

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-160871-04]

RIN 1545-BH37

Period of Limitations on Assessment for Listed Transactions Not Disclosed Under Section 6011

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the exception to the general three-year period of limitations on assessment under section 6501(c)(10) of the Internal Revenue Code (Code) for listed transactions that a taxpayer failed to disclose as required under section 6011. These regulations will affect taxpayers who fail to disclose listed transactions in accordance with section 6011.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE THAT IS 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-160871-04), room 5203, Internal Revenue Service, P. O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-160871-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent

electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-160871-04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Audra M. Dineen at (202) 622-4910; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor of the Publications and Regulations Branch at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

### **Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1940. The collection of information in these proposed regulations is in §301.6501(c)-1(g)(5). This information is required to provide the IRS, under penalties of perjury, with the information necessary to properly determine the taxpayer's applicable period of limitations. The collection of information in these proposed regulations is the same as the collection of information in Revenue Procedure 2005-26 (2005-1 CB 965), which was previously reviewed and approved by the Office of Management and Budget under control number 1545–1940. The collection of information in §301.6501(c)-1(g)(6) is the same as the collection of information required under section 6112. See § 601.601(d)(2)(ii)(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

## **Background**

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6501(c) relating to exceptions to the period of limitations on assessment. Section 6501(a) provides that, except as otherwise provided, if a return is filed, tax with respect to that return must be assessed within 3 years from the later of the date the return was filed or the original due date of the return. Section 6501(c) contains several exceptions to the general three-year period of limitations on assessment.

Section 6501(c)(10) was added to the Code by section 814 of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418, 1581 (2004)) (AJCA), enacted on October 22, 2004. Section 6501(c)(10) provides that, if a taxpayer fails to disclose a listed transaction as required under section 6011, the time to assess tax against the taxpayer with respect to that transaction will end no earlier than one year after the earlier of (1) the date on which the taxpayer furnishes the information required under section 6011, or (2) the date that a material advisor furnishes to the Secretary, upon written request, the information required under section 6112 with respect to the taxpayer related to the listed transaction. Accordingly, if neither the taxpayer nor a material advisor furnishes the requisite information, the period of limitations on assessment will remain open, and thus, the tax with respect to the listed transaction

may be assessed at any time. Section 6501(c)(10) is effective for taxable years with respect to which the period of limitations on assessment did not expire prior to October 22, 2004.

As noted, section 6501(c)(10) applies when a taxpayer does not properly disclose a listed transaction (as defined in section 6707A(c)(2)) as required under section 6011. Taxpayers are required under section 6011 and the regulations under section 6011 (collectively referred to as the “section 6011 disclosure rules”) to disclose certain information regarding each reportable transaction in which the taxpayer participated. See Treas. Reg. §§1.6011-4; 20.6011-4; 25.6011-4; 31.6011-4; 53.6011-4; 54.6011-4; and 56.6011-4. Among the transactions that are reportable are “listed transactions.” See Treas. Reg. §1.6011-4(b)(2). Under the section 6011 disclosure rules, a listed transaction is a transaction that is the same as, or substantially similar to, a transaction that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance. Treas. Reg. §1.6011-4(b)(2). Section 6707A(c)(2) incorporates the same definition of listed transaction. For a list of transactions the IRS has identified as listed transactions, see Notice 2009-59, 2009-31 IRB 1. See §601.601(d)(2).

If the section 6011 disclosure rules require a taxpayer to disclose a listed transaction, the taxpayer must complete and file a disclosure statement in accordance with the section 6011 disclosure rules. The section 6011 disclosure rules currently require that Form 8886, “Reportable Transaction Disclosure Statement” (or successor form), be used as the disclosure statement and be completed in accordance with the instructions to the form. The Form 8886 (or successor form) generally must be attached

to the taxpayer's original or amended tax return for each taxable year for which a taxpayer participates in a listed transaction. Treas. Reg. §1.6011-4(e)(1). If a listed transaction results in a loss that is carried back to a prior year, Form 8886 (or successor form) must be attached to the taxpayer's application for tentative refund or amended tax return for that prior year. The taxpayer also must send a copy of Form 8886 (or successor form) to the IRS Office of Tax Shelter Analysis (OTSA), generally at the same time that a disclosure statement pertaining to a particular listed transaction is first filed. Under the current rules, when a transaction is identified as a listed transaction after the date on which the taxpayer files a tax return (including an amended return) for a taxable year reflecting the taxpayer's participation in the listed transaction and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction, then the taxpayer must file Form 8886 (or successor form) with OTSA within 90 calendar days after the date the transaction became a listed transaction.

If a taxpayer does not disclose its participation in a listed transaction in accordance with all of the requirements of the section 6011 disclosure rules and section 6501(c)(10) applies, then the time to assess tax related to the listed transaction will expire no earlier than the earlier of (1) one year after the date on which the information described in section 6501(c)(10)(A) is provided, or (2) one year after the date on which the information described in section 6501(c)(10)(B) is provided.

The IRS and Treasury Department issued Rev. Proc. 2005-26 (2005-1 CB 965) on April 25, 2005, to provide interim guidance on section 6501(c)(10). The revenue procedure prescribes how taxpayers and material advisors should disclose listed

transactions that were not properly disclosed under section 6011 in order to start the one-year period under section 6501(c)(10). Taxpayers may continue to rely on Rev. Proc. 2005-26 until temporary or final regulations are issued under section 6501(c)(10). See §601.601(d)(2). In that revenue procedure, the IRS and Treasury Department also requested comments concerning the procedures set forth in the revenue procedure, especially their application to partners and partnerships. One comment was received but it did not address the limitations period.

