(i) Installation Prohibition

After the effective date of this AD, do not install or reinstall onto any engine an LPT rotor stage 3 disk listed in Table 1 to paragraph (c) of this AD that has accumulated 6,200 CSN or more.

(j) Definitions

(1) For the purposes of this AD, an EGT above redline is a confirmed over-temperature indication that is not a result of EGT system error.

(2) For the purposes of this AD, a shift in the smoothed EGT trending data is a shift in a rolling average of EGT readings that can be confirmed by a corresponding shift in the trending of fuel flow or fan speed/core speed (N1/N2) relationship. You can find further guidance about evaluating EGT trend data in GE Company Service Rep Tip 373 ''Guidelines For Parameter Trend Monitoring.''

(3) For the purposes of this AD, an engine shop visit is the induction of an engine into the shop, where the separation of a major engine flange occurs; except the following maintenance actions, or any combination, are not considered engine shop visits:

(i) Induction of an engine into a shop solely for removal of the compressor top or bottom case for airfoil maintenance or variable stator vane bushing replacement.

(ii) Induction of an engine into a shop solely for removal or replacement of the stage 1 fan disk.

(iii) Induction of an engine into a shop solely for replacement of the turbine rear frame.

(iv) Induction of an engine into a shop solely for replacement of the accessory gearbox or transfer gearbox, or both.

(v) Induction of an engine into a shop solely for replacement of the fan forward case.

(4) For the purposes of this AD, a raw EGT trend data point above the smoothed average is a confirmed temperature reading over the rolling average of EGT readings that is not a result of EGT system error.

(k) Credit for Previous Actions

You may take credit for the actions required by paragraph (g) of this AD if they were performed before the effective date of this AD using GE Service Bulletin (SB) No. CF6–50 SB 72–1315, Initial Issue, dated June 3, 2011, or GE SB No. CF6–50 SB 72–1315, Revision 1, dated June 30, 2011.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (m) of this AD and email it to: *ANE-AD-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) AMOCs approved previously for AD 2010–12–10, Amendment 39–16331 (75 FR 32649, June 9, 2010), AD 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011), or AD 2011–18–01, Amendment 39–16783 (76 FR 52213, August 22, 2011) are approved as AMOCs for the corresponding provisions of this AD.

(m) Related Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; email: *Sungmo.D.Cho@faa.gov.*

(n) Material Incorporated by Reference

None.

Issued on November 3, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–26579 Filed 12–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106134–22]

RIN 1545–BQ39

Syndicated Conservation Easement Transactions as Listed Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that identify certain syndicated conservation easement transactions and substantially similar transactions as listed transactions, a type of reportable transaction. Material advisors and certain participants in these listed transactions are required to file disclosures with the IRS and are subject to penalties for failure to disclose. The proposed regulations affect participants in these transactions as well as material advisors. In addition, while the proposed regulations exclude qualified organizations from being treated as participants or parties to a prohibited tax shelter transaction subject to excise tax, this notice of proposed rulemaking requests comments on whether the final regulations should remove the exclusion from the application of the excise tax for qualified organizations that facilitate syndicated conservation easement transactions. Finally, this document provides notice of a public hearing on the proposed regulations.

DATES:

Comment date: Electronic or written comments must be received by February 6, 2023.

Public hearing: The public hearing is scheduled to be held by teleconference on March 1, 2023, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by February 6, 2022. If no outlines are received by February 6, 2023, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on February 27, 2023. The telephonic hearing will be made accessible to people with disabilities. Requests for special assistance during the telephonic hearing must be received by February 24, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–106134–22). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish any comments to the public docket. Send paper submissions to: CC:PA:LPD:PR (REG–106134–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

For those requesting to speak during the hearing, send an outline of topic submissions electronically via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–106134–22).

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–106134–22 and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG–106134–22. The email should include a copy of the speaker's public comments and outline of topics. Individuals who want to attend by telephone the public hearing must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–106134–22 and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG–106134–22. To request special assistance during the telephonic hearing, contact the Publications and Regulations Branch of the Office of

Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–5177 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Theresa Melchiorre of the Office of Associate Chief Counsel (Income Tax and Accounting), (202) 317–7011; concerning submissions of comments and requests for hearing, Regina L. Johnson at (202) 317–5177 or *publichearings@irs.gov* (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at *www.regulations.gov* or upon request.

A public hearing is being held by teleconference on March 1, 2023, beginning at 10 a.m. ET unless no outlines are received by February 6, 2023.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to comment by telephone at the hearing must submit written or electronic comments and an outline of the topics to be discussed as well as the time to be devoted to each topic by February 6, 2023, as prescribed in the preamble under the **ADDRESSES** section.

A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available at *www.regulations.gov*, search IRS and REG–106134–22. Copies of the agenda will also be available by emailing a request to *publichearings@irs.gov.* Please put ''REG–106134–22 Agenda Request'' in the subject line of the email.

Announcement 2020–4, 2020–17 I.R.B. 667 (April 20, 2020), provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Background

This document contains proposed additions to 26 CFR part 1 (Income Tax Regulations) under section 6011 of the Internal Revenue Code (Code). The additions identify certain transactions that are ''listed transactions'' for purposes of section 6011.

I. Overview of the Reportable Transaction Regime

Section 6011(a) generally provides that, when required by regulations prescribed by the Secretary of the Treasury or her delegate (Secretary), ''any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.''

On February 28, 2000, the Treasury Department and the IRS issued a series of temporary regulations (T.D. 8877; T.D. 8876; T.D. 8875) and cross-referencing notices of proposed rulemaking (REG–103735–00; REG–110311–98; REG–103736–00) under sections 6011, 6111, and 6112. The temporary regulations and cross-referencing notices of proposed rulemaking were published in the **Federal Register** (65 FR 11205, 65 FR 11269; 65 FR 11215, 65 FR 11272; 65 FR 11211, 65 FR 11271) on March 2, 2000 (2000 Temporary Regulations). The 2000 Temporary Regulations were modified several times before March 4, 2003, the date on which the Treasury Department and the IRS, after providing notice and opportunity for public comment and considering the comments received, published final regulations (T.D. 9046) in the **Federal Register** (68 FR 10161) under sections 6011, 6111, and 6112 (2003 Final Regulations). The 2000 Temporary Regulations and 2003 Final Regulations consistently provided that reportable transactions include listed transactions and that a listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and has identified by notice, regulation, or other form of published guidance as a listed transaction.

Following the 2003 promulgation of § 1.6011–4, Congress passed the American Jobs Creation Act of 2004 (AJCA), Public Law 108–357, 118 Stat. 1418 (October 22, 2004), which added sections 6707A, 6662A, and 6501(c)(10) to the Code, and revised sections 6111, 6112, 6707, and 6708 of the Code. *See* sections 811–812 and 814–817 of the AJCA. The AJCA's legislative history explains that Congress incorporated in the statute the method that the Treasury Department and the IRS had been using to identify reportable transactions, and provided incentives, via penalties, to encourage taxpayer compliance with the new disclosure reporting obligations. As the Committee on Ways and Means explained in its report accompanying H.R. 4520, which became the AJCA:

> The Committee believes that the best way to combat tax shelters is to be aware of them. The Treasury Department, using the tools available, issued regulations requiring disclosure of certain transactions and requiring organizers and promoters of tax-engineered transactions to maintain customer lists and make these lists available to the IRS. Nevertheless, the Committee believes that additional legislation is needed to provide the Treasury Department with additional tools to assist its efforts to curtail abusive transactions. Moreover, the Committee believes that a penalty for failing to make the required disclosures, when the imposition of such penalty is not dependent on the tax treatment of the underlying transaction ultimately being sustained, will provide an additional incentive for taxpayers to satisfy their reporting obligations under the new disclosure provisions.

