

6110(g), the United States shall be liable, to the person described in paragraph (c)(1)(i) of this section who brought the action, in an amount equal to the sum of—

(A) Actual damages sustained by such person but in no case shall such person be entitled to receive less than the sum of \$1,000.

(B) The costs of the action, and

(C) Reasonable attorney's fees as determined by the court.

(2) *Liability for making additional disclosure of information.* The Commissioner shall not be liable for making any additional disclosure ordered pursuant to an action described in §301.6110-5(d)(2) if the notice required by §301.6110-5(d)(4) is sent.

(3) *Obligation to defend action for additional disclosure.* The Commissioner shall not be required to defend any action brought to obtain additional disclosure pursuant to section 6110(f)(4) if the notice required by §301.6110-5(d)(4) is sent.

(4) *Obligation to make deletions.* The Commissioner shall be obligated to make only those deletions required by section 6110(c) which he has agreed to make, those which a court has ordered to be made pursuant to §301.6110-5(b)(2) and those the omission of which would be intentional or willful.

(d) *Fees—(1) General rule—(i) Copies.* The Commissioner may prescribe fees pursuant to §607.702(f)(4) of this chapter for the costs of furnishing copies of material open to public inspection or subject to inspection upon written request pursuant to section 6110.

(ii) *Preparation of information available upon request.* The Commissioner may prescribe fees pursuant to §601.702(f) of this chapter for the costs of searching for and making deletions from any written determinations and background if documents that are subject to inspection only upon written request pursuant to §301.6110-1(b).

(2) *Reduction or waiver of fees—(i) Public interest.* The Commissioner shall reduce or waive the fees described in paragraph (d)(1) of this section if the Commissioner determines that furnishing copies of, searching for, or making deletions from any written determination or background file document primarily benefits the general

public, as described in §601.702(f)(2)(ii)(B) of this chapter.

(ii) *Previous requests.* The Commissioner may waive the fees described in paragraph (d)(1) of this section for searching for any written determination or background file document if the search for such written determination or background file document was made pursuant to a previous request for inspection thereof. The Commissioner shall waive the fees described in paragraph (d)(1) of this section for making deletions from any written determination or background file document if the making of such deletions from such written determination or background file document was made pursuant to a previous request for inspection thereof. Nothing in this (d)(2)(ii) shall prevent the Commissioner from prescribing fees for making additional deletions from such written determination or background file document pursuant to §301.6110-5(b).

[T.D. 7524, 42 FR 63417, Dec. 16, 1977]

§301.6111-1T Questions and answers relating to tax shelter registration.

The following questions and answers relate to the tax shelter registration requirements of section 6111 of the Internal Revenue Code of 1954, as added by section 141(a) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 678).

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IN GENERAL

Q-1. What is tax shelter registration?
 A-1. Tax shelter registration is a new provision of the Internal Revenue Code that affects organizers, sellers, investors, and certain other persons associated with investments that are considered tax shelters. The new provision imposes the following three requirements. First, a tax shelter must be registered by the tax shelter organizer. (See A-4 of this section for the definition of a tax shelter. See A-25 through A-39 of this section for rules relating to

tax shelter organizers. See A-26 of this section for rules regarding when the seller of an interest in a tax shelter is treated as the tax shelter organizer.) Registration is accomplished by filing a properly completed Form 8264 with the Internal Revenue Service. The Internal Revenue Service will assign a registration number to each tax shelter that is registered. Second, any person who sells or otherwise transfers an interest in a tax shelter must furnish the registration number of the tax shelter to the purchaser or transferee of the interest. (See A-51 through A-54 of this section for the time and manner in which the number must be furnished.) Third, any person who claims a deduction, loss, credit, or other tax benefit or reports any income from the tax shelter must report the registration number of the tax shelter on any return on which the deduction, loss, credit, benefit, or income is included. (See A-55 through A-57 of this section for rules relating to the reporting of tax shelter registration numbers.)

Q-2. Are penalties provided for failure to comply with the requirements of tax shelter registration?

A-2. Yes. Separate penalties are provided for failure to satisfy any of the requirements set forth in A-1 of this section. See A-1 of §301.6707-1T for the penalty for failure to register a tax shelter and A-8 of §301.6707-1T for the penalty for filing false or incomplete information with respect to the registration of a tax shelter. See A-12 of §301.6707-1T for the penalty for failure to furnish the tax shelter registration number to purchasers or transferees. See A-13 of §301.6707-1T for the penalty for failure to report the tax shelter registration number on a tax return on which a deduction, loss, credit, income, or other tax benefit is included. In addition, criminal penalties may be imposed for willful noncompliance with the requirements of tax shelter registration. See, for example, section 7203, relating to willful failure to supply information, and section 7206, relating to fraudulent and false statements.

Q-3. Does registration of a tax shelter with the Internal Revenue Service indicate that the Internal Revenue Service has reviewed, examined, or approved

the tax shelter or the claimed tax benefits?

A-3. No. Moreover, any representation to prospective investors that states that a tax shelter is registered with the Internal Revenue Service (or that registration is being sought) must include a legend stating that registration does not indicate that the Internal Revenue Service has reviewed, examined or approved the tax shelter or any of the claimed tax benefits. (See A-50 of this section for the form and content of the legend.)

TAX SHELTER DEFINED

Q-4. What investments are tax shelters that are required to be registered with the Internal Revenue Service?

A-4. A tax shelter is any investment that meets the following two requirements:

(I) The investment must be one with respect to which a person could reasonably infer, from the representations made or to be made in connection with any offer for sale of any interest in the investment, that the tax shelter ratio for any investor may be greater than 2 to 1 as of the close of any of the first 5 years ending after the date on which the investment is offered for sale.

(II) The investment must be (i) required to be registered under a federal or state law regulating securities, (ii) sold pursuant to an exemption from registration requiring the filing of a notice with a federal or state agency regulating the offering or sale of securities, or (iii) a substantial investment.

An investment that satisfies these two requirements is considered a tax shelter for registration purposes regardless of whether it is marketed or customarily designated as a tax shelter. See A-5 of this section for the definition of tax shelter ratio. See A-17 and A-18 of this section for the definition of an investment required to be registered under a federal or state law regulating securities. See A-19 and A-20 of this section for the definition of an investment sold pursuant to an exemption from registration requiring the filing of a notice. See A-21 of this section for the definition of a substantial investment.

TAX SHELTER RATIO

Q-5. What does the term “tax shelter ratio” mean?

A-5. The term “tax shelter ratio” means, with respect to any year, the ratio that the aggregate amount of deductions and 200 percent of the credits that are or will be represented as potentially allowable to an investor under subtitle A of the Internal Revenue Code for all periods up to (and including) the close of such year, bears to the investment base for such investor as of the close of such year.

DEDUCTIONS AND CREDITS REPRESENTED AS POTENTIALLY ALLOWABLE

Q-6. What do the terms “amount of deductions” and “credits” mean?

A-6. The term “amount of deductions” means the amount of gross deductions and other similar tax benefits potentially allowable with respect to the investment. The gross deductions are not to be offset by any gross income to be derived or potentially derived from the investment. Thus, the term “amount of deductions” is not equivalent to the net loss, if any, attributable to the investment. The term “credits” means the gross amount of credits potentially allowable with respect to the investment without regard to any possible tax liability resulting from the investment or any potential recapture of the credits.

Q-7. What does the term “year” mean for purposes of determining the tax shelter ratio?

A-7. The term “year” means the taxable year of a tax shelter, or if the tax shelter has no taxable year, the calendar year.

Q-8. Under what circumstances is a deduction or credit considered to be represented as being potentially allowable to an investor?

A-8. A deduction or credit is considered to be represented as being potentially allowable to an investor if any statement is made (or will be made) in connection with the offering for sale of an interest in an investment indicating that a tax deduction or credit is available or may be used to reduce federal income tax or federal taxable income. Representations of tax benefits may be oral or written and include those made

at the time of the initial offering for sale of interests in the investment, such as advertisements, written offering materials, prospectuses, or tax opinions, and those that are expected to be made subsequent to the initial offering. Representations are not confined solely to statements regarding actual dollar amounts of tax benefits, but also include general representations that tax benefits are available with respect to an investment. Thus, for example, an advertisement stating that “purchase of restaurant includes trade fixtures (5-year write-off and investment tax credit)” constitutes an explicit representation of tax benefits.

Q-9. If a deduction or credit is not explicitly represented as being potentially allowable to an investor may it be inferred as a represented tax benefit that is includible in the tax shelter ratio?

