(2) (i) and Form 8886 instructions.</p>
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3.	What are the consequences for not filing a disclosure statement or for filing an incomplete disclosure statement?	<p>If a taxpayer participated in a reportable transaction and filed an incomplete disclosure statement, or didn't file a disclosure statement with its return, and/or didn't file a complete disclosure statement with OTSA (if required), the IRS may assess a penalty under Internal Revenue Code (IRC) § 6707A. Where the taxpayer participated in a listed transaction, the period of assessment with respect to that transaction will remain open until the taxpayer or a material advisor properly discloses the participation in that transaction. See IRC § 6501 (c)(10) for more information. In addition, where a reportable transaction is not properly disclosed, any IRC 6662A reportable transaction understatement penalty will apply at the 30% rate rather than the 20% rate for reportable transactions that are properly disclosed.</p>
4.	What would be considered a complete disclosure?	<p>A Form 8886 must be completed according to the instructions for the Form as well as the requirements of Treas. Reg. § 1.6011-4(d). The information provided on the Form must describe the expected tax treatment and all potential tax benefits expected 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 and identify all parties involved in the transaction.</p>

5.	Would a Form 8886 filed with no checked box on Line 7 (expected tax benefit criteria) and no description on Line 7b be considered complete?	No, the disclosure isn't complete because it didn't identify the tax benefits expected from the transaction or describe the transaction.
6.	Would the Form 8886 disclosure be considered complete if a taxpayer checked Box 2c for a transaction with contractual protection, but didn't describe the tax result protection with respect to the transaction in Line 7b of the form or in an attached statement to the form?	No, the disclosure isn't complete because it didn't describe the tax result protection with respect to the transaction
7.	Would a Form 8886 filed with a checked box on Line 5a, indicating participation through a related entity, but providing no related entity information on Lines 5b or 5c, be considered complete	If Line 5a has a checked box, Line 5b and/or 5c must be completed. The disclosure is incomplete.

8.	Is a statement that information will be provided upon request sufficient to be considered a complete disclosure?	A Form 8886 containing a statement that information will be provided upon request isn't a complete disclosure statement.
9.	Do these completeness requirements apply to protective disclosures as well?	Yes, filing a protective, but incomplete disclosure when a taxpayer has participated in a reportable transaction provides no protection from a potential IRC § 6707A penalty.
10.	A taxpayer files a Form 8886 disclosure indicating it entered into many transactions some of which may have been reportable transactions and some may not be reportable transactions under Rev. Proc. 2004-66 or other Angel List exclusions. Would this be considered a complete disclosure?	No, this wouldn't be a complete disclosure. A Form 8886 disclosure must be filed for each dissimilar reportable transaction in which the taxpayer participated. Each disclosure must contain specific information regarding the reportable transaction in which the taxpayer has participated.

11.	How does a taxpayer know if it has participated in a reportable transaction?	<p>A taxpayer has participated in a reportable transaction if any of the criteria below are met:</p> <ol style="list-style-type: none">1. Its tax return reflects tax consequences or a tax strategy described in the published guidance that identifies a transaction as a listed transaction. A list of such transactions is included in Notice 2009-59 (or successor guidance).2. Its tax return reflects tax benefits from a transaction offered under conditions of confidentiality and it paid an advisor a fee of at least \$250,000 if a corporation (or partnership or trust in which all owners or beneficiaries are corporations) or at least \$50,000 for all other filers. Conditions of confidentiality exist where the advisor places a limitation on a taxpayer's disclosure of the tax treatment or tax structure of the transaction to protect the confidentiality of the advisor's tax strategies.3. Its tax return reflects tax benefits from a transaction for which the taxpayer has a right to a full or partial refund of fees if all or part of the intended consequences from the transaction are not sustained, or the fees are contingent on the taxpayer's realization of tax benefits from the transaction.4. The taxpayer's share of an IRC § 165 loss reported on its tax return from the transaction is: (a) if a C corporation or a partnership in which all partners are C corporations, at least \$10 million in a single year or \$20 million in any combination of taxable years; (b) if an individual or trust, at least \$2 million in a single taxable year or \$4 million in any combination of taxable years, or at least \$50,000 in a single taxable year and the loss arose from an IRC § 988 (foreign
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12.	What does the term “tax benefits” mean?	<p>The term “tax benefits” includes any tax consequences that may reduce the taxpayer’s federal income tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss, or credit. Examples of tax benefits include (but are not limited to) deductions, exclusions from gross income, non-recognition of gain, tax credits, adjustments (or the lack of adjustments) to the basis of property, and status as an entity exempt from federal income tax.</p>

13.	<p>A partnership has two partners, a corporation and an individual, with 80% of the partnership's losses allocated to the corporate partner. In the current year, the partnership entered into a transaction and incurred an IRC § 165 loss of \$12 million which it reported on its tax return. The partnership must disclose this transaction because the IRC §165 loss of \$12 million is greater than \$2 million. Do the partners also need to disclose this transaction?</p>	<p>The corporate partner's distributive share of the partnership's \$12 million IRC § 165 loss is \$9.6 million. The corporation doesn't have a disclosure requirement as its share of the § 165 loss is less than the \$10 million corporation threshold. The individual partner will have to disclose its \$2.4 million share of the loss since it's over the \$2 million individual threshold.</p>
14.	<p>Does an individual with an IRC § 165 loss in the current year that arose from a single IRC § 988 transaction of \$50,000 have a Form 8886 disclosure requirement?</p>	<p>Yes, an individual or a trust with an IRC §165 loss that arose from a single IRC § 988 transaction of \$50,000 or more in a single taxable year has a disclosure requirement.</p>

15.	<p>An individual partner has a distributive share of partnership losses of 5%. In the current year, the partnership entered into one IRC § 988 transaction and incurred an IRC § 165 loss of \$1.5 million. The partnership doesn't have a disclosure requirement because the IRC § 165 loss of \$1.5 million isn't more than \$2 million. Does the individual partner need to disclose this transaction?</p>	<p>Yes, because the individual partner's allocable share of the partnership's \$1.5 million IRC §165 loss that arose from an IRC § 988 transaction is \$75,000, which is greater than the \$50,000 IRC §988 loss threshold for an individual or trust.</p>
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