House Report 108–548(I), 108th Cong., 2nd Sess. 2004, at 261 (June 16, 2004) (House Report).

In Footnote 232 of the House Report, the Committee on Ways and Means notes that the statutory definitions of ''reportable transaction'' and ''listed transaction'' were intended to incorporate the pre-AJCA regulatory definitions while providing the Secretary with leeway to make changes to those definitions:

> The provision states that, except as provided in regulations, a listed transaction means a reportable transaction, which 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. For this purpose, it is expected that the definition of ''substantially similar'' will be the definition used in Treas. Reg. sec. 1.6011–4(c)(4). However, the Secretary may modify this definition (as well as the definitions of ''listed transaction'' and ''reportable transactions'') as appropriate.

Id. at 261 n.232.

Section 6707A(c)(1) defines a ''reportable transaction'' as ''any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.'' A ''listed transaction'' is defined by section 6707A(c)(2) as ''a reportable transaction which 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.''

Section 6111(a), as revised by the AJCA, provides that each material advisor with respect to any reportable transaction must make a return setting forth: (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. Such return must be filed not later than the date specified by the Secretary. Section 6111(b)(2) provides that a reportable transaction has the meaning given to such term by section 6707A(c).

Section 6112(a), as revised by the AJCA, provides that each material advisor with respect to any reportable transaction (as defined in section 6707A(c)) must (whether or not required to file a return under section 6111 with respect to such transaction) maintain a list (1) identifying each person with respect to whom such advisor acted as a material advisor and (2) containing such other information as the Secretary may by regulations require.

On August 3, 2007, the Treasury Department and the IRS published final regulations in the **Federal Register** (72 FR 43146–01, 72 FR 43157–01, 72 FR 43154–01) under sections 6011, 6111, and 6112 modifying the rules relating to the disclosure of reportable transactions by participants in reportable transactions under section 6011, the disclosure of reportable transactions by material advisors under section 6111, and the list maintenance requirements of material advisors with respect to reportable transactions under section 6112 in response to the changes in the AJCA.

II. Disclosure of Reportable Transactions by Participants and Penalties for Failure To Disclose

Section 1.6011–4(a) provides that every taxpayer that has participated in a reportable transaction within the meaning of § 1.6011–4(b) and who is required to file a tax return must file a disclosure statement within the time prescribed in § 1.6011–4(e).

Section 1.6011–4(d) and (e) provide that the disclosure statement—Form 8886, *Reportable Transaction Disclosure Statement* (or successor form)—must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. A copy of the disclosure statement must be sent to the IRS's Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction.

Reportable transactions include listed transactions, confidential transactions, transactions with contractual protection, loss transactions, and transactions of interest. *See* § 1.6011–4(b)(2) through (6). Consistent with the definitions previously provided in the 2000 Temporary Regulations and later in the 2003 Final Regulations, as promulgated in 2007, § 1.6011–4(b)(2) continues to define a ''listed transaction'' as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

Section 1.6011–4(c)(4) provides that a transaction is ''substantially similar'' if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. For example, a transaction may be substantially similar to a listed transaction even though it may involve different entities or use different Code provisions.

Section 1.6011–4(c)(3)(i)(A) provides that a taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under § 1.6011–4(b)(2). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance may also identify types or classes of persons that will not be treated as participants in a listed transaction.

Section 1.6011–4(e)(2)(i) provides that if a transaction becomes a listed transaction after the filing of a taxpayer's tax return reflecting the taxpayer's participation in the listed transaction and before the end of the period of limitations for assessment for any taxable year in which the taxpayer participated in the listed transaction, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction becomes a listed transaction. This requirement extends to an amended return and exists regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction. The Commissioner of Internal Revenue (Commissioner) may also determine the time for disclosure of listed transactions in the published guidance identifying the transaction.

Participants required to disclose these transactions under § 1.6011–4 who fail to do so are subject to penalties under section 6707A. Section 6707A(b) provides that the amount of the penalty is 75 percent of the decrease in tax shown on the return as a result of the reportable transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes), subject to minimum and maximum penalty amounts. The minimum penalty amount is $5,000 in the case of a natural person and $10,000 in any other case. For a listed transaction, the maximum penalty amount is $100,000 in the case of a natural person and $200,000 in any other case.

Additional penalties may also apply. In general, section 6662A imposes a 20 percent accuracy-related penalty on any understatement (as defined in section 6662A(b)(1)) attributable to an adequately disclosed reportable transaction. If the taxpayer had a requirement to disclose participation in the reportable transaction but did not adequately disclose the transaction in accordance with the regulations under section 6011, the taxpayer is subject to an increased penalty rate equal to 30 percent of the understatement. *See* section 6662A(c). Section 6662A(b)(2) provides that section 6662A applies to any item which is attributable to any listed transaction and any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

Participants required to disclose listed transactions who fail to do so are also subject to an extended period of limitations under section 6501(c)(10). That section provides that the time for assessment of any tax with respect to the transaction shall not expire before the date that is one year after the earlier of the date the participant discloses the transaction or the date a material advisor discloses the participation pursuant to a written request under section 6112(b)(1)(A).

III. Disclosure of Reportable Transactions by Material Advisors and Penalties for Failure To Disclose

Section 301.6111–3(a) of the Procedure and Administration Regulations provides that each material advisor with respect to any reportable transaction, as defined in § 1.6011–4(b), must file a return as described in § 301.6111–3(d) by the date described in § 301.6111–3(e).

Section 301.6111–3(b)(1) provides that a person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount as defined in § 301.6111–3(b)(3) for the material aid, assistance, or advice. Under § 301.6111–3(b)(2)(i) and (ii), a person provides material aid, assistance, or advice if the person provides a tax statement, which is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in § 1.6011–4(b)(2) through (7).

Material advisors must disclose transactions on Form 8918, *Material Advisor Disclosure Statement* (or successor form), as provided in § 301.6111–3(d) and (e). Section 301.6111–3(e) provides that the material advisor's disclosure statement for a reportable transaction must be filed with the OTSA by the last day of the month that follows the end of the calendar quarter in which the advisor becomes a material advisor with respect to a reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. The disclosure statement must be sent to the OTSA at the address provided in the instructions for Form 8918 (or successor form).

Section 301.6111–3(d)(2) provides that the IRS will issue to a material advisor a reportable transaction number with respect to the disclosed reportable transaction. Receipt of a reportable transaction number does not indicate that the disclosure statement is complete, nor does it indicate that the transaction has been reviewed, examined, or approved by the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor as defined in § 301.6111–3(b). The reportable transaction number must be provided at the time the transaction is entered into, or, if the transaction is entered into prior to the material advisor receiving the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

Additionally, material advisors must prepare and maintain lists identifying each person with respect to whom the advisor acted as a material advisor with respect to the reportable transaction in accordance with § 301.6112–1(b) and furnish such lists to the IRS in accordance with § 301.6112–1(e).