A-9. Yes. Although some explicit representation concerning tax benefits is necessary before an investment may be considered a tax shelter, once an explicit representation is made (or will be made) regarding any tax benefit, all deductions or credits typically associated with the investment will be inferred to have been represented as potentially allowable. Thus, the tax shelter ratio will be determined with reference to those tax benefits that are explicitly represented as being potentially allowable as well as all other tax benefits that are typically associated with the investment. The amount of each deduction or credit that is includible in the tax shelter ratio, if not specifically represented as to amount, should be reasonably estimated based on representations of economic value or economic projections, if any, or on any other information available to the tax shelter organizer. Reasonable estimates of deductions or credits may take into account past experience with similar investments. Reasonable estimates must assume use of the most accelerated allowable basis for cost recovery deductions.

As an example of the application of this A-9, assume that an advertisement explicitly states that a building is eligible for the investment tax credit for rehabilitation of a certified historic structure, but makes no mention of

cost recovery deductions, amortization deductions for construction period interest and taxes, real estate taxes after construction, ongoing maintenance expenses, or other deductions or credits typically associated with a building. Reasonable estimates of all such deductions and credits must be included with the investment tax credit explicitly represented in determining the tax shelter ratio associated with any investor's acquisition of an interest in the building.

Q-10. Does the fact that representations are made (or to be made) indicating that a deduction may be offset by income from the investment or that a deduction or credit may be subject to recapture or may be disallowed on audit affect the computation of the tax shelter ratio?

A-10. No. Deductions and credits represented as being potentially allowable are taken into account in computing the tax shelter ratio regardless of whether any qualifying statements are made.

Q-11. Is interest to be paid by an investor with respect to a debt obligation incurred in connection with the acquisition of an interest in the tax shelter included in the aggregate amount of deductions?

A-11. If a deduction for such interest is explicitly represented (or will be represented) as being potentially allowable, the interest is includible in the aggregate amount of the deductions. In addition, any interest to be paid with respect to a debt obligation the proceeds of which reduce the investment base (see A-14 of this section), regardless of whether a deduction for such interest is explicitly represented as being allowable, will be considered a deduction typically associated with the investment (see A-9 of this section). Accordingly, such interest will be considered to be represented as being potentially allowable and must be taken into account in computing the tax shelter ratio. If interest to be paid with respect to a debt obligation the proceeds of which do not reduce the investment base (see A-14 of this section) is not explicitly represented as being potentially allowable, however, such interest will not be considered typically associated with the investment and will not

be taken into account in computing the tax shelter ratio.

Q-12. If representations are made that part or all of an amount invested in a tax shelter will be deductible upon the occurrence of an unintended event, will the deduction be included in the aggregate amount of deductions?

A-12. No. Thus, for example, if representations are made that a person's investment in a tax shelter may give rise to a loss deduction if the investment becomes worthless, the amount of the loss deduction will not be included in the aggregate amount of deductions and will not be taken into account in computing the tax shelter ratio. Similarly, if representations are made that the costs of acquiring oil and gas lease interests may be deductible if the lease is proved worthless by abandonment, the amount of any loss deduction will not be included in the aggregate amount of deductions.

INVESTMENT BASE

Q-13. What does the term "investment base" mean?

A-13. The term "investment base" means, with respect to any year (as defined in A-7 of this section), means the cumulative amount of money and the adjusted basis of other property (reduced by any liability to which such other property is subject) that is unconditionally required to be contributed or paid directly to the tax shelter on or before the close of such year by an investor.

Q-14. What amounts must be eliminated from the investment base?

A-14. The investment base must be reduced by the following amounts:

(1) Any amount borrowed by the investor, even if borrowed on a recourse basis, from any person who participated in the organization, sale, or management of the investment or who has an interest (other than an interest as a creditor) in the investment ("a participating person") or from any person who is related (as defined in section 168 (e)(4)) to a participating person, unless the amount is unconditionally required to be repaid by the investor before the close of the year for which the determination is being made. An amount will be considered unconditionally required to be repaid by the investor only

if any offering material in which the borrowed amount is described and any agreement to be entered into between a participating (or related) person and the investor provide that the amount must be repaid (without exception) by the end of the year for which the determination is being made. An amount that is to be repaid only from earnings of the investment is not an amount that is unconditionally required to be repaid and is thus excluded from the investment base. In addition, an amount is not unconditionally required to be repaid if the amount will be (or is expected to be) reloaned to the investor during the 5-year period ending after the date the investment is offered for sale.

(2) Any amount borrowed by the investor, even if borrowed on a recourse basis, from a person, if the loan is arranged by a participating (or related) person, unless the amount is unconditionally required to be repaid by the investor before the close of the year for which the determination is being made. Any borrowing that is represented (orally or in writing) as being available from a specific source will be treated as arranged by a participating (or related) person, if the participating (or related) person provides a list of investors, or information relating to the investment, to the lender or otherwise informs the lender about the investment. However, in the case of an amount borrowed on a recourse basis, the mere fact that a lender who is actively and regularly engaged in the business of lending money obtained information relating to the investment, from a participating (or related) person, solely in response to a lender's request made in connection with such borrowing or a prior loan to the investment, a participating (or related) person, or an investor, will not, by itself, result in a determination that the loans are arranged by a participating (or related) person. Financing may be treated as arranged by a participating (or related) person regardless of whether a commitment to provide the financing is made by the lender to the participating or related person.

For example, assume that a tax shelter organizer represents that the purchase of an interest in a tax shelter

may be financed with the proceeds of a revolving loan, and the tax shelter organizer provides investors with the names of several banks or other lending institutions to which the tax shelter organizer has provided information about the investment. Assume further that the information was not provided in response to requests from such lending institutions made in connection with prior loans. The proceeds of the revolving loan will be excluded from the investment base because the loan is not unconditionally required to be repaid and it is treated as having been arranged by the tax shelter organizer.

(3) Any amount borrowed, directly or indirectly, from a lender located outside the United States ("foreign-connected financing"), of which a participating (or related) person knows or has reason to know.

(4) Any amounts to be held for the benefit of investors in cash, cash equivalents, or marketable securities. An amount is to be held in cash equivalents if the amount is to be held in a checking account, savings account, mutual fund, certificate of deposit, book entry government obligation, or any other similar account or arrangement. Marketable securities are any securities that are part of an issue any portion of which is traded on an established securities market and any securities that are regularly quoted by brokers or dealers making a market.

(5) Any distributions (whether of cash or property) that will be made without regard to the income of the tax shelter, but only to the extent such distributions exceed the amount to be held as of the close of the year in cash, cash equivalents, or marketable securities.

TAX SHELTER RATIO—MISCELLANEOUS

Q-15. Does an investment satisfy the requirement in A-4 (I) of this section ("the tax shelter ratio requirement") if it may be inferred from the representations made or to be made to investors that the tax shelter ratio for some, but not all, of the investors may be greater than 2 to 1 as of the close of any one of the first five years?

A-15. Yes. If the tax shelter ratio for any one investor may be greater than 2 to 1, the investment satisfies the tax

shelter ratio requirement and is a tax shelter if it also meets the requirement in A-4(II) of this section. Moreover, an investment will satisfy the tax shelter ratio requirement even if the tax shelter ratio for a single investor exceeds 2 to 1 as of the close of only one of the first five years.

For purposes of computing the tax shelter ratio for a year, all persons with interests in the investment are considered investors, except that general partners in a limited partnership will not be treated as investors in the partnership if the general partners' aggregate interest in each item of partnership income, gain, loss, deduction, and credit for such year is not expected to exceed 2 percent. In determining the general partners' interest in such items, limited partnership interests owned by general partners shall not be taken into account. For purposes other than the computation of the tax shelter ratio, however, all general partners will be treated as investors. Thus, for example, a general partner with a 1 percent interest in a limited partnership will be treated as an investor for the purpose of determining whether the partnership is a substantial investment.

Q-16. If a person could reasonably infer from the representations made or to be made about an investment that the tax shelter ratio for the investment may be greater than 2 to 1 under one arrangement for financing the purchase of an interest by an investor, but would be 2 to 1 or less under an alternative financing arrangement, does the investment satisfy the tax shelter ratio requirement of A-4 (I) of this section.

A-16. Yes. An investment satisfies the tax shelter ratio requirement of A-4 (I) of this section if a person could reasonably infer from the representations made or to be made that the tax shelter ratio for any person may be greater than 2 to 1 as of the close of any one of the first five years. The tax shelter ratio requirement is met if the tax shelter ratio may exceed 2 to 1 under any type of financing arrangement that is or will be represented as being available to investors.

INVESTMENTS SUBJECT TO SECURITIES REGULATION

Q-17. What is an investment that is required to be registered under a federal law regulating securities?

