26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: Part I, §§ 6011, 6112; 1.6011–4, 301.6112–1.)

Rev. Proc. 2004–67

SECTION 1. PURPOSE

This revenue procedure provides that certain book-tax differences are not taken into account in determining whether a transaction is a reportable transaction for purposes of the disclosure rules under § 1.6011–4(b)(6) of the Income Tax Regulations. However, these transactions may be reportable transactions for purposes of the disclosure rules under § 1.6011–4(b)(2), (b)(3), (b)(4), (b)(5), or (b)(7).

SECTION 2. BACKGROUND

.01 Section 1.6011–4 requires a taxpayer that participates in a reportable transaction to disclose the transaction in accordance with the procedures provided in § 1.6011–4. Under § 1.6011–4(b), there are six categories of reportable transactions. One category of reportable transaction is a transaction with a significant book-tax difference. A transaction with a significant book-tax difference is defined in § 1.6011–4(b)(6). Generally, a transaction with a significant book-tax difference is a transaction where the amount for tax purposes of any item or items of income, gain, expense, or loss from the transaction differs by more than $10 million on a gross basis from the amount of the item or items for book purposes in any taxable year.

.02 Section 1.6011–4(b)(8)(i) provides that a transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of § 1.6011–4.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that may be required to disclose reportable transactions under § 1.6011–4, material advisors that may be required to disclose reportable transactions under § 6111, as amended by § 815 of the American Jobs Creation Act of 2004, P.L. 108–357, 118 Stat. 1418 (October 22, 2004), and material advisors that may be required to maintain lists under former and new § 6112.

SECTION 4. APPLICATION

.01 *In general.* In determining whether a transaction has a significant book-tax difference in any taxable year, the taxpayer must first identify the transaction and then determine which items of income, gain, expense, or loss result from that transaction. If the book-tax difference for all of the items resulting from the transaction (as determined under § 1.6011–4(b)(6) without netting) exceeds $10 million in any taxable year, the transaction is a reportable transaction under § 1.6011–4(b)(6). For example, if the taxpayer participates in one transaction in which book income exceeds taxable income by $3 million for an income item, tax expense exceeds book expense by $5 million for an expense item, and tax expense exceeds book expense by $4 million for a second expense item (none of which are excluded from § 1.6011–4(b)(6) in section 4.02 of this revenue procedure), then the transaction has a book-tax difference of $12 million and is a reportable transaction under § 1.6011–4(b)(6).

.02 *Exceptions.* If a particular item for a specific transaction is excluded from the determination of the book-tax difference under this revenue procedure, future items reflecting that book-tax difference are also excluded from the determination of the book-tax difference for that transaction in future years, even if the subsequent reversal of the item, for example through cost recovery or an asset disposition, gives rise to a book-tax difference. Book-tax differences arising by reason of the following are not taken into account in determining whether a transaction has a significant book-tax difference under § 1.6011–4(b)(6):

(1) Items to the extent a book loss or expense is reported before or without a loss or deduction for federal income tax purposes.

(2) Items to the extent income or gain for federal income tax purposes is reported before or without book income or gain.

(3) Depreciation, depletion under § 612 of the Internal Revenue Code, and amortization relating solely to differences in methods, lives (for example, useful lives, recovery periods), or conventions, as well as differences resulting from the application of §§ 168(k), 1400I, or 1400L(b).

(4) Percentage depletion under § 613 or § 613A, and intangible drilling costs deductible under § 263(c).

(5) Capitalization and amortization under §§ 195, 248, and 709.

(6) Bad debts or cancellation of indebtedness income.

(7) Federal, state, local, and foreign taxes.

(8) Compensation of employees and independent contractors (whether or not individuals), including stock options, pensions, severance, and retirement.

(9) Charitable contributions of cash or tangible property.

(10) Tax exempt interest, including municipal bond interest.

(11) Dividends as defined in § 316 (including any dividends received deduction), amounts treated as dividends under § 78, distributions of previously taxed income under §§ 959 and 1293, and income inclusions under §§ 551, 951, and 1293.

(12) A dividends paid deduction by a publicly-traded REIT.

(13) Patronage refunds or dividends from cooperatives without a § 267 relationship to the taxpayer.

(14) Items resulting from the application of § 1033.

(15) Items resulting from the application of §§ 354, 355, 361, 367, 368, or 1031, if the taxpayer fully complies with the filing and reporting requirements for these sections, including any requirement in the regulations or in forms.

(16) Items resulting from debt-for-debt exchanges.

(17) Treatment of a transaction as a sale, purchase, or lease for book purposes and as a financing arrangement for tax purposes.

(18) Treatment of a transaction as a sale for book purposes and as a nontaxable transaction under § 860F(b)(1)(A) for tax purposes, not including differences resulting from the application of different valuation methodologies to determine the relative value of REMIC interests for purposes of allocating tax basis among those interests.

(19) Items resulting from differences solely due to the use of hedge accounting for book purposes but not for tax purposes, the use of hedge accounting under § 1.446–4 for tax purposes but not for book purposes, the use of integrated hedge accounting under § 988(d) and § 1.1275–6 for tax purposes but not for book purposes, or the use of different hedge accounting methodologies for book and tax purposes.

(20) Items resulting solely from (i) the use of a mark-to-market method of accounting for book purposes and not for tax purposes, (ii) the use of a mark-to-market method of accounting for tax purposes but not for book purposes, or (iii) in the case of a taxpayer who uses mark-to-market accounting for both book purposes and tax purposes, the use of different methodologies for book purposes and tax purposes.

(21) Items resulting from the application of § 1286.

(22) Inside buildup, death benefits, or cash surrender value of life insurance or annuity contracts.

(23) Life insurance reserves determined under § 807 and non-life insurance reserves determined under § 832(b).

(24) Capitalization of policy acquisition expenses of insurance companies.

(25) Imputed interest income or deductions under §§ 483, 1274, 7872, or 1.1275–4.

(26) Gains and losses arising under §§ 986(c), 987, and 988.

(27) Items excluded under § 883, § 921, or an applicable treaty from a foreign corporation's income that would otherwise be subject to tax under § 882.

(28) Section 481 adjustments.

(29) Inventory valuation differences.

(30) Section 198 deductions for environmental remediation costs.

(31) Items resulting from the treatment of a group of mortgages as a single asset for book purposes but as multiple assets for tax purposes.

(32) Items that are reported on a gross basis for tax and on a net basis for book, or on a net basis for tax and a gross basis for book, if the differing reporting produces no net book-tax difference for the taxable period; for example, in situations in which the amount reported for book purposes by a holder of a mortgage pass-through certificate is equal to the gross interest reported for tax purposes reduced by the holder's separate tax deduction for mortgage servicing fees.

(33) Any item resulting from the use of different book and tax treatment of original issue discount, market discount, acquisition discount, *de minimis* original issue discount, qualified stated interest, amortizable bond premium, bond issuance premium, or debt issuance costs.

(34) Items resulting from the application of specialized accounting methods for capital expenditures under § 263A, Rev. Proc. 2001–46, 2001–2 C.B. 263, or Rev. Proc. 2002–65, 2002–2 C.B. 700.

(35) Items resulting from adjustments to taxable income under § 833(b).

SECTION 5. EFFECT ON OTHER DOCUMENTS

This document modifies and supersedes Rev. Proc. 2003–25, 2003–1 C.B. 601.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective November 16, 2004, the date this revenue procedure was released to the public. This revenue procedure applies to transactions that are entered into on or after January 1, 2003.

SECTION 7. DRAFTING INFORMATION

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