



# Instructions for Form 8264

(Revised April 1996)

## Application for Registration of a Tax Shelter

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

### Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

**Recordkeeping** . . . 33 hr., 14 min.

**Learning about the law or the form** . . . 2 hr., 35 min.

**Preparing, copying, assembling, and sending the form to the IRS** . . . 3 hr., 14 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the form to this address. Instead, see **Where To File** below.

### General Instructions

#### Purpose of Form

Organizers of certain tax shelters are required to file Form 8264 to register the tax shelters with the IRS. Any investment that meets the definition of a "tax shelter" is required to be registered unless it qualifies for exemption from, or suspension of, the registration requirements. Organizers filing a properly

completed Form 8264 will receive a tax shelter registration number from the IRS. They must furnish the tax shelter registration number to investors in the tax shelter. Investors must report the tax shelter registration number on their tax returns using **Form 8271**, Investor Reporting of Tax Shelter Registration Number.

#### What Is a Tax Shelter?

An investment that meets the following two requirements is considered a tax shelter for registration purposes regardless of whether it is marketed or customarily designated as a tax shelter.

1. The investment is one with respect to which a person could reasonably infer from representations made or to be made in connection with the offering for sale of an interest in the investment that the tax shelter ratio (defined on page 3) may be greater than 2 to 1 for any investor at the close of any of the first 5 years ending after the date on which the investment is offered for sale; and

2. The investment is one that is required to be registered under a Federal or state law regulating securities, or that is sold under an exemption from registration requiring the filing of a notice with a Federal or state agency regulating the offering or sale of securities, or that is a substantial investment (defined on page 3).

#### Who Is Required To Register a Tax Shelter?

A tax shelter must be registered by a tax shelter organizer. See page 3 for the definition of a "principal organizer." In addition, (a) a person who participates in the organization of the tax shelter, (b) a person who participates in the management of the tax shelter at a time when it is not registered, and (c) a person who participates in the sale of the tax shelter at a time when the person knows or has reason to know that the tax shelter has not been registered may each be treated as a tax shelter organizer.

A group of persons who may be treated as tax shelter organizers may

enter into a written agreement designating one person to be responsible for registering the tax shelter. This "designated organizer" must have participated in the organization of the tax shelter and may not be a resident of a foreign country. Those who sign the agreement, other than the designated organizer, will not be subject to a penalty unless he or she knows or has reason to know that the designated organizer has failed to register the tax shelter as required. In that case, a person, other than the designated person, will be subject to a penalty if he or she does not register the tax shelter as soon as practicable. For more detailed information concerning designation agreements and their consequences, see A-34 through A-39 of Temporary Regulations section 301.6111-1T.

**Note:** *If a tax shelter is not registered on time, and there is no designation agreement, each person required to register the tax shelter will be subject to a penalty unless he or she has reasonable cause for failure to file a registration statement. For information about the applicable penalty and the circumstances in which a person required to register has reasonable cause for failure to register, see Penalties on page 2, and Temporary Regulations section 301.6707-1T, relating to penalties for failure to furnish information regarding tax shelters.*

#### When To File

In general, file Form 8264 no later than the day on which an interest in the tax shelter is first offered for sale.

#### Where To File

File Form 8264 with the Internal Revenue Service Center, Kansas City, MO 64999.

#### Exemptions From Registration

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 of 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 of the property (or a member of an affiliated group, within the meaning of section 1502, including the manufacturer) primarily to persons who are expected to use the property in their principal active trade or business.

3. Sales or leases of tangible personal property (other than collectibles, 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) by a person in the ordinary course of that person's trade or business will be exempt if the purchaser or lessee 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.

4. Performance of services in connection with the recipient's principal active trade or business or for the recipient's personal use.

See A-24 and A-24A of Temporary Regulations section 301.6111-1T for additional information on investments exempt from registration.

