

Reportable/Listed Transactions Disclosure

The American Jobs Creation Act of 2004 contains provisions concerning the reporting and disclosure of certain transactions that the IRS has determined may have a potential for tax avoidance or evasion.

Failure to report/disclose a reportable transaction results in a penalty of \$10,000 for an individual. The penalty increases to \$100,000 if the reportable transaction is deemed to be a “listed” transaction. Intentionally failing to report a “listed” transaction increases the penalty to \$200,000. There is no reasonable cause relief or appeal from the assertion of a penalty for failure to report a “listed” transaction.

Reportable Transactions include the following:

- Listed Transactions - Currently the IRS has identified 34 transactions. Please see the attached list and contact us for more specific details if you have questions.
- Confidential Transactions - transactions offered under conditions of confidentiality where you paid a minimum fee of \$50,000 directly or indirectly for the advice, analysis and/or strategy.
- Transactions With Contractual Protection where you are entitled to a refund if the intended tax benefits do not materialize.
- Loss Transactions of at least \$2 million before netting any gains.
- Book-Tax Difference Transactions of more than \$10 million.
- Transactions with a holding period of 45 days or less which gave rise to claiming any tax credit of \$250,000 or more.

If you directly or indirectly participated in a reportable transaction, please provide us with the details of the transaction. Please note that you may need to contact the manager of Partnerships, Limited Liability Companies and/or other entities that you have invested in to confirm that the entity did not participate in any reportable transactions or to obtain information about the transaction(s).

Index to Listed Transactions as of Last IRS Update, IRB 2009-31

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2. Multi-Employer Welfare Benefit Funds Exempt under 419
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4. Certain Distributions from Charitable Remainder Trusts (chutzpa trusts)
5. Partnership Distributions of Encumbered Property
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17. Lease In / Lease Out (LILO)
18. Prohibited Allocation of Securities in S-Corporations
19. Offshore Deferred Compensation Arrangements
20. Collectively Bargained Welfare Benefit Funds
21. Transfers of Compensatory Stock Options to Related Party
22. Lease Strips / Inflated Basis
23. 461(f) Contested Liabilities
24. Offsetting Foreign Currency Option Contracts
25. Roth IRA Corporations
26. S-Corps owned by ESOPs
27. Section 412(i) Qualified Plans
28. Foreign Tax Credit Intermediary
29. S-Corporation Tax Shelter
30. Inter-Company Financing Using Guaranteed Payments
31. Sale In, Lease Out (SILO) Transactions
32. Offshore Currency Transactions
33. SEC 419(e) Plans using Cash Value Life Insurance
34. Indifferent Party Transactions

If you have questions regarding abusive tax shelters or listed transactions, please call us to discuss, and/or refer to the IRS website at: <http://www.irs.gov/businesses/corporations/article/0,,id=97384,00.html> (for general information) or http://www.irs.gov/irb/2009-31_IRB/ar07.html (for information with respect to listed transactions).

Current Listed Transactions as of Last IRS Update, IRB 2009-31

In Notice 2004-67 published September 24, 2004, the Internal Revenue Service outlined what the Commissioner deems to be "listed transactions". In addition to the other five reportable transactions contained in the regulations to Section 6111, transactions that are the same as or substantially similar to transactions described in the list below have been determined by the Service to be tax avoidance transactions for which disclosure, registration and/or list maintenance is required. Failure to do so on behalf of taxpayers, promoters or material advisors may lead to non-disclosure and/or accuracy-related penalties.

