



# Instructions for Form 8886

(Rev. December 2005)

## Reportable Transaction Disclosure Statement

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

### What's New

- The American Jobs Creation Act of 2004 (AJCA) established penalties related to the failure to file Form 8886 to disclose reportable transactions and for understatements attributable to any reportable transaction. For more details, see *Penalties* on page 3.
- AJCA also provided an extended period of limitations to assess any tax with respect to a listed transaction that a taxpayer failed to disclose as required. For more information, see *Previously Undisclosed Listed Transactions* on page 3.
- The category for significant book-tax differences has been eliminated for transactions disclosed after January 5, 2006. See *Transactions With a Significant Book-Tax Difference* on page 2.
- The mailing address has changed for submitting a duplicate copy of initial year filings (the first year you participate in a reportable transaction). See *When and How To File* on page 3.

### General Instructions

#### Purpose of Form

Use Form 8886 to disclose information for each reportable transaction in which you participated. See *Participation in a Reportable Transaction* below to determine if you participated in a reportable transaction. For more information on the disclosure rules, see Regulations section 1.6011-4.

Generally, you must file a separate Form 8886 for each reportable transaction. However, you may report more than one transaction on one form if the transactions are the same or substantially similar. See the definition of substantially similar below.

The fact that a transaction must be reported on this form does not mean the tax benefits from the transaction will be disallowed.

#### Who Must File

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 income tax return or information return must file Form 8886. However, a regulated investment company (RIC) (as defined in section 851) or an investment vehicle that is at least 95% owned by one or more RICs at all times during the course of a transaction is not required to file Form 8886 for any transaction other than a listed transaction (as defined below).

### Definitions

#### Transaction

A transaction includes all of the factual elements relevant to the expected tax treatment of any 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 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.

#### Participation in a Reportable Transaction

A reportable transaction is a transaction described in one or more of the following five categories.

#### Listed Transactions

This category includes transactions that are 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 2004-67, 2004-41 I.R.B. 600
- Notice 2005-13, 2005-9 I.R.B. 630

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 listed transactions in the above notices and rulings will also be periodically updated in future issues of the Internal Revenue Bulletin. 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 2004-67, 2004-41 I.R.B. 600, at [www.irs.gov/pub/irs-irbs/irb04-41.pdf](http://www.irs.gov/pub/irs-irbs/irb04-41.pdf).

You have participated in a listed transaction if any of the following applies.

- Your tax return reflects tax consequences or a tax strategy described in published guidance that lists the transaction.
- You know or have reason to know that tax benefits reflected on your tax return are

derived directly or indirectly from such tax consequences or tax strategy.

- You are in a class of persons that published guidance treats as participants in a listed transaction.

#### Confidential Transactions

This category includes transactions that are offered to you under conditions of confidentiality and for which you paid an advisor a minimum fee (defined below). A transaction is considered to be offered under conditions of confidentiality if the advisor places a limitation on your 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 you. 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, 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.

You have participated in a confidential transaction if your tax return reflects a tax benefit from the transaction. If disclosure by a pass-through entity (partnership, S corporation, or trust) is limited, but disclosure by the partner, shareholder, or beneficiary is not limited, then the pass-through entity (but not the partner, shareholder, or beneficiary) has participated in the confidential transaction.

#### Transactions With Contractual Protection

This category includes transactions for which you have, 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 your realization of tax benefits from the transaction. For exceptions and other details, see Regulations section 1.6011-4(b)(4).

You have participated in a transaction with contractual protection if your tax return reflects a tax benefit from the transaction. If

a pass-through entity (partnership, S corporation, or trust) has the right to a full or partial refund of fees or has a contingent fee arrangement, but the partner, shareholder, or beneficiary individually does not, then the pass-through entity (but not the partner, shareholder, or beneficiary) has participated in the transaction with contractual protection.

## Loss Transactions

This category includes transactions that result in your claiming a loss under section 165 (described below) if the gross amount of the loss (before netting any gain against it) is:

**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 (other than 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 (other than 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).

For purposes of the above threshold amounts, a section 165 loss does not take into account offsetting gains, other income, or limitations. The full amount of a loss is taken into account in the year it was sustained, regardless of whether all or part of the loss enters into the computation of 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.

In determining whether a transaction results in a taxpayer claiming a loss that meets the threshold amounts over a combination of tax years as described above, only losses claimed in the tax year that 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).

You have participated in a loss transaction if your tax return reflects a section 165 loss that equals or exceeds the applicable threshold amount. If you are a partner, shareholder, or beneficiary of a pass-through entity (partnership, S corporation, or trust), you have participated in a loss transaction if your tax return reflects a section 165 loss allocable to you from the pass-through entity (disregarding netting at the entity level) that equals or exceeds the applicable threshold amount.