## Suspension of Registration Requirements for Projected Income Investments

The registration requirements may be suspended for a tax shelter if investors are told in a written statement made in good faith and based on reasonable economic and business assumptions that their investment is expected to produce net income and not to provide net tax benefits ("a projected income investment"). A tax shelter does not qualify for suspension if there is a projection (whether oral or written) of a net loss or other tax benefit (determined on a cumulative basis) in any of its first 5 years or if the tax shelter invests beyond an incidental amount in 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. The suspension ends if the tax shelter subsequently reduces the cumulative tax liability of an investor during the 5-year period. In that case, the tax shelter must be registered within 30 days after the end of the tax shelter's year in which the reduction is generated and before a Schedule K-1 or similar form is sent to the investor. Once the tax shelter is registered, registration numbers must be provided to investors.

For more detailed information concerning the suspension of the registration requirements for projected income investments, see A-57A through A-57J of Temporary Regulations section 301.6111-1T.

## Furnishing a Tax Shelter Registration Number

In general, any person who sells (or otherwise transfers) an interest in a tax shelter must furnish that tax shelter's registration number to each investor. For purposes of furnishing tax shelter registration numbers, the term "investors" includes both original purchasers of tax shelter interests and persons who acquire their interests from prior purchasers.

The registration number must be furnished to the investor at the time of sale or transfer of the interest. If the seller or transferor has not received the registration number at this time, a written statement must be given to the investor stating that the number has been applied for and will be furnished when available. It then must be given to the investor within 20 days after the seller or transferor receives it.

For information about furnishing the number, the required content of the written statement, and the required legend stating that the tax shelter has not been approved, etc., by the Internal Revenue Service, see A-51 through A-54 of Temporary Regulations section 301.6111-1T.

The registration number must be included on any return on which an investor claims any deduction, loss, credit, or other tax benefit, or reports any income relating to the tax shelter.

## Keeping Lists of Investors

Any person who organizes or sells an interest in any tax shelter required to be registered or for which registration is suspended generally is also required to keep a list showing the name, address, and identifying number of each investor. The requirements for keeping lists of investors are specified in Temporary Regulations section 301.6112-1T.

## Penalties

If a tax shelter organizer required to register a tax shelter fails to do so when required, or files false or incomplete information, a penalty may be charged equal to the greater of \$500 or 1% of the aggregate amount invested in the shelter. No penalty will be charged if the organizer has reasonable cause for failing to comply with the registration requirements.

Any person who is required to furnish a tax shelter registration number to investors in the tax shelter and who fails

to do so will be charged a penalty of \$100 for each failure.

A person required to keep a list of investors may be charged a penalty for each investor who is required to be on the list but is omitted. The penalty is \$50 for each omission, limited to a maximum of \$100,000 per year. No penalty will be charged if the omission was due to reasonable cause and not due to willful neglect.

An additional civil penalty is imposed against any person who directly or indirectly organizes or promotes an abusive tax shelter. The penalty also applies to persons who cause other parties to make or furnish false or fraudulent statements or gross valuation overstatements that promote the abusive tax shelter. The penalty is equal to the lesser of \$1,000 or 100% of the gross income derived (or to be derived) by that person from that activity.

Penalties are also imposed against persons who knowingly aid and abet in the understatement of the tax liability of another person. The penalty is \$1,000 (\$10,000 for corporate tax returns and documents).

## Preparing the Form

A registration number may not be issued if an incomplete application is filed. You must make an entry on Form 8264 whenever an item is applicable. If you need more space, attach a statement or use the **Explanation of Items** section on page 2. You may incorporate information contained in other documents. If you do, attach copies of the documents and specify the page number of the incorporated material. When dollar amounts are called for, use whole dollar amounts.

**Note:** *If an item does not apply or you do not know the requested information, leave the item blank and explain on page 2 why it does not apply or why you do not know the requested information.*

## Amended Forms 8264

Amendments may be made to Form 8264 in certain cases. If there is any material change in facts occurring after the initial registration, you may, but are not required to, file an amended form. A material change in facts is any of the following.

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.
4. A change in the principal business activity.
5. 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 by 50% or more. The reciprocal of the ratio is 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. For example, if the tax shelter ratio changes 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% decrease. Similarly, if the tax shelter ratio changes 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% increase. Both examples would be a material change in facts.