Section 6707(a) provides that a material advisor who fails to file a timely disclosure, or files an incomplete or false disclosure statement, is subject to a penalty. Pursuant to section 6707(b)(2), for listed transactions, the penalty is the greater of (A) $200,000, or (B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return is filed under section 6111.

A material advisor may also be subject to a penalty under section 6708 for failing to maintain a list under section 6112(a) and failing to make the list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request. Section 6708(a) provides that the penalty is $10,000 per day for each day of the failure after the 20th day. However, no penalty will be imposed with respect to the failure on any day if such failure is due to reasonable cause.

IV. Tax-Exempt Entities as Parties to Prohibited Tax Shelter Transactions

Section 4965 of the Code, which was enacted in 2006, is intended to deter certain ''tax-exempt entities'' (as defined in section 4965(c)) from facilitating prohibited tax shelter transactions, which include listed transactions. Section 4965(a)(1) provides, in part, that if a transaction is a prohibited tax shelter transaction at the time a tax-exempt entity becomes a party to the transaction, the entity must pay a tax for the taxable year and any subsequent taxable year as provided in section 4965(b)(1). Tax-exempt entities subject to the tax are listed in section 4965(c)(1)–(3) and include, among others, entities and governmental units described in sections 501(c) and 170(c) (other than the United States). A tax-exempt entity that is a party to a prohibited tax shelter transaction generally is also subject to various reporting and disclosure obligations. Additionally, an entity manager is subject to excise taxes under section 4965(a)(2) if the manager approves the entity as a party (or otherwise causes the entity to be a party) to a prohibited tax shelter transaction and knows or has reason to know that the transaction is a prohibited tax shelter transaction.

A. The Excise Taxes

The amount of the section 4965 tax owed by a tax-exempt entity depends on whether the tax-exempt entity knows, or has reason to know, that a transaction is a prohibited tax shelter transaction at the time the entity becomes a party to the transaction. A tax-exempt entity is treated as knowing or having reason to know that a transaction is a prohibited tax shelter transaction if one or more of its entity managers knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity manager(s) approved the entity as (or otherwise caused the entity to be) a party to the transaction.[1] The tax-exempt entity is also attributed the knowledge or reason to know of certain entity managers—those persons with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization—even if the entity manager does not approve the entity as (or otherwise cause the entity to be) a party to the transaction.

Section 53.4965–4(a)(1) provides that a tax-exempt entity is a ''party'' to a prohibited tax shelter transaction if it facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent, or tax-favored status. In addition, under § 53.4965–4(a)(2) and (b), the Secretary may issue published guidance to identify tax-exempt entities by type, class, or role that will or will not be treated as parties to a prohibited tax shelter transaction.

If the tax-exempt entity unknowingly becomes a party to a prohibited tax shelter transaction, the section 4965 tax generally equals the greater of (1) the product of the highest rate of tax under section 11 (currently 21 percent) and the entity's net income attributable to the prohibited tax shelter transaction, or (2) the product of the highest rate of tax under section 11 and 75 percent of the proceeds received by the entity that are attributable to the prohibited tax shelter transaction. If the tax-exempt entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the tax-exempt entity became a party to the transaction, the section 4965 tax increases to the greater of (1) 100 percent of the entity's net income attributable to the prohibited tax shelter transaction, or (2) 75 percent of the entity's proceeds attributable to the prohibited tax shelter transaction.

The terms ''net income'' and ''proceeds'' are defined in § 53.4965–8.

[1] Section 53.4965–6 of the Foundation and Similar Excise Tax Regulations provides factors to be considered in determining whether an entity manager knows or has reason to know that a transaction is a prohibited tax shelter transaction.

In general, a tax-exempt entity's net income attributable to a prohibited tax shelter transaction is its gross income derived from the transaction, reduced by those deductions that are attributable to the transaction and that would be allowed by chapter 1 of the Code if the tax-exempt entity were treated as a taxable entity for this purpose, and further reduced by the taxes imposed by subtitle D of the Code (other than the tax imposed by section 4965) with respect to the transaction. In the case of a tax-exempt entity that is a party to the transaction by reason of facilitating a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent, or tax-favored status, the term ''proceeds,'' solely for purposes of section 4965, means the gross amount of the tax-exempt entity's consideration for facilitating the transaction, not reduced for any costs or expenses attributable to the transaction. Published guidance with respect to a particular prohibited tax shelter transaction may designate additional amounts as proceeds from the transaction for purposes of section 4965. In addition, for all tax-exempt entities that are parties to a prohibited tax shelter transaction, any amount that is a gift or a contribution to a tax-exempt entity and that is attributable to a prohibited tax shelter transaction is treated as proceeds for purposes of section 4965, unreduced by any associated expenses.

The amount of the section 4965 tax on an ''entity manager'' equals $20,000 for each time the manager approves the tax-exempt entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction and knows or has reason to know that the transaction is a prohibited tax shelter transaction. This liability is not joint and several.

B. Disclosures

Section 53.6011–1 requires that a tax-exempt entity subject to the section 4965 excise tax must file Form 4720, *Return of Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code,* to report the liability and pay the tax due under section 4965(a)(1). Under § 1.6033–5, a tax-exempt entity that is a party to a prohibited tax shelter transaction must file Form 8886–T, *Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction,* to disclose that it is a party to a prohibited tax shelter transaction, the identity of any other party (whether taxable or tax-exempt) to such transaction that is known to the tax-exempt entity, and certain other information. Under § 1.6033–2, if the tax-exempt entity is required to file Form 990, *Return of Organization Exempt From Income Tax,* it must disclose on that form that it is a party to a prohibited tax shelter transaction, whether any taxable party notified the tax-exempt entity that it was or is a party to a prohibited tax shelter transaction, and whether the tax-exempt entity filed Form 8886–T.

Section 6011(g) and § 301.6011(g)–1 provide that any taxable party to a prohibited tax shelter transaction must disclose to each tax-exempt entity that the taxable party knows or has reason to know is a party to such transaction that the transaction is a prohibited tax shelter transaction.

V. Conservation Easements

Section 170(f)(3)(A) provides that, in the case of a contribution (not made by a transfer in trust) of an interest in property that consists of less than the taxpayer's entire interest in such property, a deduction will be allowed only to the extent that the value of the interest contributed would be allowable as a deduction under section 170 if such interest had been transferred in trust.

Section 170(f)(3)(B)(iii) provides that section 170(f)(3)(A) does not apply to a qualified conservation contribution.

Section 170(h)(1) provides that, for purposes of section 170(f)(3)(B)(iii), the term ''qualified conservation contribution'' means a contribution (1) of a qualified real property interest, (2) to a qualified organization, (3) exclusively for conservation purposes.

Under section 170(h)(2), the term ''qualified real property interest'' means any of the following interests in real property: (A) the entire interest of the donor other than a qualified mineral interest as defined in section 170(h)(6); (B) a remainder interest; and (C) a restriction (granted in perpetuity) on the use that may be made of the real property.

Section 170(h)(3) provides that the term ''qualified organization'' generally includes governmental units, certain public charities, and Type I supporting organizations thereto.

Section 170(h)(4)(A) generally provides that the term ''conservation purpose'' includes (1) the preservation of land areas for outdoor recreation by, or the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation is either for the scenic enjoyment of the general public, or pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and that will yield a significant public benefit, or (4) the preservation of an historically important land area or a certified historic structure (as defined in section 170(h)(4)(C)).

