

this paragraph (g)(2), any person that participates directly or indirectly in a transaction will be treated as having discussed participation in the transaction not later than the date of the agreement to participate. Thus, a tax shelter participant will be treated as having discussed participation in the transaction even if all discussions were conducted by an intermediary and the agreement to participate was made indirectly through another person acting on the participant's behalf (for example, through an intermediary empowered to commit the participant to participate in the shelter).

(v) *Special rule for controlled entities.* A person (first person) will be treated as participating indirectly in a confidential corporate tax shelter if a foreign person controlled by the first person participates in the shelter, and a significant purpose of the shelter is the avoidance or evasion of the first person's Federal income tax. For purposes of this paragraph (g)(2)(v), control of a foreign corporation or partnership will be determined under the rules of section 6038(e)(2) and (3), except that such section shall be applied by substituting "10" for "50" each place it appears and "at least" for "more than" each place it appears. In addition, section 6038(e)(2) shall be applied for these purposes without regard to the constructive ownership rules of section 318 and by treating stock as owned if it is owned directly or indirectly. Section 6038(e)(3) shall be applied for these purposes without regard to the last sentence of section 6038(e)(3)(B). Any beneficiary with a 10 percent or more interest in a foreign trust or estate shall be treated as controlling that trust or estate for purposes of this paragraph (g)(2)(v).

(vi) *Other rules—(A)* For purposes of the registration requirements under section 6111(d)(3), it is presumed that the tax shelter promoters will receive fees in excess of \$100,000 in the aggregate unless the person responsible for registering the tax shelter can show otherwise.

(B) Any person treated as a tax shelter promoter under section 6111(d) solely by reason of being related (within the meaning of section 267 or 707) to a foreign promoter will be treated as a

foreign promoter for purposes of this paragraph (g)(2).

(h) *Effective date.* This section applies to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000. If an interest is sold after February 28, 2000, it is treated as offered for sale after February 28, 2000 unless the sale was pursuant to a written binding contract entered into on or before February 28, 2000. However, paragraphs (b)(3)(ii), (c)(1), (2) and (3), (f), and (g)(1) of this section apply to confidential corporate tax shelters in which any interests are offered for sale after August 11, 2000. The rules in paragraphs (b)(3)(ii), (c)(1), (2) and (3), (f), and (g)(1) of this section may be relied upon for confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000. Otherwise, the rules that apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000, are contained in §301.6111-2T in effect prior to August 11, 2000 (see 26 CFR part 301 revised as of April 1, 2000). However, paragraphs (b)(1), (b)(3)(ii), (b)(4)(i), (b)(6) *Example* (i) and (ii), (c)(3), and (e)(2)(ii)(E) of this section apply to confidential corporate tax shelters in which any interests are offered for sale after August 2, 2001. The rules in paragraphs (b)(1), (b)(3)(ii), (b)(4)(i), (b)(6), (b)(6) *Example* (i) and (ii), (c)(3), and (e)(2)(ii)(E), of this section may be relied upon for confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000. Otherwise, the rules that apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000, and on or before August 2, 2001 are contained in this §301.6111-2T in effect prior to August 2, 2001 (See 26 CFR part 301 revised as of April 1, 2001).

[T.D. 8876, 65 FR 11218, Mar. 2, 2000, as amended by T.D. 8896, 65 FR 49912, Aug. 16, 2000; T.D. 8961, 66 FR 41135, Aug. 7, 2001]

**§ 301.6112-1T Questions and answers relating to the requirement to maintain a list of investors in potentially abusive tax shelters (temporary).**

The following questions and answers relate to the requirement to maintain

## Internal Revenue Service, Treasury

## § 301.6112-1T

a list of investors in potentially abusive tax shelters that is imposed by section 6112 of the Internal Revenue Code of 1954, as added by section 142 of the Tax Reform Act of 1984 (Pub. L. 98-369; 98 Stat. 681):

### IN GENERAL

Q-1: What requirements are imposed by section 6112 on persons who organize potentially abusive tax shelters (“organizers”) and persons who sell interests in such tax shelters (“sellers”)?

