

Remarks of IRS Commissioner Doug Shulman
August 6, 2008

In the last several years, as you know, the IRS has reinvigorated its enforcement program. A major part of this has been the IRS' stepped up efforts to detect and deter aggressive tax shelters. We have been particularly effective in rooting out tax shelter transactions. And I've said publicly that during my tenure here at the IRS, you can expect these efforts to continue. Promoters and participants in aggressive tax shelters should know that the IRS will remain vigilant.

Our success in uncovering tax shelters, however, is just the start of the process to resolving these issues. Today, I'm pleased to announce that the IRS has decided to launch a settlement initiative for both Lease-In/Lease-Out (LILO) and Sale-in/Lease-Out (SILO) transactions. Under this initiative, more than 45 of the nation's largest corporations that participated in these shelters will receive a letter with an offer. Shelter participants will have 30 days to make a decision to accept the offer.

Let me refresh everyone's memory, LILOs and SILOs involved complex and convoluted purported leasing arrangements in which some of the nation's largest corporations supposedly leased or purchased large assets, such as foreign rail systems or sewer systems, and then immediately leased them back to their original owners. Under the arrangement, these corporations, which include companies in the Fortune 500, buoyed their balance sheets by gaining billions of dollars of tax deferrals. Using LILOs and SILOs, these companies, which include many of the nation's top banks, put off recognition of current income for tax purposes for many years.

The IRS designated LILOs as "listed transactions" in 2000. SILOs were designated in 2005. Since then, the government has gone to court and successfully challenged these deals as having no purpose other than creating tax benefits. But there are hundreds of these transactions that have yet to be fully examined and/or adjudicated. With the government's recent victories in court demonstrating the strength of our position, the time has come to find the most effective way to resolve these existing disputes. As IRS Commissioner, I believe that the settlement initiative that the IRS is offering today achieves this.

The public has a right to expect that large corporations be good corporate citizens and meet their legal and compliance obligations. The nation's leading commercial enterprises have the legal and accounting resources to take full advantage of favorable provisions of the tax law. But they are not entitled to use their extensive resources to twist provisions of the tax law to the point that they no longer reflect Congress's intent. As a basic matter of fairness to all taxpayers, the IRS cannot allow LILO and SILO deals to stand. The time has come for these shelter participants to put these cases behind them. And the best way for them to do so is to act on the settlement offer they will receive today.

Internal Revenue Service

Department of the Treasury

Date:

Taxpayer Identification Number:

Person to Contact:

Contact Telephone Number:

Contact Fax Number:

Employee Identification Number:

Refer Reply to:
Regular Mail

Express Mail

Last Date to Respond to this Letter:

K85CB
Digitally signed by
K85CB
DN: CN = K85CB
Reason: I have
reviewed this document
Date: 2008.07.30
14:42:54 -04'00'

Resolution of Sale-In/Lease-Out (SILO) Transactions

Dear

The Internal Revenue Service (the Service) is willing to resolve all Sale-In/Lease-Out (SILO) transactions entered into by (the Taxpayer) based on the terms stated in Attachment 1.

This resolution offer will remain effective until 30 days from the date of this letter. In order to accept this offer, Taxpayer must advise the listed contact in writing of its acceptance of all of the terms stated in Attachment 1. The Taxpayer must also provide the documents listed in Attachment 2 within 30 days of accepting the terms of this offer. Additional documents may be needed depending on the specific transactions. No counterproposals will be entertained. If the Taxpayer fails to agree to all of the terms within the specified timeframe, the Service will take whatever action is necessary to protect the Government's interest and to bring the case to conclusion.

Thank you for your cooperation.

Sincerely yours,

Enclosures:
Attachment 1
Attachment 2

Attachment 1 – SILO Initiative

A. General

- The Taxpayer agrees to use its best efforts to terminate its SILO transactions on or before December 31, 2008.
- If the Taxpayer is unable to terminate all of its SILO transactions by December 31, 2008, then any of its SILO transactions that are not terminated by that date will be deemed terminated as of that date (“Deemed Termination”).
- If a Deemed Termination has occurred, the taxpayer will be permitted to claim the benefit of an Actual Termination if its SILO transactions are terminated on or before December 31, 2010.