## Transactions With a Significant Book-Tax Difference

The disclosure requirement for this category has been eliminated by Notice 2006-6. Transactions with a significant book-tax difference that would have been required to be disclosed on returns filed with due dates (including extensions) after January 5, 2006 are no longer reportable transactions. These transactions do not need to be disclosed on Form 8886. For more details, see Notice 2006-6, 2006-5 I.R.B. 385.

However, Notice 2006-6 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 information on book-tax difference transactions, see Regulations section 1.6011-4 and the instructions for Form 8886 for the year in which the transaction should have been disclosed.

If the significant book-tax difference transaction is also a transaction described in any of the five remaining reportable transaction categories, the transaction must still be disclosed. For more information, see the instructions for line 2 on page 4.

## Transactions With a Brief Asset Holding Period

This category includes transactions that result in your claiming a tax credit (including a foreign tax credit) of more than \$250,000 if the asset giving rise to the credit was held by you for 45 days or less. For purposes of determining the holding period of the asset, the principles of section 246(c)(3) and (c)(4) apply. Disregard any transactions generating a foreign tax credit for withholding taxes or other taxes imposed on a dividend that are not disallowed under section 901(k) (including transactions eligible for the exception for security dealers under section 901(k)(4)).

You have participated in a transaction involving a brief asset holding period if your tax return reflects items giving rise to a tax credit of more than \$250,000. If you are a partner, shareholder, or beneficiary of a pass-through entity (partnership, S corporation, or trust), you have participated in such a transaction if you are claiming a tax credit on your tax return from the pass-through entity (disregarding netting at the entity level) of more than \$250,000.

# Exceptions

## 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. The IRS may also determine by individual letter ruling that an individual letter ruling request satisfies the reporting requirements. However, an individual letter ruling may be relied upon only by the taxpayer who requested the individual letter ruling. This includes a transaction that would otherwise be included in any of the above reportable transaction categories.

## Certain Lease Transactions

Customary leasing transactions involving tangible personal property that are exempt from the tax shelter registration requirements and the list maintenance requirements under Notice 2001-18, 2001-9 I.R.B. 731, are not required to be reported on Form 8886 unless the transaction is a listed transaction.

## Shareholders of Foreign Corporations

Special rules apply when determining whether you participated in a reportable transaction if you are a U.S. shareholder of a foreign personal holding company, for tax years beginning before January 1, 2005, or a controlled foreign corporation, or if you are a 10% shareholder of a qualified electing fund. See Regulations section 1.6011-4(c)(3)(i)(G) for details.

## Request for Ruling

You may request a ruling from the IRS to determine whether a transaction must be disclosed. The request for a ruling must be submitted to the IRS by the date Form 8886 would otherwise be required to be filed. Send the request to Internal Revenue Service, Attn: CC:PA:LPD:DRU, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. However, if a private delivery service is used, send the request to Internal Revenue Service, Attn: CC:PA:LPD:DRU, Room 5336, 1111 Constitution Avenue, NW, Washington, DC 20224. See Rev. Proc. 2005-1, 2005-1 I.R.B. 1, or subsequent IRS guidance for more details. If the request fully discloses all relevant facts relating to the transaction, your requirement to disclose the transaction will be suspended during the period that the ruling request is pending. If the IRS determines that the transaction is a reportable transaction, you must disclose the transaction on Form 8886 and file the form by the 60th day after the issuance of the ruling. Also send a copy of the form by this date to the address shown in *When and How To File* below. If your request for a ruling is withdrawn, you must file the form by the 60th day after the date it is withdrawn.

## Recordkeeping

You must keep a copy of all documents and other records related to a reportable transaction. See Regulations section 1.6011-4(g) for more details.



## When and How To File

Attach Form 8886 to your income tax return or information return (including a partnership, S corporation or trust return), including amended returns, for each tax year in which you participated in a reportable transaction. If a reportable transaction results in a loss or credit carried back to a prior tax year, attach Form 8886 to an application for tentative refund (Form 1045 or 1139) or amended return for the carryback years. If you filed a return or amended return that reflects the tax consequences or tax strategy of a transaction that later becomes a listed transaction, attach Form 8886 to the first tax return you file after the date the transaction became a listed transaction.

**Also file separately.** If this is an initial year filing of Form 8886, send an exact copy of the form to the Office of Tax Shelter Analysis (OTSA) at the following address when you file the form with your tax return:  
Internal Revenue Service  
OTSA Mail Stop 4915  
1973 North Rulon White Blvd.  
Ogden, Utah 84404

If you file your income tax return electronically, the copy sent to OTSA must show exactly the same information, word for word, provided with the electronically filed return and it must be provided on the official IRS Form 8886 or an exact copy of the form. If you use a computer-generated or substitute Form 8886, it must be an exact copy of the official IRS form. See the instructions for your income tax return for information on electronic filing and substitute forms.