### **Explanation of Provisions**

These proposed regulations provide rules reflecting the enactment of section 6501(c)(10) by the AJCA. They explain how to determine whether section 6501(c)(10) applies and, if so, the applicable period of limitations on assessment. As a preliminary matter, the effective date of section 6501(c)(10) limits its application to taxable years with respect to which the period of limitations on assessment was open on or after October 22, 2004 (the date the AJCA was enacted). Thus, for taxable years for which a return was due prior to October 22, 2004, an analysis under section 6501 must be conducted to determine if the period of limitations on assessment was open under the general three-year period or an exception other than section 6501(c)(10).

#### **1. Application of Section 6501(c)(10).**

The general rule for applying section 6501(c)(10) is set forth in §301.6501(c)-1(g)(1) of these proposed regulations. The first step in analyzing whether section 6501(c)(10) applies is to determine whether the taxpayer failed to comply with any disclosure obligation under the section 6011 disclosure rules with respect to a listed transaction (as defined in section 6707A(c)(2)) for any taxable year. The IRS and

Treasury Department have issued several regulations under section 6011, some of which apply only to certain types of taxpayers. The disclosure requirements also vary among the regulations. Therefore, particular attention must be paid to the effective dates of the various section 6011 disclosure rules in order to determine whether there was a disclosure obligation.

If there was no obligation to disclose the listed transaction, or if the taxpayer complied with its disclosure obligations, then section 6501(c)(10) does not apply. If there was a disclosure obligation and a failure to disclose as required, then section 6501(c)(10) applies. Section 6501(c)(10) applies to all open years for which the taxpayer failed to disclose its participation in the transaction as required under the section 6011 disclosure rules, even if the disclosures required under section 6011 were not due in, or with a return for, the year of participation but were due in a later year when the transaction was subsequently identified as a listed transaction. If section 6501(c)(10) applies because a taxpayer failed to disclose a listed transaction and the transaction is later removed from the category of listed transactions, section 6501(c)(10) will continue to apply with respect to the tax years for which disclosure was required. If section 6501(c)(10) applies, then the period of limitations with respect to the listed transaction will remain open until at least the earlier of (1) one year after the date on which the taxpayer provides a disclosure to satisfy section 6501(c)(10)(A) (as provided in §301.6501(c)-1(g)(5) described elsewhere in this preamble), or (2) one year after the date on which a material advisor provides the IRS with information concerning the taxpayer's participation in the transaction sufficient to satisfy section 6501(c)(10)(B) (as provided in §301.6501(c)-1(g)(6) described elsewhere in this preamble). If either

paragraph (g)(5) or (g)(6) is satisfied, the period of limitations on assessment will end under the circumstances described in §301.6501(c)-1(g)(2) of these proposed regulations.

Section 301.6501(c)-1(g)(2) of these proposed regulations also provides guidance on how section 6501(c)(10) interacts with the otherwise applicable period of limitations provided in the Internal Revenue Code. The proposed regulations confirm that section 6501(c)(10) does not operate to extend a limitations period that expired before the effective date of section 6501(c)(10) or before the date on which the failure to disclose occurs. In addition, a taxpayer or material advisor cannot shorten any other applicable period of limitations on assessment by following the procedures to begin the one-year period provided under section 6501(c)(10), including, but not limited to, a limitations period that has been extended by agreement under section 6501(c)(4), or the limitations period described in section 6501(c)(1) relating to a false or fraudulent return.

The terms “listed transaction,” “material advisor,” and “taxable year(s) to which the failure to disclose relates” are defined in §301.6501(c)-1(g)(3) of these proposed regulations by cross-reference to section 6707A and the relevant regulations under sections 6011 and 6111.

Under section 6501(c)(10), the term “listed transaction” is defined by reference to section 6707A(c)(2), which defines a listed transaction as “a reportable transaction that is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.” Although section 6707A was enacted by section 811 of the AJCA and is effective for returns and statements due after October 22, 2004, and which were not filed before that date, its

definition of “listed transactions” incorporates transactions identified as listed transactions in the section 6011 disclosure rules before section 6707A was enacted. Accordingly, any transactions that were listed transactions as of October 22, 2004, under the section 6011 disclosure rules are listed transactions under section 6707A and, thus, for purposes of section 6501(c)(10). Therefore, section 6501(c)(10) applies to transactions that were identified as listed transactions prior to October 22, 2004.

The term “taxable year(s) to which the failure to disclose relates” identifies the years to which section 6501(c)(10) applies. Clarification is necessary because a taxpayer may participate in a listed transaction over multiple years, because a transaction may be identified as a listed transaction after the taxpayer enters into the transaction, and because the section 6011 disclosure rules may require disclosure in a year in which the taxpayer did not participate in the listed transaction. The term “taxable year(s) to which the failure to disclose relates” means each taxable year that the taxpayer participated (as defined by the regulations under section 6011) in a transaction that was identified as a listed transaction and for which there was no proper disclosure when required under the section 6011 disclosure rules. For these purposes, it does not matter whether the transaction was identified as a listed transaction before or after the taxpayer filed a tax return for any taxable year in which the taxpayer participated in the transaction. On occasion, the section 6011 disclosure rule may require that a disclosure be filed in a taxable year or with a tax return for a taxable year other than the taxable year in which the taxpayer participated in the listed transaction. In those circumstances, the taxable year(s) to which the failure to disclose relates is not the

taxable year in which the disclosure is required to be filed, but each taxable year that the taxpayer participated in the listed transaction.

Section 301.6501(c)-1(g)(4) of these proposed regulations provides the rule for application of section 6501(c)(10) in the case of taxpayers who are partners in partnerships, shareholders in S corporations, or beneficiaries of trusts. If these taxpayers were required to disclose their participation in a listed transaction under the section 6011 disclosure rules, and failed to disclose, then the period of limitations on assessment with respect to each partner, shareholder, or beneficiary that failed to disclose will remain open under section 6501(c)(10) even if the partnership, S corporation, or trust disclosed in accordance with the section 6011 disclosure rules and even if another partner, shareholder, or beneficiary disclosed in accordance with the section 6011 disclosure rules. This rule is as adopted because the period of limitations on assessment is specific to each taxpayer. Consistent with the above rule, a failure to disclose by an entity will not cause section 6501(c)(10) to apply to all of the taxpayers who are partners, shareholders or beneficiaries of the entity.