B. Definitions

- **Actual Termination** – An Actual Termination occurs when a Taxpayer terminates its SILO transactions.
- **Actual Termination Gain** – Actual Termination Gain is equal to the Actual Termination Proceeds less the Taxpayer’s Adjusted Basis on the termination date.
- **Actual Termination Proceeds** – The net proceeds the Taxpayer receives when it actually terminates its SILO transactions (expected to be the balance in the equity defeasance account).
- **Deemed Termination** – If the Taxpayer is unable to terminate all of its SILO transactions by December 31, 2008, then any of its SILO transactions that are not terminated by that date will be deemed terminated as of that date.
- **Deemed Termination Date** – December 31, 2008.
- **Deemed Termination Gain** - The difference between the Deemed Termination Proceeds and the Taxpayer’s Adjusted Basis on the Deemed Termination Date.
- **Deemed Termination Proceeds** - The amount which, at the Deemed Termination Date, is equal to the value of the equity defeasance account.
- **Taxpayer’s Adjusted Basis** - The Taxpayer’s Adjusted Basis includes all of the following items:
 - 1) The Taxpayer’s equity investment (equity collateral + accommodation fees) plus transaction fees;

Less

- 2) The allowed deductions (20% of the losses previously claimed) through the 2007 tax year;

Plus

- 3) 80% of the Original Issue Discount ("OID") that accrued through the tax year 2007.

Other Basis Adjustments

- 4) In the event that Taxpayer claimed losses in taxable years that the Service is now barred by the statute of limitations under I.R.C. § 6501 from adjusting, basis will be reduced by the losses claimed in those barred years.

C. Terms

1. Tax Years Through 2007

a. 80% Disallowance of SILO Transactions

- The Taxpayer agrees to concede 80% of any claimed interest expense deduction, depreciation deduction, and amortized transaction costs for each tax year through 2007.
- The IRS agrees to disregard 80% of any reported taxable rental income with respect to Taxpayer's SILO transactions for each tax year through 2007.

b. Report 80% of Accrued OID

- The Taxpayer agrees to report in 2008, 80% of the OID accrued with respect to its SILO transactions for each tax year through 2007.

2. Tax Treatment of an Actual Termination on or before December 31, 2008

- In the event of an Actual Termination on or before December 31, 2008, the Taxpayer agrees to recognize as ordinary income the Actual Termination Gain.

3. Tax Treatment Under a Deemed Termination

- If the Taxpayer is unable to terminate all of its SILO transactions by December 31, 2008, then its non-terminated SILO transactions will be deemed terminated as of the Deemed Termination Date.
- If there is a Deemed Termination, the Taxpayer agrees to recognize as ordinary income the Deemed Termination Gain.

- If there is a Deemed Termination, the Taxpayer agrees to recognize as ordinary income, 100% of the OID that accrues each year from the Deemed Termination Date until the date of an Actual Termination.

4. Tax Treatment of an Actual Termination occurring after the Deemed Termination on December 31, 2008, but before January 1, 2011

- If an Actual Termination occurs after December 31, 2008 but before January 1, 2011, and the Actual Termination Gain is less than the Deemed Termination Gain, then the Taxpayer will be entitled to an ordinary deduction for the difference between the gain that was recognized as a result of the Deemed Termination and the Actual Termination Gain in the taxable year of Actual Termination.

5. Other Terms

- The Taxpayer will not be liable for any penalties under I.R.C. §§ 6662 and 6662A.
- The Taxpayer will waive the prohibition against *ex parte* communications between Appeals and Compliance and Office of Chief Counsel employees as to any LILO and/or SILO transactions that are the subject of this initiative.
- The Taxpayer signs the Closing Agreement that is part of this initiative.
- The Taxpayer agrees that all exit strategies will be disregarded for tax purposes. The Taxpayer agrees that if it has already received any such tax benefits, it will recapture such tax benefits as of the Deemed Termination Date.
- The Taxpayer agrees that its acceptance of this settlement initiative indicates its agreement that it is not entitled to claim or receive tax benefits from the SILO transactions other than those outlined herein.
- The Service will not resolve any of the Taxpayer's SILO transactions unless all of its SILO transactions are resolved. In the event that the Taxpayer also engaged in LILO transactions and is invited to participate in the LILO Settlement Initiative, the Taxpayer must also agree to participate fully in that initiative. The Service will not resolve any of the Taxpayer's SILO transactions unless the Taxpayer also agrees to fully resolve all of its LILO transactions.
- If applicable, resolution of the Taxpayer's SILO transactions will be reported to the Joint Committee on Taxation pursuant to I.R.C. § 6405.