A-1: Any organizer of a potentially abusive tax shelter generally must prepare and maintain for a specified period a list identifying certain persons who acquire interests in the tax shelter. Any seller of an interest in such a tax shelter generally must maintain a list identifying each person who acquires an interest in the tax shelter from the seller. The lists also must contain the other information required by this section. The organizer or seller also is required to make the list available for inspection upon request by the Internal Revenue Service. For the definition of a potentially abusive tax shelter, see A-3 of this section. For the definition of an organizer of a potentially abusive tax shelter, see A-5 of this section. For the definition of a seller of an interest in a potentially abusive tax shelter, see A-6 of this section. For rules relating to the designation of one organizer to maintain a list in cases in which two or more organizers or sellers would be required to maintain the same list or portion of a list, see A-11 through A-13 of this section. For the information that must be included on a list, see A-17 of this section. For the requirements relating to the retention of lists and making lists available for inspection, see A-19 through A-21 of this section.

Q-2: What sanctions apply to an organizer or seller who fails properly to comply with the requirements of section 6112 and this section?

A-2: Any organizer or seller who fails to comply with the applicable requirements shall be subject to the penalty imposed by section 6708. For rules relating to section 6708, see §301.6708-1T.

### DEFINITION OF POTENTIALLY ABUSIVE TAX SHELTER

Q-3: What is the meaning of the term “potentially abusive tax shelter”?

A-3: A potentially abusive tax shelter (“tax shelter”) means (a) any investment that is a tax shelter required to be registered with the Internal Revenue Service under section 6111, and (b) any other entity, plan, or arrangement that is treated by regulations as a tax shelter for purposes of the list requirement. An investment that is required to be registered under section 6111 is a tax shelter even if the investment has not been properly registered with the Internal Revenue Service. See §301.6111-1T for rules relating to tax shelter registration and §301.6111-2T for rules relating to confidential corporate tax shelter registration.

Q-4: Are any entities, plans, or arrangements other than those required to be registered with the Internal Revenue Service under section 6111 treated as tax shelters for purposes of the list requirement?

A-4. (a) Yes; for purposes of the list requirement, a tax shelter includes any tax shelter that is a projected income investment, as defined in §301.6111-1T A-57A, and any transaction a significant purpose of the structure of which is the avoidance or evasion of Federal income tax within the meaning of section 6111(d)(1)(A) and §301.6111-2T(b) (whether or not offered to any direct or indirect corporate participant). For this purpose, as under §301.6111-2T, 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, including any series of related steps carried out as part of a prearranged plan.

(b) Section 301.6111-2T provides a procedure for obtaining rulings as to whether a transaction is subject to registration under §301.6111-2T. The same procedure shall be available to a person who is uncertain whether a transaction constitutes a tax shelter for which a list must be maintained under this section. The requirement to make a list

which contains the information required by this section available for inspection by the Secretary shall be suspended during the period that such ruling request is pending and for sixty days thereafter; however, if it is ultimately determined that the transaction is a tax shelter, the pendency of such a ruling request shall not affect the requirement to maintain the list or limit the participants required to be included on the list or the other information required to be included as part of the list.

PERSONS REQUIRED TO MAINTAIN LISTS  
OF INVESTORS

Q-5: Who is an organizer of a tax shelter?

A-5: An organizer is any person who is a principal organizer of a tax shelter under A-27 of §301.6111-1T. Thus, an organizer, for purposes of the list requirement, means any person who discovers, creates, investigates, or initiates the tax shelter investment, devises the business or financial plans for the tax shelter, or carries out those plans through negotiations or transactions with others. In addition, an organizer is any other person who participates in the organization or management of the tax shelter within the meaning of §301.6111-1T A-28 or A-29, except those persons whose activities do not constitute participation in the organization or management of a tax shelter under §301.6111-1T A-30 or A-33.