## 2. One-Year Period Under Section 6501(c)(10).

Guidance on the events that will start the one-year period under section 6501(c)(10) is provided in §301.6501(c)-1(g)(5) and (6) of these proposed regulations.

### a. Disclosures by taxpayers of required information.

Under section 6501(c)(10)(A), if there is a failure to disclose information related to a listed transaction as required under the section 6011 disclosure rules, the time to assess tax will end no earlier than one year after the date “the Secretary is furnished the information so required.” Section 301.6501(c)-1(g)(5)(i)(A)-(C) of these proposed

regulations sets forth the general procedures for how to furnish the information to the IRS. These procedures are similar to the ones required under the section 6011 disclosure rules because failure to comply with those rules triggers the application of section 6501(c)(10). Because the rules set forth in §301.6501(c)-1(g)(5)(i) generally concern annual returns, §301.6501(c)-1(g)(5)(ii) provides that the IRS may issue published guidance that prescribes alternative procedures to address particular listed transactions, if necessary, in the case of returns other than annual returns.

Section 301.6501(c)-1(g)(5)(i)(A) of these proposed regulations provides that to begin the one-year period under section 6501(c)(10)(A) taxpayers must complete Form 8886 (or successor form) in accordance with the instructions to the form and these proposed regulations and submit the completed form with a cover letter (as described in §301.6501(c)-1(g)(5)(i)(B)) to OTSA. Under the procedures set forth in Revenue Procedure 2005-26, taxpayers were required to submit the completed form and cover letter both to OTSA and the Internal Revenue Service Center where the taxpayer filed its original return in all cases and, if applicable, to an IRS examiner or Appeals officer. These proposed regulations simplify the procedures taxpayers need to follow by only requiring them to submit the information to one IRS office instead of two, unless the taxpayer also needs to submit a copy to an IRS examiner or Appeals officer, as discussed later in this Preamble.

Taxpayers must complete the most current version of the form available at the time the taxpayer attempts to satisfy section 6501(c)(10). In other words, if the Form 8886 (or successor form) changes between the date that the taxpayer was required to disclose the listed transaction under the section 6011 disclosure rules and the date that

the taxpayer discloses the listed transaction for purposes of section 6501(c)(10), then the taxpayer must follow the rules in effect on the date of the section 6501(c)(10) disclosure.

The taxpayer also must indicate on the form that the disclosure is for purposes of section 6501(c)(10) and the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. The section 6501(c)(10) disclosure will only be effective for the tax return(s) and taxable year(s) that the taxpayer specifies he or she is attempting to disclose for purposes of section 6501(c)(10). Thus, for example, if a taxpayer failed to disclose the taxpayer's participation in a listed transaction in three taxable years but the taxpayer's section 6501(c)(10) disclosure only specifies one taxable year, then the period of limitations on assessment for the other two taxable years will remain open under section 6501(c)(10). If the Form 8886 (or successor form) contains a line for that purpose, then taxpayers may use that line, so long as the line is completed in accordance with the instructions to the form. If no line is provided on the form, then the taxpayer must include on the top of Page 1 of the Form 8886, and each copy of the form, the following statement: "Section 6501(c)(10) Disclosure" followed by the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. This information is necessary to place the IRS on notice that the taxpayer is attempting to remedy its failure to properly disclose the listed transaction and, thus, the one-year period will start to run with respect to the tax years identified. Because the IRS may have as little as one year to determine whether to conduct an examination and, if it does conduct an examination, to determine whether any additional

tax is due with respect to the listed transaction, it is important that the IRS receives proper notice that the one-year period has started.

Taxpayers must submit a separate Form 8886 (or successor form) and cover letter (discussed elsewhere in this Preamble) for each listed transaction that the taxpayer did not properly disclose under the section 6011 disclosure rules. If the taxpayer participated in one listed transaction over multiple years, then the taxpayer may submit one Form 8886 (or successor form), so long as the taxpayer indicates on the Form 8886 all of the tax returns and taxable years for which the taxpayer is making a section 6501(c)(10) disclosure. If a taxpayer participated in more than one listed transaction, then the taxpayer must submit separate Forms 8886 (or successor form) for each listed transaction, unless the listed transactions are the same or substantially similar, in which case all the listed transactions may be reported on one Form 8886.

Section 301.6501(c)-1(g)(5)(i)(B) of these proposed regulations provides the requirements for the cover letter. The cover letter must identify the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. In addition, the cover letter must include the statement provided in §301.6501(c)-1(g)(5)(i)(B) signed under penalties of perjury by the taxpayer and, if applicable, by the paid preparer preparing the Form 8886. The cover letter is necessary because the Form 8886 does not currently contain a penalties-of-perjury statement or place for signature.

A special rule for taxpayers under examination or Appeals consideration by the IRS is provided in §301.6501(c)-1(g)(5)(i)(C) of these proposed regulations. If the taxpayer wants to make a section 6501(c)(10) disclosure for a taxable year or a listed

transaction under examination or Appeals consideration, then, in addition to the otherwise applicable filing obligations set forth in §301.6501(c)-1(g)(5)(i)(A), the taxpayer must submit a copy of the submission made under paragraph (g)(5)(i)(A) to the IRS examiner or Appeals officer examining or considering the taxable year to which the section 6501(c)(10) disclosure relates. This rule is adopted to ensure that the IRS personnel who are considering the taxpayer's tax year(s) at issue are made aware as soon as possible that the one-year period under section 6501(c)(10) may have started to run, so that whatever action is necessary can be taken within the one-year period.