Attachment 2- SILO Initiative

1. A list of all Sale-In/Lease-Out (SILO) transactions that are the same as or substantially similar to those described in Notice 2005-13 for which losses or deductions were claimed in any taxable year (The Commissioner and the Department of the Treasury designated SILO transactions as “listed transactions” in Notice 2005-13).
2. Computations in electronic (Excel) format reflecting the settlement terms outlined in Section C of Attachment 1.
3. Interest/ABC Reports up through and including the EBO date showing annual cash flow analysis, annual tax presentation, and accretion of equity collateral balance.
4. Equity collateral schedules (schedules detailing beginning equity collateral and equity portion of rent, and/or EBO payments).
5. Documents evidencing EBO purchase price.
6. Documents evidencing amount of equity investment and transaction costs.
7. Detailed breakdown of transaction costs by amount, nature, and recipient.

Internal Revenue Service

Department of the Treasury

Date:

Taxpayer Identification Number:

Person to Contact:

Contact Telephone Number:

Contact Fax Number:

Employee Identification Number:

Refer Reply to:
Regular Mail

Express Mail

Last Date to Respond to this Letter:

K85C
B

Digitally signed by
K85CB
DN: CN = K85CB
Reason: I have
reviewed this document
Date: 2008.07.30
14:41:20 -04'00'

Resolution of Lease-In/Lease-Out (LILO) Transactions

Dear

The Internal Revenue Service (the Service) is willing to resolve all Lease-In/Lease-Out (LILO) transactions entered into by (the Taxpayer) based on the terms stated in Attachment 1.

This resolution offer will remain effective until 30 days from the date of this letter. In order to accept this offer, Taxpayer must advise the listed contact in writing of its acceptance of all of the terms stated in Attachment 1. The Taxpayer must also provide the documents listed in Attachment 2 within 30 days of accepting the terms of this offer. Additional documents may be needed depending on the specific transactions. No counterproposals will be entertained. If the Taxpayer fails to agree to all of the terms within the specified timeframe, the Service will take whatever action is necessary to protect the Government's interest and to bring the case to conclusion.

Thank you for your cooperation.

Sincerely yours,

Enclosures:
Attachment 1
Attachment 2

Attachment 1 – LILO Initiative

A. General

- The Taxpayer agrees to use its best efforts to terminate its LILO transactions on or before December 31, 2008.
- If the Taxpayer is unable to terminate all of its LILO transactions by December 31, 2008, then any of its LILO transactions that are not terminated by that date will be deemed terminated as of that date (“Deemed Termination”).
- If a Deemed Termination has occurred, the taxpayer will be permitted to claim the benefit of an Actual Termination if its LILO transactions are terminated on or before December 31, 2010.

B. Definitions

- **Actual Termination** – An Actual Termination occurs when a Taxpayer terminates its LILO transactions.
- **Actual Termination Gain** – Actual Termination Gain is equal to the Actual Termination Proceeds less the Taxpayer’s Adjusted Basis on the termination date.
- **Actual Termination Proceeds** – The net proceeds the Taxpayer receives when it actually terminates its LILO transactions (expected to be the balance in the equity defeasance account).
- **Deemed Termination** – If the Taxpayer is unable to terminate all of its LILO transactions by December 31, 2008, then any of its LILO transactions that are not terminated by that date will be deemed terminated as of that date.
- **Deemed Termination Date** - December 31, 2008.
- **Deemed Termination Gain** - The difference between the Deemed Termination Proceeds and the Taxpayer’s Adjusted Basis on the Deemed Termination Date.
- **Deemed Termination Proceeds** - The amount which, at the Deemed Termination Date, is equal to the value of the equity defeasance account.
- **Taxpayer’s Adjusted Basis** - The Taxpayer’s Adjusted Basis includes all of the following items:
 - 1) The Taxpayer’s equity investment (equity collateral + accommodation fees) plus transaction fees;

Less

- 2) The allowed deductions (20% of the losses previously claimed) through the 2007 tax year;

Plus

- 3) 80% of the Original Issue Discount ("OID") that accrued through the tax year 2007.

