

“(D) Six years after such date of enactment, in the case of any other Chief Counsel advice issued after December 31, 1985.

“(3) DOCUMENTS TREATED AS CHIEF COUNSEL ADVICE.—If the Secretary of the Treasury by regulation provides pursuant to section 6110(i)(2) of the Internal Revenue Code of 1986, as added by this section, that any additional advice or instruction issued by the Office of Chief Counsel shall be treated as Chief Counsel advice, such additional advice or instruction shall be made available for public inspection pursuant to section 6110 of such Code, as amended by this section, only in accordance with the effective date set forth in such regulation.

“(4) CHIEF COUNSEL ADVICE TO BE AVAILABLE ELECTRONICALLY.—The Internal Revenue Service shall make any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act [July 22, 1998] and made available for public inspection pursuant to section 6110 of such Code, as amended by this section, also available by computer telecommunications within 1 year after issuance.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Pub. L. 94-455, title XII, §1201(e), Oct. 4, 1976, 90 Stat. 1667, provided that: “Except as otherwise provided in this section [enacting this section and provisions set out below], the amendments made by this section shall take effect on November 1, 1976.”

PENDING REQUESTS

Pub. L. 94-455, title XII, §1201(b), Oct. 4, 1976, 90 Stat. 1667, provided that: “Any written determination or background file document which is the subject of a judicial proceeding pursuant to section 552 of title 5, United States Code, commenced before January 1, 1976, shall not be treated as a written determination subject to subsection (h)(1) [subsec. (h)(1) of this section], but shall be available to the complainant along with the background file document, if requested, as soon as practicable after July 1, 1976.”

§ 6111. Disclosure of reportable transactions

(a) In general

Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

- (1) information identifying and describing the transaction,
- (2) information describing any potential tax benefits expected to result from the transaction, and
- (3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

(b) Definitions

For purposes of this section:

(1) Material advisor

(A) In general

The term “material advisor” means any person—

(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and

(ii) who directly or indirectly derives gross income in excess of the threshold amount (or such other amount as may be prescribed by the Secretary) for such aid, assistance, or advice.

(B) Threshold amount

For purposes of subparagraph (A), the threshold amount is—

- (i) \$50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and
- (ii) \$250,000 in any other case.

(2) Reportable transaction

The term “reportable transaction” has the meaning given to such term by section 6707A(c).

(c) Regulations

The Secretary may prescribe regulations which provide—

- (1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,
- (2) exemptions from the requirements of this section, and
- (3) such rules as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 98-369, div. A, title I, §141(a), July 18, 1984, 98 Stat. 677; amended Pub. L. 99-514, title II, §201(d)(13), title XV, §1531(a), title XVIII, §1899A(54), Oct. 22, 1986, 100 Stat. 2142, 2749, 2961; Pub. L. 105-34, title X, §1028(a), Aug. 5, 1997, 111 Stat. 926; Pub. L. 108-357, title VIII, §815(a), Oct. 22, 2004, 118 Stat. 1581; Pub. L. 109-135, title IV, §412(zz), Dec. 21, 2005, 119 Stat. 2641.)

PRIOR PROVISIONS

A prior section 6111 was renumbered 6116 of this title.

AMENDMENTS

2005—Subsec. (b)(1)(A)(ii). Pub. L. 109-135 substituted “aid, assistance, or advice” for “advice or assistance”.

2004—Pub. L. 108-357 amended section catchline and text generally, substituting provisions relating to disclosure of reportable transactions for provisions relating to registration of tax shelters and inclusion of identification numbers on returns.

1997—Subsecs. (d) to (f). Pub. L. 105-34 added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1986—Subsec. (c)(2)(A). Pub. L. 99-514, §1531(a), substituted “350 percent” for “200 percent”.

Subsec. (c)(3)(B)(ii). Pub. L. 99-514, §201(d)(13), substituted “section 465(b)(3)(C)” for “section 168(e)(4)”.

Subsec. (d)(1)(B). Pub. L. 99-514, §1899A(54), substituted “subparagraph” for “subpagraph”.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §815(c), Oct. 22, 2004, 118 Stat. 1583, provided that: “The amendments made by this section [amending this section and sections 6112 and 6708 of this title] shall apply to transactions with respect to which material aid, assistance, or advice re-

ferred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title X, §1028(e), Aug. 5, 1997, 111 Stat. 928, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 6662 and 6707 of this title] shall apply to any tax shelter (as defined in section 6111(d) of the Internal Revenue Code of 1986, as amended by this section) interests in which are offered to potential participants after the Secretary of the Treasury prescribes guidance with respect to meeting requirements added by such amendments.