Section 301.6501(c)-1(g)(5)(i)(D) provides guidance concerning the date on which the taxpayer is considered to have furnished the information to the IRS to satisfy section 6501(c)(10)(A) and start the running of the one-year period. The one-year period under section 6501(c)(10)(A) will begin on the date that the taxpayer satisfies all the requirements set forth in §301.6501(c)-1(g)(5)(i)(A) through (C). If the required procedures are not completed on the same date, the one-year period will begin on the date that the last procedure is satisfied. For example, if a taxpayer mails a completed Form 8886 to OTSA but not to the IRS examiner or Appeals officer who is examining or considering the taxable year to which the section 6501(c)(10) disclosure relates, the one-year period under section 6501(c)(10)(A) will not begin until both events occur.

Information provided under §301.6501(c)-1(g)(5) is deemed furnished on the date the IRS receives the information. Section 7502 does not apply to the mailing of the information detailed in §301.6501(c)-1(g)(5), because the information is not required to be filed within a prescribed period or on or before a prescribed date. Taxpayers can determine the date the IRS receives the information by using a delivery service that

provides a way to track delivery, such as U.S. registered or certified mail, express or priority mail, or delivery confirmation from the U.S. post office or a private delivery service that provides tracking. Moreover, documentation from the post office or private delivery service showing the date the information was delivered to the IRS, together with evidence that the envelope was properly addressed to the office to which the information was required to be sent, generally will be sufficient proof that the IRS received the information, unless the IRS can establish that it did not in fact receive the information. Separate delivery confirmation documentation should be obtained to establish receipt by OTSA and the appropriate IRS revenue agent or Appeals officer, if applicable.

b. Disclosures by material advisors.

Under section 6501(c)(10)(B), if a taxpayer fails to disclose information related to a listed transaction as required under the section 6011 disclosure rules, the time to assess tax will end no earlier than one year after the date “a material advisor meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.” Section 6112 requires material advisors to maintain lists of advisees and other information with respect to reportable transactions, including listed transactions, and to furnish that information to the IRS upon request. The term “material advisor” is defined in §301.6111-3(b). The IRS and Treasury Department finalized regulations under section 6112 in TD 9352 (72 FR 43154) published on August 3, 2007. Section 6112 and §301.6112-1 provide guidance relating to the preparation, content, maintenance, retention, and furnishing of lists by material advisors.

Section 6501(c)(10)(B) provides that a material advisor must satisfy the requirements of section 6112 to begin the one-year period. Information provided in response to another method of inquiry, such as an Information Document Request in a section 6700 investigation, will not begin the one-year period. In addition, §301.6501(c)-1(g)(6)(i) provides that the material advisor must furnish the information described in §301.6112-1(e) with respect to the taxpayer that failed to properly disclose the listed transaction. Thus, if the material advisor furnishes the information described in §301.6112-1(e) for some, or even most, of its clients but not for a particular taxpayer that failed to properly disclose the listed transaction, then the assessment period for that taxpayer will remain open under section 6501(c)(10).

Section 301.6501(c)-1(g)(6)(ii) of these proposed regulations clarifies that the one-year period will begin once the material advisor furnishes the information in response to an IRS request under section 6112, regardless of whether the material advisor provides the information within 20 business days of the IRS's request as required by section 6708. If the material advisor furnishes the required information over the course of multiple days, the requirements of paragraph (g)(6) of this section will be deemed satisfied and the one-year period will begin on the date that the IRS is furnished the information that, together with prior information, satisfies the requirements of section 6112 and §301.6112-1 with respect to the taxpayer. The information is deemed furnished for purposes of section 6501(c)(10) on the date the material advisor is treated as satisfying the requirements of section 6112 under the rules applicable to that section.

### 3. Taxes that can be Assessed under Section 6501(c)(10).

Section 6501(c)(10) allows the IRS to assess any tax with respect to a listed transaction for the taxable year(s) to which the failure to disclose relates. Section 301.6501(c)-1(g)(7) of these proposed regulations provides that taxes with respect to the listed transaction include, but are not limited to, (1) adjustments made to the tax consequences claimed on the return, (2) adjustments to any item to the extent the item is affected by the listed transaction even if it is unrelated to the listed transaction, and (3) interest and penalties that are related to the listed transaction or the adjustments made to the tax consequences (see I.R.C. §§6601(e)(1) and 6665(a)(2)). An example of an item affected by the listed transaction but not related to the listed transaction is the threshold for the medical expense deduction under section 213 that varies if there is a change in an individual's adjusted gross income. Examples of a penalty related to the adjustments made to the tax consequences are the accuracy-related penalties under sections 6662 and 6662A. An example of a penalty related to the listed transaction is the penalty under section 6707A for failure to file the disclosure statement reporting the taxpayer's participation in the listed transaction.

#### 4. Examples.

Section 301.6501(c)-1(g)(8) of these proposed regulations contains examples of the application of section 6501(c)(10) to various types of taxpayers participating in listed transactions. Additional examples illustrate the application of the one-year period under section 6501(c)(10), the coordination of section 6501(c)(10) with other limitations periods provided by the Internal Revenue Code, and tax that can be assessed with respect to a listed transaction.

#### **Proposed Effective/Applicability Date**

When adopted as final regulations, these rules will apply to taxable years with respect to which the period of limitations on assessment did not expire before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, taxpayers may rely on these proposed regulations for taxable years with respect to which the period of limitations on assessment expired before the publication of the Treasury decision. Otherwise, Rev. Proc. 2005-26 continues to apply for taxable years to which these regulations do not apply and for which the period of limitations on assessment did not expire before April 8, 2005 – the effective date of Rev. Proc. 2005-26.