Q-6: Who is a seller of an interest in a tax shelter?

A-6: For purposes of the list requirement, a seller is—

(a) Any organizer, underwriter, broker, or dealer (or other similar person) who transfers any interest in a tax shelter;

(b) Any agent who negotiates the transfer of any interest in a tax shelter for the tax shelter, an organizer, or other person described in paragraph (a) of this A-6;

(c) Any investor (*i.e.*, a person not described in paragraph (a) of this A-6) who transfers any interest in a tax shelter; and

(d) Any other person who receives consideration in connection with another person's right to participate in a tax shelter, for services necessary to

the organization or structure of such tax shelter (other than services that do not constitute participation in the organization or management of a tax shelter under §301.6111-1T A-30 or A-33), or for information that is integral to participation in such tax shelter.

For example, if a broker or underwriter purchases a block of interests in a tax shelter from an organizer and in turn sells those interests to individual investors, the broker or underwriter, under paragraph (a) of this A-6, is a seller for purposes of the list requirement. Moreover, if a broker or underwriter who purchases a block of interests in a tax shelter engages other brokers or agents to negotiate sales of interests, such other brokers or agents, under paragraph (b) of this A-6, are sellers for purposes of the list requirement. Similarly, if an organizer engages a broker or other agent to negotiate sales of interests in a tax shelter to investors, the broker or other agent, under paragraph (b) of this A-6, is a seller for purposes of the list requirement. If, on the other hand, an individual investor engages a broker or other agent to negotiate a sale of the investor's interest to another investor, the broker or other agent is not a seller for purposes of the list requirement. The individual investor who transfers the interest, however, would be a seller for purposes of the list requirement under paragraph (c) of this A-6.

Q-7: What is the meaning of the term "an interest" in a tax shelter?

A-7: An interest in a tax shelter includes any right to participate in the tax shelter by reason of (a) a partnership interest, a shareholder interest, or a beneficial interest in a trust, (b) any interest in property (including a leasehold interest), or (c) the entry into a leasing arrangement or a consulting, management, or other agreement for the performance of services. In addition, in any case in which a person has directly or indirectly paid consideration to an organizer or seller for the right to participate in a tax shelter, for services necessary to the organization or structure of such tax shelter (other than services that do not constitute participation in the organization or management of a tax shelter under

§ 301.6111-1T A-30 or A-33), or for information that is integral to participation in such tax shelter, the participant shall be considered to have acquired an interest in the tax shelter and to have been sold an interest in the tax shelter by the organizer or seller.

PERSONS REQUIRED TO BE INCLUDED ON  
A LIST

Q-8: What persons are required to be included on a list maintained by an organizer?

A-8. (a) An organizer of a tax shelter must include on a list all persons who acquire interests in the tax shelter by reason of—

(1) Any transfer of an interest made by the organizer (*i.e.*, a transfer with respect to which the organizer, under paragraph (a) of A-6 of this section, is also a seller) or through an agent of the organizer described in paragraph (b) of A-6 of this section;

(2) Any transfer of an interest made by the tax shelter or through an agent of the tax shelter described in paragraph (b) of A-6 of this section (provided the organizer is involved in the tax shelter on the date of the transfer);

(3) Any transfer of an interest made by or through a person related (as defined in section 465(b)(3)(C)) to the organizer or the tax shelter (provided the organizer is involved in the tax shelter on the date of the transfer);

(4) Any transfer of an interest of which the organizer is informed (regardless of whether the organizer is so informed under A-15 of this section for the specific purpose of maintaining a list); and

(5) Any other transfer of which the organizer knows or has reason to know whether on account of the duty of inquiry described in A-9 of this section or for any other reason.