A-17. An investment required to be registered under a federal law regulating securities is any public offering of an investment that is required to be registered under the Securities Act of 1933 (1933 Act), the Investment Company Act of 1940, or any other federal law regulating securities. An investment is required to be registered under the 1933 Act, the Investment Company Act, or any other federal law regulating securities, if failure to register the investment would result in a violation of the applicable federal law, whether or not the investment has in fact been registered and, if proper notice has not been filed, whether or not the investment could have been sold pursuant to an exemption listed in A-19 of this section if such notice had been filed.

Q-18. What is an investment required to be registered under a state law regulating securities?

A-18. An investment required to be registered under a state law regulating securities is any investment required to be registered under a blue sky law or other similar state statute regulating securities. The term "state" includes the 50 states, the District of Columbia, and possessions of the United States.

Q-19. What is an investment sold pursuant to an exemption from registration requiring the filing of a notice with a federal agency regulating the offering or sale of securities?

A-19. An investment sold pursuant to an exemption from registration requiring the filing of a notice with such a federal agency is any investment that is sold pursuant to an exemption from registration requiring the filing or submission of a notice or other document with the Securities and Exchange Commission or any other federal agency regulating the offering or sale of securities, including the following exemptions (and applicable filing):

(1) Regulation A, as promulgated under section (3)(b) of the 1933 Act (Form 1(A)),

(2) Regulation B, as promulgated under section 3(b) of the 1933 Act (Schedules A through F),

(3) Regulation D, as promulgated under sections (3)(b) and 4(2) of the 1933 Act (Form D), and

(4) Any other statutory or regulatory exemption from registration requiring the filing or submission of a notice or other document.

Q-20. What is an investment sold pursuant to an exemption from registration requiring the filing of a notice with a state agency regulating the offering or sale of securities?

A-20. An investment sold pursuant to an exemption from registration requiring the filing of a notice with such a state agency is any investment sold pursuant to an exemption under a blue sky law or other similar state statutory or regulatory scheme that requires the filing or submission of a notice or other document with such a state agency. See A-18 of this section for the definition of state.

SUBSTANTIAL INVESTMENT

Q-21. What is a substantial investment?

A-21. An investment is a substantial investment if the aggregate amount that may be offered for sale to all investors exceeds \$250,000 and 5 or more investors are expected. The aggregate amount offered for sale is the aggregate amount to be received from the sale of interests in the investment and includes all cash, the fair market value of all property contributed, and the principal amount of all indebtedness received in exchange for interests in the investment, regardless of whether the proceeds of the indebtedness are included in the investment base under A-14 of this section. For purposes of determining whether 5 or more investors are expected in an investment involving real property (and related personal property) that is used as a farm (as defined in section 2032A(e)(4)) for farming purposes (as defined in section 2032A(e)(5)), interests in the investment expected to be held by a husband and wife, their children and parents, and the spouses of their children (or any of them) will be treated as if the interests were to be held by one investor. Thus, for example, interests in a farm that

are offered to two brothers and their wives would be treated as interests offered to one investor. Such an investment could be a substantial investment only if four or more persons who were not members of the family were expected to be investors in the farm.

Q-22. Will an investment be considered a substantial investment if the investment involves a number of parts each including fewer than 5 investors or an aggregate amount of \$250,000 or less?

A-22. Yes, under the circumstances described in this A-22. For purposes of determining whether investments are parts of a substantial investment, similar investments offered by the same person or related persons (as defined in section 168(e)(4)) are aggregated together. Investments are considered similar if they involve similar principal business assets and similar plans or arrangements. Investments that include no business assets will be considered similar if they involve similar plans or arrangements.

Similar investments are aggregated solely for the purpose of determining whether investments involving fewer than 5 investors or an aggregate amount of \$250,000 or less are substantial investments. For this purpose, similar investments are aggregated even though some, but not all, of the investments are (i) required to be registered under a Federal or State law regulating securities or are sold pursuant to an exemption from securities registration requiring the filing of a notice with a Federal or State agency regulating the offering or sale of securities (*i.e.*, required to be registered as tax shelters whether or not a substantial investment) or (ii) substantial investments without regard to aggregation.

Assume, for example, that a person develops similar arrangements involving 8 different partnerships, each investing in a separate but similar asset (such as a separate master recording or separate piece of similar real estate), each with a different general partner and each with 3 different limited partners. Assume further that the arrangements of all the partnerships are similar. These partnerships involving similar arrangements and similar assets

would be aggregated together. Thus, if each partner is expected to invest \$11,000, there will be 32 investors (1 general partner plus 3 limited partners times 8 partnerships) and an aggregate investment of \$352,000 (32 partners times \$11,000). Accordingly, each partnership will constitute part of a substantial investment. If representations are made that \$1,000 in tax credits and \$3,000 in deductions are available to each limited partner in the first year and \$10,000 of the cash invested was expected to be the proceeds of a loan arranged by the organizer, the tax shelter ratio as of the close of the first year (assuming there are no deductions or credits typically associated with such investment, as described in A-9 of this section) would be 5 to 1 (\$5,000 in total tax benefits and \$1,000 investment base). Accordingly, the organizer would be required to register the partnerships with the Internal Revenue Service.

Q-23. If an investment involving fewer than 5 investors or an aggregate amount of \$250,000 or less is offered for sale and, at the time of the offering, it is not known (and there is no reason to know) that subsequent similar investments will be offered by the person who made the first offering (or a related person), will subsequent similar investments offered by that person (or a related person) be aggregated with the first investment for purposes of determining whether the investments constitute a substantial investment?

A-23. No. However, a tax shelter organizer will be presumed to have known of any similar investments (as defined in A-22 of this section) offered during the 12 months following the first offering of an investment.

EXCEPTIONS FROM TAX SHELTER REGISTRATION

Q-24. Are there any investments that will not be subject to tax shelter registration even if they satisfy the requirements of a tax shelter (as defined in A-4 of this section)?

A-24. Yes. The following investments are not subject to tax shelter registration:

(1) Sales of residences primarily to persons who are expected to use the residences as their principal place of residence,

(2) Sales or leases or tangible personal property (other than master sound recordings, motion picture or television films, videotapes, lithograph plates, or other property relating to a literary, musical, or artistic composition) by the manufacturer (or a member of an affiliated group, within the meaning of section 1502, including the manufacturer) of the property primarily to persons who are expected to use the property in their principal active trade or business (see, however, A-32 and A-46 of this section for the additional rules applicable to a purchaser of property described in this A-24 who organizes an investment involving the property),

(3) Any other investment as specified by the Secretary in a rule-related notice published in the FEDERAL REGISTER.

Q-24A. Under what other circumstances are particular sales or leases of tangible personal property to certain persons or the performance of particular services for certain persons exempt from tax shelter registration?

A-24A. A person who, in the ordinary course of a trade or business, sells or leases tangible personal property (other than collectibles (as defined in section 408(m)(2)), master sound recordings, motion picture or television films, videotapes, lithograph plates, or other property that includes or relates to a literary, musical or artistic composition) to a purchaser or lessee who is reasonably expected to use the property either for a personal use or in the purchaser's or lessee's principal active trade or business is not required for any purpose to treat such a purchaser or lessee as an investor in a tax shelter. Property may be reasonably expected to be used by a purchaser or lessee for personal use only if sold or leased to the purchaser or lessee in a quantity that is customary for such use. Similarly, a person who performs services for another person in connection with the principal active trade or business of the recipient of the services or for the recipient's personal use is not required to treat the recipient as an investor in a tax shelter. Persons who are not reasonably expected to use property or services either in their principal active trade or business or for

personal use must be treated as tax shelter investors in the event the sales, leases, or performance of services otherwise constitute a tax shelter.

Assume, for example, that an organizer forms Z corporation to feed cattle and to provide services in connection with the cattle feeding operations. Z will agree to serve customers with a minimum of 200 head of cattle. The fee for the services is \$20 per head. Feed for cattle will cost \$280 per head. Z represents that the service fee and the cost of the feed may be financed by \$5,000 of cash and \$55,000 of proceeds of a revolving recourse note that Z has arranged be available. Z provides its services to 100 customers. Ninety-five of the customers are persons whose principal active trade or business is reasonably expected to be farming (as defined in section 464(e)(1)). Five of the customers are not reasonably expected to engage in farming as their principal active trade or business. Although all the individual investments involve similar principal business assets and similar plans or arrangements, only the 5 customers who are not reasonably expected to be in the principal active trade or business of farming will be treated as investors in a tax shelter and aggregated to determine whether a substantial investment exists. Thus, there will be 5 investors and an aggregate investment of \$300,000. If representations are made that the service fee and the cost of the feed are tax deductible, the tax shelter ratio (assuming there are no deductions or credits typically associated with such an investment, as described in A-9 of this section) would be 12 to 1 (\$60,000 in total tax benefits and \$5,000 investment base) and the organizer would be required to register the five aggregated feeding arrangements as a tax shelter. The registration number of the tax shelter must be provided to the five customers treated as investors in the tax shelter, but would not be required to be furnished to the customers whose principal active trade or business is reasonably expected to be farming.

