

(2) *Protective disclosures.* If a taxpayer is uncertain whether a transaction must be disclosed under this section, the taxpayer may disclose the transaction in accordance with the requirements of this section, and indicate on the disclosure statement that the taxpayer is uncertain whether the transaction is required to be disclosed under this section and that the disclosure statement is being filed on a protective basis.

(3) *Rulings on the merits of a transaction.* If a taxpayer requests a ruling on the merits of a specific transaction on or before the date that disclosure would otherwise be required under this section, and receives a favorable ruling as to the transaction, the disclosure rules under this section will be deemed to have been satisfied by that taxpayer with regard to that transaction, so long as the request fully discloses all relevant facts relating to the transaction which would otherwise be required to be disclosed under this section.

(g) *Retention of documents.* In accordance with the instructions to Form 8886, the taxpayer must retain a copy of all documents and other records related to a transaction subject to disclosure under this section that are material to an understanding of the tax treatment or tax structure of the transaction. The documents must be retained until the expiration of the statute of limitations applicable to the final taxable year for which disclosure of the transaction was required under this section. (This document retention requirement is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) The documents may include the following: marketing materials related to the transaction; written analyses used in decision-making related to the transaction; correspondence and agreements between the taxpayer and any advisor, lender, or other party to the reportable transaction that relate to the transaction; documents discussing, referring to, or demonstrating the purported or claimed tax benefits arising from the reportable transaction; and documents, if any, referring to the business purposes for the reportable transaction. A taxpayer is not required to retain earlier drafts of a document if the taxpayer retains a copy of the final document (or, if there is no final document, the most recent draft of the document) and the final document (or most recent draft) contains all the information in the earlier drafts of the document that is material to an understanding of the purported tax

treatment or tax structure of the transaction.

(h) *Effective dates.* This section applies to Federal income tax returns filed after February 28, 2000. However, paragraphs (a) through (g) of this section apply to transactions entered into on or after February 28, 2003. All the rules in paragraphs (a) through (g) of this section may be relied upon for transactions entered into on or after January 1, 2003, and before February 28, 2003. Otherwise, the rules that apply with respect to transactions entered into before February 28, 2003 are contained in § 1.6011-4T in effect prior to February 28, 2003 (see 26 CFR part 1 revised as of April 1, 2002, 2002-28 I.R.B. 90, and 2002-45 I.R.B. 818 (see § 601.601(d)(2) of this chapter)).

§ 1.6011-4T [Removed]

Par. 3. Section 1.6011-4T is removed.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 4. The authority citation for part 20 continues to read in part as follows:

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

Par. 5. Section 20.6011-4 is added to read as follows:

§ 20.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* as defined in § 1.6011-4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an estate tax under chapter 11 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

§ 20.6011-4T [Removed]

Par. 6. Section 20.6011-4T is removed.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 7. The authority citation for part 25 continues to read in part as follows:

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

Par. 8. Section 25.6011-4 is added to read as follows:

§ 25.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* as

defined in § 1.6011-4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves a gift tax under chapter 12 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

§ 25.6011-4T [Removed]

Par. 9. Section 25.6011-4T is removed.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Par. 10. The authority citation for part 31 continues to read in part as follows:

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

Par. 11. Section 31.6011-4 is added to read as follows:

§ 31.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* as defined in § 1.6011-4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

§ 31.6011-4T [Removed]

Par. 12. Section 31.6011-4T is removed.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 13. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 14. Section 53.6011-4 is added to read as follows:

§ 53.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* as defined in § 1.6011-4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an excise tax under chapter 42 of subtitle D of the Internal Revenue