Section 170(h)(4)(B) provides a special rule with respect to buildings in registered historic districts. Among other requirements, any contribution of a qualified real property interest that is a restriction with respect to the exterior of a building described in section 170(h)(4)(C)(ii) is not considered to be exclusively for conservation purposes unless such interest includes a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior.

Section 170(h)(4)(C) provides that, for purposes of section 170(h)(4)(A)(iv), the term ''certified historic structure'' means any building, structure, or land area which is listed in the National Register, or any building which is located in a registered historic district (as defined in section 47(c)(3)(B) of the Code) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district. A building, structure, or land area satisfies section 170(h)(4)(C) if it satisfies that definition either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under chapter 1 of the Code for the taxable year in which the transfer is made.

Section 170(h)(5)(A) provides that, for purposes of section 170(h), a contribution is not treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity. Section 170(h)(2)(C) and section 1.170A–14(b)(2) provide in part that a perpetual conservation restriction is a restriction granted in perpetuity on the use that may be made of real property including an easement or other interest in property that under state law has attributes similar to an easement.

VI. Syndicated Conservation Easement Transactions and Notice 2017–10

Some promoters have been syndicating conservation easement transactions that purport to give investors in a partnership or other pass-through entity (pass-through entity) the opportunity to claim a charitable contribution deduction in amounts that significantly exceed the amounts invested. In one type of an abusive syndicated conservation easement transaction, the promoter obtains an appraisal that purports to be a qualified appraisal as defined in section

170(f)(11)(E)(i). The appraisal greatly inflates the value of the conservation easement based on unreasonable and unrealistic conclusions about the highest and best use of the real property and does not take into account all of the factors necessary to support the valuation, such as the time and costs to achieve that highest and best use. In addition, investors who held their direct or indirect interests in the pass-through entity for one year or less take into account under section 1223 of the Code the pass-through entity's holding period in the conservation easement for purposes of section 1222 of the Code (taking into account any modification required by section 1061 of the Code) for purposes of potential treatment of the donated conservation easement as long-term capital gain property under section 170(e)(1).

On December 23, 2016, the IRS released Notice 2017–10, 2017–4 I.R.B. 544, which was subsequently modified by Notice 2017–29, 2017–20 I.R.B. 1243, and Notice 2017–58, 2017–42 I.R.B. 326, alerting taxpayers and their representatives that syndicated conservation easement transactions described in Notice 2017–10, and substantially similar transactions, are tax avoidance transactions and identifying them as listed transactions for purposes of § 1.6011–4(b)(2) and sections 6111 and 6112. Notice 2017–10 also alerts persons involved with the transactions that certain responsibilities may arise from their involvement. Notice 2017–10, as modified by Notice 2017–29, specifically excludes a donee described in section 170(c) from being treated as a party to the transaction under section 4965 of the Code (''section 4965 carve-out''), a participant under § 1.6011–4, or a material advisor under section 6111(b)(1). Notice 2017–10 applies to easements placed on any real property, including historically important land areas and certified historic structures.

Notice 2017–10 describes the following transaction as a listed transaction. An investor receives promotional materials that offer investors in a pass-through entity the possibility of a charitable contribution deduction that equals or exceeds an amount that is two and one-half times (that is, 250 percent of) the amount of the investor's investment. The promotional materials may be oral or written. For purposes of Notice 2017–10, promotional materials include, but are not limited to, documents described in § 301.6112–1(b)(3)(iii)(B). The investor purchases an interest, directly or indirectly (through one or more tiers of pass-through entities), in the pass-through entity that holds real property. The pass-through entity that holds the real property contributes a conservation easement encumbering the property to a tax-exempt entity and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the investor. Following that contribution, the investor reports on his or her federal income tax return a charitable contribution deduction with respect to the conservation easement.

Notice 2017–10 creates a rule only for purposes of reporting and penalties under the reportable transaction rules. No inference should be drawn from Notice 2017–10 (or these regulations) regarding the appropriateness of any deduction in any specific case, including cases in which the deduction is less than two and one-half times the amount of an investor's investment.

The foregoing efforts to combat abuse notwithstanding, the Treasury Department and IRS fully support otherwise proper deductions attributable to the voluntary contribution of a properly valued restriction on real property requiring the real property to be granted and protected for conservation purposes in perpetuity.

VII. Purpose of Proposed Regulations

On March 3, 2022, the Sixth Circuit issued an order in *Mann Construction* v. *United States,* 27 F.4th 1138, 1147 (6th Cir. 2022), holding that Notice 2007–83, 2007–2 C.B. 960, which identified certain trust arrangements claiming to be welfare benefit funds and involving cash value life insurance policies as listed transactions, violated the Administrative Procedure Act (APA), 5 U.S.C. 551–559, because the notice was issued without following the notice-and-comment procedures required by section 553 of the APA. The Sixth Circuit concluded that Congress did not clearly express an intent to override the notice-and-comment procedures required by section 553 of the APA when it enacted the AJCA. *Id.* at 1148. The Sixth Circuit reversed the decision of the district court, which held that Congress had authorized the IRS to identify listed transactions without notice and comment. *See Mann Construction, Inc.* v. *United States,* 539 F.Supp.3d 745, 763 (E.D. Mich. 2021). *See also GBX Associates, LLC,* v. *United States,* 1:22cv401 (N.D. Ohio, Nov. 14, 2022).

Relying on an analysis similar to the Sixth Circuit's analysis in *Mann Construction,* the Tax Court, in a reviewed decision with two judges dissenting, recently held that Notice 2017–10 was improperly issued because it was issued without following the APA's notice and comment procedures. See *Green Valley Investors, LLC, et al.* v. *Commissioner,* 159 T.C. No. 5 (Nov. 9, 2022). Accordingly, the court granted the petitioner's cross-motion for partial summary judgment on the application of section 6662A penalties. A final decision has not been entered in the case.

The Treasury Department and the IRS disagree with the Sixth Circuit's decision in *Mann Construction* and the Tax Court's decision in *Green Valley* and are continuing to defend the validity of Notice 2017–10 and other notices identifying transactions as listed transactions in circuits other than the Sixth Circuit. At the same time, however, to eliminate any confusion and ensure consistent enforcement of the tax laws throughout the nation, the Treasury Department and the IRS are issuing these proposed regulations to identify certain syndicated conservation easement transactions as listed transactions for purposes of all relevant provisions of the Code and Treasury Regulations.

These proposed regulations inform taxpayers that participate in syndicated conservation easement transactions, and substantially similar transactions, and persons who act as material advisors with respect to these transactions, and substantially similar transactions, that, once these proposed regulations are published in final form, those taxpayers and material advisors must disclose the transactions in accordance with the final regulations and the regulations issued under section 6011 and 6111. Material advisors must also maintain lists as required by section 6112. Prior to the date these regulations are published as final regulations, it is the position of the Treasury Department and the IRS that disclosure and list maintenance requirements for syndicated conservation easement transactions identified as listed transactions in Notice 2017–10 continue to be in effect, other than in the Sixth Circuit. In addition, taxpayers, including taxpayers in the Sixth Circuit, who have filed a tax return reflecting their participation in a syndicated conservation easement transaction before the final regulations are published and who have not disclosed the transaction pursuant to Notice 2017–10 will be required to file a disclosure statement within 90 calendar days after the date on which the final regulations are published if the period of limitations for assessment for any taxable year in which the taxpayer participated in the transaction remains open. Material advisors also have disclosure and list maintenance obligations with respect to such transactions. See Part VI. of the Explanation of Provisions section of this preamble.