“(2) MODIFICATIONS TO SUBSTANTIAL UNDERSTATEMENT PENALTY.—The amendments made by subsection (c) [amending section 6662 of this title] shall apply to items with respect to transactions entered into after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(13) of Pub. L. 99-514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99-514, set out as a note under section 168 of this title.

Amendment by section 201(d)(13) of Pub. L. 99-514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99-514, set out as a note under section 46 of this title.

Pub. L. 99-514, title XV, §1531(b), Oct. 22, 1986, 100 Stat. 2749, provided that: “The amendment made by this section [amending this section] shall apply to any tax shelter (within the meaning of section 6111 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as amended by this section) interests in which are first offered for sale after December 31, 1986.”

EFFECTIVE DATE

Pub. L. 98-369, div. A, title I, §141(d), July 18, 1984, 98 Stat. 680, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section and section 6707 of this title and renumbering former section 6111 as section 6112 of this title] shall apply to any tax shelter (within the meaning of section 6111 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this section) any interest in which is first sold to any investor after August 31, 1984.

“(2) SUBSTANTIAL INVESTMENT TEST.—For purposes of determining whether any investment is a tax shelter by reason of section 6111(c)(1)(B)(iii) of such Code (as added by this section), only offers for sale after August 31, 1984, shall be taken into account.

“(3) FURNISHING OF SHELTER IDENTIFICATION NUMBER FOR INTERESTS SOLD BEFORE SEPTEMBER 1, 1984.—With respect to interests sold before September 1, 1984, any liability to act under paragraph (1) of section 6111(b) of such Code (as added by this section) which would (but for this sentence) arise before such date shall be deemed to arise on December 31, 1984.”

§ 6112. Material advisors of reportable transactions must keep lists of advisees, etc.

(a) In general

Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall (whether or not required to file a return under section 6111 with respect to such transaction) maintain (in

such manner as the Secretary may by regulations prescribe) a list—

(1) identifying each person with respect to whom such advisor acted as a material advisor with respect to such transaction, and

(2) containing such other information as the Secretary may by regulations require.

(b) Special rules

(1) Availability for inspection; retention of information on list

Any person who is required to maintain a list under subsection (a) (or was required to maintain a list under subsection (a) as in effect before the enactment of the American Jobs Creation Act of 2004)—

(A) shall make such list available to the Secretary for inspection upon written request by the Secretary, and

(B) except as otherwise provided under regulations prescribed by the Secretary, shall retain any information which is required to be included on such list for 7 years.

(2) Lists which would be required to be maintained by 2 or more persons

The Secretary may prescribe regulations which provide that, in cases in which 2 or more persons are required under subsection (a) to maintain the same list (or portion thereof), only 1 person shall be required to maintain such list (or portion).

(Added Pub. L. 98-369, div. A, title I, §142(a), July 18, 1984, 98 Stat. 681; amended Pub. L. 108-357, title VIII, §815(b)(2), (3), Oct. 22, 2004, 118 Stat. 1582; Pub. L. 109-135, title IV, §403(z), Dec. 21, 2005, 119 Stat. 2629.)

REFERENCES IN TEXT

Enactment of the American Jobs Creation Act of 2004, referred to in subsec. (b)(1), means enactment of Pub. L. 108-357, which was approved Oct. 22, 2004.

PRIOR PROVISIONS

A prior section 6112 was renumbered 6116 of this title.

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109-135, in introductory provisions, inserted “(or was required to maintain a list under subsection (a) as in effect before the enactment of the American Jobs Creation Act of 2004)” after “a list under subsection (a)”.

2004—Pub. L. 108-357, §815(b)(2), substituted “Material advisors of reportable transactions must keep lists of advisees, etc.” for “Organizers and sellers of potentially abusive tax shelters must keep lists of investors” in section catchline.

Subsec. (a). Pub. L. 108-357, §815(b)(2), reenacted heading without change and amended text of subsec. (a) generally, substituting provisions requiring each material advisor to maintain a list identifying each person with respect to whom such advisor acted as a material advisor with respect to a reportable transaction and containing such other information as required by regulations, for provisions requiring any person who organized any potentially abusive tax shelter or sold any interest in such a shelter to maintain a list identifying each person who had been sold an interest in such shelter and containing such other information as required by regulations.

Subsec. (b). Pub. L. 108-357, §815(b)(2), (3)(A), redesignated subsec. (c) as (b) and struck out former subsec. (b), which defined “potentially abusive tax shelter” for purposes of this section.