#### **Effect on Other Documents**

Upon the publication of final regulations under section 6501(c)(10) in the **Federal Register**, Rev. Proc. 2005-26 (2005-1 CB 965) will be superseded for taxable years with respect to which the period of limitations on assessment did not expire before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

#### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). Section 6501(c)(10) applies when taxpayers fail to comply

with the reporting requirements set forth in section 6011. The Treasury Department and the IRS do not know the exact number and types of taxpayers that fail to comply with those requirements. However, although the Treasury Department and the IRS are aware that many tax avoidance transactions involve pass-through entities, when pass-through entities are utilized, the entities are not ultimately liable for the tax; rather, the taxpayers subject to section 6501(c)(10) will be the individuals and corporations owning, directly or indirectly, the interests in the pass-through entities. Therefore, the Treasury Department and the IRS have determined that these proposed regulations will not affect a substantial number of small entities.

In addition, the Treasury Department and the IRS have determined that any impact on small entities resulting from these proposed regulations will not be significant. Most of the information required under these proposed regulations is already required by other regulations or forms, namely §1.6011-4, §301.6112-1, and Form 8886, "Reportable Transaction Disclosure Statement." The only new information required to be submitted to the IRS is a cover letter, which must contain a reference to the tax returns and taxable year(s) at issue and a statement signed under penalty of perjury. The cover letter should take minimal time and expense to prepare. Therefore, the additional requirement of the cover letter should not significantly increase the burden on taxpayers. Based on these facts, the Treasury Department and the IRS have determined that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief

Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### **Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the substance of the proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments submitted by the public will be made available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal author of these regulations is Audra M. Dineen of the Office of the Associate Chief Counsel (Procedure and Administration).

### **List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR Part 301 is proposed to be amended as follows:

#### **PART 301 - - PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 301.6501(c)-1 is amended by adding paragraph (g) to read as follows:

§301.6501(c)-1 Exceptions to general period of limitations on assessment and collection.

\* \* \* \* \*

(g) Listed transactions--(1) In general. If a taxpayer is required to disclose a listed transaction under section 6011 and the regulations under section 6011 and does not do so in the time and manner required, then the time to assess any tax attributable to that listed transaction for the taxable year(s) to which the failure to disclose relates (as defined in paragraph (g)(3)(iii) of this section) will not expire before the earlier of one year after the date on which the taxpayer makes the disclosure described in paragraph (g)(5) of this section or one year after the date on which a material advisor makes a disclosure described in paragraph (g)(6) of this section.

(2) Limitations period if paragraph (g)(5) or (g)(6) is satisfied. If one of the disclosure provisions described in paragraphs (g)(5) or (g)(6) of this section is satisfied, then the tax attributable to the listed transaction may be assessed at any time before the expiration of the limitations period that would have otherwise applied under this section (determined without regard to paragraph (g)(1) of this section) or the period ending one year after the date that one of the disclosure provisions described in paragraphs (g)(5) or (g)(6) of this section was satisfied, whichever is later. If both disclosure provisions are satisfied, the one-year period will begin on the earlier of the dates on which the provisions were satisfied. Paragraph (g)(1) of this section does not

apply to any period of limitations on assessment that expired before the date on which the failure to disclose the listed transaction under section 6011 occurred.

(3) Definitions--(i) Listed transaction. The term listed transaction means a transaction described in section 6707A(c)(2) of the Code and §1.6011-4(b)(2) of this chapter.

(ii) Material advisor. The term material advisor means a person described in section 6111(b)(1) of the Code and §301.6111-3(b) of this chapter.

(iii) Taxable year(s) to which the failure to disclose relates. The taxable year(s) to which the failure to disclose relates are each taxable year that the taxpayer participated (as defined under section 6011 and the regulations under section 6011) in a transaction that was identified as a listed transaction and the taxpayer failed to disclose the listed transaction as required under section 6011. If the taxable year in which the taxpayer participated in the listed transaction is different from the taxable year in which the taxpayer is required to disclose the listed transaction under section 6011, the taxable year(s) to which the failure to disclose relates are each taxable year that the taxpayer participated in the transaction.

(4) Application of paragraph with respect to pass-through entities. In the case of taxpayers who are partners in partnerships, shareholders in S corporations, or beneficiaries of trusts and are required to disclose a listed transaction under section 6011 and the regulations under section 6011, paragraph (g)(1) of this section will apply to a particular partner, shareholder, or beneficiary if that particular taxpayer does not disclose within the time and in the form and manner provided by section 6011 and §1.6011-4(d) and (e), regardless of whether the partnership, S corporation, or trust or

another partner, shareholder, or beneficiary discloses in accordance with section 6011 and the regulations under section 6011. Similarly, because paragraph (g)(1) of this section applies on a taxpayer-by-taxpayer basis, the failure of a partnership, S corporation, or trust that has a disclosure obligation under section 6011 and does not disclose within the time or in the form and manner provided by §1.6011-4(d) and (e) will not cause paragraph (g)(1) of this section to apply automatically to all the partners, shareholders or beneficiaries of the entity. Instead, the application of paragraph (g)(1) of this section will be determined based on whether the particular taxpayer satisfied their disclosure obligation under section 6011 and the regulations under section 6011.

(5) Taxpayer's disclosure of a listed transaction that taxpayer did not properly disclose under section 6011--(i) In general--(A) Method of disclosure. The taxpayer must complete the most current version of Form 8886, "Reportable Transaction Disclosure Statement" (or successor form), available on the date the taxpayer attempts to satisfy this paragraph in accordance with §1.6011-4(d) (in effect on that date) and the instructions to that form. The taxpayer must indicate on the Form 8886 that the form is being submitted for purposes of section 6501(c)(10) and the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. The section 6501(c)(10) disclosure will only be effective for the tax return(s) and taxable year(s) that the taxpayer specifies he or she is attempting to disclose for purposes of section 6501(c)(10). If the Form 8886 contains a line for this purpose then the taxpayer must complete the line in accordance with the instructions to that form. Otherwise, the taxpayer must include on the top of Page 1 of the Form 8886, and each copy of the form, the following statement: "Section 6501(c)(10) Disclosure" followed by the tax