The IRS intends to challenge the purported tax benefits from these syndicated conservation easement transactions based on the overvaluation of the conservation easement. The IRS may also challenge the purported tax benefits from these transactions based on failure to comply with the requirements of section 170 (including, for example, lack of donative intent or the failure to comply with requirements of section 170(h)), lack of economic substance, lack of business purpose, violation of the partnership anti-abuse rule, or application of other rules or doctrines based on the facts of a particular case.

Explanation of Provisions

I. Definition of Syndicated Conservation Easement Transactions

Proposed § 1.6011–9(a) provides that a transaction that is the same as, or substantially similar to, a syndicated conservation easement transaction described in proposed § 1.6011–9(b) is a listed transaction for purposes of § 1.6011–4(b)(2) and sections 6111 and 6112. ''Substantially similar to'' is defined in § 1.6011–4(c)(4) to include any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or a similar tax strategy. In the context of a syndicated conservation easement transaction, that would include, for example, transactions in which the contributed property is described in section 170(h)(2)(A) or (B) or a fee interest in real property.

Proposed § 1.6011–9(b) defines a syndicated conservation easement transaction as a transaction in which the four elements described in proposed § 1.6011–9(b)(1) through (4) occur (regardless of the order in which they occur). These four elements are as follows:

A. Promotional Materials Satisfy the 2.5 Times Rule

A taxpayer receives promotional materials that offer investors in a pass-through entity the possibility of a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the taxpayer's investment in the pass-through entity. The proposed regulations refer to this element as the ''2.5 times rule.'' Proposed § 1.6011–9(c)(4) states that, for this purpose, the term ''promotional materials'' includes materials described in § 301.6112–1(b)(3)(iii)(B) and any other written or oral communication regarding the transaction provided to investors, such as marketing materials, appraisals (including preliminary appraisals, draft appraisals, and the appraisal that is attached to the taxpayer's return), websites, transactional documents such as the deed of conveyance, private placement memoranda, tax opinions, operating agreements, subscription agreements, statements of the anticipated value of the conservation easement, and statements of the anticipated amount of the charitable contribution deduction. These proposed regulations provide additional guidance on how to determine whether the 2.5 times rule is met, as discussed in Part II of the Explanation of Provisions section of this preamble.

B. Taxpayer Invests in the Pass-Through Entity

The taxpayer acquires an interest, directly or indirectly through one or more tiers of pass-through entities, in the pass-through entity that owns real property (that is, the taxpayer becomes an investor in the entity that owns the real property).

C. Pass-Through Entity Contributes the Conservation Easement to a Qualified Organization and Allocates a Charitable Contribution Deduction to Its Partners

The pass-through entity that owns the real property contributes an easement on such real property to a qualified organization and treats the easement as a conservation easement. A conservation easement is defined in these proposed regulations (in proposed § 1.6011–9(c)(2)) as a restriction, exclusively for conservation purposes, granted in perpetuity (per the relevant subsections of section 170), on the use that may be made of specified real property.

The pass-through entity allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the taxpayer.

D. Taxpayer Reports Charitable Contribution Deduction on Taxpayer's Federal Income Tax Return

The taxpayer reports on the taxpayer's Federal income tax return a charitable contribution deduction with respect to the conservation easement.

II. 2.5 Times Rule

These proposed regulations include three rules to address potential avoidance of the 2.5 times rule. First, to prevent promoters from circumventing the 2.5 times rule by having promotional materials contain language that is ambiguous as to the amount of the potential charitable deduction, the proposed regulations provide that the highest deduction amount stated or implied in the promotional materials, taken as a whole, applies. Thus, if the promotional materials suggest a range of possible charitable contribution deduction amounts, the highest suggested deduction amount determines whether the 2.5 times rule is met. Similarly, if one piece of promotional materials (for example, an appraisal or oral statement) suggests a higher charitable contribution deduction amount than do other promotional materials, then the highest suggested charitable contribution deduction amount will determine whether the 2.5 times rule is met.

Second, the proposed regulations include a rebuttable presumption deeming the 2.5 times rule to be met if (i) the pass-through entity donates a conservation easement within three years following taxpayer's investment in the pass-through entity, (ii) the pass-through entity allocates a charitable contribution deduction to the taxpayer that equals or exceeds two and one-half times the amount of the taxpayer's investment, and (iii) the taxpayer claims a deduction that equals or exceeds two and one-half times the amount of the taxpayer's investment. This presumption is intended to address taxpayers and promoters who may not be forthcoming about the content or receipt of the promotional materials (as broadly defined under the proposed regulations). By the fact that the taxpayer claimed a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of their investment in the pass-through entity, the Treasury Department and the IRS will presume that the taxpayer received promotional materials that offered investors the possibility of being allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the taxpayer's investment in the pass-through entity. The presumption may be rebutted if the taxpayer establishes to the satisfaction of the Commissioner that none of the promotional materials contained a suggestion or implication that investors might receive a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of their investment in the pass-through entity. The Treasury

Department and the IRS request comments on this rule.

Finally, to prevent taxpayers from investing excess amounts in the pass-through entity to avoid meeting the 2.5 times rule, the proposed regulations contain an ''anti-stuffing'' rule. The anti-stuffing rule provides that the amount of a taxpayer's investment in the pass-through entity for purposes of determining application of the 2.5 times rule is limited to the portion of the taxpayer's investment that is attributable to the portion of the real property on which a conservation easement is placed and that produces the charitable contribution deduction described in paragraph (b)(3) of this section. For example, if a portion of the taxpayer's investment in the pass-through entity is attributable to property held directly or indirectly by the pass-through entity other than the real property on which a conservation easement is placed (including any other real property, cash, cash equivalents, digital assets, marketable securities, or other assets), that portion of the taxpayer's investment is not attributable to the portion of the real property on which a conservation easement is placed for purposes of the 2.5 times rule. The proposed regulations include an example illustrating the application of this rule.

III. Participant

Whether a taxpayer has participated in the listed transaction described in proposed § 1.6011–9(b) is determined under § 1.6011–4(c)(3)(i)(A). Participants include, but are not limited to, an owner of a pass-through entity, the pass-through entity (any tier, if multiple tiers are involved in the transaction), or any other taxpayer whose tax return reflects tax consequences or a tax strategy described in these proposed regulations. The proposed regulations provide, consistent with Notice 2017–10, that a qualified organization to which a syndicated conservation easement described in proposed § 1.6011–9(b) is donated is not treated as a participant under § 1.6011–4(c)(3)(i)(A) to the listed transaction described in these proposed regulations.

