

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also Part 1, §§ 6011, 6111, 6112; 1.6011-4, 301.6111-2, 301.6112-1.)

Rev. Proc. 2003-24

SECTION 1. PURPOSE

This revenue procedure provides that certain losses are not taken into account in determining whether a transaction is a reportable transaction for purposes of the

disclosure rules under § 1.6011-4(b)(5) of the Income Tax Regulations.

SECTION 2. BACKGROUND

.01 Section 1.6011-4 requires a taxpayer who participates in a reportable transaction to disclose the transaction in accordance with the procedures provided in § 1.6011-4. Under § 1.6011-4(b), there are six categories of reportable transactions. One category of reportable transaction is a loss transaction. A loss transaction is defined in § 1.6011-4(b)(5).

.02 Section 1.6011-4(b)(8)(i) provides that a transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of § 1.6011-4.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that may be required to disclose reportable transactions under § 1.6011-4 and/or material advisors that may be required to maintain lists under § 301.6112-1.

SECTION 4. APPLICATION

.01 *In general.* Losses from the sale or exchange of an asset with a qualifying basis under section 4.02 or losses described in section 4.03 of this revenue procedure are not taken into account in determining whether a transaction is a reportable transaction.

.02 *Sale or exchange of an asset with a qualifying basis.*

(1) *General rule.* A loss under § 165 of the Internal Revenue Code from the sale or exchange of an asset is not taken into account in determining whether a transaction is a loss transaction under § 1.6011-4(b)(5) if—

(a) the basis of the asset (for purposes of determining the loss) is a qualifying basis;

(b) the asset is not an interest in a passthrough entity (within the meaning of § 1260(c)(2));

(c) the loss from the sale or exchange of the asset is not treated as ordinary under § 988;

(d) the asset has not been separated from any portion of the income it generates; and

(e) the asset is not, and has never been, part of a straddle within the meaning of § 1092(c), excluding a mixed straddle under § 1.1092(b)-4T.

(2) *Qualifying basis.* For purposes of section 4 of this revenue procedure, a taxpayer's basis in an asset (less adjustments for any allowable depreciation, amortization, or casualty loss) is a qualifying basis if—

(a) the basis of the asset is equal to, and is determined solely by reference to, the amount (including any option premium) paid in cash by the taxpayer for the asset and for any improvements to the asset;

(b) the basis of the asset is determined under § 358 by reason of a transaction under § 355 or § 368, and the taxpayer's basis in the property exchanged in the transaction was described in this section 4.02(2);

(c) the basis of the asset is determined under § 1014;

(d) the basis of the asset is determined under § 1015, and the donor's basis in the asset was described in this section 4.02(2); or

(e) the basis of the asset is determined under § 1031(d), the taxpayer's basis in the property that was exchanged for the asset in the § 1031 transaction was described in this section 4.02(2), and any debt instrument issued or assumed by the taxpayer in connection with the § 1031 transaction is treated as a payment in cash under section 4.02(3) of this revenue procedure.

(3) *Debt instruments.* Except as provided below, an amount paid in cash will not be disregarded for purposes of section 4.02(2) of this revenue procedure merely because the taxpayer issued a debt instrument to obtain the cash. However, if the taxpayer has issued a debt instrument to the person (or a related party as described in § 267(b) or § 707(b)) who sold or transferred the asset to the taxpayer, assumed a debt instrument (or took an asset subject to a debt instrument) issued by the person (or a related party as described in § 267(b) or § 707(b)) who sold or transferred the asset to the taxpayer, or issued a debt instrument in exchange for improvements to an asset, the taxpayer will be treated as having paid cash for the asset or the improvement only if the debt instrument is secured by the asset and all amounts due under the debt instrument have been paid in cash no later than the time of the

sale or exchange of the asset (except in the case of stock or securities traded on an established securities market, the settlement date) for which the loss is claimed.

.03 *Other losses.* The following losses under § 165 are not taken into account in determining whether a transaction is a loss transaction under § 1.6011-4(b)(5):

(1) A loss from fire, storm, shipwreck, or other casualty, or from theft, under § 165(c)(3);

(2) A loss from a compulsory or involuntary conversion as described in §§ 1231(a)(3)(A)(ii) and 1231(a)(4)(B);

(3) A loss arising from any mark-to-market treatment of an item under §§ 475, 1256, 1296(a), 1.446-4(e), 1.988-5(a)(6), or 1.1275-6(d)(2), provided that the taxpayer computes its loss by using a qualifying basis (as defined in section 4.02(2) of this revenue procedure) or a basis resulting from previously marking the item to market, or computes its loss by making appropriate adjustments for previously determined mark-to-market gain or loss as provided, for example, in § 475(a) or § 1256(a)(2);

(4) A loss arising from a hedging transaction described in § 1221(b), if the taxpayer properly identifies the transaction as a hedging transaction, or from a mixed straddle account under § 1.1092(b)-4T;

(5) A loss attributable to basis increases under § 860C(d)(1) during the period of the taxpayer's ownership;

(6) A loss attributable to the abandonment of depreciable tangible property that was used by the taxpayer in a trade or business and that has a qualifying basis under section 4.02(2) of this revenue procedure;

(7) A loss arising from the bulk sale of inventory if the basis of the inventory is determined under § 263A; or

(8) A loss that is equal to, and is determined solely by reference to, a payment of cash by the taxpayer (for example, a cash payment by a guarantor that results in a loss or a cash payment that is treated as a loss from the sale of a capital asset under § 1234A or § 1234B).

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for transactions entered into on or after February 28, 2003. However, if a taxpayer applies § 1.6011-4 retroactively, as provided

in § 1.6011-4(h), to transactions entered into on or after January 1, 2003, then this revenue procedure will be effective January 1, 2003, for those transactions.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Tara P. Volungis of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Ms. Volungis at (202) 622-3080 (not a toll-free call).