

MEMO# 15698

February 26, 2003

IRS ISSUES PROPOSED REGULATIONS ON AVOIDING ACCURACY-RELATED PENALTIES WITH RESPECT TO REPORTABLE TRANSACTIONS

[15698] February 26, 2003 TO: 529 PLAN ADVISORY COMMITTEE No. 13-03 ACCOUNTING/TREASURERS COMMITTEE No. 9-03 ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 2-03 TAX COMMITTEE No. 8-03 UNIT INVESTMENT TRUST COMMITTEE No. 6-03 RE: IRS ISSUES PROPOSED REGULATIONS ON AVOIDING ACCURACY-RELATED PENALTIES WITH RESPECT TO REPORTABLE TRANSACTIONS The Internal Revenue Service has issued proposed regulations under sections 6662 and 6664 of the Internal Revenue Code (the "Code")¹ that limit the defenses available to taxpayers seeking to avoid the accuracy-related penalty for failing to disclose a reportable transaction. Section 6662 of the Code imposes an accuracy-related penalty for underpayments of tax, including understatements that are "substantial" within the meaning of the statute. Taxpayers can avoid the accuracy-related penalty by establishing, among other things, that there was reasonable cause for the underpayment and that they acted in good faith within the meaning of Code section 6664(c). Taxpayers may establish reasonable cause for the underpayment and that they acted in good faith by relying on an opinion or advice issued by a tax advisor. Temporary regulations issued under Code section 6011 require taxpayers to disclose on their returns "reportable transactions," within the meaning of the temporary regulations. Reportable transactions may be abusive tax avoidance transactions. According to the preamble to the proposed accuracy-related penalty regulations, the regulations were revised to prevent taxpayers from improperly relying on opinions or advice from tax advisors to establish reasonable cause and good-faith as a basis for avoiding the penalty where the opinion relates to a reportable transaction that the taxpayer should have, but did not, disclose on a tax return. The proposed regulations have been amended to now provide that a taxpayer who engages in a reportable transaction cannot rely on an opinion or advice from a tax advisor to satisfy the reasonable cause and good faith exceptions to the imposition of the accuracy-related penalty with respect to any underpayment involving a reportable transaction, unless that transaction has been disclosed by the taxpayer pursuant to Code section 6011. 1 All section references are to the 1986 Internal Revenue Code, as amended. 2 The proposed regulations are to apply to returns filed after December 30, 2002, with respect to transactions entered into on or after January 1, 2003, in order to coincide with the temporary regulations relating to the disclosure of reportable transactions under section 6011. Written comments and requests for a public hearing regarding these regulations must be received by March 31, 2003. Lisa Robinson Assistant Counsel Attachment (in .pdf format)

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.