IV. Material Advisors

Material advisors, including promoters, appraisers and return preparers who make a tax statement with respect to transactions described in proposed § 1.6011–9(b), have disclosure and list maintenance obligations under sections 6111 and 6112. *See* §§ 301.6111–3 and 301.6112–1. Notice 2017–10, as modified by Notice 2017–29, provided that a qualified organization is not treated as a material advisor under section 6111. These proposed regulations differ from Notice 2017–10, as modified, in that they do not contain this rule. One of the requirements to be a material advisor under section 6111(b)(1) is that the person must directly or indirectly derive gross income in excess of the threshold amount provided in section 6111(b)(1)(B) for providing material aid, assistance, or advice with respect to the listed transaction. The regulations under section 6111 provide that gross income includes all fees for a tax strategy, for services for advice (whether or not tax advice), and for the implementation of a reportable transaction. However, a fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. *See* § 301.6111–3(b)(3)(ii). The Treasury Department and the IRS request comments on whether qualified organizations are receiving fees for providing material aid, assistance, or advice with respect to transactions described in these proposed regulations, the nature of the services being provided, and why a carve-out from the definition of material advisor is needed.

V. Party to a Prohibited Tax Shelter Transaction

The proposed regulations provide, consistent with Notice 2017–10, that a qualified organization [2] is not treated as a party to the transaction under section 4965. However, the Treasury Department and the IRS are considering whether a qualified organization that facilitates an abusive syndicated conservation easement transaction described in these proposed regulations should be subject to section 4965. Since the issuance of Notice 2017–10, the IRS has received tens of thousands of listed transaction disclosures under sections 6011 and 6111. These disclosures indicate that a small number of qualified organizations facilitate abusive syndicated conservation easement transactions, sometimes for several hundreds of investors per year. Eliminating or limiting the scope of the section 4965 carve-out could deter qualified organizations from facilitating these abusive transactions. Any elimination or limitation of the section 4965 carve-out would apply only to transactions occurring after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

While some land trusts facilitate syndicated conservation easement transactions that the land trusts know, or have reason to know, are abusive, other land trusts take affirmative steps to avoid participating in abusive transactions. For example, some land trusts, when engaging in transactions with pass-through entities of unrelated parties, require a donor's appraisal and will decline to participate in any transaction in which, among other things: (i) the appraisal indicates an increase in value of more than two and one-half times the basis in the property; (ii) the easement or property is donated within 36 months of the pass-through entity's acquisition of the property; and (iii) the value of the donation (not the deduction) is $1 million or greater.

The Treasury Department and the IRS request comments on specific ways that qualified organizations can engage in due diligence to avoid entering into abusive syndicated conservation easement transactions described in these proposed regulations. For example: what questions should qualified organizations ask donors to avoid entering into a syndicated conservation easement transaction described in these proposed regulations; when is the qualified organization best positioned to make the inquiries; and what written information or materials could the donor provide to the qualified organization to ensure the qualified organization will not be participating in an inappropriate transaction?

A. Eliminating the Section 4965 Carve-Out

Tax-exempt entities that facilitate abusive syndicated conservation easement transactions described in these proposed regulations do so by reason of their tax-exempt, tax-indifferent, or tax-favored status. Thus, if the final regulations were to eliminate the section 4965 carve-out, a qualified organization that accepts a syndicated conservation easement described in these proposed regulations would be subject to the section 4965 excise tax. However, if the qualified organization did not know, or have reason to know, that the contribution of the easement was part of a syndicated conservation

[2] As noted in Part V of the Background section of this preamble, a donation of a qualified conservation contribution must be made to a ''qualified organization,'' generally defined in section 170(h)(3) to include governmental units, certain public charities, and Type I supporting organizations thereto. Under section 4965(c), the term ''tax-exempt entity'' includes, among others, entities and governmental units described in sections 501(c) and 170(c) (other than the United States). Thus, absent the section 4965 carve-out, tax-exempt entities that would be affected are donees that are qualified organizations described in section 170(h)(3), other than the United States, that accept a conservation easement as part of the syndicated conservation easement transaction described in these proposed regulations.

easement transaction described in these proposed regulations, then the qualified organization would be subject only to the lesser section 4965 entity-level tax provided in section 4965(b)(1)(A). *See* discussion in Part IV.A. of the Background section of this preamble. Further, if at the time an entity manager approves or otherwise causes the qualified organization to accept the contribution the manager does not know, or have reason to know, that the contribution is part of a syndicated conservation easement transaction described in these proposed regulations, the manager would not be subject to the tax imposed by section 4965(a)(2).

Conversely, if the qualified organization knows or has reason to know (under the rules discussed in Part IV.A. of the Background section of this preamble) that a contribution of an easement is part of a syndicated conservation easement transaction described in these proposed regulations, the qualified organization would be subject to the increased section 4965 entity-level tax provided in section 4965(b)(1)(B). In addition, any entity manager who approves or otherwise causes the qualified organization to accept the contribution of an easement that the entity manager knows or has reason to know is part of a syndicated conservation easement transaction described in these proposed regulations would be subject to the $20,000 tax imposed by section 4965(a)(2).

The Treasury Department and the IRS request comments on eliminating the section 4965 carve-out in final regulations, including whether there are specific situations in which a qualified organization should or should not be considered to know or have reason to know that a conservation easement contribution is part of a syndicated conservation easement transaction described in these proposed regulations.

B. Limiting the Section 4965 Carve-Out

As described in Part IV.A. of the Background section of this preamble, § 53.4965–4(b) provides that the Secretary can identify tax-exempt entities that will not be treated as parties to a prohibited tax shelter transaction in published guidance by type, class, or role. As an alternative to eliminating the section 4965 carve-out in final regulations, the Treasury Department and the IRS are considering whether to include a more limited carve-out in the final regulations. Such a limited carve-out could provide, for example, that a tax-exempt entity that conducted an adequate amount of due diligence before entering into a transaction is not treated as a party to a syndicated conservation easement transaction.

The Treasury Department and the IRS request comments on what would constitute adequate due diligence to warrant relieving a tax-exempt entity from potential liability for the section 4965 excise tax and what additional safeguards might be needed. For example, the Treasury Department and the IRS request comments on whether, if final regulations include a more limited carve-out, the carve-out should provide relief only for organizations that have not previously been involved [3] in a syndicated conservation easement transaction.

C. Net Income and Proceeds

As noted in Part IV.A. of the Background section of this preamble, the section 4965 excise tax is based on an entity's net income attributable to the prohibited tax shelter transaction or proceeds received by the entity that are attributable to a prohibited tax shelter transaction. The Treasury Department and the IRS request comments on determining the amount of net income and proceeds attributable to the prohibited tax shelter transaction in the context of a syndicated conservation easement transaction, including what gross income (if any) typically is derived from (and what deductions are attributable to) the transaction; the value of the gift or contribution that would be treated as proceeds for purposes of section 4965; and whether the IRS should designate additional amounts as proceeds for section 4965 purposes, as permitted by § 53.4965–8.

D. General Request for Comments

In addition to the specific comment requests above, the Treasury Department and the IRS request comments regarding all aspects of the potential elimination or limitation of the section 4965 carve-out in final regulations, including any alternative ways to deter tax-exempt entities from acting as parties to syndicated conservation easement transactions and whether any additional guidance is needed on the application of section 4965 in the syndicated conservation easement context.

[3] A tax-exempt entity might be considered ''involved'' for these purposes, for example, if it previously accepted a syndicated conservation easement or if any person who established the tax-exempt entity, or related persons to any such person, were participants, material advisors, or involved in any other capacity with a previous syndicated conservation easement transaction.

