

be issued in separate published guidance.

7. Section 6011—Form 8886

Taxpayers will disclose reportable transactions under the final regulations on Form 8886. Reportable transactions entered into on or after January 1, 2003, and prior to February 28, 2003, for which the taxpayer does not choose to apply the final regulations, may be disclosed on Form 8886 or as provided in § 1.6011-4T(c) as published in the **Federal Register** (67 FR 41324) on June 18, 2002. Form 8886 will allow taxpayers to aggregate substantially similar transactions on one form for disclosure purposes.

8. Section 6112

Commentators requested clarification on the definition of a material advisor and the threshold fee requirement. In response to those comments, the final regulations provide that a person is a material advisor if the person is required to register a transaction under section 6111, or the person receives at least a minimum fee with respect to the transaction and makes a tax statement to certain taxpayers. In addition, the IRS and Treasury Department have clarified that fees are defined as all fees for services for advice (whether or not tax advice) or for the implementation of a transaction that is a potentially abusive tax shelter.

In the final regulations, the IRS and Treasury Department have clarified that the procedures for asserting a privilege claim apply to information required to be maintained in § 301.6112-1(e)(3)(i)(I) that might be privileged. This change reflects the IRS and Treasury Department's belief that the other information covered by these regulations is not privileged. These procedures neither expand nor contract the scope of items that may be privileged.

Effective Date

Regulations §§ 1.6011-4, 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, 56.6011-4, 301.6111-2, and 301.6112-1 apply to transactions entered into on or after February 28, 2003.

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 also has 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. With regard to disclosure and registration, this certification is based upon the fact that the time required to prepare or retain the disclosure or registration is not lengthy and will not have a significant impact on those small entities that are required to provide disclosure or to register. With regard to list maintenance, this certification is based upon the fact that the number of respondents is small, those persons responsible for maintaining the list described in the regulations are principally sophisticated businesses, including accounting firms and law firms, and very few respondents, if any, are likely to be small businesses. 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 Internal Revenue 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 their impact on small business.

Drafting Information

The principal authors of these regulations are Tara P. Volungis and Charlotte Chyr of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate tax, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 56

Excise taxes, Lobbying, Nonprofit organizations, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, 25, 31, 53, 54, 56, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

Par. 2. Section 1.6011-4 is added to read as follows:

§ 1.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* Every taxpayer that has participated, as described in paragraph (c)(3) of this section, in a reportable transaction within the meaning of paragraph (b) of this section and who is required to file a tax return must attach to its return for the taxable year described in paragraph (e) of this section a disclosure statement in the form prescribed by paragraph (d) of this section. The fact that a transaction is a reportable transaction shall not affect the legal determination of whether the taxpayer's treatment of the transaction is proper.

(b) *Reportable transactions*—(1) *In general.* A reportable transaction is a transaction described in any of the paragraphs (b)(2) through (7) of this section. The term transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan. There are six categories of reportable transactions: listed transactions, confidential transactions, transactions with contractual protection, loss transactions, transactions with a significant book-tax difference, and