To amend Form 8264, enter in the space provided above Part I the tax shelter registration number previously issued to the tax shelter. If the tax shelter has not yet received the registration number, enter "Applied for" in the space. Complete Part I but only show in Part II the information that has changed since the tax shelter was registered. If you are amending Form 8264 because of a change in the tax shelter ratio, complete the **Tax Shelter Ratio Worksheet** on page 2. In addition, you should include any other information that you did not know at the time the tax shelter was registered but have since learned. Complete the signature area on page 1. For further information, see A-45A of Temporary Regulations section 301.6111-1T.

**Note:** *The filing of an amended application will not affect the determination whether the initial application would be subject to any applicable penalty. In addition, if the initial application was timely filed and contained complete and accurate information, the penalty under section 6707 will not be imposed as a result of the information in an amended application.*

## Definitions

**Principal organizer.**—A person principally responsible for organizing a tax shelter 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.

**Participation in the organization of a tax shelter.**—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.

**Participation in the management of a tax shelter.**—Participation in the management of a tax shelter includes managing the assets of the tax shelter or directing or having supervisory authority for its business activities.

**Participation in the sale of a tax shelter.**—Participation in the sale of a tax shelter includes any marketing activities (directly or through an agent) with respect to an investment.

For more detailed information concerning the terms defined above, see A-25 through A-33 of Temporary Regulations section 301.6111-1T.

**Substantial investment.**—A substantial investment is one in which the total amount that may be offered for sale to all investors exceeds \$250,000 and at least five investors are expected. The total amount offered for sale is the total amount to be received from the sale of interests in the investment. It includes all cash, fair market value of property contributed, and indebtedness received in exchange for interests. For the purpose of determining whether five or more investors are expected in an investment involving real property (and related personal property) used as a farm for farming purposes, interests in the investment expected to be held by a husband and wife, their children and parents, and the spouses of their children will be treated as held by one investor.

**Aggregation of similar plans or arrangements.**—Generally, for purposes of determining whether investments are parts of a substantial investment, investments offered by the same person or related persons that involve similar business assets and similar plans or arrangements are aggregated. However, investments exempt from registration (see paragraphs 3 and 4 under **Exemptions From Registration** starting on page 1) because they are sold or leased to or involve rendition of services to persons who are reasonably expected to use the property or services for either personal use or in their principal active trade or business are not aggregated with similar investments by persons who are expected to use the property or services for other purposes. See A-22 and A-24A of Temporary Regulations section 301.6111-1T.

**Tax shelter ratio.**—The tax shelter ratio with respect to any year for any investor is the ratio that the aggregate amount of deductions and 350% of the credits that are represented or that 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 the year, bears to the investment base for the investor as of the close of the year. Use the **Tax Shelter Ratio Worksheet** on page 2 of Form 8264 to compute tax shelter ratios.

For purposes of computing the tax shelter ratio for a year, 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 the year is not expected to exceed 2%. For purposes other than the computation of the tax shelter ratio, however, general partners will be treated as investors.

The term "year" means the tax year of a tax shelter, or if the tax shelter has no tax year, the calendar year.

**Potentially allowable deduction or credit.**—A deduction or credit is considered to be represented as being potentially allowable to an investor if any oral or written statement is 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 taxable income or Federal income tax. Representations may be made, for example, as advertisements, written offering materials, prospectuses, or tax opinions, and include general representations that tax benefits are available. For example, an advertisement stating that "purchase of a restaurant includes trade fixtures (5-year write-off)" is considered an explicit representation of tax benefits. In addition, if any explicit representation is made regarding any tax benefit, all deductions or credits typically associated with the investment will be treated as having been represented as potentially allowable. See A-8 through A-12 of Temporary Regulations section 301.6111-1T and the instructions for the **Tax Shelter Ratio Worksheet** for additional information about potentially allowable deductions or credits.

**Investment base.**—The investment base for any year is the cumulative amount of money and the adjusted basis of other property (reduced by any liability to which the other property is subject) that is unconditionally required to be contributed or paid directly to the tax shelter by the investor before the close of the year. Amounts which reduce the investment base are listed in the instructions on page 6 for line 11 of the **Tax Shelter Ratio Worksheet**.