## Penalties

There is a monetary penalty under section 6707A for the failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction. The penalty for failure to include information with respect to a reportable transaction, other than a listed transaction, is \$10,000 in the case of a natural person, and \$50,000 in any other case. The penalty for failure to include information with respect to a listed transaction is \$100,000 in the case of a natural person and \$200,000 in any other case. This penalty is in addition to any other penalty that may be imposed. See section 6707A and Notice 2005-11, 2005-7 I.R.B. 493 for more information.

If you have a reportable transaction understatement, an accuracy-related penalty may be imposed under section 6662A. This penalty applies to the amount of the understatement that is attributable to any reportable transaction with a significant tax avoidance purpose. The penalty increases for transactions that are not disclosed in accordance with Form 8886 and these instructions. If the transaction is not disclosed and a reportable transaction understatement exists, you will not have a reasonable cause and good faith defense under section 6664(d) with respect to the accuracy-related penalty under section 6662A. For more information, see section 6662A and Notice 2005-12, 2005-7 I.R.B. 494.

A penalty is assessed for each failure by any person required to file a Form 8886, if the person (a) fails to file the form by the due date, including extensions, or (b) files a form that fails to include all the information required (or includes incorrect information). The Form 8886 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 you to penalty under sections 6707A and 6662A.



*If you are required to pay a penalty under section 6707A or section 6662A, you may be required to disclose them on reports filed with the Securities and Exchange Commission. If you do not disclose these penalties, you may incur additional penalties under section 6707A(e). For more information, see section 6707A(e) and Rev. Proc. 2005-51, 2005-33 I.R.B. 296.*

## Previously Undisclosed Listed Transactions

If you are required to disclose a listed transaction and fail to do so within the time and manner prescribed under section 6011 and the related regulations, then under section 6501(c)(10) the period of limitations to assess any tax with respect to the listed transaction will be extended beyond the normal assessment period until one year after the earlier of either:

- The date you disclose the transaction by filing Form 8886 in accordance with the manner prescribed in Rev. Proc. 2005-26 (or subsequently published guidance), or
- The date that a material advisor provides the information required under section 6112 in response to a request by the IRS under section 6112.

Section 6501(c)(10) is effective for tax years with respect to which the limitations period on assessment did not expire prior to October 22, 2004. Section 6501(c)(10) does not revive an assessment period that expired prior to October 22, 2004. For more information, see Rev. Proc. 2005-26, 2005-17 I.R.B. 965.

If you are filing Form 8886 to disclose a previously undisclosed listed transaction for purposes of section 6501(c)(10), submit the form and a cover letter to the Internal Revenue Service Center where your original tax return was filed. Write across the top of page 1 of each Form 8886 the following statement: "Section 6501(c)(10) Disclosure" followed by the tax year and tax return to which the disclosure statement applies. For example, if the Form 8886 relates to your Form 1040 for the 2002 tax year, you must include the following statement: "Section 6501(c)(10) Disclosure; 2002 Form 1040" on the form. The cover letter must identify the tax return to which the disclosure statement relates and the following statement signed under penalties of perjury by the taxpayer and if applicable, the paid preparer of Form 8886: "Under penalties of perjury, I declare that I have examined this reportable transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement

is true, correct, and complete. Declaration of preparer (other than the taxpayer) is based on all information of which the preparer has any knowledge." Separate Forms 8886 and separate cover letters must be submitted for each tax year for which you participated in the undisclosed listed transaction. You must also submit a copy of the form and cover letter simultaneously to OTSA at the address indicated above. See Rev. Proc. 2005-26, 2005-17 I.R.B. 965 for additional guidance.

## Specific Instructions

### How To Complete Form 8886

In order to be considered complete, Form 8886 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 your name and identifying number at the top of each additional sheet.

### Item A

Enter the form number and year of the tax return with which this Form 8886 is filed (for example, Form 1040). If the tax return has a calendar tax year, enter the year shown on the return (for example, 2005). If it is a fiscal year return, enter the date the fiscal year ends using the mm/dd/yyyy format (for example, 06/30/2006).

### Item B

Check all the box(es) that apply.

**Initial year filer.** If this is the first year that you are filing a Form 8886 to disclose this transaction, check this box and file a duplicate copy of the form with OTSA (see *When and How To File* above).

**Protective disclosure.** You may indicate that you are filing on a protective basis by checking this box (under the option provided in Regulations section 1.6011-4(f)).

### Line 1a

Enter the name, if any, by which the transaction is known or commonly referred to. 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). If you are reporting more than one transaction and the transactions have different names, enter all names in the space provided. If additional space is needed, write "See Additional List" and attach a list.

