the payer of such winnings upon the payer's demand. Such statements shall accompany the payer's return made with respect to the payment as required pursuant to section 3402(q) or 6041, as the case may be.

(b) *Contents of statement.* The statement referred to in paragraph (a) shall contain information (in addition to that required under section 6041(c)) as to the amount, if any, of winnings from identical wagers to which the recipient is entitled. If any person other than the recipient is entitled to all or a portion of the payment, the statement shall also include information as to the amount, if any, of winnings from identical wagers to which each such person is entitled. The statement shall be provided on Form W–2G or, if persons other than the recipient are entitled to all or a portion of such payment, on Form 5754.

(c) *Exception.* The requirement of paragraph (a) of this section does not apply with respect to any payment of winnings—

(1) From a slot machine play, or a bingo or keno game,

(2) Which is subject to withholding under section 3402(q) without regard to the existence of winnings from identical wagers, or

(3) For which no return of information under section 6041 is required of the payer.

(d) *Meaning of terms,* For purposes of this section, the terms ''sweepstakes'', ''wagering pool'', ''lottery'', ''other wagering transaction'' and ''identical wagers'' shall have the same meanings as ascribed to them under § 31.3402(q)–1.

[T.D. 7919, 48 FR 46297, Oct. 12, 1983]

§ 1.6011–4T Requirement of statement disclosing participation in certain transactions by corporate taxpayers (Temporary).

(a) *In general.* Every taxpayer that is required to file a return for a taxable year with respect to a tax imposed under section 11, 594, 801, or 831 and that has participated, directly or indirectly, in a reportable transaction within the meaning of paragraph (b) of this section must attach to its return for the taxable year described in paragraph (d) of this section a disclosure statement in the form prescribed by paragraph (c) of this section. For this purpose, a taxpayer will have indirectly participated in a transaction if its Federal income tax liability is affected by the transaction even if it is not a direct party to the transaction (*e.g.*, it participates through a partnership or through a controlled entity). A separate disclosure statement is required for each reportable transaction. The fact that a taxpayer files a disclosure statement for a reportable transaction shall not affect the legal determination whether the tax benefits claimed with respect to the transaction are allowable.

(b) *Definition of reportable transaction*—(1) *In general.* A reportable transaction is a transaction that is described in either paragraph (b)(2) or (3) of this section and that meets the projected tax effect test in paragraph (b)(4) of this section. The term *transaction* includes all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, and includes any series of related steps carried out as part of a prearranged plan and any series of substantially similar transactions entered into in the same taxable year.

(2) *Listed transactions.* A transaction is described in this paragraph (b)(2) if the transaction is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction for purposes of section 6011. However, a listed transaction is not treated as a reportable transaction if it has affected the taxpayer's Federal income tax liability as reported on any tax return filed on or before February 28, 2000. The fact that a transaction becomes a listed transaction does not imply that the transaction was not otherwise a reportable transaction prior thereto.

(3) *Other reportable transactions*—(i) *In general.* Except as provided in paragraph (b)(3)(ii) of this section, a transaction is described in this paragraph

(b)(3) if it is entered into after February 28, 2000 and has at least two of the following characteristics:

(A) The taxpayer has participated in the transaction under conditions of confidentiality (as defined in § 301.6111–2T(c)).

(B) The taxpayer has obtained or been provided with contractual protection against the possibility that part or all of the intended tax benefits from the transaction will not be sustained, including, but not limited to, recission rights, the right to a full or partial refund of fees paid to any person, fees that are contingent on the taxpayer's realization of tax benefits from the transaction, insurance protection with respect to the tax treatment of the transaction, or a tax indemnity or similar agreement (other than a customary indemnity provided by a principal to the transaction that did not participate in the promotion of the transaction to the taxpayer).

(C) The taxpayer's participation in the transaction was promoted, solicited, or recommended by one or more persons who have received or are expected to receive fees or other consideration with an aggregate value in excess of $100,000, and such person or persons' entitlement to such fees or other consideration was contingent on the taxpayer's participation in the transaction.

(D) The expected treatment of the transaction for Federal income tax purposes in any taxable year differs or is expected to differ by more than $5 million from the treatment of the transaction for purposes of determining book income as taken into account on the schedule M–1 (or comparable schedule) on the taxpayer's Federal corporate income tax return for the same period.