PERSONS REQUIRED TO REGISTER A TAX
SHELTER

Q-25. Who has the legal obligation to register a tax shelter?

A-25. A tax shelter organizer is obligated to register the tax shelter.

Q-26. What is the definition of tax shelter organizer?

A-26. Several categories of persons may be tax shelter organizers. In general, the term tax shelter organizer means a person principally responsible for organizing a tax shelter. If a person principally responsible for organizing a tax shelter has not registered the tax shelter by the day on which interests in the shelter are first offered for sale, any other person who participated in the organization of the tax shelter will be treated as a tax shelter organizer. If neither a person principally responsible for organizing the tax shelter nor any other person who participated in the organization of a tax shelter has registered the tax shelter by the day on which interests in the tax shelter are first offered for sale, then any person who participates in the management of the tax shelter at a time when the tax shelter is not registered will be treated as a tax shelter organizer. Finally, if a person participates in the sale of a tax shelter at a time when the person knows or has reason to know that a tax shelter has not been registered, that person will be treated as a tax shelter organizer. See A-38 of this section for rules relating to the execution of an agreement among persons who may be treated as tax shelter organizers to designate one person to register a tax shelter.

Q-27. Who is a person principally responsible for organizing a tax shelter?

A-27. A person principally responsible for organizing a tax shelter ("principal organizer") is any person who discovers, creates, investigates, or initiates the investment, devises the business or financial plans for the investment, or carries out those plans through negotiations or transactions with others.

Q-28. What constitutes participation in the organization of a tax shelter?

A-28. Participation in the organization of a tax shelter includes the performance of any act (directly or through an agent) related to the establishment of the tax shelter, including the following:

(1) Preparation of any document establishing the tax shelter (for example,

articles of incorporation, a trust instrument, or a partnership agreement);

(2) Preparation of any document in connection with the registration (or exemption from registration) of the tax shelter with any federal, state, or local government body;

(3) Preparation of a prospectus, offering memorandum, financial statement, or other statement describing the tax shelter;

(4) Preparation of a tax or other legal opinion relating to the tax shelter;

(5) Preparation of an appraisal relating to the tax shelter;

(6) Negotiation or other participation on behalf of the tax shelter in the purchase of any property relating to the tax shelter.

Q-29. What constitutes participation in the management of a tax shelter?

A-29. Participation in the management of a tax shelter includes managing the assets of the tax shelter, directing the business activity of the tax shelter, or, depending on the form of the tax shelter, acting as a general partner who actively participates in the management of a partnership, a trustee of a trust, a director or an officer of a corporation (including a corporate general partner of a partnership), or performing activities similar to those performed by such a general partner, a trustee, a director, or an officer.

Q-30. Will the performance of any act described in A-27 through A-29 of this section constitute participation in the organization or management of a tax shelter if the person performing the act is unrelated to the tax shelter (or any principal organizer of the tax shelter) and does not participate in the entrepreneurial risks or benefits of the tax shelter?

A-30. No. The performance of an act described in A-27 through A-29 of this section will not constitute participation in the organization or management of a tax shelter unless the person performing the act is related to the tax shelter (or any principal organizer of the tax shelter) or the person participates in the entrepreneurial risks or benefits of the tax shelter. A person will be considered related to a tax shelter if the person is related to the tax shelter or a principal organizer of the

tax shelter within the meaning of section 168(e)(4) or is employed by the tax shelter or a principal organizer of the tax shelter or has an interest (other than an interest as a creditor) in the tax shelter. A person will be considered a participant in the entrepreneurial risks or benefits of a tax shelter if the person's compensation for performing an act described in A-27 through A-29 of this section is contingent on any matter relating to the tax shelter (e.g., the compensation is based in whole or in part upon (i) whether interests in the tax shelter are actually sold or (ii) the number or value of the units in the tax shelter that are sold), or if the person will receive an interest in the tax shelter as part or all of the person's compensation.

For example, assume that A forms Z partnership, a tax shelter for which registration is required. Z hires the X law firm, none of the partners of which is related to the tax shelter, to prepare the documents necessary to register the offering of Z securities with the Securities and Exchange Commission. X charges \$100 an hour for its services in connection with the preparation of the necessary documents, and payment of the fee is not contingent. X will not be treated as a participant in the organization of the tax shelter. If, however, X were to charge a fee equal to 1 percent of the value of the units in the tax shelter that are sold, X would be considered a participant in the organization of the shelter.

As another example, assume that individual C is an attorney employed by W corporation, the corporate general partner and principal organizer of Z, and that C prepares the documents necessary to register the tax shelter with the Securities and Exchange Commission. C will be treated as having participated in the organization of the tax shelter regardless of the way in which C's compensation is structured, because C, as an employee, is related to the principal organizer of the tax shelter.

Q-31. What constitutes participation in the sale of a tax shelter?

A-31. Participation in the sale of a tax shelter includes any marketing activities (directly or through an agent)

with respect to an investment, including the following:

(1) Direct contact with a prospective purchaser of an interest, or with a representative or agent of a prospective purchaser, but only if the contract relates to the possible purchase of an interest in the tax shelter;

(2) Solicitation of investors using the mail, telephone, or other means, or by placing an advertisement for the tax shelter in a newspaper, magazine, or other publication or medium;

(3) Instructing or advising salespersons regarding the tax shelter or sales presentations.

Q-32. May persons be treated as tax shelter organizers if such persons do not make any representations of tax benefits to investors?

A-32. Yes. If a person described in A-26 of this section knows or has reason to know that representations of tax benefits have been made, that person may be treated as a tax shelter organizer. For example, a participant in the sale of a tax shelter may know or have reason to know that representations of tax benefits have been made by the principal organizer or others who participate in the organization of the tax shelter. In addition, a person who acquires property from a manufacturer in a transaction exempt from tax shelter registration under A-24 of this section and who organizes an investment involving the property may know or have reason to know of any representation of tax benefits made by the manufacturer.

Q-33. If a person performs support services such as typing, photocopying, or printing for a tax shelter (or a tax shelter organizer) or performs other ministerial functions for the tax shelter (or a tax shelter organizer), may the person be considered to have participated in the organization, management, or sale of the tax shelter?

A-33. No. Merely performing support services or ministerial functions will not be considered participation in the organization, management, or sale of a tax shelter.

CIRCUMSTANCES UNDER WHICH TAX SHELTER ORGANIZERS ARE REQUIRED TO REGISTER A TAX SHELTER

Q-34. When is a principal organizer or a person who participates in the organization of a tax shelter required to register a tax shelter?

A-34. A principal organizer or a person who participates in the organization of a tax shelter (*i.e.*, a person who could be treated as a tax shelter organizer within the meaning of A-26 of this section) is required to register the tax shelter by the day on which the first offering for sale of interests in the tax shelter occurs, unless the person has signed a designation agreement pursuant to A-38 of this section. If a group of persons who could be treated as tax shelter organizers has signed a designation agreement pursuant to A-38 of this section, the designated organizer is required to register the tax shelter by the day on which the first offering for sale of interests in the tax shelter occurs. See A-39 of this section for additional rules applicable to tax shelter organizers (other than a designated organizer) who have signed a designation agreement.

Q-35. When is a person who participates in the management of a tax shelter ("manager") required to register a tax shelter?

A-35. A manager who has not signed a designation agreement pursuant to A-38 of this section must register the tax shelter if the manager participates in the management of the tax shelter on or after the first offering for sale of interests in the tax shelter at a time when the tax shelter has not been properly registered (*i.e.*, the manager is treated as a tax shelter organizer within the meaning of A-26 of this section). Such a manager must register the tax shelter by the day on which the first offering for sale of interests in the tax shelter occurs, or by the day on which the manager's participation in the management of the tax shelter commences, whichever is later. See A-39 of this section for rules applicable to a manager who has signed a designation agreement.

Q-36. When is a person who participates in the sale of a tax shelter ("seller") required to register the tax shelter?

A-36. A seller who has not signed a designation agreement pursuant to A-38 of this section must register the tax shelter if the seller participates in the sale of the tax shelter at a time when the seller knows or has reason to know that the tax shelter has not been properly registered (*i.e.*, the seller is treated as a tax shelter organizer within the meaning of A-26 of this section). A seller who has not signed a designation agreement will be deemed to have reason to know that the tax shelter has not been properly registered if the seller does not receive a copy of the Internal Revenue Service tax shelter registration notice containing the registration number within the 30-day period after the seller first offers interests in the tax shelter for sale. A seller must register the tax shelter as soon as practicable after the seller first knows or has reason to know that the tax shelter has not been properly registered. See A-39 of this section for rules applicable to a seller who has signed a designation agreement.

