

Lease Exception to the Tax Shelter Regulations

Notice 2001-18

This notice provides an exception from the registration requirements under § 6111(d) of the Internal Revenue Code and the list maintenance requirements under § 6112 for certain leasing transactions, except as may be provided in subsequent guidance.

BACKGROUND

Section 301.6111-2T of the temporary Procedure and Administration Regulations provides rules regarding the registration of confidential corporate tax shelters under § 6111(d). A confidential corporate tax shelter is any entity, plan, arrangement, or transaction that satisfies the fol-

lowing three requirements: (1) a significant purpose of the structure of the transaction is the avoidance or evasion of federal income tax for a direct or an indirect corporate participant; (2) the transaction is offered to any potential participant under conditions of confidentiality; and (3) the tax shelter promoters may receive fees in excess of \$100,000 in the aggregate. Section 301.6111-2T(b) provides that the avoidance or evasion of federal income tax is considered a significant purpose of the structure of the transaction if the transaction is a listed transaction under § 301.6111-2T(b)(2), lacks economic substance under § 301.6111-2T(b)(3), or is otherwise a tax-structured transaction under § 301.6111-2 T(b)(4). However, a transaction described in § 301.6111-2T(b)(3) or (4) does not need to be registered if, under § 301.6111-2T(b)(5)(ii), the Internal Revenue Service makes a determination by published guidance that a transaction is not subject to the registration requirements under § 6111(d).

Section 301.6112-1T provides rules regarding the requirement to maintain lists of investors in potentially abusive tax shelters under § 6112. A potentially abusive tax shelter under § 6112 includes any investment that is required to be registered with the Internal Revenue Service as a tax shelter under § 6111, and any other entity, plan, or arrangement, if specified in regulations, that has a potential for tax avoidance or evasion. Section 301.6112-1T A-4 provides that for purposes of the list requirement, a tax shelter includes any transaction a significant purpose of the structure of which is the avoidance or evasion of federal income tax within the meaning of §§ 6111(d)(1)(A) and 301.6111-2T(b) (whether or not offered to any direct or indirect corporate participant). If a transaction is exempted from registration under § 301.6111-2T(b)(5), the transaction is also exempted from the list maintenance requirement under § 6112, unless the transaction is subject to registration under § 6111(c).

DISCUSSION

Since the issuance of §§ 301.6111-2T and 301.6112-1T, the U.S. Treasury Department and the Internal Revenue Service have received comments asking

that certain customary leasing transactions involving tangible personal property be excepted from the registration requirement under § 6111(d) and the list maintenance requirement under § 6112. After consideration of those comments, Treasury and the Service have determined that exemptive relief for certain leasing transactions is consistent with the objectives of the registration requirements under § 6111(d) and the list maintenance requirements under § 6112.

Under § 301.6111-2T(b)(5)(ii), no person shall be required to register under § 6111(d) a transaction that satisfies the following requirements: (1) the transaction is a lease or sale leaseback between an owner-lessor of tangible personal property and a lessee who is the user of the property, (2) the terms of the lease (including any related agreements) are consistent with customary commercial practice for the leasing of similar items of property, (3) the transaction qualifies as a lease for federal income tax purposes under Rev. Proc. 75-21, 1975-1 C.B. 715 (or its successor), or under generally accepted case law principles, (4) the lessor and lessee agree to consistently report the transaction as a lease for federal income tax purposes, and (5) the transaction is not the same as or substantially similar to a listed transaction (or part of a listed transaction) under § 301.6111-2T(b)(2), including a "lease strip" described in Notice 95-53, 1995-2 C.B. 334, or a "LILO" (lease in / lease out) transaction described in Rev. Rul. 99-14, 1999-1 C.B. 835. Furthermore, no list needs to be maintained under § 6112 for transactions satisfying this leasing exception that are not otherwise subject to registration under § 6111(c).

EFFECTIVE DATE

This notice applies to leasing transactions entered into after February 28, 2000.

DRAFTING INFORMATION

The principal author of this notice is Catherine Moore of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Catherine Moore at (202) 622-3080 (not a toll-free call).