(E) The transaction involves the participation of a person that the taxpayer knows or has reason to know is in a Federal income tax position that differs from that of the taxpayer (such as a tax exempt entity or a foreign person), and the taxpayer knows or has reason to know that such difference in tax position has permitted the transaction to be structured on terms that are intended to provide the taxpayer with more favorable Federal income tax treatment than it could have obtained without the participation of such person (or another person in a similar tax position).

(ii) *Exceptions.* A transaction is not a reportable transaction under paragraph (b)(3) of this section if paragraph (b)(3)(ii)(A), (B), (C), or (D) of this section is satisfied.

(A) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that it would have participated in the same transaction on substantially the same terms irrespective of the expected Federal income tax benefits.

(B) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that there is a generally accepted understanding that the taxpayer's intended tax treatment of the transaction (taking into account any combination of intended tax consequences) is properly allowable under the Internal Revenue Code for substantially similar transactions. There is no minimum period of time for which such a generally accepted understanding must exist. In general, however, a taxpayer cannot reasonably determine whether the intended tax treatment of a transaction has become generally accepted unless information relating to the structure and tax treatment of such transactions has been in the public domain (e.g., rulings, published articles, etc.) and widely known for a sufficient period of time (ordinarily a period of years) to provide knowledgeable tax practitioners and the IRS reasonable opportunity to evaluate the intended tax treatment. The mere fact that the taxpayer may have received an opinion or advice from one or more knowledgeable tax practitioners to the effect that the taxpayer's intended tax treatment of the transaction should or will be sustained, if challenged by the IRS, is not sufficient to satisfy the requirements of this paragraph (b)(3)(ii)(B).

(C) The taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any

significant portion of the expected Federal income tax benefits from the transaction. This paragraph (b)(3)(ii)(C) applies only if the taxpayer reasonably determines that there is no basis that would meet the standard applicable to taxpayers under § 1.6662–3(b)(3) under which the IRS could disallow any significant portion of the expected Federal income tax benefits of the transaction. Thus, the reasonable basis standard is not satisfied by an IRS position that would be merely arguable or that would constitute merely a colorable claim. However, the taxpayer's determination of whether the IRS would or would not have a reasonable basis for such a position must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, administrative guidance, and judicial decisions that establish principles of general application in the tax law (e.g., *Gregory* v. *Helvering*, 293 U.S. 465 (1935)). The determination of whether the IRS would or would not have such a reasonable basis is qualitative in nature and does not depend on any percentage or other quantitative assessment of the likelihood that the taxpayer would ultimately prevail if a significant portion of the expected tax benefits were disallowed by the IRS.

(D) The transaction is identified in published guidance as being excepted from disclosure under this section.

(iii) *Ordinary course of business*. For purposes of paragraphs (b)(3)(ii)(A) and (B) of this section, a transaction involving the acquisition, disposition, or restructuring of a business, including the acquisition, disposition, or other change in the ownership or control of an entity that is engaged in a business, or a transaction involving a recapitalization or an acquisition of capital for use in the taxpayer's business, shall be considered a transaction carried out in the ordinary course of a taxpayer's business.

(4) *Projected tax effect*—(i) *In general*. A transaction described in paragraph (b)(2) of this section meets the projected tax effect test if, at the time the taxpayer enters into the transaction or at any time thereafter, the taxpayer reasonably estimates that the transaction will reduce the taxpayer's Federal income tax liability by more than $1 million in any single taxable year or by a total of more than $2 million for any combination of taxable years in which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability. A transaction described in paragraph (b)(3) of this section meets the projected tax effect test if, at the time the taxpayer enters into the transaction or at any time thereafter, the taxpayer reasonably estimates that the transaction will reduce the taxpayer's Federal income tax liability by more than $5 million in any single taxable year or by a total of more than $10 million for any combination of taxable years in which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability. For purposes of this paragraph (b)(4), a transaction will be treated as reducing a taxpayer's Federal income tax liability for a taxable year if, and to the extent that, disallowance of the tax treatment claimed or expected to be claimed would result in an increase in the taxpayer's Federal income tax liability for that year. These dollar thresholds may be adjusted pursuant to forms prescribed for reporting under this section and the instructions to such forms.