## Specific Instructions

### Part I

The tax shelter name will be that of the tax shelter entity if the entity has an employer identification number separate from that of the principal organizer. If the tax shelter consists of Schedule C (Form 1040) or Schedule F (Form 1040) activities and there is no tax shelter entity, provide the name, address, identifying number, and the daytime telephone number of the principal organizer in the left block of Part I. In that case, if you are the principal organizer, the information will be the same in both blocks of Part I.

If you are not the principal organizer, enter the information as it relates to you in the right block. In addition, check the

box in the right block and separately provide the name, address, identifying number, and the daytime telephone number of the principal organizer.

## Part II

**Item 1a.**—Check the box that describes the tax shelter organization or structure. If you check the “Other” box, specify the type of organization or structure in the space provided.

**Item 1b.**—Indicate by checking the appropriate box whether the tax shelter is subject to registration because similar investments have been aggregated to form a substantial investment. The “Yes” box should be checked whether or not separate Forms 8264 are filed for the separate investments aggregated to create a substantial investment.

A separate Form 8264 must be completed for each separate investment, aggregated to create a substantial investment, that differs from the other investments so aggregated 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 a minimum investment unit.
5. Tax shelter ratio.

**Do not** file separate Forms 8264 for aggregated investments if the investments do not differ for any of the above. You should attach a separate statement to each Form 8264 that shows the name, address, identifying number, and telephone number of all such aggregated investments, whether or not separate Forms 8264 are required to be filed.

**Note:** *If possible, all separate forms relating to aggregated investments should be filed together.*

**Items 2a and 2b.**—Enter in item 2a the four-digit code from the chart on page 7 for the principal business activity of the tax shelter. Where two or more activities are relevant to the operation of the tax shelter, enter in item 2a the code that most specifically describes the operation of the tax shelter; in item 2b, enter the code for the secondary activity. Enter N/A only if no other types of activities or transactions are occurring.

**Item 3a.**—Describe the principal asset of the tax shelter (e.g., a building, a computer, a patent, or livestock) acquired or to be acquired. If the tax shelter has more than one asset, the principal asset is the one with the largest adjusted basis. For purposes of completing this item, treat a building and the underlying land as one asset. Blind pools should also specify the asset to be acquired.

**Item 3b.**—Check the appropriate box to indicate whether the principal asset was acquired by the tax shelter from a party that is related (within the meaning of section 465(b)(3)(C)) to either the tax shelter or a principal organizer. Check “Yes” if **any part** of the principal asset is acquired from a related party (e.g., one piece of equipment out of ten, when the ten pieces of equipment constitute the tax shelter’s principal asset).

**Item 3c(1).**—Enter the total cost (actual or projected) of the principal asset of the tax shelter. Use only the costs of acquiring the asset itself. Do not include any costs associated with the use of the asset. If the tax shelter did not purchase the principal asset, enter the tax shelter’s basis in the asset.

**Item 3c(2).**—If the principal asset, or any part of it, was acquired by the tax shelter from a related party (i.e., the “Yes” box is checked in item 3b), enter the cost of the principal asset, or the appropriate part of it, when it was first acquired from an unrelated party. If the entire principal asset was acquired by the tax shelter from an unrelated party (i.e., the “No” box is checked in item 3b), leave this item blank.

**Item 3d.**—Check the “Yes” box if the principal asset of the tax shelter is or will be located outside the United States and enter its location in the space provided. Check the “No” box if the principal asset is located in the United States and make no entry in the country space.

**Item 3e.**—If the principal asset is acquired by more than one means (e.g., if part is purchased and part is constructed), check all the boxes that apply. If it is acquired in whole or in part by a means other than purchase, construction, or lease, check the “Other” box and specify the means of acquisition in the space provided.

**Item 3f(1).**—Enter the date the principal asset was acquired by the tax shelter, or the expected acquisition date if the asset has not been acquired by the date the tax shelter is registered. If the principal asset was acquired from a party who is related to the tax shelter or a principal organizer (i.e., the “Yes” box in item 3b is checked), enter the date the asset was first acquired from an unrelated party.

**Item 3f(2).**—Enter the date the principal asset was placed in service by the tax shelter, or the expected date if the asset has not been placed in service by the date the tax shelter is registered.