*Example 1.* Assume that A, an organizer, offers partnership interests in a tax shelter for sale through Y, a broker. In 1985, ten individual investors purchase partnership interests from A through Broker Y. A must include on A's list the ten individual investors, because organizers must include on their lists persons who acquire interests by reason of transfers with respect to which the organizers also are sellers within the meaning of paragraph (a) of A-6 of this section. Broker Y, who is a seller within the meaning of paragraph (b) A-6 of this section, also would

be required to maintain a list containing the names of the ten individual investors (see A-10 of this section). See A-17 of this section for the other information required to be included on a list. See A-11 through A-13 of this section for rules relating to the designation of a single organizer to maintain a list for multiple organizers and sellers.

*Example 2.* Assume the same facts as in example 1 and that, in addition, A is the tax matters partner (within the meaning of section 6231) for the partnership. In 1986, A, as tax matters partner, is instructed to prepare a Form K-1 for partner Z, a corporation that acquired its interest from one of the ten investors. A would be required to include Z on A's list under paragraph (d) of this A-8 because A has been informed of the acquisition of an interest by Z.

(b) An organizer may, but is not required to, list a person that acquired an interest in a potentially abusive tax shelter if the shelter is not subject to registration under section 6111, is not a listed transaction described in § 301.6111-2T(b)(2), and is not a projected income investment described in § 301.6111-1T A-57A, if the total consideration paid to all organizers and sellers with respect to such person's acquisition of the interest is less than \$25,000, or if the organizer reasonably believes that such person's acquisition of the interest will not result in a reduction of the Federal income tax liability of any corporation or corporations that exceeds, or exceeds in the aggregate, \$1 million in any single taxable year or a total of \$2 million for any combination of taxable years and will not result in a reduction of the Federal income tax liability of any noncorporate taxpayer or taxpayers that exceeds, or exceeds in the aggregate, \$250,000 in any single taxable year or a total of \$500,000 for any combination of taxable years. For purposes of this paragraph (b), the fees paid by or to, and the tax savings of, persons related within the meaning of section 267 or section 707(b) are aggregated.

Q-9: When does an organizer have a duty to inquire with respect to transfers of interests in the tax shelter?

A-9. An organizer has a duty to make a reasonable inquiry only with respect to transfers of interests in the tax shelter made by a seller described in paragraph (a) of A-6 of this section who acquired the interests from the organizer

or a person related (as defined in section 465(b)(3)(C)) to the organizer, or the tax shelter or a person related (as defined in section 465(b)(3)(C)) to the tax shelter (provided the organizer is involved in the tax shelter on the date the interest is transferred to the seller). See Q&A-8 of this section. For example, if a broker or underwriter purchases a block of interests in a tax shelter from an organizer and in turn sells those interests to individual investors, the organizer has a duty to inquire with respect to such sales. If, as a result of the inquiry, the organizer knows the investors who acquired interests in the tax shelter from the broker or underwriter, the organizer would be required to include those persons on the list. (See paragraph(a)(5) of A-8 of this section.) If the organizer fails reasonably to inquire with respect to transfers by a seller described in paragraph (a) of A-6 of this section, the organizer will have reason to know for purposes of paragraph(a)(5) of A-8 of this section of those investors who acquired interests in the tax shelter from such a seller by reason of any transfer that the organizer would have discovered through a reasonable inquiry.

Q-10: What persons are required to be included on a list maintained by a seller?

A-10: Any list required to be maintained by a seller must identify each person who acquired an interest in the tax shelter from the seller, or, if the seller is an agent described in paragraph (b) of A-6 of this section, each person who acquired an interest through the seller. Any list required to be maintained by a seller described in paragraph (a) of A-6 of this section must also identify each person who acquired an interest of which the seller is informed under A-15 of this section. However, a seller may, but is not required to, list a person that is described in A-8(b) of this section.

#### DESIGNATION OF ONE ORGANIZER TO MAINTAIN THE LIST

Q-11: If more than one person is required to maintain a list for the same tax shelter (*i.e.*, multiple organizers, or organizers and sellers), may a single person be designated to maintain the

list or a portion of the list for the tax shelter?