Q-37. When is a person who acts in more than one capacity with respect to a tax shelter required to register the shelter?

A-37. A person who acts in more than one capacity with respect to a tax shelter (*i.e.*, as two or more of the following: principal organizer, participant in the organization, manager, or seller) must register the tax shelter by the earliest day on which a tax shelter organizer acting in any of the person's several capacities would be required to register the tax shelter.

Q-38. May a group of persons who could be treated as tax shelter organizers under A-26 of this section designate one person to register the tax shelter?

A-38. Yes. A group of persons who could be treated as tax shelter organizers under A-26 of this section may enter into a written agreement designating one person as the tax shelter organizer responsible for registering the tax shelter ("designated organizer"). The designated organizer should ordinarily be a person principally responsible for organizing the tax shelter, but may be any person who participates in the organization of the tax shelter. Although persons who participate only in

the sale or management of a tax shelter may sign a designation agreement, they may not be the designated organizer. In addition, the designated organizer may not be a person who is a resident in a country other than the United States. Any person who signs a designation agreement, other than the designated organizer, will not be liable for failing to register the tax shelter and will not be subject to a penalty, even if the designated organizer fails to register the tax shelter, unless the person fails to register the tax shelter when such registration is required under A-39 of this section. See A-7 of §301.6707-1T for additional rules relating to the reasonable cause exception applicable to persons who sign a designation agreement.

Q-39. Is a tax shelter organizer who has signed a designation agreement and who is not the designated organizer required to register the tax shelter under any circumstances?

A-39. Yes. If a tax shelter organizer who has signed a designation agreement pursuant to A-38 of this section knows or has reason to know on or after the day on which the first offering for sale of interests in a tax shelter occurs that the designated organizer failed to register the tax shelter, such tax shelter organizer must register the tax shelter as soon as practicable after he first knows or has reason to know of the failure. A tax shelter organizer who has signed a designation agreement is deemed to have reason to know that the designated organizer has failed to register the tax shelter if the tax shelter organizer does not receive a copy of the Internal Revenue Service registration notice containing the registration number from the designated organizer within the 60-day period after the day on which the first offering for sale of interests in the tax shelter occurs (or the person signs the designation agreement, if later). See A-41 of this section for the requirement that the designated organizer provide a copy of the registration notice and number to persons who have signed the designation agreement.

REGISTRATION—GENERAL RULES

Q-40. By what date must a tax shelter be registered?

A-40. A tax shelter must be registered not later than the day on which the first offering for sale of an interest in the tax shelter occurs.

Q-41. Is a tax shelter organizer (including a designated organizer) who registers a tax shelter responsible for performing any act with respect to tax shelter registration other than registering the tax shelter?

A-41. Yes. A tax shelter organizer (including a designated organizer) who registers a tax shelter must provide a copy of the Internal Revenue Service registration notice containing the registration number within 7 days after the notice is received from the Internal Revenue Service to the principal organizer (if a different person) and to any persons who the tax shelter organizer knows or has reason to know are participating in the sale of interests in the tax shelter (if such persons begin to participate after the registration number is received, they must be provided the notice within 7 days after they commence their participation). In addition, a designated organizer must provide a copy of the notice within 7 days after it is received to all persons who have signed the designation agreement.

Q-42. What is the sale of an interest in a tax shelter?

A-42. The sale of an interest in a tax shelter includes the sale of property, or any interest in property, the entry into a leasing arrangement, a consulting, management or other agreement for the performance of services, or the sale or entry into any other plan, investment, or arrangement.

Q-43. What does the term “offering for sale” mean?

A-43. The term “offering for sale” means making any representation, whether oral or written, relating to participation in a tax shelter as an investor. The term includes any advertisement relating to the tax shelter and any mail, telephonic, or other contact with prospective investors. A representation relating to participation in a tax shelter will be considered an offering for sale of an interest in the tax shelter even though there is included in the representation an explicit statement that the representation does not constitute an offer to sell or a solicitation of an offer to buy an interest in

the tax shelter. In determining whether an offering for sale of an interest has occurred, federal and state laws regulating securities are not controlling.

Q-44. After a tax shelter has been registered, must it be registered again each year that it continues to be offered for sale?

A-44. No. Registration is effective for the year in which first accomplished and all subsequent years.

Q-45. If the facts relating to a tax shelter change after the tax shelter has been registered, must the tax shelter be registered again or must an amended application for registration be filed by the tax shelter organizer?

A-45. No. The tax shelter organizer, however, is permitted to file an amended application if a material change in facts occurs after the initial registration. A material change in facts is—

(1) A change in the identifying information relating to the tax shelter or tax shelter organizer,

(2) The acquisition or construction of a principal asset not reported on the initial application for registration,

(3) A change in the method of financing a minimum investment unit, or

(4) A change in the principal business activity.

In addition, a change in any tax shelter ratio reported on the initial application for registration that increases or decreases the reciprocal of the tax shelter ratio (*i.e.*, the fraction in which the amount of the applicable investment base is the numerator and the amount of the applicable deductions and credits is the denominator) by 50 percent or more is a material change in facts. For example, if the tax shelter ratio increases from 2 to 1 to 4 to 1, the reciprocal of the tax shelter ratio decreases from $\frac{1}{2}$ to $\frac{1}{4}$, a 50-percent decrease. Similarly, if the tax shelter ratio decreases from 6 to 1 to 4 to 1, the reciprocal of the tax shelter ratio increases from $\frac{1}{6}$ to $\frac{1}{4}$, a 50-percent increase. In either case, there is a material change in facts and an amended application could be filed.

Q-45A. What information should be included on an amended application for registration?

A-45A. The tax shelter organizer must include the identifying information requested on Form 8264, Application for Registration of a Tax Shelter, and the tax shelter registration number that has been assigned to the tax shelter. In addition, the tax shelter organizer should include any other information requested on Form 8364(1) that has changed since the tax shelter was registered, or (2) that the tax shelter organizer did not know at the time the tax shelter was registered but has learned of since the registration.

For example, assume that A organizes partnership L, a blind pool that will invest in real estate. Before the real estate is identified or acquired, interests in L will be offered to the public in an offering that must be registered with the Securities and Exchange Commission. Although A does not know what real estate L will acquire and therefore is unable to calculate the tax shelter ratio with certainty, A concludes (based on representations made or to be made) that the tax shelter ratio will exceed 2 to 1 as to some of the investors. Accordingly, A registers L as a tax shelter. A attaches a statement to the application for registration, explaining that L is a blind pool organized to invest in real estate, but that L has not yet acquired any real estate. In addition, A attaches a statement explaining that although the tax shelter ratio is expected to exceed 2 to 1, A cannot compute the tax shelter ratio with certainty because L has not yet acquired any real estate. Several months after L is registered, L acquires a shopping center. A may file an amended application for registration. In addition to reporting the identifying information and the tax shelter registration number on the amended application, A should report the shopping center as the principal asset and the recomputed tax shelter ratio.

As another example, assume that C organizes a limited partnership that is a tax shelter. On the application for registration, C reports that the tax shelter ratio is 2.2 to 1. After the partnership has been registered, C finds that the partnership is unable to attract sufficient investors. To make investing in the partnership more attractive, C decides to offer financing for

the purchase or interests in the partnership. As a result of the change in financing, the tax shelter ratio will be 5 to 1. Because there is a change in financing and a change in the tax shelter ratio that decreases the reciprocal of the tax shelter ratio by 50 percent or more, C may file an amended application for registration. In addition to reporting the identifying information and the tax shelter registration number on the amended application, C should report the recomputed tax shelter ratio and information relating to the change in financing.

Q-46. If assets constituting a tax shelter are sold ("original sale") and, subsequently, either the assets or interests in the assets are offered for sale by the purchaser ("resale"), must the purchaser file a new application for registration if the resale is an offering or sale of interests in a tax shelter?

A-46. If the resale constitutes a tax shelter, the purchaser must file a new application for registration, unless the tax shelter organizer with respect to the original sale is also the tax shelter organizer with respect to the resale and the facts pertaining to the resale were reflected in the application for registration filed with respect to the original sale. For example, assume that A intends to sell a building with an estimated fair market value of \$2.5 million to a group of 5 investors (*i.e.*, a substantial investment, as defined in A-21 of this section). A also intends to make representations of tax benefits attributable to an investment in the building. Based on these representations and the investment base, the tax shelter ratio attributable to an investment in the building may be greater than 2 to 1. A therefore files an application for registration relating to the building with the Internal Revenue Service. The Internal Revenue Service issues a registration number for the investment, and A furnishes the registration number to each of the 5 investors in accordance with A-53 of this section. In an unrelated transaction, the 5 investors decide to syndicate the building and to offer interests in the syndicate to approximately 500 investors. In connection with this offer, the investors expect to make representations concerning tax benefits with respect to

the syndication. If based on these representations and the investment base, the tax shelter ratio may be greater than 2 to 1 for an investor in the syndicate, the 5 investors must file an application for registration for the syndicate before interests in the syndicate may be offered for sale. The investors in the syndicate must be furnished with the new registration number and not the registration number issued with respect to A. On the other hand, if the original sale and the syndication were part of A's plan to sell interests in the building, A is a tax shelter organizer with respect to the syndication. If the facts pertaining to the syndication were reflected on A's application for registration with respect to the original sale, a second application for registration would not be required with respect to the syndication. However, the investors in the syndicate would have to be furnished with the tax shelter registration number issued to A.