**Item 4.**—Enter the accounting method used by the tax shelter. Check only one box. Check “Hybrid” only if the accounting method is a combination of the cash and accrual methods. If you check “Other,” enter a description in the space provided.

**Note:** *In general, tax shelters cannot use the cash method.*

**Item 5a.**—Check the appropriate box to show whether the tax shelter is required to register with Federal or state agencies regulating securities.

**Item 5b.**—Check the appropriate box to show, in the case of a tax shelter exempt from registration with Federal or state agencies regulating securities, whether the filing of a notice of such exemption is required.

**Note:** *If a tax shelter is not exempt from registration, check the “No” box.*

**Item 5c.**—If you checked the “Yes” box in either item 5a or 5b, complete items 5c(1) and 5c(2) as applicable. In item 5c(1) check the appropriate boxes for Federal agencies regulating securities. In item 5c(2) enter the states in which the tax shelter is registered with agencies regulating securities, or with which a notice of exemption from securities registration is filed. If the tax shelter is required to register or file an exemption notice in more than five states, enter the five such states in which the highest aggregate amounts are expected to be realized.

**Item 6.**—If you (or any person related to you as defined in section 465(b)(3)(C)) were a principal organizer or participated in the organization of other tax shelters that were registered, but you were not the filer of Form 8264 for such other shelters, enter in the space provided the tax shelter registration numbers of up to the five most recently registered of those tax shelters. For example, assume that individuals P and M (a person related to P) participate in the organization of Tax Shelter I, and individuals P and D participate in the organization of Tax Shelter II. Also assume that M files a Form 8264 for Tax Shelter I, and D files a Form 8264 for Tax Shelter II. If P were subsequently a participant in the organization of Tax Shelter III and P filed the Form 8264 for Tax Shelter III, P would be required to enter the registration numbers for Tax Shelter I and Tax Shelter II in item 6 of the Form 8264 filed for Tax Shelter III.

**Item 7a.**—The entries in this item summarize the methods of financing that the tax shelter makes available to investors to purchase a minimum investment unit. For purposes of Item 7a, a “minimum investment unit” is the minimum investment that may be purchased by an investor in the tax shelter and may consist of single, multiple, or fractional units as represented in any offering material. For example, if a prospectus states that subscriptions in a limited partnership will be offered in units of \$5,000 each with a minimum subscription of five units per subscriber, the minimum investment unit is \$25,000. If there is no minimum investment unit represented, the minimum investment unit is the cost of a

typical investment purchased by an individual investor.

**Note:** *If the tax shelter is a limited partnership, complete items 7a through 9e by providing information concerning the minimum investment unit of a limited partner.*

**1. Cash.**—If applicable, check this box and enter in the space provided the minimum amount of cash that is unconditionally required to be contributed or paid by the purchaser of a minimum investment unit during the first 5 years of the tax shelter.

**2. Property contributions.**—If applicable, check this box and enter in the space provided the adjusted basis of any property expected to be contributed by the purchaser of a minimum investment unit during the first 5 years of the tax shelter.

**3. Recourse debt.**—If recourse debt that is available to the purchaser of a minimum investment unit will reduce the investment base, check this box and enter in the space provided the maximum amount of such debt.

**4. Nonrecourse debt.**—If nonrecourse debt that is available to the purchaser of a minimum investment unit will reduce the investment base, check this box and enter in the space provided the maximum amount of such debt.

**5. Other.**—If applicable, check this box and enter in the space provided the maximum amount of any financing that the purchaser of a minimum investment unit can obtain under any other financing method. Also, describe such other financing method in the space provided.

**Item 7a(6).**—Add items 7a(1) through 7a(5). This should be the total acquisition cost for a minimum investment unit. If it is not, provide an explanation. For example, if the cost of a minimum investment unit is \$50,000, with the purchaser putting \$5,000 cash down and financing the remaining \$45,000 with a nonrecourse loan repayable over 5 years, \$5,000 is entered in item 7a(1), \$45,000 is entered in item 7a(4), and \$50,000 is the total shown in item 7a(6).