- (1) **Accelerated Deduction for Plan Contributions** - identified February 28, 2000
Transactions in which taxpayers claim deductions for contributions to a qualified cash or deferred arrangement or matching contributions to a defined contribution plan where the contributions are attributable to compensation earned by plan participants after the end of the taxable year - *Rev. Rul. 90-105*
- (2) **Multi-Employer Welfare Benefit Funds Exempt under 419** - identified February 28, 2000
Certain trust arrangements purported to qualify as multiple employer welfare benefit funds exempt from the limits of §§ 419 and 419A of the Internal Revenue Code - *Notice 95-34*
- (3) **Contingent Installment Note Sale Transactions** - identified February 28, 2000
Transactions involving contingent installment sales of securities by partnerships in order to accelerate and allocate income to a tax-indifferent partner, such as a tax-exempt entity or foreign person, and to allocate later losses to another partner - *in ASA Investering Partnership v. Commissioner and ACM Partnership v. Commissioner*
- (4) **Certain Distributions from Charitable Remainder Trusts (chutzpa trusts)** - identified February 28, 2000
Transactions involving distributions described in § 1.643(a)-8 from charitable remainder trusts - *Reg § 1.643(a)-8*
- (5) **Partnership Distributions of Encumbered Property** - identified February 28, 2000
Transactions involving the distribution of encumbered property in which taxpayers claim tax losses for capital outlays that they have in fact recovered - *Notice 99-59*
- (6) **Financing Arrangements Using Fast-Pay Stock** - identified February 28, 2000
Transactions involving fast-pay arrangements, such as through the use of RICs or REITs - *Reg § 1.7701(l)-3(b)*
- (7) **Debt Straddles** - identified February 28, 2000
Certain transactions involving the acquisition of two debt instruments the values of which are expected to change significantly at about the same time in opposite directions - *Rev. Rul. 2000-12*
- (8) **Artificial Inflation of Partnership Basis** - identified August 11, 2000
Transactions generating losses resulting from artificially inflating the basis of partnership interests - *Notice 2000-44, Reg § 1.752-6T, Reg §§ 1.752-1(a), Reg § 1.752-7*

- (9) **Stock Compensation Transactions** - identified November 16, 2000
Transactions involving the purchase of a parent corporation's stock by a subsidiary, a subsequent transfer of the purchased parent stock from the subsidiary to the parent's employees, and the eventual liquidation or sale of the subsidiary - *Notice 2000-60*
- (10) **Guam Trusts** - identified November 21, 2000
Transactions purporting to apply § 935 to Guamanian trusts - *Notice 2000-61*
- (11) **Intermediary Transactions** - identified January 18, 2001
Transactions involving the use of an intermediary to sell the assets of a corporation - *Notice 2001-16*
- (12) **Contingent Liabilities** - identified January 18, 2001
Transactions involving a loss on the sale of stock acquired in a purported § 351 transfer of a high basis asset to a corporation and the corporation's assumption of a liability that the transferor has not yet taken into account for federal income tax purposes - *Notice 2001-17*
- (13) **302/308 Basis Shifting** - identified July 26, 2001
Certain redemptions of stock in transactions not subject to U.S. tax in which the basis of the redeemed stock is purported to shift to a U.S. taxpayer - *Notice 2001-45*
- (14) **Custom Adjustable Rate Debt (Card)** - identified March 18, 2002
Transactions involving the use of a loan assumption agreement to inflate basis in assets acquired from another party to claim losses - *Notice 2002-21*
- (15) **Contingent Swaps** - identified May 6, 2002
Transactions involving the use of a notional principal contract to claim current deductions for periodic payments made by a taxpayer while disregarding the accrual of a right to receive offsetting payments in the future - *Notice 2002-35*
- (16) **Tiered Partnership Straddle / Common Trust Fund Straddle** - identified June 25, 2002
- a. Transactions involving the use of a straddle, a tiered partnership structure, a transitory partner, and the absence of a § 754 election to claim a permanent non-economic loss - *Notice 2002-50*
 - b. Transactions involving the use of a straddle, an S corporation or a partnership, and one or more transitory shareholders or partners to claim a loss while deferring an offsetting - *Notice 2002-65*
 - c. Transactions involving the use of economically offsetting positions, one or more tax indifferent parties, and the common trust fund accounting rules of § 584 to allow a taxpayer to claim a non-economic loss - *Notice 2003-54*
- (17) **Lease In / Lease Out (LILLO)** - identified February 28, 2000
Transactions in which a taxpayer purports to lease property and then purports to immediately sublease it back to the lessor (often referred to as "lease-in/lease-out" or "LILLO" transactions) - *Rev. Rul. 2002-69*
- (18) **Prohibited Allocation of Securities in S-Corporations** - identified December 17, 2002
Certain arrangements involving the transfer of employee stock ownership plans (ESOPs) that hold stock in an S corporation for the purpose of claiming eligibility for the delayed effective date of § 409(p) - *Rev. Rul. 2003-6*