A-11. (a) Yes. Organizers and sellers who are required to maintain a list (or a portion of such a list) of persons who have acquired interests in the same tax shelter may designate one of the organizers (but not a seller who is not also an organizer) to maintain the required list or portion of the list (“designated person”). Organizers and sellers may not designate one person to maintain a list for the tax shelter, however, unless the tax shelter is timely and properly registered under section 6111 or unless the tax shelter is described in Q&A-4 of this section. If the tax shelter is registered with the Internal Revenue Service under section 6111, the organizer who registered the tax shelter ordinarily should be the designated person, although any other organizer who meets the requirements of this A-11 may be the designated person. An organizer may not be a designated person, however, unless—

(1) It is reasonably expected that the organizer will actively participate in the management of the tax shelter as (i) a general partner of the tax shelter, (ii) an officer or director of the tax shelter, (iii) an officer or director of a corporate general partner of the tax shelter, or (iv) a trustee of the tax shelter; and

(2) The organizer is not a resident of, and does not maintain its principal place of business in, a foreign country.

(b) In the case of a confidential corporate tax shelter under section 6111(d) and §301.6111-2T or a tax shelter described in Q&A-4 of this section (other than one required to be registered under section 6111(c) or a projected income investment as described in §301.6111-1T A-57A), the rules contained in A-11(a)(1), A-13(a)(2), the second sentence of A-13(b), A-13(c) and A-14 of this section do not apply.

Q-12: What must organizers and sellers do to designate one organizer to maintain a list under A-11 of this section?

A-12: The organizers and sellers must enter into a written agreement that identifies the designated person and that is signed by all the parties to the agreement, including the designated person.

Q-13: What are the consequences of an agreement under A-12 of this section?

A-13. (a) If the tax shelter is required to be registered under section 6111 at the time an agreement under A-12 of this section is signed, a seller or an organizer who signs the agreement shall not be subject to penalty under section 6708 for failing to maintain a list provided that the seller or organizer—

(1) Submits to the designated person all of the information that the organizer or seller otherwise would be required to maintain on a list (as described in A-8, A-10, and A-17 of this section); and

(2) Provides to each investor (within the meaning of paragraph (c) of A-6 of this section) otherwise required to be included on a list maintained by such organizer or seller a notice in the form prescribed in paragraph (c) of this A-13.

(b) If the tax shelter is described in A-4 of this section at the time an agreement under A-12 of this section is signed, a seller or an organizer who signs the agreement shall not be subject to penalty under section 6708 for failing to maintain a list provided that the seller or organizer submits to the designated person all of the information that the organizer or seller otherwise would be required to maintain on a list (as described in A-8, A-10, and A-17 of this section). If the tax shelter ceases to be a projected income investment under A-57G of §301.6111-1T, or the tax shelter becomes subject to the registration requirements under section 6111, the designated person must provide to each investor (within the meaning of paragraph (c) of A-6 of this section) required to be included on the list an explanation that the tax shelter has ceased to be projected income investment or that the tax shelter is subject to the registration requirements of section 6111, whichever applies, and a notice substantially in the form prescribed in paragraph (c) of this A-13.

(c) Any notice required to be provided to an investor (within the meaning of paragraph (c) of A-6 of this section) under paragraph (a) or (b) of this A-13 must be substantially in the form set forth below:

You have acquired an interest in [name and address of tax shelter]. If you transfer

your interest in this tax shelter to another person, you are required by the Internal Revenue Service to keep a list containing that person's name, address, taxpayer identification number, the date on which you transferred the interest, and the name, address, and tax shelter registration number of this tax shelter. If you do not want to keep such a list, you must (1) send the information specified above to [name and address of designated person], who will keep the list for this tax shelter, and (2) give a copy of this notice to the person to whom you transfer your interest.

This notice may be incorporated into the notice required by A-53 or A-54 of §301.6111-1T (relating to tax shelter registration).