(ii) *Estimation of projected tax effect*. A taxpayer's estimate of the effect of a transaction on its Federal income tax liability shall take into account all projected Federal income tax consequences of the transaction, including all deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, and any other tax consequences that may reduce the taxpayer's Federal income tax liability by affecting the timing, character, or source of any item of income, gain, deduction, loss, or credit. The estimate shall not take into account the potential Federal income tax effect of any other transaction or transactions that the taxpayer might

have entered into if the taxpayer had not entered into the transaction in question. Gross income may not be taken into account if the elements of the transaction that result in the creation of the gross income are not necessary to achieve the intended tax results of the transaction, whether or not these elements are an integral part of the transaction. For example, gross income may not be taken into account to the extent that it would have been reasonably possible for the taxpayer to have participated in the transaction in a manner that would have been expected to produce less gross income without a commensurate effect on the other tax consequences of the transaction. In addition, gain on property that the taxpayer acquired independent of its participation in the transaction may not be taken into account.

(5) *Examples*. The following examples illustrate the application of paragraph (b) of this section. Assume, for purposes of these examples, that the transactions are not the same as or substantially similar to any of the types of transactions that the IRS has identified as listed transactions under section 6011 and, thus, are not described in paragraph (b)(2) of this section. The examples are as follows:

Example 1. In March of 2000, C, a domestic corporation, invests $100 million to purchase certain financial instruments the terms of which have been structured to enable the holder to claim a deductible tax loss upon the disposition of one or more of the instruments a short time after acquisition while deferring gain on the retained instruments. C purchased the instruments on the recommendation of X, which is expected to receive direct or indirect compensation in excess of $100,000 contingent on C's purchase. C disposes of certain of the financial instruments in November of 2000, and reports a loss from the disposition of those financial instruments on its 2000 Federal corporate income tax return which reduces its reported Federal income tax liability by more than $5 million. That loss is not reflected on C's income statement for purposes of determining book income as taken into account on the schedule M–1 on C's Federal corporate income tax return. Further, C is unable to reasonably determine that it would have entered into the transaction irrespective of the Federal income tax benefits, or that the transaction is a customary form of transaction giving rise to tax consequences for which there is a generally accepted understanding that such tax consequences are allowable under the Code for similar transactions, or that the Commissioner would have no reasonable basis to deny the claimed loss. The transaction involving C's purchase and disposition of the financial instruments has the characteristics described in paragraphs (b)(3)(i)(C) and (D) of this section. None of the exceptions in paragraph (b)(3)(ii) of this section applies. Therefore, the transaction involving C's purchase and disposition of the financial instruments is a reportable transaction because it is described in paragraph (b)(3) of this section.

Example 2. In the year 2001, D, a domestic corporation, completes construction of an office building to be used in its business. After completion of the building but before D files its tax return for the year 2001, it is approached by Y, a professional services organization, which advises D that Y has developed a set of programs that will enable D to maximize its depreciation deductions with respect to the building and the related furniture and fixtures. Y allows D to review Y's programs subject to D's agreement that it will not use any portion of the programs in establishing its depreciation accounts for Federal tax purposes unless it pays Y a fee of $150,000. In addition, D makes a commitment to Y that it will not divulge any information relating to the programs to any person, whether or not D decides to use the programs. D agrees to use Y's programs for purposes of computing its depreciation allowances for 2001 and later taxable years. D expects its use of the programs to reduce its Federal income tax liability by more than $10 million over the life of the building. However, D reasonably determines that it would have constructed and owned the office building in the same manner irrespective of the enhanced depreciation that it expects to derive from the use of Y's programs. Therefore, regardless of whether D's depreciation deductions on the building may be subject to disallowance, the transaction encompassing the construction of the building and the use of Y's programs is not a reportable transaction by reason of the exception under paragraph (b)(3)(ii)(A) of this section.

Example 3. E is a domestic corporation, which is a calendar year taxpayer. E is engaged in the leasing business. In 2001, E enters into a large number of substantially similar arrangements described in paragraph (b)(3)(i) of this section under which it acquires and leases tangible personal property to U.S. persons who use such property in their businesses. E treats the leases as leases for Federal income tax purposes and as loans for financial accounting purposes. During the first three taxable years in which the leases are in effect, E reasonably expects that its reported taxable income will be more than $30 million lower than it would be

if the leases were treated as loans for Federal income tax purposes, giving rise to a total expected reduction of E's Federal income tax liability for those years in excess of $10 million. E cannot conclude that it would have entered into the leases on substantially the same terms irrespective of the expected Federal income tax benefits, nor can it conclude that the Commissioner would have no reasonable basis to deny its tax treatment of the leases. However, E does reasonably determine that the terms of the leases are consistent with customary commercial form in the leasing industry, and that there is a generally accepted understanding that the combination of Federal income tax consequences it is claiming with respect to the leases are allowable under the Code for similar transactions. The substantially similar leases would be treated for purposes of this section as a single transaction that would satisfy the projected tax effect test described in paragraph (b)(4) of this section. However, the leases would not be a reportable transaction by reason of the exception under paragraph (b)(3)(ii)(B) of this section.

