sis in the nominal share for any transfers described in §1.368–2(l), designate the share of stock of the issuing corporation to which the basis, if any, of the nominal share will attach.

(a)(2)(iv) through (c), *Example 14* [Reserved]. For further guidance, see §1.358–2(a)(2)(iv) through (c), *Example 14*.

Example 15. (i) *Facts*. Each of Corporation X and Corporation Y has a single class of stock outstanding, all of which is owned by J, an individual. J acquired 100 shares of Corporation X stock on Date 1 for $1.50 each. On Date 2, Corporation Y acquires the assets of Corporation X for $100 of cash, their fair market value, in a transaction described in §1.368–2(l). Pursuant to the terms of the exchange, Corporation X does not receive any Corporation Y stock. Corporation X distributes the $100 of cash to J in liquidation. Pursuant to §1.368–2(l), Corporation Y will be deemed to issue a nominal share of Corporation Y stock to Corporation X in addition to the $100 of cash actually exchanged for the Corporation X assets, and Corporation X will be deemed to distribute all of the consideration to J. J will have a basis of $50 in the nominal share of Corporation Y stock under section 358(a).

(ii) *Analysis*. Under paragraph (a)(2)(iii) of this section, J is the actual shareholder of Corporation Y, the issuing corporation, deemed to receive the nominal share of Corporation Y stock described in §1.368–2(l). Therefore, J must designate any share of Corporation Y stock to which the basis of $50 in the nominal share of Corporation Y stock will attach.

Example 16. (i) *Facts*. Each of Corporation X and Corporation Y has a single class of stock outstanding, all of which is owned by Corporation P. Corporation T has a single class of stock outstanding, all of which is owned by Corporation X. The corporations do not join in the filing of a consolidated return. Corporation X acquired 100 shares of Corporation T stock on Date 1 for $1.50 each. On Date 2, Corporation Y acquires the assets of Corporation T for $100 of cash, their fair market value, in a transaction described in §1.368–2(l). Pursuant to the terms of the exchange, Corporation T does not receive any Corporation Y stock. Corporation T distributes the $100 of cash to Corporation X in liquidation. Pursuant to §1.368–2(l), Corporation Y will be deemed to issue a nominal share of Corporation Y stock to Corporation T in addition to the $100 of cash actually exchanged for the Corporation T assets, and Corporation T will be deemed to distribute all of the consideration to Corporation X. Corporation X will have a basis of $50 in the nominal share of Corporation Y stock under section 358(a). Corporation X will be deemed to distribute the nominal share of Corporation Y stock to Corporation P. Corporation X does not recognize the loss on the deemed distribution of the nominal share to Corporation P under section 311(a). Corporation P's basis in the nominal share is zero, its fair market value, under section 301(d).

(ii) *Analysis*. Corporation X is deemed to receive the nominal share of Corporation Y stock described in §1.368–2(l). However, under paragraph (a)(2)(iii) of this section, Corporation X is not an actual shareholder of Corporation Y, the issuing corporation. Therefore, Corporation X cannot designate any share of Corporation Y stock to which the basis, if any, of the nominal share of Corporation Y stock will attach. Furthermore, Corporation P cannot designate a share of Corporation Y stock to which basis will attach because Corporation P receives the nominal share with a basis of zero.

(d) *Effective/applicability date*. This section applies to exchanges and distributions of stock and securities occurring on or after November 21, 2011.

(e) *Expiration date*. This section expires on or before November 18, 2014.

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved November 1, 2011.

Emily S. McMahon,
Acting Assistant Secretary of the Treasury (Tax Policy).

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

26 CFR 26.6011–4: Requirement of statement disclosing participation in certain transactions by taxpayers.

T.D. 9556

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

Generation-Skipping Transfers (GST) Section 6011 Regulations and Amendments to the Section 6112 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide rules relating to the disclosure of listed transactions and transactions of interest with respect to the generation-skipping transfer tax under section 6011 of the Internal Revenue Code (Code), conforming amendments under sections 6111 and 6112, and rules relating to the preparation and maintenance of lists with respect to reportable transactions under section 6112. The regulations affect taxpayers participating in listed transactions and transactions of interest and material advisors to such transactions. The final regulations also contain rules under section 6112 that affect material advisors to reportable transactions. These regulations provide guidance regarding the length of time a material advisor has to prepare the list that must be maintained after the list maintenance requirement first arises with respect to a reportable transaction. These regulations also clarify guidance regarding designation agreements.