return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. For example, if the taxpayer did not properly disclose its participation in a listed transaction the tax consequences of which were reflected on the taxpayer's Form 1040 for the 2005 taxable year, the taxpayer must include the following statement: "Section 6501(c)(10) Disclosure; 2005 Form 1040" on the form. The taxpayer must submit the properly completed Form 8886 and a cover letter, which must be completed in accordance with the requirements set forth in paragraph (g)(5)(i)(B) of this section, to the Office of Tax Shelter Analysis (OTSA). The taxpayer is permitted, but not required, to file an amended return with the Form 8886 and cover letter. Separate Forms 8886 and separate cover letters must be submitted for each listed transaction the taxpayer did not properly disclose under section 6011. If the taxpayer participated in one listed transaction over multiple years, the taxpayer may submit one Form 8886 (or successor form) and cover letter and indicate on that form all of the tax returns and taxable years for which the taxpayer is making a section 6501(c)(10) disclosure. If a taxpayer participated in more than one listed transaction, then the taxpayer must submit separate Forms 8886 (or successor form) for each listed transaction, unless the listed transactions are the same or substantially similar, in which case all the listed transactions may be reported on one Form 8886.

(B) Cover letter. A cover letter to which a Form 8886 is to be attached must identify the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure and include the following statement signed under penalties of perjury by the taxpayer and if the Form 8886 is prepared by a paid preparer, the Form 8886 must be signed under penalties of perjury by the paid preparer as well:

Under penalties of perjury, I declare that I have examined this reportable transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

(C) Taxpayer under examination or Appeals consideration. A taxpayer making a disclosure under paragraph (g)(5) of this section with respect to a taxable year under examination or Appeals consideration by the IRS must satisfy the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and also submit a copy of the submission to the IRS examiner or Appeals officer examining or considering the taxable year(s) to which the disclosure under paragraph (g) of this section relates.

(D) Date the one-year period will begin to run if paragraph (g)(5) satisfied.

Unless an earlier expiration is provided for in paragraph (g)(6) of this section, the time to assess tax under paragraph (g) of this section will not expire before one year after the date on which the Secretary is furnished the information from the taxpayer that satisfies all the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and, if applicable, paragraph (g)(5)(i)(C) of this section. If the taxpayer does not satisfy all of the requirements on the same date, the one-year period will begin on the date that the IRS is furnished the information that, together with prior disclosures of information, satisfies the requirements of paragraph (g)(5) of this section. For purposes of paragraph (g)(5) of this section, the information is deemed furnished on the date the IRS receives the information.

(ii) Exception for returns other than annual returns. The IRS may prescribe alternative procedures to satisfy the requirements of this paragraph (g)(5) in a revenue

procedure, notice, or other guidance published in the Internal Revenue Bulletin for circumstances involving returns other than annual returns.

(6) Material advisor's disclosure of a listed transaction not properly disclosed by a taxpayer under section 6011--(i) Method of disclosure. In response to a written request of the IRS under section 6112, a material advisor with respect to a listed transaction must furnish to the IRS the information described in section 6112 and §301.6112-1(b) in the form and manner prescribed by section 6112 and §301.6112-1(e). If the information the material advisor furnishes identifies the taxpayer as a person who engaged in the listed transaction, regardless of whether the material advisor provides the information before or after the taxpayer's failure to disclose the listed transaction under section 6011, then the requirements of this paragraph (g)(6) will be satisfied for that taxpayer. The requirements of this paragraph (g)(6) will be considered satisfied even if the material advisor furnishes the information required under section 6112 to the IRS after the date prescribed in section 6708 or published guidance relating to section 6708.

(ii) Date the one-year period will begin if paragraph (g)(6) is satisfied. Unless an earlier expiration is provided for in paragraph (g)(5) of this section, the time to assess tax under paragraph (g) of this section will expire one year after the date on which the material advisor satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer. For purposes of paragraph (g)(6) of this section, information is deemed to be furnished on the date that, in response to a request under section 6112, the IRS receives the information from a material advisor that satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer.

(7) Tax assessable under this section. If the period of limitations on assessment

for a taxable year remains open under this section, the Secretary has authority to assess any tax with respect to the listed transaction in that year. This includes, but is not limited to, adjustments made to the tax consequences claimed on the return plus interest, additions to tax, additional amounts, and penalties that are related to the listed transaction or adjustments made to the tax consequences. This also includes any item to the extent the item is affected by the listed transaction even if it is unrelated to the listed transaction. An example of an item affected by, but unrelated to, a listed transaction is the threshold for the medical expense deduction under section 213 that varies if there is a change in an individual's adjusted gross income. An example of a penalty related to the listed transaction is the penalty under section 6707A for failure to file the disclosure statement reporting the taxpayer's participation in the listed transaction. Examples of penalties related to the adjustments made to the tax consequences are the accuracy-related penalties under sections 6662 and 6662A.

(8) Examples. The rules of paragraph (g) of this section are illustrated by the following examples:

Example 1. No requirement to disclose under section 6011. P, an individual, is a partner in a partnership that entered into a transaction in 2001 that was the same as or substantially similar to the transaction identified as a listed transaction in Notice 2000-44 (2000-2 CB 255). P claimed a loss from the transaction on his Form 1040 for the tax year 2001. P filed the Form 1040 prior to June 14, 2002. P did not disclose his participation in the listed transaction because P was not required to disclose the transaction under the applicable section 6011 regulations (TD 8961). Although the transaction was a listed transaction and P did not disclose the transaction, P had no obligation to include on any return or statement any information with respect to a listed transaction within the meaning of section 6501(c)(10) because TD 8961 only applied to corporations, not individuals. Accordingly, section 6501(c)(10) does not apply.