(d) A designated person who fails to maintain a list shall be subject to penalty under section 6708. For special rules for determining the amount of the penalty imposed on a designated person under section 6708, see A-6 of §301.6708-1T.

#### ADDITIONAL REQUIREMENT IMPOSED ON SELLERS WHO DO NOT SIGN DESIGNATION AGREEMENTS

Q-14: Is any additional requirement imposed on a seller who does not sign an agreement under A-12 of this section to designate one organizer to maintain a list for a tax shelter?

A-14. Yes. Any seller described in paragraph (a) of A-6 of this section who does not sign a designation agreement under A-12 of this section (including organizers who are such sellers) with respect to a tax shelter that is required to be registered under section 6111 must provide a notice to all investors (within the meaning of paragraph (c) of A-6 of this section) who acquire interests in the tax shelter from the seller. The notice must be substantially in the form prescribed in paragraph (c) of A-13 of this section except that the notice must include the name and address of the designated person. In the case of a tax shelter described in A-4 of this section, a notice to investors need not be provided until such time, if any, as the tax shelter ceases to be a projected income investment under A-57G of §301.6111-1T, or the tax shelter becomes subject to the registration requirements under section 6111. In such a case, the seller shall provide, with the notice, an explanation that the tax

shelter has ceased to be a projected income investment, or that the tax shelter has otherwise become subject to the registration requirements under section 6111, whichever applies.

SPECIAL RULES APPLICABLE TO  
INVESTORS

**Q-15:** Under what circumstances is an investor described in paragraph (c) of A-6 of this section who retransfers an interest in a tax shelter not required to maintain a list disclosing the transferee's name and the other information required by A-17 of this section?

**A-15.** An investor who retransfers an interest in a tax shelter that is described in A-4 of this section, is not required to maintain a list with respect to the retransfer unless prior to the retransfer the tax shelter ceases to be a projected income investment under A-57G of §301.6111-1T or otherwise becomes subject to the registration requirements under section 6111. In addition, any investor who is required to maintain a list for a tax shelter (including a tax shelter that has ceased to be a projected income investment) may require a designated person or a seller identified in a notice provided under either A-13 or A-14 of this section to maintain the investor's list (and the investor will thus not be subject to any penalty under section 6708 for failing to maintain the list) by—

(a) Submitting to the designated person or seller so identified all of the information that the investor otherwise would be required to maintain on a list for that tax shelter, and

(b) Providing a copy of the notice furnished to the investor under either A-13 or A-14 of this section to the person or persons to whom the investor retransfers an interest in the tax shelter.

*Example.* Assume that X, an organizer, retains brokers A and B to sell interests in a tax shelter that is not a projected income investment. In 1985, A and B each negotiate sales of interests in the tax shelter to investors. Assume that X timely and properly registered the tax shelter under section 6111. A, B, and X enter into an agreement to designate X to maintain the list of investors who acquired interests in the tax shelter through A and B. Pursuant to the agreement, A and B submit the required information to X and provide the required notice to the investors who acquired interests through

A and B. On January 1, 1986, C, an investor who acquired an interest through A, sells the interest to D. Since C was provided with the notice required by A-13 of this section, C may require X to maintain C's list with respect to the sale to D by submitting to X all of the required information regarding the sale and by providing a copy of the notice to D. If A, B, and X had not signed an agreement, X, a seller described in paragraph (a) of A-6 of this section, would nevertheless have been required to provide a notice to C (under A-14 of this section) and C would have been able to require X to keep the list by complying with the two requirements of this A-15. In the absence of an agreement, however, A and B, who are sellers described in paragraph (b) of A-6 of this section, would have been required to keep lists of investors with whom they negotiated sales.

MANNER IN WHICH LIST SHALL BE  
MAINTAINED

**Q-16:** In what manner must an organizer or a seller maintain a list?

**A-16:** A list may be maintained on paper, card file, magnetic media, or in any other form, provided the method of maintaining the list enables the Internal Revenue Service to determine without undue delay or difficulty the information required by A-17 of this section.