- (19) **Offshore Deferred Compensation Arrangements** - identified April 4, 2003
Certain arrangements involving leasing companies that have been used to avoid or evade federal income and employment taxes - *Notice 2003-22*
- (20) **Collectively Bargained Welfare Benefit Funds** - identified April 11, 2003
Certain arrangements that purportedly qualify as collectively-bargained welfare benefit funds excepted from the account limits of §§ 419 and 419A - *Notice 2003-24*
- (21) **Transfers of Compensatory Stock Options to Related Party** - identified July 1, 2003
Transactions involving compensatory stock options and related persons to avoid or evade federal income and employment taxes - *Notice 2003-47*
- (22) **Lease Strips / Inflated Basis** - identified February 28, 2000
Transactions in which one participant claims to realize rental or other income from property or service contracts and another participant claims the deductions related to that income (often referred to as "lease strips" - *Notice 2003-55*
- (23) **461(f) Contested Liabilities** - identified November 19, 2003
Certain transactions that use contested liability trusts improperly to accelerate deductions for contested liabilities under § 461(f) - *Notice 2003-77, Reg § 1.461-2, and Rev. Proc. 2004-31 - for procedures which taxpayers must use to change their methods of accounting*
- (24) **Offsetting Foreign Currency Option Contracts** - identified December 4, 2003
Certain transactions in which a taxpayer claims a loss upon the assignment of a § 1256 contract to a charity but fails to report the recognition of gain when the taxpayer's obligation under an offsetting non- section 1256 contract terminates - *Notice 2003-81*
- (25) **Roth IRA Corporations** - identified December 31, 2003
Certain transactions designed to avoid the limitations on contributions to Roth IRAs described in § 408A - *Notice 2004-8*
- (26) **S-Corps owned by ESOPs** - identified January 23, 2004
Transactions that involve segregating the business profits of an ESOP-owned S corporation in a qualified subchapter S subsidiary, so that rank-and-file employees do not benefit from participation in the ESOP - *Rev. Rul. 2004-4*
- (27) **Section 412(i) Qualified Plans** - identified February 13, 2004
Certain arrangements in which an employer deducts contributions to a qualified pension plan for premiums on life insurance contracts that provide for death benefits in excess of the participant's death benefit, where under the terms of the plan, the balance of the death benefit proceeds revert to the plan as a return on investment - *Rev. Rul. 2004-20, "Situation 2", Rev. Proc. 2004-16*
- (28) **Foreign Tax Credit Intermediary** - identified February 17, 2004
Transactions in which, pursuant to a prearranged plan, a domestic corporation purports to acquire stock in a foreign target corporation and to make an election under § 338 before selling all or substantially all of the target corporation's assets in a preplanned transaction that generates a taxable gain for foreign tax purposes (but not for U.S. tax purposes) - *Notice 2004-20*

- (29) **S-Corporation Tax Shelter** - identified April 1, 2004
Transactions in which S corporation shareholders attempt to transfer the incidence of taxation on S corporation income by purportedly donating S corporation nonvoting stock to an exempt organization while retaining the economic benefits associated with that stock - *Notice 2004-30*
- (30) **Inter-Company Financing Using Guaranteed Payments** - identified April 1, 2004
Transactions in which corporations claim inappropriate deductions for payments made through a partnership - *Notice 2004-31*
- (31) **SIL0 Transactions** – identified February 11, 2005
Transactions in which a taxpayer enters into a purported sale-leaseback arrangement with a tax-indifferent person in which substantially all of the tax-indifferent person's payment obligations are economically defeased and the taxpayer's risk of loss from a decline, and opportunity for profit from an increase, in the value of the leased property are limited – *Notice 2005-13*
- (32) **Offshore Currency Transactions** – identified July 16, 2007
Transactions in which a U.S. taxpayer uses offsetting positions with respect to foreign currency or other property for the purpose of importing a loss, but not the corresponding gain, in determining U.S. taxable income – *Notice 2007-57*
- (33) **SEC 419(e) Plans using Cash Value Life Insurance** – identified October 17, 2007
Transactions in which certain trust arrangements claiming to be welfare benefit funds and involving cash value life insurance policies that are being promoted to and used by taxpayers to improperly claim federal income and employment tax benefits – *Notice 2007-83*
- (34) **Indifferent Party Transactions** – identified February 27, 2008
Transactions in which a tax indifferent party, directly or indirectly, contributes one or more distressed assets (for example, a creditor's interests in debt) with a high basis and low fair market value to a trust or series of trusts and sub-trusts, and a U.S. taxpayer acquires an interest in the trust (and/or series of trusts and/or sub-trusts) for the purpose of shifting a built-in loss from the tax indifferent party to the U.S. taxpayer that has not incurred the economic loss – *Notice 2008-34, 2008-12 I.R.B.*