Example 2. Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after taxpayer files a tax return for that year. (i) In January 2009, A, a calendar year taxpayer, enters into a transaction that at the time is not a listed transaction. A reports the tax consequences from the transaction

on its individual income tax return for 2009 timely filed on April 15, 2010. The time for the IRS to assess tax against A under the general three-year period of limitations for A's 2009 taxable year would expire on April 15, 2013. A only participated in the transaction in 2009. On March 1, 2012, the IRS identifies the transaction as a listed transaction. A does not file the Form 8886 with OTSA by May 30, 2012.

(ii) The period of limitations on assessment for A's 2009 taxable year was open on the date the transaction was identified as a listed transaction. Under the applicable section 6011 regulations (TD 9350, 2007-38 IRB 607), A must disclose its participation in the transaction by filing a completed Form 8886 with OTSA on or before May 30, 2012, which is 90 days after the date the transaction became a listed transaction. A did not disclose the transaction as required. A's failure to disclose relates to taxable year 2009 even though the obligation to disclose did not arise until 2012. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2009 taxable year with respect to the listed transaction until at least one year after the date A satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to A.

Example 3. Requirements of paragraph (g)(6) satisfied. Same facts as Example 2, except that on April 5, 2013, the IRS hand delivers to Advisor J, who is a material advisor, a section 6112 request related to the listed transaction. Advisor J furnishes the required list with all the information required by section 6112 and §301.6112-1, including all the information required with respect to A, to the IRS on May 13, 2013. The submission satisfies the requirements of paragraph (g)(6) even though Advisor J furnishes the information outside of the 20-business-day period provided in section 6708. Accordingly, under section 6501(c)(10), the period of limitations with respect to A's taxable year 2009 will end on May 13, 2014, one year after the IRS received the required information, unless the period of limitations remains open under another exception. Any tax for the 2009 taxable year not attributable to the listed transaction must be assessed by April 15, 2013.

Example 4. Requirements of paragraph (g)(5) also satisfied. Same facts as Examples 2 and 3, except that on May 23, 2013, A files a properly completed Form 8886 and signed cover letter with OTSA both identifying that the section 6501(c)(10) disclosure relates to A's Form 1040 for 2009. A satisfied the requirements of paragraph (g)(5) of this section as of May 23, 2013. Because the requirements of paragraph (g)(6) were satisfied first as described in Example 3, under section 6501(c)(10) the period of limitations will end on May 13, 2014 (one year after the requirements of paragraph (g)(6) were satisfied) instead of May 23, 2014 (one year after the requirements of paragraph (g)(5) were satisfied). Any tax for the 2009 taxable year not attributable to the listed transaction must be assessed by April 15, 2013.

Example 5. Period to assess tax remains open under another exception. Same facts as Examples 2, 3, and 4, except that on April 1, 2013, A signed Form 872, consenting to extend, without restriction, its period of limitations on assessment for taxable year 2009 under section 6501(c)(4) until July 15, 2014. In that case, although

under section 6501(c)(10) the period of limitations would otherwise expire on May 13, 2014, the IRS may assess tax with respect to the listed transaction at any time up to and including July 15, 2014, pursuant to section 6501(c)(4). Section 6501(c)(10) can operate to extend the assessment period but cannot shorten any other applicable assessment period.

Example 6. Requirements of (g)(5) not satisfied. In 2009, X, a corporation, enters into a listed transaction. On March 15, 2010, X timely files its 2009 Form 1120, reporting the tax consequences from the transaction. X does not disclose the transaction as required under section 6011 when it files its 2009 return. The failure to disclose relates to taxable year 2009. On February 12, 2014, X completes and files a Form 8886 with respect to the listed transaction with OTSA but does not submit a cover letter, as required. The requirements of paragraph (g)(5) of this section have not been satisfied. Therefore, the time to assess tax against X with respect to the transaction for taxable year 2009 remains open under section 6501(c)(10).

Example 7. Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after first year of participation. (i) On December 30, 2003, Y, a corporation, enters into a transaction that at the time is not a reportable transaction. On March 15, 2004, Y timely files its 2003 Form 1120, reporting the tax consequences from the transaction. On April 1, 2004, the IRS issues Notice 2004-31 that identifies the transaction as a listed transaction. Y also reports tax consequences from the transaction on its 2004 Form 1120, which it timely filed on March 15, 2005. Y did not attach a completed Form 8886 to its 2004 Form 1120 and did not send a copy of the form to OTSA. The general three-year period of limitations on assessment for Y's 2003 and 2004 taxable years would expire on March 15, 2007, and March 17, 2008, respectively.

(ii) The period of limitations on assessment for Y's 2003 taxable year was open on the date the transaction was identified as a listed transaction. Under the applicable section 6011 regulations (TD 9108), Y should have disclosed its participation in the transaction with its next filed return, which was its 2004 Form 1120, but Y did not disclose its participation. Y's failure to disclose with the 2004 Form 1120 relates to taxable years 2003 and 2004. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2003 and 2004 taxable years with respect to the listed transaction until at least one year after the date Y satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to Y.

Example 8. Section 6501(c)(10) applies to keep one partner's period of limitations on assessment open. T and S are partners in a partnership, TS, that enters into a listed transaction in 2010. T and S each receive a Schedule K-1 from TS on April 11, 2011. On April 15, 2011, TS, T and S each file their 2010 returns. Under the applicable section 6011 regulations, TS, T, and S each are required to disclose the transaction. TS attaches a completed Form 8886 to its 2010 Form 1065 and sends a copy of Form 8886 to OTSA. Neither T nor S files a disclosure statement with their

respective returns nor sends a copy to OTSA on April 15, 2011. On May 17, 2011, T timely files a completed Form 8886 with OTSA pursuant to §1.6011-4(e)(1). T's disclosure is timely because T received the Schedule K-1 within 10 calendar days before the due date of the return and, thus, T had 60 calendar days to file Form 8886 with OTSA. TS and T properly disclosed the transaction in accordance with the applicable regulations under section 6011, but S did not. S's failure to disclose relates to taxable year 2010. The time to assess tax with respect to the transaction against S for 2010 remains open under section 6501(c)(10) even though TS and T disclosed the transaction.