**Q-17:** What information must be included on a list?

**A-17.** (a) A list must contain the following information—

(1) The name of the tax shelter and the registration number, if any, obtained under section 6111;

(2) The TIN (as defined in section 7701(a)(41)), if any, of the tax shelter;

(3) The name, address, and TIN (as defined in section 7701(a)(41)) of each person who is required to be included on the list under A-8 or A-10 of this section and, in the case of a tax shelter that is a transaction described in section 6111(d)(1)(A) and §301.6111-2T(b) whether or not the direct or indirect participant is a corporation, the name, address, and TIN of each investor and any indirect corporate participant in the shelter if known to the organizer or seller;

(4) If applicable, the number of units (*i.e.*, percentage of profits, number of shares, etc.) acquired by each person who is required to be included on the list;

(5) The date on which each interest was acquired;

(6) The amount of money invested in the tax shelter by each person required to be included on the list under A-8 or A-10 of this section;

(7) A detailed description of the tax shelter that describes both the structure of the tax shelter and the intended tax benefits for participants in the tax shelter;

(8) A summary or schedule of the tax benefits that each person is intended or expected to derive from participation in the tax shelter, if known by the organizer or seller;

(9) Copies of any additional written materials, including tax analyses or opinions, relating to the tax shelter that have been given to any potential participants in the tax shelter or to any representatives, tax advisors, or agents of such potential participants by the organizer or seller or by any other person who has participated in the offering of the tax shelter (excluding any written materials that the organizer or seller has never possessed);

(10) If the interest was not acquired from the person maintaining the list, the name of the person from whom the interest was acquired; and

(11) The name and address of each agent of the person maintaining the list who is described in paragraph (b) of A-6 of this section.

(b) In any case in which an organizer or a seller of a potentially abusive tax shelter believes that information required to be maintained as part of the list for that tax shelter is protected by the attorney-client privilege or constitutes confidential tax advice protected under section 7525(a), such information may be withheld from disclosure to the Service, provided that the organizer or seller provides the Service with a statement signed under penalties of perjury with information and representations required in that statement that are the same as those required by §301.6111-2T if the promoter of a confidential corporate tax shelter asserts that information required to be included with Form 8264, "Application for Registration of a Tax Shelter," is privileged.

(c) No information needs to be included on a list with regard to any tax

shelter for which no person is an investor required to be included on the list under A-8(b) or A-10 of this section.

Q-18: If a person is required to maintain lists for more than one tax shelter, how should the lists be arranged?

A-18: A separate list, identified by the registration number obtained under section 6111 (or if there is no registration number, the name of the tax shelter), must be maintained for each tax shelter. Interests in substantially similar tax shelter transactions that are sold to different persons generally are to be treated as interests in the same tax shelter for purposes of this section. Further, the list for each tax shelter must identify each other tax shelter (if any) that the organizer or seller has offered that has not been treated as part of the same tax shelter, but that utilizes a similar structure or is intended to produce similar tax benefits.

#### RETENTION OF LISTS

Q-19: How long must organizers and sellers retain a list?

A-19: A list generally must be retained for 7 years following the date on which the last acquisition of an interest required to be included on the list is made (not including any acquisition for which an organizer or seller is required to maintain a list under A-15 or paragraph (a)(4) or (5) of A-8 of this section). In the case of any acquisition of an interest for which an organizer or seller is required to maintain a list under A-15 or paragraph (a)(4) or (5) of A-8 of this section, the list with respect to the acquisition must be retained for the longer of the 7-year period determined under the preceding sentence, or the 3-year period following the date on which the interest is acquired.

Q-20: Who must retain the list if the person required to maintain the list is a corporation or a partnership that is dissolved or liquidated before completion of the period determined under A-19 of this section?