Q-47. When is a tax shelter considered registered?

A-47. A tax shelter is considered registered when a properly completed Form 8264, Application for Registration of a Tax Shelter, is filed with the appropriate Internal Revenue Service Center. See A-7 of § 301.6111-2T for rules relating to the information required to be included on the form, and A-8 of § 301.6707-1T for rules relating to the penalty for filing incomplete information.

Q-48. Must a person registering a tax shelter that is a substantial investment only by reason of an aggregation of multiple investments under A-22 of this section complete a separate Form 8264 for each investment constituting part of the substantial investment?

A-48. A separate Form 8264 must be completed for each investment that differs from the other investments in a substantial investment with respect to any of the following:

- (1) Principal asset,
- (2) Accounting methods,
- (3) Federal or state agencies with which the investment is registered or with which an exemption notice is filed,
- (4) Methods of financing the purchase of an interest in the investment,
- (5) Tax shelter ratio.

Such aggregated investments, however, are part of a single tax shelter.

Q-49. Do the rules of section 7502 of the Internal Revenue Code, regarding timely mailing, apply to the filing of registration forms?

A-49. Yes.

Q-50. After a tax shelter has been registered, may representations that the investment has been registered with the Internal Revenue Service be made to potential investors?

A-50. Investors may be informed that the investment has been registered with the Internal Revenue Service. Investors also must be informed, however, that registration does not imply that the Internal Revenue Service has reviewed, examined, or approved the investment or the claimed tax benefits. The disclaimer must be substantially in the form provided below:

ISSUANCE OF A REGISTRATION NUMBER DOES NOT INDICATE THAT THIS INVESTMENT OR THE CLAIMED TAX BENEFITS HAVE BEEN REVIEWED, EXAMINED, OR APPROVED BY THE INTERNAL REVENUE SERVICE.

See A-53 of this section for rules relating to the legend that must be included on any statement on which the tax shelter registration number is furnished to investors.

FURNISHING TAX SHELTER REGISTRATION NUMBERS TO INVESTORS

Q-51. Who must furnish investors in a tax shelter with the registration number of the tax shelter?

A-51. Any person who sells (or otherwise transfers) an interest in a tax shelter is required to furnish the registration number assigned to that tax shelter to each person who purchases (or otherwise acquires) an interest in that tax shelter from the seller or transferor. For example, X, a tax shelter organizer, sells an interest in a tax shelter to A. One year later A sells A's interest in the shelter to B. X must furnish the tax shelter registration number to A, and A must furnish the number to B. If B sells or otherwise transfers the interest (by gift, for example), B must furnish the number to the purchaser or transferee of B's interest in the tax shelter.

Q-52. When must the registration number be furnished to purchasers of interests in the tax shelter?

A-52. The person who sells (or otherwise transfers) an interest in a tax shelter must furnish the registration number to the purchaser (or transferee) at the time of sale (or transfer) of the interest (or, if later, within 20 days after the seller or transferor receives the registration number). If the registration number is not furnished at the time of the sale (or other transfer), the seller (or transferor) must furnish the statement described in A-54 to the purchaser (or transferee) at the time of the sale (or other transfer). If interests in a tax shelter were sold before September 1, 1984, all investors who acquired their interests in the tax shelter before September 1, 1984, must be furnished with the registration number of the tax shelter by December 31, 1984. The registration number will be considered furnished to the investor if it is mailed to the investor at the last address of the investor known to the person required to furnish the number.

Q-53. How is a seller or transferor of an interest in a tax shelter required to furnish the registration number to investors?

A-53. The person who sells (or otherwise transfers) an interest in a tax shelter must furnish the registration number of the tax shelter to the tax shelter to the purchaser (or transferee) on a written statement. The written statement shall show the name, registration number, and taxpayer identification number of the tax shelter, and include a prominent legend in bold and conspicuous type stating that the registration number must be included on any return on which the investor claims any deduction, loss, credit, or other tax benefit, or reports any income, by reason of the tax shelter. The statement must also include a prominent legend in bold and conspicuous type stating that the issuance of the registration number does not indicate that the Internal Revenue Service has reviewed, examined, or approved the investment or the claimed tax benefits. The statement shall be substantially in the form provided below:

You have acquired an interest in [name and address of tax shelter]

whose taxpayer identification number is [if any]. The Internal Revenue Service has issued [name of tax shelter] the following tax shelter registration number: [Number]

YOU MUST REPORT THIS REGISTRATION NUMBER TO THE INTERNAL REVENUE SERVICE, IF YOU CLAIM ANY DEDUCTION, LOSS, CREDIT, OR OTHER TAX BENEFIT OR REPORT ANY INCOME BY REASON OR YOUR INVESTMENT IN [NAME OF TAX SHELTER].

You must report the registration number (as well as the name, and taxpayer identification number of [name of tax shelter]) on Form 8271.

FORM 8271 MUST BE ATTACHED TO THE RETURN ON WHICH YOU CLAIM THE DEDUCTION, LOSS, CREDIT, OR OTHER TAX BENEFIT OR REPORT ANY INCOME.

ISSUANCE OF A REGISTRATION NUMBER DOES NOT INDICATE THAT THIS INVESTMENT OR THE CLAIMED TAX BENEFITS HAVE BEEN REVIEWED, EXAMINED, OR APPROVED BY THE INTERNAL REVENUE SERVICE.

This statement may be modified as necessary if the tax shelter is not a separate entity (e.g., certain Schedule F or Schedule C activities) or has no name or taxpayer identification number.

Q-54. If a registration number has not been received by a seller (or transferor) from the person who registered the tax shelter by the time interests in the tax shelter are sold (or otherwise transferred), must the seller (or transferor) of the interests furnish the purchaser (or transferee) with any information regarding the registration?

A-54. Yes. At the time of the sale (or other transfer) the seller (or other transferor) must furnish the purchaser (or transferee) with a written statement in substantially the form prescribed in A-53 of this section, except that the second sentence of the form prescribed in A-53 shall be replaced by a statement in the form provided below:

On behalf of [name of tax shelter], [name of tax shelter organizer who has applied for registration] has applied to the Internal Revenue Service for a tax

shelter registration number. The number will be furnished to you when it is received.

INCLUDING THE REGISTRATION NUMBER
ON TAX RETURNS

Q-55. Is an investor required to report the registration number of a tax shelter in which the investor has acquired an interest to the Internal Revenue Service?

A-55. Yes. Any person claiming any deduction, loss, credit, or other tax benefit by reason of a tax shelter must report the registration number of the tax shelter on Form 8271, Investor Reporting of Tax Shelter Registration Number, which must be attached to the return on which any deduction, loss credit, or other tax benefit attributable to the tax shelter is claimed. For purposes of determining whether the tax shelter registration number must be reported by an investor, income attributable to an investment, such as a partner's distributive share of income, constitutes a deduction or tax benefit that is claimed, because gross deductions and other tax benefits are included in the net income reported by the investor. Thus, the registration number also must be reported on any return on which an investor reports any income attributable to a tax shelter.

Q-56. What should the investor do if the investor has received a notice that a registration number for the tax shelter has been applied for, but the investor has not received the registration number by the time the investor files a return on which a deduction, loss credit, other tax benefit, or income attributable to the tax shelter is included?

A-56. The investor must attach to the return a Form 8271 with the words "Applied For" written in the space for the registration number and must include on the Form 8271 the name and taxpayer identification number (if any) of the tax shelter and the name of the person who has applied for registration of the tax shelter.

Q-57. Does the requirement to include the tax shelter registration number on a return apply to applications for tentative refund (Form 1045 and Form 1139) and amended returns (Form 1040X, Form 1120X)?

A-57. Yes. A completed Form 8271 must be attached to any such return on which any deduction, loss, credit, other tax benefit, or income relating to a tax shelter is included.

PROJECTED INCOME INVESTMENTS

Q-57A. Are the registration requirements suspended with respect to any tax shelters?