Example 9. Section 6501(c)(10) satisfied before expiration of three-year period of limitations under section 6501(a). Same facts as Example 8, except that on August 27, 2012, S satisfies the requirements of paragraph (g)(5) of this section. No material advisor satisfied the requirements of paragraph (g)(6) of this section with respect to S on a date earlier than August 27, 2012. Under section 6501(c)(10), the period of time in which the IRS may assess tax against S with respect to the listed transaction would expire no earlier than August 27, 2013, one year after the date S satisfied the requirements of paragraph (g)(5). As the general three-year period of limitations on assessment under section 6501(a) does not expire until April 15, 2014, the IRS will have until that date to assess any tax with respect to the listed transaction.

Example 10. No section 6112 request. B, a calendar year taxpayer, entered into a listed transaction in 2010. B did not comply with the applicable disclosure requirements under section 6011 for taxable year 2010; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after B satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to B. In June 2011, the IRS conducts a section 6700 investigation of Advisor K, who is a material advisor to B with respect to the listed transaction. During the course of the investigation, the IRS obtains the name, address, and TIN of all of Advisor K's clients who engaged in the transaction, including B. The information provided does not satisfy the requirements of paragraph (g)(6) with respect to B because the information was not provided pursuant to a section 6112 request. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2010 remains open under section 6501(c)(10).

Example 11. Section 6112 request but the requirements of paragraph (g)(6) are not satisfied with respect to B. Same facts as Example 10, except that on January 2, 2014, the IRS sends by certified mail a section 6112 request to Advisor L, who is another material advisor to B with respect to the listed transaction. Advisor L furnishes some of the information required under section 6112 and §301.6112-1 to the IRS for inspection on January 13, 2014. The list includes information with respect to many clients of Advisor L, but it does not include any information with respect to B. The submission does not satisfy the requirements of paragraph (g)(6) of this section with respect to B. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2010 remains open under section 6501(c)(10).

Example 12. Section 6112 submission made before taxpayer failed to disclose a listed transaction. Advisor M, who is a material advisor, advises C, an individual, in 2010 with respect to a transaction that is not a reportable transaction at that time. C files its return claiming the tax consequences of the transaction on April 15, 2011. The time for the IRS to assess tax against C under the general three-year period of limitations for C's 2010 taxable year would expire on April 15, 2014. The IRS identifies the transaction as a listed transaction on November 1, 2013. On December 5, 2013, the IRS hand delivers to Advisor M a section 6112 request related to the transaction. Advisor M furnishes the information to the IRS on December 30, 2013. The information contains all the required information with respect to Advisor M's clients, including C. C does not disclose the transaction on or before January 30, 2014, as required under section 6011 and the regulations under section 6011. Advisor M's submission under section 6112 satisfies the requirements of paragraph (g)(6) of this section even though it occurred prior to C's failure to disclose the listed transaction. Thus, under section 6501(c)(10), the period of limitations to assess tax against C with respect to the listed transaction will end on December 30, 2014 (one year after the requirements of paragraph (g)(6) of this section were satisfied), unless the period of limitations remains open under another exception.

Example 13. Transaction removed from the category of listed transactions after taxpayer failed to disclose. D, a calendar year taxpayer, entered into a listed transaction in 2011. D did not comply with the applicable disclosure requirements under section 6011 for taxable year 2011; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after D satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to D. In 2016, the IRS removes the transaction from the category of listed transactions because of a change in law. Section 6501(c)(10) continues to apply to keep the period of limitations on assessment open for D's taxable year 2011.

Example 14. Taxes assessed with respect to the listed transaction. (i) F, an individual, enters into a listed transaction in 2009. F files its 2009 Form 1040 on April 15, 2010, but does not disclose his participation in the listed transaction in accordance with section 6011 and the regulations under section 6011. F's failure to disclose relates to taxable year 2009. Thus, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the listed transaction for taxable year 2009 until at least one year after the date F satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to F.

(ii) On July 1, 2014, the IRS completes an examination of F's 2009 taxable year and disallows the tax consequences claimed as a result of the listed transaction. The disallowance of a loss increased F's adjusted gross income. Due to the increase of F's adjusted gross income, certain credits, such as the child tax credit, and exemption deductions were disallowed or reduced because of limitations based on adjusted gross

income. In addition, F now is liable for the alternative minimum tax. The examination also uncovered that F claimed two deductions on Schedule C to which F was not entitled. Under section 6501(c)(10), the IRS can timely issue a statutory notice of deficiency (and assess in due course) against F for the deficiency resulting from (1) disallowing the loss, (2) disallowing the credits and exemptions to which F was not entitled based on F's increased adjusted gross income, and (3) being liable for the alternative minimum tax. In addition, the IRS can assess any interest and applicable penalties related to those adjustments, such as the accuracy-related penalty under sections 6662 and 6662A and the penalty under section 6707A for F's failure to disclose the transaction as required under section 6011 and the regulations under section 6011. The IRS cannot, however, pursuant to section 6501(c)(10), assess the increase in tax that would result from disallowing the two deductions on F's Schedule C because those deductions are not related to, or affected by, the adjustments concerning the listed transaction.

(9) Effective/applicability date. The rules of this paragraph (g) apply to taxable years with respect to which the period of limitations on assessment did not expire before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. However, taxpayers may rely on the rules of this paragraph (g) for taxable years with respect to which the period of limitations on assessment expired before the date of publication of the Treasury decision. If an individual does not choose to rely on the rules of this paragraph (g), Rev. Proc. 2005-26 (2005-1 CB 965) will continue to apply to taxable years with respect to which the period of limitations on assessment expired on or after April 8, 2005, and before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

/s/ Linda E. Stiff

Deputy Commissioner for Services and Enforcement

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