VI. Effect of Transaction Becoming a Listed Transaction Under These Regulations

Participants required to disclose these transactions under § 1.6011–4 who fail to do so are subject to penalties under section 6707A. Participants required to disclose these transactions under § 1.6011–4 who fail to do so are also subject to an extended period of limitations under section 6501(c)(10). Material advisors required to disclose these transactions under section 6111 who fail to do so are subject to penalties under section 6707. Material advisors required to maintain lists of investors under section 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) are subject to penalties under section 6708(a). In addition, the IRS may impose other penalties on persons involved in these transactions or substantially similar transactions, including accuracy-related penalties under section 6662 or section 6662A, the section 6694 penalty for understatements of a taxpayer's liability by a tax return preparer, the section 6695A penalty for certain valuation misstatements attributable to incorrect appraisals, the section 6700 penalty for promoting abusive tax shelters, and the section 6701 penalty for aiding and abetting understatement of tax liability.

Taxpayers who have filed a tax return (including an amended return (or Administrative Adjustment Request (AAR) for certain partnerships)) reflecting their participation in these transactions prior to [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] and who have not previously disclosed their participation in the transactions pursuant to Notice 2017–10 must disclose the transactions as provided in § 1.6011–4(d) and (e) provided that the period of limitations for assessment of tax, including any applicable extensions, for any taxable year in which the taxpayer participated in the transaction has not ended on or before [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**]. Taxpayers that disclosed their participation in a transaction pursuant to Notice 2017–10 before final regulations are published will be treated as having made the disclosure pursuant to the final regulations for the years covered by that disclosure.

In addition, material advisors have disclosure requirements with regard to transactions occurring in prior years. However, notwithstanding § 301.6111–3(b)(4)(i) and (iii), material advisors are required to disclose only if they have made a tax statement on or after [DATE

6 YEARS BEFORE DATE OF PUBLICATION OF FINAL RULE].

VII. Applicability Date

Proposed § 1.6011–9(a) would identify syndicated conservation easement transactions described in proposed § 1.6011–9(b) as listed transactions effective as of the date of publication in the **Federal Register** of a Treasury decision adopting these regulations as final regulations.

VIII. Effect on Other Documents

These proposed regulations do not revoke or modify Notice 2017–10.

Special Analyses

I. Paperwork Reduction Act

The collection of information contained in these proposed regulations is reflected in the collection of information for Forms 8886 and 8918 that have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545–1800 and 1545–0865.

To the extent there is a change in burden as a result of these regulations, the change in burden will be reflected in the updated burden estimates for the Forms 8886 and 8918. The requirement to maintain records to substantiate information on Forms 8886 and 8918 is already contained in the burden associated with the control number for the forms and remains unchanged.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

II. Regulatory Flexibility Act

The Secretary of the Treasury hereby certifies that the proposed 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). As previously explained, the basis for these proposed regulations is Notice 2017–10, 2017–4 I.R.B. 544 (modified by Notice 2017–29, 2017–20 I.R.B. 1243, and Notice 2017–58, 2017–42 I.R.B. 326). The following chart sets forth the gross receipts of respondents to Notice 2017–10 that report federal tax information using Form 1065 (U.S. Return of Partnership Income) and Form 1120–S (U.S. Income Tax Return for an S Corporation):

NOTICE 2017–10—ALL FILINGS 2017 TO 2021, RESPONDENTS BY SIZE

Receipts	Respondents %	Filings %
Under 5M	93.3	88.3
5M to 10M	3.1	5.2
10M to 15M	1.2	2.9
15M to 20M	0.6	0.4
20M to 25M	0.6	0.7
Over 25M	1.2	2.5

This chart shows that the majority of respondents to Notice 2017–10 reported gross receipts under $5 million. Even assuming that these respondents constitute a substantial number of small entities, the proposed regulations will not have a significant economic impact on these entities because the proposed regulations implement sections 6111 and 6112 and § 1.6011–4 by specifying the manner in which and time at which an identified transaction must be reported. Accordingly, because the proposed regulations are limited in scope to time and manner of information reporting and definitional information, the economic impact of the proposal is expected to be minimal. Further, the Treasury Department and the IRS expect that the reporting burden is low; the information sought is necessary for regular annual return preparation and ordinary recordkeeping. The estimated burden for any taxpayer required to file Form 8886 is approximately 10 hours, 16 minutes for recordkeeping, 4 hours, 50 minutes for learning about the law or the form, and 6 hours, 25 minutes for preparing, copying, assembling, and sending the form to the IRS. The IRS's Research, Applied Analytics, and Statistics division estimates that the appropriate wage rate for this set of taxpayers is $98.87 (2021 dollars) per hour. Thus, it is estimated that a respondent will incur costs of approximately $2,127.00 per filing. Disclosures received to date by the Treasury Department and the IRS in response to the reporting requirements of Notice 2017–10 indicate that this small amount will not pose any significant economic impact for those taxpayers now required to disclose under the proposed regulations.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Treasury Department and the IRS invite comments on the impact of the proposed regulations on small entities. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt state law within the meaning of the Executive Order.

V. Regulatory Planning and Review

The Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, has determined that this proposed rule is not a significant regulatory action, as that term is defined in section 3(f) of Executive Order 12866. Therefore, OIRA has not reviewed this proposed rule pursuant to section 6(a)(3)(A) of Executive Order 12866 and the April 11, 2018, Memorandum of Agreement between the Treasury Department and the Office of Management and Budget (OMB).

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of these proposed regulations is Theresa Melchiorre, Office of Associate Chief Counsel (Income Tax & Accounting).

However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.6011–9 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011. * * *

■ **Par. 2.** Section 1.6011–9 is added to read as follows:

§ 1.6011–9 Syndicated conservation easement listed transactions.

(a) *Identification as listed transaction.* Transactions that are the same as, or substantially similar to, a transaction described in paragraph (b) of this section are identified as listed transactions for purposes of § 1.6011–4(b)(2).

(b) *Syndicated conservation easement transaction.* The term *syndicated conservation easement transaction* means a transaction in which the following steps occur (regardless of the order in which they occur)—

(1) A taxpayer receives promotional materials that offer investors in a pass-through entity the possibility of being allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the taxpayer's investment in the pass-through entity as determined under paragraph (d) of this section (2.5 times rule);

(2) The taxpayer acquires an interest directly, or indirectly through one or more tiers of pass-through entities, in the pass-through entity that owns real property (that is, becomes an investor in the entity);

(3) The pass-through entity that owns the real property contributes an easement on such real property, which it treats as a conservation easement within the meaning of paragraph (c)(2) of this section, to a qualified organization and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the taxpayer; and

(4) The taxpayer claims a charitable contribution deduction with respect to the conservation easement on the taxpayer's Federal income tax return.

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Charitable contribution deduction.* The term *charitable contribution deduction* means a deduction under section 170 of the Internal Revenue Code (Code), which includes a deduction arising from a qualified conservation contribution as defined in section 170(h)(1).

(2) *Conservation easement.* The term *conservation easement* means a restriction, within the meaning of section 170(h)(2)(C), exclusively for conservation purposes, within the meaning of section 170(h)(1)(C) and section 170(h)(4), granted in perpetuity, on the use that may be made of specified real property.

(3) *Pass-through entity.* The term *pass-through entity* means a partnership, S corporation, or trust (other than a grantor trust within the meaning of subchapter J of chapter 1 of the Code).