A-57A. Yes. If a tax shelter is a projected income investment, it is not required to be registered before the first offering for sale of an interest in the tax shelters occurs, but is subject only to the registration requirements set forth in A-57H through A-57J of this section. A tax shelter is a projected income investment if—

(a) The tax shelter is not expected to reduce the cumulative tax liability of any investor for any year during the 5-year period described in A-4 (I) of this section; and

(b) The assets of the tax shelter do not include or relate to any property described in A-57E of this section.

Q-57B. Under what circumstances does a tax shelter satisfy the requirement of paragraph (a) of A-57A of this section?

A-57B. A tax shelter is not expected to reduce the cumulative tax liability of any investor for any year during the 5-year period described in A-4 (I) of this section only if—

(a) A written financial projection or other written representation that is provided to investors before the sale of interests in the investment states (or leads a reasonable investor to believe) that the investment will not reduce the cumulative tax liability of any investor with respect to any year (within the meaning of A-7 of this section) in such 5-year period; and

(b) No written or oral projections or representations, other than those related to circumstances that are highly unlikely to occur, state (or lead a reasonable investor to believe) that the investment may reduce the cumulative tax liability of any investor with respect to any such year.

Thus, a tax shelter for which there are multiple written or oral financial projections or other representations is not a projected income investment if any such projection or representation that

relates to circumstances that are not highly unlikely to occur states (or leads a reasonable investor to believe) that the investment may reduce the cumulative tax liability of any investor. See A-57D and A-57F of this section for rules relating to financial projections or other representations that are not made in good faith, that are not based on reasonable economic and business assumptions, or that relate to circumstances that are highly unlikely.

Q-57C. When does an investment reduce the cumulative tax liability of an investor?

A-57C. (a) An investment reduces the cumulative tax liability of an investor with respect to a year during the 5-year period described in A-4 (I) of this section if, as of the close of such year, (i) cumulative projected deductions for the investor exceed cumulative projected income for the investor, or (ii) cumulative projected credits for the investor exceed cumulative projected tax liability (without regard to credits) for the investor.

(b) The cumulative projected deductions for an investor as of the close of a year are the gross deductions of the investor with respect to the investment, for all periods up to (and including) the end of such year, that are included in the financial projection or upon which the representation is based. The deductions with respect to an investment include all deductions explicitly represented as being allowable and all deductions typically associated (within the meaning of A-9 of this section) with the investment. Therefore, interest to be paid by the investor that is taken into account in determining the tax shelter ratio of the investment (see A-11 of this section) is treated as a deduction with respect to the investment.

(c) The cumulative projected income for an investor as of the close of a year is the gross income of the investor with respect to the investment, for all periods up to (and including) the end of such year, that is included in the financial projection or upon which the representation is based. For this purpose, income attributable to cash, cash equivalents, or marketable securities (within the meaning of A-14 (4) of this

section) may not be treated as income from the investment.

(d) The cumulative projected credits for an investor as of the close of a year are the gross credits of the investor with respect to the investment, for all periods up to (and including) the close of such year, that are included in the financial projection or upon which the representation is based. The credits with respect to an investment include all credits explicitly represented as being allowable and all credits typically associated (within the meaning of A-9 of this section) with the investment.

(e) The cumulative projected tax liability (without regard to credits) for an investor as of the close of a year is 50 percent of the excess of cumulative projected income for the investor over cumulative projected deductions for the investor with respect to the investment as of the close of such year.

(f) The following examples illustrate the application of the principles of this A-57C:

Example 1. The promotional material with respect to a tax shelter includes a written financial projection indicating that the expected income of the investment in each of its first 5 years is \$800,000. In subsequent oral discussions, investors are advised that, in certain circumstances that are not highly unlikely, the income expected from the investment may be as little as \$500,000 per year. The subsequent oral discussions are taken into account in determining whether any projections or representations state or lead a reasonable investor to believe that the investment may reduce the cumulative tax liability of any investor. Thus, if the written financial projections indicate that the gross deductions attributable to the investment in each of its first 5 years are expected to be \$600,000 and the subsequent oral discussions do not indicate that the amount of those deductions will change under the circumstances in which the income expected may be as little as \$500,000, the subsequent oral discussions taken together with the written financial projections state (or lead a reasonable investor to believe) that the cumulative tax liability of an investor may be reduced (*i.e.*, the subsequent oral discussions (taken together with the projections) state or lead a reasonable investor to believe that cumulative projected deductions may exceed cumulative projected income under circumstances that are not highly unlikely). Accordingly, under paragraph (b) of A-57B of this section, the tax shelter would not qualify as a projected income investment.

Example 2. The written promotional material with respect to a tax shelter states that certain deductions are allowable to an investor (without specifying their amount), but there is no written statement relating to the amount of income expected from the investment. Because there is no written financial projection or other written representation that states or leads a reasonable investor to believe that the investment will not reduce the investor's cumulative tax liability (*i.e.*, the cumulative projected deductions, although not specified in the projections, may exceed the cumulative projected income (0)), the requirement of paragraph (a) of A-57B of this section would not be satisfied. The result in this example would be the same if there were only oral representations that the income to be derived from the investment would exceed the deductions with respect to the investment, because there would be no written statement as required by paragraph (a) of A-57B of this section. The tax shelter in this case would qualify as a projected income investment, however, if the written promotional material contains good-faith representations based on reasonable economic and business assumptions that state or lead reasonable investors to believe that the cumulative projected income from the investment will exceed the cumulative projected deductions allowable with respect to the investment for each year in the 5-year period, even though the amounts of income and deductions are not specified.

Example 3. The written promotional material with respect to a tax shelter includes a good-faith financial projection for the first 5 years of the investment. Based on reasonable economic and business assumptions, the projection indicates that the expected net income of the investment in each of its first 4 years is \$100,000 (\$500,000 of gross income and \$400,000 of gross deductions), but as a result of the anticipated acquisition of new business assets a loss of \$20,000 is expected in the fifth year of the investment (\$500,000 of gross income and \$520,000 of gross deductions). The projection also indicates that a credit of \$50,000 is expected in the fifth year of the investment. Such a written financial projection would be considered to state that the investment will not reduce the cumulative tax liability of any investor with respect to any year in the 5-year period described in A-4 (I) of this section. Although a loss and a credit are projected in the fifth year of the investment, as of the close of such year, cumulative projected income (\$2,500,000) exceeds cumulative projected deductions (\$2,120,000), and cumulative projected tax liability (without regard to credits) ($\$380,000 \times 50$ percent = \$190,000) exceeds cumulative projected credits (\$50,000). Assuming no contrary oral or written projections or representations are made, the tax shelter would thus be a projected income investment.

Example 4. The written promotional material with respect to a tax shelter states that an investor will be entitled to a "1.5 to 1 write-off" in the year of investment. This statement is a representation that the investment will reduce the cumulative tax liability of an investor with respect to the first year of the investment and, accordingly, the investment is not a projected income investment. The result in this example would be the same if any "write-off" were represented, even if the write-off were less than 1.5 to 1.

Q-57D. Are all financial projections and representations relating to the cumulative tax liability of an investor taken into account for purposes of A-57B of this section?

A-57D. (a) No. A financial projection or other representation relating to the cumulative tax liability of an investor is not taken into account for purposes of A-57B of this section unless it is made in good faith and is based on reasonable economic and business assumptions. In addition, a financial projection or other representation is not taken into account if it relates to circumstances that are highly unlikely. Moreover, a general statement or disclaimer indicating that projected income is not guaranteed or otherwise assured, standing alone, is not a projection or representation for purposes of paragraph (b) of A-57B of this section.

(b) The following example illustrates the application of the principles of this A-57D:

Example. The written promotional material with respect to a tax shelter contains a representation stating that the investment is projected to produce net income for all investors in each of its first five years and there are no credits potentially allowable with respect to the investment. This statement is based on reasonable economic and business assumptions. Such a written representation, if made in good faith, would be considered under paragraph (a) of A-57B of this section to state that the investment will not reduce the cumulative tax liability of any investor with respect to any year in the 5-year period described in A-4(I) of this section. In addition, no oral or written statements or representations are communicated to investors that would indicate under paragraph (b) of A-57B of this section that the investment might reduce the cumulative tax liability of any investor with respect to any year in the 5-year period.

Assume the tax shelter organizer has knowledge of certain other facts that lead

the tax shelter organizer to believe that it is more likely than not that the investment will produce a net loss in the first year. The representation projecting net income is thus contrary to the tax shelter organizer's belief that it is more likely than not that the investment will produce a net loss in the first year. Therefore, the representation is not made in good faith. Since representations not made in good faith are ignored under A-57D, the tax shelter would not be a projected income investment. If, on the other hand, the tax shelter organizer did not know of the other facts so that the tax shelter organizer did not believe that the investment would produce a net loss in the first year, the representation projecting income is made in good faith. In that case, the tax shelter would be a projected income investment.