Other Basis Adjustments

- 4) In the event that Taxpayer claimed losses in taxable years that the Service is now barred by the statute of limitations under I.R.C. § 6501 from adjusting, basis will be reduced by the losses claimed in those barred years.

C. Terms

1. Tax Years Through 2007

a. 80% Disallowance of LILO Transactions

- The Taxpayer agrees to concede 80% of any claimed interest expense deduction, amortized transaction costs, and head lease rent expense for each tax year through 2007.
- The IRS agrees to disregard 80% of any reported taxable rental income with respect to Taxpayer's LILO transactions for each tax year through 2007.

b. Report 80% of Accrued OID

- The Taxpayer agrees to report in 2008, 80% of the OID accrued with respect to its LILO transactions for each tax year through 2007.

2. Tax Treatment of an Actual Termination on or before December 31, 2008

- In the event of an Actual Termination on or before December 31, 2008, the Taxpayer agrees to recognize as ordinary income the Actual Termination Gain.

3. Tax Treatment Under a Deemed Termination

- If the Taxpayer is unable to terminate all of its LILO transactions by December 31, 2008, then its non-terminated LILO transactions will be deemed terminated as of the Deemed Termination Date.

- If there is a Deemed Termination, the Taxpayer agrees to recognize as ordinary income the Deemed Termination Gain.
- If there is a Deemed Termination, the Taxpayer agrees to recognize as ordinary income 100% of the OID that accrues each year from the Deemed Termination Date until the date of an Actual Termination.

4. Tax Treatment of an Actual Termination occurring after the Deemed Termination on December 31, 2008, but before January 1, 2011

- If an Actual Termination occurs after December 31, 2008 but before January 1, 2011, and the Actual Termination Gain is less than the Deemed Termination Gain, then the Taxpayer will be entitled to an ordinary deduction for the difference between the gain that was recognized as a result of the Deemed Termination and the Actual Termination Gain in the taxable year of Actual Termination.

5. Other Terms

- The Taxpayer will not be liable for any penalties under I.R.C. §§ 6662 and 6662A.
- The Taxpayer will waive the prohibition against *ex parte* communications between Appeals and Compliance and Office of Chief Counsel employees as to any LILO and/or SILO transactions that are the subject of this initiative.
- The Taxpayer will sign the Closing Agreement that is part of this initiative.
- The Taxpayer will agree that all exit strategies will be disregarded for tax purposes. The Taxpayer will agree that if it has already received any such tax benefits, it will recapture such tax benefits as of the Deemed Termination Date.
- The Taxpayer will agree that its acceptance of this settlement initiative indicates its agreement that it is not entitled to claim or receive tax benefits from the LILO transactions other than those outlined herein.
- The Service will not resolve any of the Taxpayer's LILO transactions unless all of its LILO transactions are resolved. In the event that the Taxpayer also engaged in SILO transactions and is invited to participate in the SILO Settlement Initiative, the Taxpayer must also agree to participate fully in that initiative. The Service will not resolve any of the Taxpayer's LILO transactions unless the Taxpayer also agrees to fully resolve all of its SILO transactions.
- If applicable, resolution of the Taxpayer's LILO transactions will be reported to the Joint Committee on Taxation pursuant to I.R.C. § 6405.

Attachment 2- LILO Initiative

1. A list of all Lease-In/Lease-Out (LILO) transactions that are the same as or substantially similar to those described in Rev. Rul. 2002-69 for which losses or deductions were claimed in any taxable year (The Commissioner and the Department of the Treasury designated LILO transactions as "listed transactions" in Notice 2000-15).
2. Computations in electronic (Excel) format reflecting the settlement terms outlined in Section C of Attachment 1.
3. Interest/ABC Reports up through and including the EBO date showing annual cash flow analysis, annual tax presentation, and accretion of equity collateral balance.
4. Equity collateral schedules (schedules detailing beginning equity collateral and equity portion of rent, and/or EBO payments).
5. Documents evidencing EBO purchase price.
6. Documents evidencing amount of equity investment and transaction costs.
7. Detailed breakdown of transaction costs by amount, nature, and recipient.