

Rev. Proc. 2004-65

SECTION 1. PURPOSE

This revenue procedure provides that certain transactions with contractual protection are not reportable transactions for purposes of the disclosure rules under § 1.6011-4(b)(4) of the Income Tax Regulations. However, these transactions may be reportable transactions for purposes of the disclosure rules under § 1.6011-4(b)(2), (b)(3), (b)(5), (b)(6), or (b)(7).

SECTION 2. BACKGROUND

.01 Section 1.6011-4 requires a taxpayer that participates in a reportable transaction to disclose the transaction in accordance with the procedures provided in § 1.6011-4. Under § 1.6011-4(b), there are six categories of reportable transactions. One category of reportable transaction is a transaction with contractual protection. A transaction with contractual protection is defined in § 1.6011-4(b)(4). Generally, a transaction with contractual protection is a transaction involving a fee that is refundable if all or part of the intended tax consequences from the transaction are not sustained or a transaction involving a fee that is contingent on the taxpayer's realization of the tax benefits from the transaction.

.02 Section 1.6011-4(b)(8)(i) provides that a transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of § 1.6011-4.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that may be required to disclose reportable transactions under § 1.6011-4, material advisors that may be required to disclose reportable transactions under § 6111, as amended by § 815 of the American Jobs Creation Act of 2004, P.L. 108-357, 118 Stat. 1418 (October 22, 2004), and material advisors that may be required to maintain lists under former and new § 6112.

SECTION 4. APPLICATION

.01 *In general.* The definition of a transaction with contractual protection includes references to "tax consequences" and "tax benefits." For purposes of § 1.6011-4, "tax" is defined as "Federal income tax." § 1.6011-4(c)(5). Accordingly, § 1.6011-4(b)(4) does not apply to transactions in which the refundable or contingent fees are based on the taxpayer's liability for taxes other than federal income taxes.

.02 *Exceptions.* The following transactions are not taken into account in determining whether a transaction is a transaction with contractual protection under § 1.6011-4(b)(4):

(1) Transactions in which the refundable or contingent fee is related to the work opportunity credit under § 51 of the Internal Revenue Code.

(2) Transactions in which the refundable or contingent fee is related to the welfare-to-work credit under § 51A.

(3) Transactions in which the refundable or contingent fee is related to the Indian employment credit under § 45A(a).

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective November 16, 2004, the date this revenue procedure was released to the public. This revenue procedure applies to transactions that are entered into on or after January 1, 2003.

SECTION 6. DRAFTING INFORMATION

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