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Instructions for Form 8886-T



Department of the Treasury
Internal Revenue Service

(December 2019)

Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction

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

General Instructions

Future Developments

For the latest information about developments related to Form 8886-T and the instructions, such as legislation enacted after they were published, go to IRS.gov/Form8886-T.

Purpose of Form

Certain tax-exempt entities (defined below) are required to file Form 8886-T to disclose information with respect to each prohibited tax shelter transaction to which the entity is a party. See *Prohibited tax shelter transaction* below. See *Party to a prohibited tax shelter transaction* below to determine if the tax-exempt entity is a party to a prohibited tax shelter transaction. See Regulations section 1.6033-5 for more information. Form 8886-T is available for public inspection.

A separate Form 8886-T must be filed for each prohibited tax shelter transaction.

In addition to filing Form 8886-T, a tax-exempt entity and/or entity manager(s) may be liable for excise taxes in connection with the prohibited tax shelter transaction. For more information, see the instructions for Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code, and the Instructions for Form 5330, Return of Excise Taxes Related to Employee Benefit Plans.

A taxable party to a prohibited tax shelter transaction must provide a statement to any tax-exempt entity that is party to the transaction that the transaction is a prohibited tax shelter transaction. See *Tax-exempt entity* below.

If a tax-exempt entity participates in any reportable transaction (defined in Regulations section 1.6011-4), the tax-exempt entity may also be required to file Form 8886, Reportable Transaction Disclosure Statement. For more information, see the Instructions for Form 8886.

Frequency of disclosure. A single disclosure is required for each prohibited tax shelter transaction.

Who Must File

If the tax-exempt entity is a non-plan entity (defined below), Form 8886-T must be

filed by the entity. If the tax-exempt entity is a plan entity (defined below), Form 8886-T must be filed by the entity manager (defined on page 2).

Note. If the entity is a fully self-directed qualified plan, IRA, or other savings arrangement, the entity manager is the plan participant, beneficiary, or owner who approved or caused the entity to be a party to the prohibited tax shelter transaction.

Definitions

Tax-exempt entity. A tax-exempt entity is an entity which is **either** a plan entity (defined below) **or** a non-plan entity (defined below).

Non-plan entity. Non-plan entities are tax-exempt entities described in section 4965(c)(1), (c)(2), or (c)(3). The following tax-exempt entities are non-plan entities.

- An organization described in section 501(c) or 501(d).
- Entities described in section 170(c) including a state, a possession of the United States, the District of Columbia, or a political subdivision of a state or possession of the United States (but not including the United States).
- An Indian tribal government.

See Regulations section 1.6033-5 for more information.

Plan entity. Plan entities are tax-exempt entities described in section 4965(c)(4), (c)(5), (c)(6), (c)(7), or (c)(8). The following tax-exempt entities are plan entities.

- A plan described in section 401(a) which includes a trust exempt from tax under section 501(a).
- An annuity plan described in section 403(a) or annuity contract described in section 403(b).
- A qualified tuition program described in section 529.
- An eligible deferred compensation plan described in section 457(b) that is maintained by a governmental employer described in section 457(e)(1)(A).
- An individual retirement account within the meaning of section 408(a).
- An individual retirement annuity within the meaning of section 408(b).
- An Archer medical savings account within the meaning of section 220(d).
- A custodial account treated as an annuity contract under section 403(b)(7)(A).

- A Coverdell education savings account as defined in section 530.
 - A health savings account within the meaning of section 223(d).
 - An ABL program described in section 529A.
- See Regulations section 1.6033-5 for more information.

Party to a prohibited tax shelter transaction. A tax-exempt entity is a party to a prohibited tax shelter transaction if it:

- Facilitates the transaction by reason of its tax-exempt, tax indifferent, or tax-favored status;
- Is identified in published guidance, by type, class, or role, as a party to a prohibited tax shelter transaction. See example in Regulations section 53.4965-4(c).

Prohibited tax shelter transaction.

Generally, a prohibited tax shelter transaction is a transaction that is a listed transaction (including subsequently listed transaction), a confidential transaction, or a transaction with contractual protection. See definitions of these terms on pages 1 and 2.

Note. In general, if the IRS determines by published guidance that a transaction will be excluded from the definition of listed transaction, confidential transaction, or transaction with contractual protection, the transaction will not be considered a prohibited tax shelter transaction.

Listed transaction. A listed transaction is a transaction that is the same as or substantially similar to any of the types of transactions that the IRS has determined to be a tax avoidance transaction and are identified by notice, regulation, or other form of published guidance as a listed transaction. For existing guidance, see Notice 2009-59, 2009-31 I.R.B. 170. See IRS.gov/Businesses/Corporations/Listed-Transactions for recognized list of *Abusive Tax Shelters and Transactions*.

Subsequently listed transaction. A subsequently listed transaction is a transaction that is identified in published guidance as a listed transaction after the tax-exempt entity has entered into the transaction and that was not a confidential transaction or transaction with contractual protection at the time the entity entered into the transaction. See section 4965(e)(2) for more information.

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.

Confidential transaction. A confidential transaction is a transaction that is offered under conditions of confidentiality and for which a minimum fee (defined below) was paid. A transaction is considered to be offered under conditions of confidentiality if the advisor places a limitation on 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. 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 (looking through any partners or beneficiaries that are themselves partners or trusts), 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.

Transaction with contractual protection. A transaction with contractual protection is a transaction for which a participant (or related party as defined under section 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 the realization of tax benefits from the transaction. For exceptions and other details, see Regulations section 1.6011-4(b)(4) and Rev. Proc. 2007-20.