(c) *Form and content of disclosure statement*. (1) The disclosure statement for each reportable transaction must include the information required by paragraph (c)(1)(i) through (c)(1)(vi) of this section and shall be presented in a format (preferably no longer than one page) similar to that shown in the *Example* in paragraph (c)(2) of this section or on such form as may be prescribed for use under this section.

(i) The name, if any, by which the transaction is known or commonly referred to by the taxpayer; if no name exists, provide a short-hand designation of this transaction to distinguish it from other reportable transactions in which the taxpayer may have participated (or may participate in the future).

(ii) A statement indicating whether, to the best knowledge of the taxpayer, the transaction has been registered as a tax shelter under section 6111. If the transaction has been registered as a tax shelter under section 6111, indicate whether Form 8271, ''Investor Reporting of Tax Shelter Registration Number'', has been filed with the taxpayer's return and provide the registration number, if any, that has been assigned to the tax shelter.

(iii) A brief description of the principal elements of the transaction that give rise to the expected tax benefits.

(iv) A brief description of the expected tax benefits of the transaction (*e.g.*, loss deductions, interest deductions, rental deductions, foreign tax credits, etc.).

(v) An identification of each taxable year (including prior taxable years) for which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability and an estimate (which may be rounded to the nearest $1 million) of the amount by which the transaction is expected to reduce the taxpayer's Federal income tax liability for each such taxable year.

(vi) The names and addresses of any parties who promoted, solicited, or recommended the taxpayer's participation in the transaction and who had a financial interest, including the receipt of fees, in the taxpayer's decision to participate.

(2) Example. The following example illustrates the application of paragraph (c) of this section: In January of 1999, X, a domestic corporation which is a calendar year taxpayer, entered into an arrangement under which it purported to lease a building owned and occupied by the government of a municipality located in foreign country W and lease the building back to the municipal government. X determines that the transaction is a reportable transaction described in paragraph (b)(1) of this section because it is described in paragraph (b)(2) of this section and satisfies the projected tax effect test in paragraph (b)(4) of this section. As of February 28, 2000, X had not filed its 1999 Federal corporate income tax return. The following form of disclosure statement would satisfy the requirements described in paragraph (c)(1) of this section.

DISCLOSURE STATEMENT FOR REPORTABLE TRANSACTION

Corporation X (address)	(EIN)

DISCLOSURE STATEMENT FOR REPORTABLE TRANSACTION—Continued

1. IDENTIFICATION OF TRANSACTION: LILO—Country W.

2. REGISTRATION STATUS UNDER SECTION 6111: Not registered.

3. DESCRIPTION OF TRANSACTION: We leased a building from a municipality in W. We made an advance payment of rent of $89 million. The lease term is 34 years. The foreign municipality subleased the asset back from us for a term of 20 years. The foreign municipality has the option, at the end of the sublease term, to buy out our interest for $50 million. Our advance lease payment has been financed with a bank loan of $60 million. The foreign municipality placed $75 million of the advance rental payment in special accounts to satisfy the sublease and buyout obligations.

4. PRINCIPAL TAX BENEFITS: Deductions for rental and interest payments in excess of income from leaseback rental payments.

5. ESTIMATES OF EXPECTED REDUCTION OF FEDERAL INCOME TAX LIABILITY FOR AFFECTED TAXABLE YEARS: 1999–2002, $5 million per year; 2003–2013, $4 million per year; and 2014–2017, $3 million per year.