**Item 7b.**—Enter in the boxes corresponding to the types of financing specified in items 7a(3) through 7a(5) the maximum period of time (in whole years) over which such borrowed amounts may be repaid.

**Item 7c.**—If applicable, check the appropriate box to indicate whether any of the investor's financing is expected to be collateralized by one or more letters of credit or whether any of the tax shelter's financing is expected to be collateralized by letters of credit executed by the investors.

**Item 7d.**—If applicable, check the box marked "Unrelated party" and enter the maximum percentage of the financing

included in item 7a that may be borrowed by an investor from a party who is not the tax shelter, a participating person, or a related person (as defined in section 465(b)(3)(C)), but which reduces the investment base because it will be arranged by the tax shelter, a participating person, or a related person.

If applicable, check the box marked "Related party" and enter the maximum percentage of the financing included in item 7a that is expected to be borrowed by an investor from the tax shelter, a participating person, or a related person, and which reduces the investment base.

**Item 7e.**—If no foreign-connected financing is available, check the box. See the instructions for line 11(3) of the **Tax Shelter Ratio Worksheet** for the definition of foreign-connected financing. If any of the financing included in item 7a is foreign-connected financing, enter the maximum dollar amount of such financing and the foreign country, foreign possession, or U.S. possession in which the lender is located. If foreign-connected financing is available from more than one foreign country, foreign possession, or U.S. possession, enter in the right-hand space the country, foreign possession, or U.S. possession from which the greatest dollar amount of such financing is available and the portion (in dollars) of the amount entered in the left-hand space that is available from such country or possession.

**Items 8a and 8b.**—Enter the dollar amount of gross deductions under subtitle A of the Code represented as potentially allowable over the first 5 years to the purchaser of a minimum investment unit in the tax shelter. In addition, from the list below, enter in 8b the codes for the two largest deductions, in dollar terms, represented as being potentially allowable to an investor in the tax shelter.

- 01 Amortization
- 02 Charitable contributions
- 03 Demolition expenses
- 04 Depletion—oil and gas
- 05 Depletion—other
- 06 Depreciation
- 07 Feed expenses
- 08 Consulting fees
- 09 Loan placement fees
- 10 Management fees
- 11 Marketing fees
- 12 Fees—other
- 13 Financing charges
- 14 Guaranteed payments
- 15 Intangible drilling costs
- 16 Interest expense
- 17 Legal expenses
- 18 Mining development costs
- 19 Ordinary loss from sale of an asset
- 20 Rehabilitation expenses
- 21 Rental expenses

- 22 Research and experimental expenditures
- 23 Royalties—oil, gas, and mineral
- 24 Royalties—other
- 25 Soil and water conservation expenditures
- 99 Other

**Items 8c and 8d.**—Enter in 8c the dollar amount of total credits under subtitle A of the Code represented as potentially allowable over the first 5 years to the purchaser of a minimum investment unit in the tax shelter. Also, from the list below, enter in 8d the codes for the two largest credits, in dollar terms, represented as being potentially allowable to an investor in the tax shelter.

- 01 Energy credit (section 48(a))
- 02 Credit for increasing research activities (section 41)
- 08 Rehabilitation credit (section 47)
- 09 Low-income housing credit (section 42)
- 99 Other

**Items 9a–9e.**—Enter the highest tax shelter ratio for any investor as of the close of each of the first 5 years of the tax shelter. For this purpose, general partners in a limited partnership will not be treated as investors in the partnership if the aggregate interest of all general partners in each item of partnership income, gain, loss, deduction, and credit for such year is not expected to exceed 2%. If the general partner is treated as an investor and the tax shelter ratio for the general partner as of the close of any of the first 5 years of the tax shelter exceeds the highest tax shelter ratio for any limited partner for such year, the tax shelter organizer also must attach a statement to Form 8264 providing the information requested in items 7a through 9e for the minimum investment unit of a general partner.

Use the **Tax Shelter Ratio Worksheet** on page 2 of Form 8264 to figure the tax shelter ratio for any investor for each of the first 5 years of the tax shelter. See the **Tax Shelter Ratio Worksheet** instructions on page 6. Figure the tax shelter ratio to two decimal places, rounded off. For example, if line 15, column (a) of the worksheet is 6.654, enter 6.65 in item 9a on page 1 of the form; if line 15, column (b) is 14.735, enter 14.74 in item 9b.