DATE: These regulations are effective November 14, 2011.

FOR FURTHER INFORMATION CONTACT: Charles D. Wien, (202) 622–3070 (not a toll-free number).

Background

This document contains final regulations that amend 26 CFR part 26 to provide rules for purposes of the generation-skipping transfer tax that require the disclosure of listed transactions and transactions of interest by certain taxpayers on their Federal tax returns under section 6011. This document also contains final regulations that modify and clarify some of the rules under 26 CFR part 301 relating to the disclosure obligations of material advisors under section 6111 and the list maintenance requirements of material advisors with respect to reportable transactions under section 6112.

On July 31, 2007, the IRS and Treasury Department issued final regulations under section 6011 (T.D. 9350, 72 FR 43146) 6111 (T.D. 9351, 72 FR 43157) and 6112 (T.D. 9352, 72 FR 43154) (the July 2007 regulations) that were published in the **Federal Register** on August 3, 2007. In the July 2007 regulations, the IRS and Treasury Department amended 26 CFR parts 20, 25, 31, 53, 54, and 56 to provide that certain taxpayers would be required to disclose transactions of interest, in addition to listed transactions,

on their Federal tax returns under section 6011. On September 10, 2009, the IRS and Treasury Department issued a notice of proposed rulemaking under sections 6011, 6111, and 6112 (REG–136563–07) (the September 2009 proposed regulations). The September 2009 proposed regulations were published in the **Federal Register** (74 FR 46705) on September 11, 2009.

In response to the September 2009 proposed regulations, the IRS and Treasury Department received two written public comments. A public hearing was not requested. After consideration of the comments received, the IRS and Treasury Department are adopting the proposed regulations without change.

Explanation of Comments

Two commentators expressed concern that if the IRS and Treasury Department designate a transaction involving gift, estate, or generation-skipping transfer taxes as a listed transaction or transaction of interest, that a corporate fiduciary, merely by acting as an executor or trustee with respect to an estate or trust that is incidental to the transaction, would be treated as a material advisor under section 6112 and the regulations thereunder. One of the commentators proposed that the September 2009 proposed regulations and existing final regulations under sections 6011, 6111, and 6112 be amended to require public comment before a transaction involving Chapters 11, 12, and 13 of the Code can be designated as a listed transaction or transaction of interest.

The IRS and Treasury Department believe that in the situation described by the commentators the existing regulations under sections 6111 and 6112 properly address which parties are material advisors, and transactions involving gift, estate, or generation-skipping transfer taxes should not be treated differently than other transactions. A fiduciary will not be treated as a material advisor merely by acting as an executor or trustee with respect to an estate or trust that is incidental to a transaction. A fiduciary will be treated as a material advisor only if the fiduciary provides material aid, assistance or advice as described in §301.6111–3(b)(2), the fiduciary directly or indirectly derives gross income in excess of the threshold amount as described in §301.6111–3(b)(3), and the transaction is entered into by the taxpayer.

In addition, the regulations are not amended to require advance notice before designating a transaction as a transaction of interest or as a listed transaction as suggested by a commentator. In appropriate circumstances, the IRS and Treasury Department may choose to publish advance notice of a transaction of interest and request comments in certain circumstances. The IRS and Treasury Department will determine whether to provide advance notice and a request for comments on a transaction by transaction basis. Accordingly, the proposed regulations will be adopted without change.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that most of the material advisors affected by these regulations are not small entities and for those material advisors that are small entities most of the information is already required under the current regulations. Any additional recordkeeping burdens on material advisors that result from this regulation are insubstantial. Also, the collection of information referenced in these regulations has been approved under OMB control number 1545–1686. The clarification and new information required by these final regulations add little or no new burden to those existing requirements. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Charles D. Wien, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 26 and 301 are amended as follows:

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Paragraph 1. The authority citation for part 26 is amended to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 26.6011–4 also issued under 26 U.S.C. 6011 * * *

Par. 2. Section 26.6011–4 is added to read as follows:

§26.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* or a *transaction of interest* as defined in §1.6011–4 of this chapter by the Commissioner in published guidance, and the listed transaction or transaction of interest involves a tax on generation-skipping transfers under chapter 13 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective/applicability date.* This section applies to listed transactions and transactions of interest entered into on or after November 14, 2011.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 301.6111–3 is amended as follows:

1. Paragraphs (b)(2)(i)(A) and (b)(3)(i)(B) are amended by adding the language "26.6011–4," after each occurrence of "25.6011–4,".