6. PROMOTERS:

Financial Institution Y
(address)
(telephone number)

Professional Service Firm Z
(address)
(telephone number)

(d) *Time of providing disclosure*—(1) *In general*. The disclosure statement for a reportable transaction shall be attached to the taxpayer's Federal corporate income tax return for each taxable year for which the taxpayer's Federal income tax liability is affected by its participation in the transaction. In addition, at the same time that the disclosure statement is first attached to the taxpayer's Federal income tax return, a copy of that disclosure statement must be sent to: Internal Revenue Service LM:PFTG:OTSA, Large & Mid-Size Business Division, 1111 Constitution Ave., N.W., Washington, DC 20224. If a transaction becomes a reportable transaction on or after the date the taxpayer has filed its return for the first taxable year for which the transaction affected the taxpayer's Federal income tax liability (*e.g.*, there is a change in facts affecting the expected Federal income tax effect of the transaction, or the transaction subsequently becomes one identified in published guidance as a listed transaction described in (b)(2) of this section), the disclosure statement shall be filed as an attachment to the taxpayer's Federal corporate income tax return next filed after the date the transaction becomes a reportable transaction. If a disclosure statement is required as an attachment to a Federal corporate income tax return that is filed earlier than 180 days after February 28, 2000, the taxpayer may either attach the disclosure statement to the return, or file the disclosure statement as an amendment to the return no later than 180 days after February 28, 2000.

(2) *Example*. The following example illustrates the application of this paragraph (d):

In December of 2000, F, a domestic corporation which is a calendar year taxpayer, enters into a transaction described in paragraph (b)(3) of this section but not described in paragraph (b)(2) of this section. At the time F enters into the transaction and thereafter, F reasonably estimates that the transaction will reduce F's Federal income tax liability by $2 million in any single taxable year and by a total of $8 million for any combination of taxable years in which the transaction is expected to have the effect of reducing F's Federal income tax liability. Consequently, the transaction does not meet the projected tax effect test described in paragraph (b)(4) of this section for transactions described in paragraph (b)(3) of this section. On March 1, 2002, the IRS publishes a notice identifying the transaction as a listed transaction described in paragraph (b)(2) of this section. Thus, upon issuance of the notice, the transaction becomes a transaction described in paragraph (b)(2) of this section. As a result of the lower dollar thresholds of the projected tax effect test with respect to transactions described in (b)(2) of this section, the transaction meets the projected tax effect test in paragraph (b)(4) of this section. Consequently, the transaction becomes a reportable transaction described in paragraph (b)(1) of this section, and F is required to file a disclosure statement meeting the requirements of paragraph (c)(1) of this section for the transaction as an attachment to F's next filed Federal corporate income tax return. If F's 2001 return has not been filed on or before the date the Service identifies the transaction as a listed transaction, the disclosure statement must be attached to F's 2001 return.

(e) *Retention of documents*. 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 facts of the transaction, the expected tax treatment of the transaction, or the corporation's decision to participate in the transaction. Such documents must be retained until the expiration of the statute of limitations applicable to the first taxable year for which disclosure of the transaction was made in accordance with the requirements of this section. (This document retention requirement is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) Such documents generally include, but are not limited to, 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 promoter, advisor, lender, or other party to the reportable transaction that relate to the transaction; documents discussing, referring to, or demonstrating the tax benefits arising from the reportable transaction; and documents, if any, referring to the business purposes for the reportable transaction.

(f) *Affiliated groups*. For purposes of this section, an affiliated group of corporations that joins in the filing of a consolidated return under section 1501 shall be considered a single taxpayer.

(g) *Effective date*. This section applies to Federal corporate income tax returns filed after February 28, 2000. However, paragraphs (b)(3)(ii)(B), (b)(3)(ii)(C), and (b)(5) *Examples 1* and *3*, of this section apply to Federal corporate income tax returns filed after August 2, 2001. Taxpayers may rely on the rules in paragraphs (b)(3)(ii)(B), (b)(3)(ii)(C), and (b)(5) *Examples 1* and *3*, of this section for Federal corporate income tax returns filed after February 28, 2000. Otherwise, the rules that apply with respect to Federal corporate income tax returns filed after February 28, 2000, and on or before August 2, 2001, are contained in § 1.6011–4T in effect prior to August 2, 2001 (see 26 CFR part 1 revised as of April 1, 2001).

[T.D. 8877, 65 FR 11207, Mar. 2, 2000, as amended by T.D. 8896, 65 FR 49911, Aug. 16, 2000; T.D. 8961, 66 FR 41135, Aug. 7, 2001]

§ 1.6012–1 Individuals required to make returns of income.

(a) *Individual citizen or resident*—(1) *In general*. Except as provided in subparagraph (2) of this paragraph, an income tax return must be filed by every individual for each taxable year beginning before January 1, 1973, during which he receives $600 or more of gross income, and for each taxable year beginning after December 31, 1972, during which he receives $750 or more of gross income, if such individual is:

(i) A citizen of the United States, whether residing at home or abroad,

(ii) A resident of the United States even though not a citizen thereof, or