**Item 10.**—Enter the maximum aggregate amount to be received from the sale of investment units in the tax shelter, as represented in any offering material. If there is no maximum aggregate amount, enter the aggregate amount reasonably expected to be received from the sale of investment units.

**Item 11a.**—Enter the maximum number of investors that potentially can participate in the tax shelter, as

represented in any offering material. If there is no maximum number of investors, enter the number of investors reasonably expected to participate in the tax shelter. If investors are required to purchase multiple units, or are permitted to purchase fractional units, attach an explanation, including the numbers of investors expected in all three categories (i.e., single, multiple, and fractional units).

**Item 11b.**—Enter the maximum number of investment units in the tax shelter that potentially can be sold, as represented in any offering material. If there is no maximum number represented, enter the number reasonably expected to be sold.

## Who Must Sign

**Tax shelter organizer.**—Form 8264 must be signed by the tax shelter organizer.

**Paid preparer's information.**—If someone prepares Form 8264 and does not charge for it, that person should not sign the form.

Generally, anyone who is paid to prepare Form 8264 must sign it and fill in the other blanks in the Paid Preparer's Use Only area of the form.

The preparer required to sign Form 8264 MUST complete the required preparer information and:

- Sign it, by hand, in the space provided for the preparer's signature. Signature stamps or labels are not acceptable.
- Give the organizer a copy of Form 8264 in addition to the copy to be filed with the IRS.

The preparer should enter the daytime telephone number where he or she may be reached.

## Tax Shelter Ratio Worksheet

**Gross deductions and total credits.**—For purposes of the tax shelter ratio, the deductions and credits to be taken into account are gross deductions and total credits potentially allowable for the investment. They are not offset or reduced by any income derived or to be derived from the investment, any potential tax liability resulting from the investment, any potential recapture of deductions or credits, or any deductions

or credits that may not be currently allowable because of the passive activity limitations.

**Interest.**—Interest on a debt obligation incurred to acquire a tax shelter interest is taken into account if the deduction for such interest is explicitly represented as being allowable. Also, interest on any debt obligation, the proceeds of which reduce the investment base, is taken into account regardless of whether a deduction for such interest is specifically represented as being allowable. See the instructions for line 11 of this worksheet for information on debts that reduce the investment base.

**Aggregated investments.**—In the case of aggregated investments for which multiple Forms 8264 must be completed (see the instructions for item 1b), compute for each separate Form 8264 the highest tax shelter ratio for an investor in the investments to which such Form 8264 relates. Enter this ratio in the appropriate space for item 9 of each of the separate Forms 8264.

**Line 1.**—Enter the amount of gross deductions represented as being potentially allowable to the investor for the particular year.

**Line 8.**—Enter the amount of cash to be contributed by the investor.

**Line 9.**—Enter the adjusted basis of property (reduced by any liability to which the property is subject) to be contributed by the investor.

**Line 11.**—Enter the sum of the following five items:

1. Any amount (whether recourse or nonrecourse) borrowed by the investor from a participating person, or from any person related (as defined in section 465(b)(3)(C)) 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. A "participating person" is one 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. An amount is "unconditionally required to be repaid" only if any offering material in which the amount is described and any agreement relating to the amount so provides.

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 thus such an amount reduces the investment base. In addition, an amount is not "unconditionally required to be repaid" and thus reduces the investment base if the amount will be (or is expected to be) repaid to the investor during the 5-year period ending after the date the investment is offered for sale.

2. Any amount (whether recourse or nonrecourse) borrowed from any 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, either orally or in writing, as being available from a specific source will be treated as arranged by the participating (or related) person, whether or not a commitment to provide the financing is made, if such person provides information to the lender relating to the investment or otherwise informs the lender about the investment. However, in the case of an amount borrowed on a recourse basis, the 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, will not, by itself, result in a determination that the loan is arranged by a participating (or related) person.

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

4. Amounts that are to be held for the benefit of investors in cash, cash equivalents, or marketable securities.

5. Any distributions 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.