Q-57E. What assets may not be held by a projected income investment?

A-57E. A tax shelter is not a projected income investment if more than an incidental amount of its assets include or relate to any interest in a collectible (as defined in section 408(m)(2)), a master sound recording, motion picture or television film, videotape, lithograph plate, copyright, or a literary, musical, or artistic composition.

Q-57F. What are the consequences if financial projections or other representations are not made in good faith or are not based on reasonable economic and business assumptions?

A-57F. If a tax shelter is not a projected income investment because the financial projections or other representations are not made in good faith or are not based on reasonable economic and business assumptions, it must be registered not later than the day on which the first offering for sale of an interest in the tax shelter occurs. If the tax shelter is not registered timely, the tax shelter organizer may be subject to a penalty. (See A-1 of §301.6707-1T.)

Q-57G. When does a tax shelter cease to be a projected income investment?

A-57G. A tax shelter ceases to be a projected income investment on the last day of the first year (as defined in A-7 of this section) in the 5-year period described in A-4 (I) of this section for which, for any investor, (i) the gross deductions allocable to the investor for that year and prior years exceed the gross income allocable to the investor for such years, or (ii) the credit allo-

cable to the investor for that year and prior years exceed 50 percent of the amount by which gross income allocable to the investor exceeds gross deductions allocable to the investor for such years. For purposes of determining when a tax shelter ceases to be a projected income investment, the tax shelter organizer is not required to take into account interest that may be incurred by an investor with respect to debt described in A-14 (2) or (3) of this section, but is required to take into account interest incurred by an investor with respect to debt described in A-14 (1) of this section. In addition, the tax shelter organizer may not take into account income attributable to cash, cash equivalents, or marketable securities (within the meaning of A-14 (4) of this section).

Q-57H. How does the requirement to register apply with respect to a tax shelter that is a projected income investment?

A-57H. In the case of a tax shelter that is a projected income investment, registration is not required unless the tax shelter ceases to be a projected income investment under A-57G of this section. If the tax shelter ceases to be a projected income investment, the tax shelter organizer must register the tax shelter in accordance with the rules set forth in A-1 through A-39 and A-41 through A-50 of this section. The tax shelter must be registered—

(a) Within 30 days after the date on which the tax shelter ceases to be a projected income investment, and

(b) Before the date on which the tax shelter or a tax shelter organizer sends the investor any schedule of profit or loss, or income, deduction, or credit that may be used in preparing the investor's income tax return for the taxable year that includes the date on which the tax shelter ceases to be a projected income investment. If a tax shelter organizer fails to register timely as required by this A-57H, the tax shelter organizer may be subject to a penalty. (See A-1 of §301.6707-1T.) For example, assume that C is the principal organizer and general partner of a limited partnership. Interests in the partnership will be offered for sale in a public offering required to be registered

with the Securities and Exchange Commission. C knows that the tax shelter ratio (as defined in A-5 of this section) for the limited partners will be 5 to 1. Although C knows the partnership is a tax shelter, C does not register the partnership by the day on which the first offering for sale of an interest occurs because C believes the partnership is a projected income investment. In the second year of the partnership, the gross deductions allocable to each of the limited partners for the first two years of the partnership exceed the gross income allocable to the limited partners in such years. Thus, the partnership ceases to be a projected income investment under A-57G of this section. Assuming further that C continues as the general partner and knowingly fails to register the partnership as a tax shelter within the time prescribed in this A-57H, C will be subject to a penalty of 1 percent of the aggregate amount invested in the partnership. Because there is an intentional disregard of the registration requirements, the \$10,000 limitation will not apply.

Q-57I. How does the requirement to furnish registration numbers (A-51 through A-54 of this section) apply in the case of a tax shelter that is a projected income investment?

A-57I. In the case of a tax shelter that is a projected income investment, a person who sells or transfers an interest in the tax shelter is not required to furnish a registration number under A-51 of this section or a notice under A-54 of this section unless the tax shelter ceases to be a projected income investment. If the tax shelter ceases to be a projected income investment, the tax shelter organizer who registers the tax shelter is required to furnish the registration number to all persons who the tax shelter organizer knows or has reason to know are participating in the sale of interests in the tax shelter and to all persons who the tax shelter organizer knows or has reason to know have acquired interests in the tax shelter. A person who sold (or otherwise transferred) an interest in the tax shelter before the date on which the tax shelter ceased to be a projected income investment is required to furnish the registration number to the purchaser

or transferee as provided in A-51 of this section only if the seller or transferor knows or has reason to know that the tax shelter has ceased to be a projected income investment and that the tax shelter organizer who registered the tax shelter has not provided a registration number to such purchaser or transferee. In the case of persons who acquired interests in the tax shelter before the date on which the tax shelter ceased to be a projected income investment, the registration number must be provided not later than the date described in paragraph (b) of A-57H of this section or, if the tax shelter does not provide any schedule described in paragraph (b) of A-57H of this section, within 60 days after the date on which the tax shelter ceases to be a projected income investment. Thus, for example, if a tax shelter that ceases to be a projected income investment is a partnership, the tax shelter organizer would be required to provide the registration number to each partner not later than the date the Schedule K-1 for the year in which the tax shelter ceases to be a projected income investment is provided to each partner.

The registration number must be provided in accordance with A-51 and A-52 of this section and must be accompanied by a statement explaining that the tax shelter has ceased to be a projected income investment and instructing the recipient to furnish the registration number to any persons to whom the recipient has sold or otherwise transferred interests in the tax shelter. A tax shelter organizer who fails to provide the registration number as provided in this A-57I may be subject to penalties. (See A-12 of § 301.6707-1T.)

Q-57J. How does the requirement to include the registration number on tax returns (A-55 through A-57 of this section) apply in the case of a tax shelter that is a projected income investment?

A-57J. In the case of a tax shelter that is a projected income investment, an investor is not required to report a registration number on the investor's tax return unless the tax shelter ceases to be a projected income investment. If the tax shelter ceases to be a projected income investment, the requirements of A-55 through A-57 apply with respect

to returns for taxable years ending on or after the date on which the tax shelter ceases to be a projected income investment.

EFFECTIVE DATES

Q-58. On what date does the requirement to register a tax shelter become effective?

A-58. In general, a tax shelter must be registered if any interest in the tax shelter (other than an interest previously sold to an investor) is sold on or after September 1, 1984 (whether or not interests in the tax shelter were sold or offered for sale before September 1, 1984). The tax shelter must be registered with the Internal Revenue Service not later than the first day after August 31, 1984 on which an interest in the tax shelter is offered for sale.

Q-59. By what date must the tax shelter registration number be furnished to investors who acquired interests before September 1, 1984 in a tax shelter that is required to be registered.

A-59. All investors who acquired their interests in a tax shelter before September 1, 1984 must be supplied with the tax shelter registration number by December 31, 1984. See A-52 of this section for the date by which registration numbers must be furnished to investors who acquire their interests on or after September 1, 1984.

Q-60. What interests will be taken into account in determining whether an investment in which interests were sold before September 1, 1984, is a substantial investment?

A-60. The determination of whether an investment is a substantial investment will be made by taking into account only the interests that are offered for sale on or after September 1, 1984. An investment will be considered a substantial investment if there are expected to be 5 or more investors on or after September 1, 1984, and the aggregate amount offered for sale on or after September 1, 1984 is expected to exceed \$250,000. Amounts received from the sale of interests before September 1, 1984, however, are taken into account

in computing the amount of the penalty for failure to register.

(Secs. 6111 and 7805, Internal Revenue Code of 1954 (98 Stat. 678, 26 U.S.C. 6111; 68A Stat. 917, 26 U.S.C. 7805); secs. 6111, 6112 and 7805, Internal Revenue Code of 1954 (98 Stat. 678, 98 Stat. 681, 68A Stat. 917; 26 U.S.C. 6111, 6112 and 7805))

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§ 301.6111-2 Confidential corporate tax shelters.

(a) *In general.* (1) Under section 6111(d) and this section, a confidential corporate tax shelter is treated as a tax shelter subject to the requirements of sections 6111 (a) and (b).

(2) A confidential corporate tax shelter is any transaction—

(i) A significant purpose of the structure of which is the avoidance or evasion of Federal income tax, as described in paragraph (b) of this section, for a direct or indirect corporate participant;

(ii) That is offered to any potential participant under conditions of confidentiality, as described in paragraph (c) of this section; and

(iii) For which the tax shelter promoters may receive fees in excess of \$100,000 in the aggregate, as described in paragraph (d) of this section.

(3) For purposes of this section, references to the term *transaction* include all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and include any series of steps carried out as part of a plan. For purposes of this section, the term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax consequences and that 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 registration. For examples, see § 1.6011-4(c)(4) of this chapter.