2. Paragraphs (c)(2) and (c)(13) are amended by adding the language "26.6011–4," after "25.6011–4,".

3. Paragraph (i)(1) is revised.

The revision reads as follows:

§301.6111–3 Disclosure of reportable transactions.

* * * * *

(i) *Effective/applicability date*—(1) *In general*. This section applies to transactions with respect to which a material advisor makes a tax statement on or after August 3, 2007. However, this section applies to transactions of interest entered into on or after November 2, 2006, with respect to which a material advisor makes a tax statement under this section on or after November 2, 2006. Paragraphs (b)(2)(i)(A), (b)(3)(i)(B), (c)(2), and (c)(13) of this section apply to transactions with respect to which a material advisor makes a tax statement under this section after November 14, 2011. Paragraph (h) of this section applies to ruling requests received on or after November 2, 2006. Otherwise, the rules that apply on or before November 14, 2011 are contained in this section in effect prior to November 14, 2011, (see 26 CFR part 301 revised as of April 1, 2011).

* * * * *

Par. 5. Section 301.6112–1 is amended as follows:

1. Paragraph (b)(1) is revised.

2. Paragraphs (c)(3) and (c)(12) are amended by adding the language "26.6011–4," after "25.6011–4,".

3. Paragraphs (f) and (g) are revised.

The revisions read as follows:

§301.6112–1 Material advisors of reportable transactions must keep lists of advisees, etc.

* * * * *

(b) * * * (1) *In general*. A separate list must be prepared and maintained for each reportable transaction. However, one list must be maintained for substantially similar transactions. A material advisor will have 30 calendar days from the date the list maintenance requirement first arises (see §301.6111–3(b)(4) and paragraph (a) of this section) with respect to a reportable transaction to prepare the list that must be maintained under this section with respect to that transaction. The Commissioner in his discretion also may provide in published guidance designating a transaction as a reportable transaction a list preparation time period greater than 30 calendar days. If a list is requested under this section during the list preparation time period, the request for the list will be treated as having been made on the day after the list preparation time period ends. A list must be maintained in a form that enables the IRS to determine without undue delay or difficulty the information required in paragraph (b)(3) of this section. The Commissioner in his discretion may provide in published guidance a form or method for maintaining or furnishing the list.

* * * * *

(f) *Designation agreements*. If more than one material advisor is required to maintain a list of persons for a reportable transaction, in accordance with paragraph (b) of this section, the material advisors may designate by written agreement a single material advisor (the designated material advisor) to maintain the list or a portion of the list. A designation agreement does not relieve material advisors from their obligation to maintain a list in accordance with paragraph (b) of this section or to furnish their list to the IRS in accordance with paragraph (e)(1) of this section, but a designation agreement may allow one material advisor to maintain a list on behalf of the other material advisors who are a party to the designation agreement. A material advisor is not relieved from the requirement of this section because a material advisor is unable to obtain the list from any designated material advisor, any designated material advisor did not maintain a list, or the list maintained by any designated material advisor is not complete. The existence of a designation agreement does not affect the ability of the IRS to request a list from any party to the designation agreement. The IRS may request a list from any party to the designation agreement, and the party receiving the request must furnish their list to the IRS in accordance with paragraph (e)(1) of this section, regardless of whether their list was maintained by another party pursuant to the terms of a designation agreement.

(g) *Effective/applicability date*. In general, this section applies to transactions with respect to which a material advisor makes a tax statement under §301.6111–3 on or after August 3, 2007. However, this section applies to transactions of interest entered into on or after November 2, 2006, with respect to which a material advisor makes a tax statement under §301.6111–3 on or after November 2, 2006. Paragraphs (b)(1), (c)(3), (c)(12), and (f) of this section apply to transactions with respect to which a material advisor makes a tax statement under §301.6111–3 after November 14, 2011.

Otherwise, the rules that apply on or before November 14, 2011, are contained in this section in effect prior to November 14, 2011, (see 26 CFR part 301 revised as of April 1, 2011).

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved November 4, 2011.

Emily S. McMahon,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on November 10, 2011, 8:45 a.m., and published in the issue of the Federal Register for November 14, 2011, 76 F.R. 70340)