A-20: If a list is required to be maintained by a corporation or partnership that is dissolved or liquidated before completion of the period determined under A-19 of this section, the list shall be retained by the person or persons

who under state law are responsible for winding up the affairs of the corporation or partnership. If state law does not specify any person or persons as responsible for winding up, then, collectively, the directors of the corporation or general partners of the partnership shall be responsible for retaining the list.

#### AVAILABILITY FOR INSPECTION

Q-21: When must a person required to maintain a list make the list available for inspection?

A-21: Any person required to maintain a list must, upon request by the Internal Revenue Service, make the list available for inspection as soon as practicable, but in no event later than 10 calendar days after such request. The request need not be in the form of an administrative summons.

#### EFFECTIVE DATE

Q-22: With respect to what interests must an organizer or a seller maintain a list?

A-22. An organizer or seller must maintain a list with respect to any interest acquired by an investor (within the meaning of paragraph (c) of A-6 of this section) in a potentially abusive tax shelter after February 28, 2000. If a transaction becomes a potentially abusive tax shelter after interests are acquired by investors, an organizer or a seller must maintain a list with respect to any interest in the transaction acquired after the transaction becomes a potentially abusive tax shelter. Additionally, the Internal Revenue Service will not ask to inspect any list for a potentially abusive tax shelter, other than a tax shelter described in section 6111(c), until August 29, 2000. The lists required by the preceding two sentences with regard to interests acquired in potentially abusive tax shelters must contain the information required by A-17 of this section as it relates to such interests. However, the rules in A-4(a), A-5, A-6(d), A-7, A-8(b), A-10, A-11(b), and A-17(a)(3) and (c) of this section apply to any interest acquired by an investor (within the meaning of paragraph (c) of A-6 of this section) in a potentially abusive tax shelter after August 11, 2000. The rules in A-4(a), A-5, A-6(d), A-7, A-8(b), A-10,

A-11(b), and A-17(a)(3) and (c) of this section may be relied upon for any interest acquired by an investor (within the meaning of paragraph (c) of A-6 of this section) in a potentially abusive tax shelter after February 28, 2000. Otherwise, the rules that apply with respect to interests acquired in potentially abusive tax shelters after February 28, 2000, are contained in § 301.6112-1T in effect prior to August 11, 2000 (see 26 CFR part 301 revised as of April 1, 2000). The rules that apply with respect to interests acquired in potentially abusive tax shelters acquired on or before February 28, 2000, are contained in 26 CFR part 301 revised as of April 1, 1999.

[T.D. 7969, 49 FR 34201, Aug. 29, 1984, as amended by T.D. 7990, 49 FR 43646, Oct. 31, 1984; 50 FR 13020, Apr. 2, 1985; T.D. 8875, 65 FR 11213, Mar. 2, 2000; T.D. 8896, 65 FR 49912, Aug. 16, 2000; T.D. 8961, 66 FR 41137, Aug. 7, 2001]

#### § 301.6114-1 Treaty-based return positions.

(a) *Reporting requirement*—(1) *General rule.* (i) Except as provided in paragraph (c) of this section, if a taxpayer takes a return position that any treaty of the United States (including, but not limited to, an income tax treaty, estate and gift tax treaty, or friendship, commerce and navigation treaty) overrules or modifies any provision of the Internal Revenue Code and thereby effects (or potentially effects) a reduction of any tax incurred as any time, the taxpayer shall disclose such return position on a statement (in the form required in paragraph (d) of this section) attached to such return.

(ii) If a return of tax would not otherwise be required to be filed, a return must nevertheless be filed for purposes of making the disclosure required by this section. For this purpose, such return need include only the taxpayer's name, address, taxpayer identifying number, and be signed under penalties of perjury (as well as the subject disclosure). Also, the taxpayer's taxable year shall be deemed to be the calendar year (unless the taxpayer has previously established, or timely chooses for this purpose to establish, a different taxable year). In the case of a disclosable return position relating solely to income subject to withholding