Entity manager. In the case of a plan entity, entity manager means the person who approves or otherwise causes the tax-exempt entity to be a party to the prohibited tax shelter transaction. See section 4965(d)(2).

Recordkeeping

The entity or entity manager must keep a copy of all documents and other records related to a prohibited tax shelter transaction. See Regulations section 1.6001-1(c) and 53.6001-1 for more details.

When To File

General rules. Generally, the due date for filing Form 8886-T depends on whether the tax-exempt entity is a party to a prohibited tax shelter transaction to reduce its own federal tax liability or, alternatively, whether it is a party to such a transaction to facilitate the transaction by reason of its tax-exempt, tax indifferent, or tax-favored status.

In the case of a tax-exempt entity that is a party to a prohibited tax shelter transaction because it facilitates the transaction by reason of its tax-exempt, tax indifferent, or tax-favored status, Form 8886-T must be filed on or before May 15 of the calendar year following the close of the calendar year during which the tax-exempt entity entered into the prohibited tax shelter transaction. See section 1.6033-5(d)(1).

Entities identified as a party to a prohibited tax shelter transaction by published guidance. In the case of a tax-exempt entity that becomes a party to a prohibited tax shelter transaction because it is identified in published guidance by type, class, or roles as a party to a prohibited tax shelter transaction, the published guidance will specify the due date of Form 8886-T.

Subsequently listed transaction. In the case of a tax-exempt entity that is a party to a prohibited tax shelter transaction because the transaction was subsequently listed, Form 8886-T must be filed by May 15 of the calendar year following the close of the calendar year during which the transaction was identified as a listed transaction. See section 1.6033-5(d)(2).

Where To File

Send the return to the:

Department of the Treasury
Internal Revenue Service Center
Ogden, UT 84201-0027

Penalties

There is a monetary penalty under section 6652(c) for the failure to disclose information required under section 6033(a)(2) with respect to a prohibited tax shelter transaction. The penalty for failure to include information with respect to a prohibited tax shelter transaction is \$100 for each day during which such failure

continues, not to exceed \$50,000 for each required disclosure. In addition, the IRS is authorized to make a written demand on the entity or entity manager specifying a future date by which the required disclosure must be filed. If there is a failure to comply with this demand, there is an additional penalty in the amount of \$100 per day after the expiration of the time specified in the demand, not to exceed \$10,000 for each required disclosure. In the case of a non-plan entity (defined on page 1), the penalty is imposed on the tax-exempt entity. In the case of a plan entity (defined on page 1), the penalty is imposed on the entity manager. These penalties are adjusted for inflation. See section 6652(c) for more information on penalties.

A penalty is assessed to the tax-exempt entity (for a non-plan entity) or to the entity manager (for a plan entity) for each failure to timely file Form 8886-T in accordance with its instructions and Regulations section 1.6033-5. Form 8886-T 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 the tax-exempt entity (for a non-plan entity) or the entity manager (for a plan entity) to penalty. See section 6652(c) for more information.

Public Inspection

A completed Form 8886-T is available for public inspection as required under section 6104.

Specific Instructions

Name and Address

Enter the name and address of the tax-exempt entity. Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address, show the P.O. box number instead of the street address. The name and address should be the same as shown on other forms filed with the IRS.

Employer Identification Number (EIN)

Enter the employer identification number of the tax-exempt entity. In the case of a fully self-directed qualified plan, or an IRA (or other savings arrangement) that does not have and is not required to obtain an EIN, leave the EIN box blank. Do not enter a social security number.

Who Must Sign

Non-plan entity. The director, trustee, officer, or other official authorized to sign for the non-plan entity (defined on page 1) must sign Form 8886-T.

Plan entity. For plan entities (defined on page 1), the entity manager (defined on page 2) must sign Form 8886-T.

How To Complete Form 8886-T

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

Line 1

Check the box which indicates the type of tax-exempt entity that is a party to a prohibited tax shelter transaction.

Line 2

Check the box for all categories that apply to the transaction being reported. The categories of prohibited tax shelter transactions (listed, confidential, and transaction with contractual protection) are described on pages 1 and 2. Do not report more than one transaction on this form. If the transaction is substantially

similar to a listed transaction, check the box next to "listed transaction." See *Substantially similar* on page 2. If you checked the listed transaction box, you must also identify the transaction on line 3.



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

Line 3

If you selected "listed transaction" on line 2, provide a brief identifying description of the listed transaction and identify the notice, revenue ruling, regulation (for example, Regulations section 1.643(a)-8 or Notice 2003-81 modified and supplemented by Notice 2007-71, 2007-35 I.R.B. 472), announcement, or other published guidance that identified the listed transaction. For guidance identifying listed transactions, see Notice 2009-59, 2009-31 I.R.B. 170. For further updates, go to IRS.gov/Businesses/Corporations/Listed-Transactions.

Line 4

Provide the complete names and addresses of all other parties (whether taxable or tax-exempt) to the transaction, if known. If you need additional space, attach separate sheets. At the top of each additional sheet, write "Line 4" and enter the tax-exempt entity's name and identifying number.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the

United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax. 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. However, certain returns and return information of tax-exempt organizations and trusts are subject to public disclosure and inspection, as provided by section 6104. The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for tax-exempt organizations filing this form is approved under OMB control number 1545-0047 and is included in the estimates shown in the instructions for their information return.

Comments. 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 send us comments from IRS.gov/FormComments. Or you can write to the Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Don't send the form to this office. Instead, see *Where To File*, on page 2.