### Line 1b

Enter the first year that you participated in this transaction in year format (yyyy). If you are reporting for more than one transaction, enter all initial years in the space provided. If additional space is needed, write "See Additional List" and attach a list.

**Note.** This may not be the same as the year for which you are disclosing a reportable transaction.



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

## Line 1c

Enter your material advisor registration number(s) (9 digits) and/or the tax shelter registration number(s) (11 digits), if any. If you are reporting either of these numbers for more than one transaction, enter all numbers in the space provided. If additional space is needed, write "See Additional List" and attach a list.

### Material advisor registration number(s).

Enter the 9 digit material advisor registration number(s) for the transaction you are reporting on this Form 8886. Enter all numbers in the space provided. If additional space is needed, write "See Additional List" and attach a list. Material advisor registration numbers are issued to material advisors who file a return disclosing a reportable transaction under section 6111. Material advisors must give this number to the investors. See section 6111 and Notice 2004-80, 2004-50 I.R.B. 963 for more information.

**Tax shelter registration number(s).** If the transaction(s) has been registered as a tax shelter under section 6111, provide the registration number(s) that has been assigned to the tax shelter. If you are reporting more than one transaction and tax shelter registration number, enter all numbers in the space provided. If additional space is needed, write "See Additional List" and attach a list. Generally, a tax shelter registration number is reported on Form 8271, Investor Reporting of Tax Shelter Registration Number. If you are a partner of a partnership or a shareholder of an S corporation that invested in a tax shelter, you may receive a Form 8271 with your Schedule K-1.

## Line 2

Check the box for all categories that apply to the transaction being reported. The five reportable transaction categories are described under *Participation in a Reportable Transaction* on page 1.

**Note.** The category for significant book-tax difference transactions has been eliminated by Notice 2006-6. Transactions with a significant book-tax difference that would have been required to be disclosed on returns filed with a due date (including extensions) after January 5, 2006 are no longer reportable transactions. Do not check box 2e for these transactions.

However, if the transaction is also a transaction described in any of the five remaining reportable transaction categories, it must still be disclosed and the box for all appropriate categories (that is, a, b, c, d, or f) must be checked.

For more details, see *Transactions With a Significant Book-Tax Difference* on page 2 and Notice 2006-6.

## Line 3

Provide a brief identifying description of the listed transaction and identify the notice, revenue ruling, or regulation (for example, Regulations section 1.634(a)-8 or Notice 2002-70) that identified the listed transaction as shown in Notice 2004-67 or later IRS guidance.

## Line 4

Do not report more than one transaction on this form unless the transactions are the same or substantially similar. See the definition of substantially similar on page 1.

## Line 5

If you invested in the transaction through another entity(ies), such as a partnership, an S corporation, or a foreign corporation, complete lines 5a-d. If you are reporting more than one entity, separate the information for each entity by commas in each space provided. For line 5c, enter the form number of the U.S. tax return filed by the entity (for example, Form 1065). If the entity did not file a U.S. tax return, enter "none." Enter the EIN of the entity, if any (include the hyphen).

## Line 7

Include the facts that may be relevant to understanding the claimed or expected federal income tax treatment of the transaction. In addition:

1. Provide the complete names and addresses of all parties to the transaction (including, but not limited to, participants in the transaction), and describe their involvement in the transaction. For example, such parties may include:
  - Other investors in the transaction.
  - Tax-exempt entities that received fees, contributions, income, or gains in connection with the transaction.
  - Foreign individuals or entities not subject to U.S. income tax that received fees, income, or gains in connection with the transaction.
  - Financial institutions that loaned money used in the transaction.
2. If you checked box 2b, explain how your disclosure of information concerning the transaction was limited (for example, by contract or verbal agreement) and the nature and extent of the disclosure limitations. See Regulations section 1.6011-4(b)(3) for more details.
3. If you checked box 2c, describe the terms of the contractual protection. See Regulations section 1.6011-4(b)(4) for more details.

4. If you checked box 2d, explain how you calculated the basis of the asset for which there was a loss.

If you need more space, follow the instructions under *How To Complete Form 8886* on page 3.

## Line 8

Tax benefits include deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as a tax-exempt organization, or any other tax consequences that may reduce your federal income tax liability by affecting the amount, timing, character, or source of any item of income, gain, loss, expense, or credit.

If you need more space, follow the instructions under *How To Complete Form 8886* on page 3.

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**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.

<b>Recordkeeping</b> . . . . .	6 hr., 13 min.
<b>Learning about the law or the form</b> . . . . .	4 hr., 28 min.
<b>Preparing, copying, assembling, and sending the form to the IRS</b> . . . . .	4 hr., 46 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-6406, Washington, DC 20224. Do not send the form to this address. Instead, see *When and How To File* on page 3.

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