(4) *Promotional materials.* The term *promotional materials* includes materials described in § 301.6112–1(b)(3)(iii)(B) of this chapter and any other written or oral communication regarding the transaction provided to investors, such as marketing materials, appraisals (including preliminary appraisals, draft appraisals, and the appraisal that is attached to the taxpayer's return), websites, transactional documents such as the deed of conveyance, private placement memoranda, tax opinions, operating agreements, subscription agreements, statements of the anticipated value of the conservation easement, and statements of the anticipated amount of the charitable contribution deduction.

(5) Qualified organization. The term *qualified organization* means an organization described in section 170(h)(3).

(6) *Real property.* The term *real property* includes all land, structures, and buildings, including a certified historic structure defined in section 170(h)(4)(C).

(d) *Application of 2.5 times rule*—(1) *Multiple suggested deduction amounts.* If the promotional materials, as defined in paragraph (c)(4) of this section and described in paragraph (b)(1) of this section, suggest or imply a range of possible charitable contribution deduction amounts that may be allocated to the taxpayer, the highest suggested or implied deduction amount will determine whether the 2.5 times rule is met. In addition, if one piece of promotional materials (for example, an appraisal or oral statement) suggests or implies a higher charitable contribution deduction amount than suggested or implied by other promotional materials, then the highest suggested charitable contribution deduction amount determines whether the 2.5 times rule is met.

(2) *Rebuttable presumption.* The 2.5 times rule is deemed to be met if the pass-through entity donates a conservation easement within three years following taxpayer's investment in the pass-through entity, the pass-through entity allocates a charitable contribution deduction to the taxpayer that equals or exceeds two and one-half times the amount of the taxpayer's investment, and the taxpayer claims a charitable contribution deduction that equals or exceeds two and one-half times the amount of the taxpayer's investment. This presumption may be rebutted if the taxpayer establishes to the satisfaction of the Commissioner that none of the promotional materials contained a suggestion or implication that investors might be allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of their investment in the pass-through entity.

(3) *Anti-stuffing rule.* For purposes of paragraph (b)(1) of this section, the amount of a taxpayer's investment in the pass-through entity is limited to the portion of the taxpayer's investment described in paragraph (b)(2) of this section that is attributable to the portion of the real property on which a conservation easement is placed and that produces the charitable contribution deduction described in paragraph (b)(3) of this section. For example, if a portion of the taxpayer's investment in the pass-through entity is attributable to property held directly or indirectly by the pass-through entity other than the real property on which a conservation easement is placed as described in paragraph (b)(3) of this section (including any other real property, cash, cash equivalents, digital assets, marketable securities, or other assets), that portion of the taxpayer's investment is not attributable to the portion of the real property on which a conservation easement is placed for purposes of paragraph (b)(1) of this section.

(4) *Example illustrating anti-stuffing rule.*—(i) *Facts.* An individual (A) purchased an interest in a partnership (P) that owns real property with a fair market value of $500,000 and marketable securities with a fair market value of $500,000. A is one of four equal investors in P, each of whom purchased its interest in P for $250,000 of cash. With respect to an investor's $250,000 payment for its interest in P, the

promotional materials stated that P expected to allocate a $500,000 charitable contribution deduction to the investor (that is, a charitable deduction that is two times the amount an investor paid for its interest in P). After all four investors have purchased their interests in P, P donates a conservation easement to a qualified organization as defined in section 170(h)(3) of the Code and reports a $2,000,000 charitable contribution deduction on its Form 1065 based on P obtaining an appraisal indicating that the value of the conservation easement is $2,000,000. The Schedule K–1 (Form 1065) that P furnishes to A indicates that P allocated a $500,000 charitable contribution deduction to A for the taxable year.

(ii) *Analysis.* Under paragraph (d)(2) of this section, for purposes of paragraph (b)(1) of this section, the amount of A's investment in P that is attributable to the real property on which a conservation easement is placed described in paragraph (b)(3) of this section is $125,000 (that is, only the portion of the investment that is attributable to the real property on which a conservation easement is placed and that produces the charitable contribution deduction described in paragraph (b)(3) of this section). Because A's investment for purposes of the 2.5 times rule is $125,000 and A's expected charitable contribution deduction, based on the promotional materials, is $500,000 (that is, an expected deduction that is four times the investor's investment), the requirements of the 2.5 times rule of paragraph (b)(1) of this section are satisfied.

(e) *Participation in a syndicated conservation easement transaction*—(1) *In general.* Whether a taxpayer has participated in a syndicated conservation easement transaction described in paragraph (b) of this section is determined under § 1.6011–4(c)(3)(i)(A).

(2) *Class of participants.* For purposes of § 1.6011–4(c)(3)(i)(A), participants in a syndicated conservation easement transaction described in paragraph (b) of this section include—

(i) An owner of a pass-through entity;

(ii) A pass-through entity;

(iii) Any other taxpayer whose Federal income tax return reflects tax consequences or a tax strategy arising from the syndicated conservation easement transaction described in paragraph (b) of this section.

(3) *Exclusion.* A qualified organization to which the conservation easement is donated is not treated as a participant under § 1.6011–4(c)(3)(i)(A) in a syndicated conservation easement transaction described in paragraph (b) of this section.

(f) *Application of section 4965.* A qualified organization is not treated under section 4965 of the Code as a party to the transaction described in paragraph (b) of this section.

(g) *Applicability date.* This section's identification of transactions that are the same as, or substantially similar to, the transactions described in paragraph (b) of this section as listed transactions for purposes of § 1.6011–4(b)(2) and sections 6111 and 6112 of the Code is effective [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

Melanie R. Krause,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2022–26675 Filed 12–6–22; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900–AR36

Allowances for Caskets and Urns for Unclaimed Remains of Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to revise its regulation that governs the program that furnishes caskets and urns for the burial of remains of veterans with no known next-of-kin (NOK) where sufficient resources are not available for this purpose. First, VA proposes to implement the Charles Duncan Buried with Honor Act of 2016 that expanded the casket and urn authority to apply to eligible veteran burials in State and Tribal cemeteries that received a VA cemetery grant. Further, VA proposes to issue flat-rate allowances for caskets and urns rather than calculate the average cost for those items on an annual basis. Using flat-rate allowances would promote consistency and efficiency in the administration of this program. Additionally, we propose an update to the casket specifications based on feedback from funeral directors and other funeral industry professionals. Finally, VA proposes to amend the regulation by eliminating the retroactive reimbursement provisions. This change would reflect the fact that these provisions are no longer needed because the relevant applicability period has passed.

DATES: Comments must be received by VA on or before February 6, 2023.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

FOR FURTHER INFORMATION CONTACT: Daniel Catron, Supervisory Program Analyst, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; *Daniel.Catron@va.gov,* telephone: (314) 416–6324 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Implementing Regulations for Statutory Program Expansion

Section 2306(f) of title 38, United States Code (U.S.C.), authorizes VA to furnish a casket or urn for burial of the unclaimed remains of veterans for whom VA cannot identify the NOK and determines that sufficient resources for the furnishing of a casket or urn for burial are not available. In 2016, Congress authorized an expansion of the casket and urn program to include VA grant-funded State and Tribal veterans' cemeteries. Therefore, burial of an eligible veteran must take place in a VA national cemetery or a veterans' cemetery of a State or Tribal Organization for which VA has provided a grant under 38 U.S.C. 2408. VA proposes to amend its regulations in 38 CFR 38.628 to reflect the expanded scope of the program. To implement this change, we propose to revise the introductory text of paragraph (a) and the text of paragraph (c)(1) of § 38.628.