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Using Income Taxable Installment Sales to Related Parties to Defer Reporting the Gain Realized Upon Later Sale of an Asset to a Third Party

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Chris Siegle is the Senior Wealth Advisor and a Managing Director in the Phoenix office of J.P. Morgan Private Bank. He is a member of the global Wealth Advisory group, offering clients and the professional community the insights gathered from extensive law practice, tax expertise, and exposure to the most interesting and innovative estate and tax planning techniques in the United States and internationally.

Chris works with clients and their advisors on the operation and efficiency of federal estate, gift, generation-skipping transfer, and income tax techniques. He blends his advice with that of his teammates in the financial and lending practices of J.P. Morgan Private Bank to bring innovative solutions and benefits to the families he works with. Before joining the J.P. Morgan Private Bank in 2010, he was a partner in a Phoenix regional law firm in which he practiced for over 13 years in trust and estate, tax, employee benefits, and business planning practices.

Chris is a Fellow of the American College of Trust and Estate Counsel (ACTEC). He currently serves on the Fiduciary Income Tax and Business Planning committees. He has spoken and written nationally on tax and estate planning matters through the ACTEC National Meeting, University of Southern California Tax Institute, the Notre Dame Tax and Estate Planning Institute, the American Bar Association Tax Section, the Arizona Bar Association Convention, Arizona Bar Association Tax Section, the Nevada Bar Association, the Maricopa County Bar Association, the Collier County Bar Association, Matthew Bender Books/LexisNexis Major Tax Planning 2020, 2021, 2022, 2023, Aspatore Books' *Inside the Minds of Family and Business Succession Planning*, Thomson Reuters' *Estate Planning Journal*, Wealth Management's *Trusts and Estates* Magazine, where he serves on the editorial board. He regularly speaks at the Southern Arizona, East Valley and Southern Nevada Estate Planning Councils, Valley Estate Planners (Phoenix) and other professional organizations throughout the United States. Chris' teachings in GSTT planning, qualified small business stock (§1202) planning, charitable planning with trust income tax planning, selling remainder interests and promissory notes, planning with retained interests and Code §§ 2036, 2038, 2043 and Chapter 14, securities laws for estate planners, working with QTIP Martial Trusts and GRAT remainders, and planning with life insurance have assisted professionals elevate their practices.

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Ed Morrow is currently co-chair of the estate planning and estate + trust administration practice groups at Kelleher + Holland, LLC, and advises clients across the country, particularly high-net-worth individuals, business owners, and professionals. His multidisciplinary background as a licensed attorney (Ohio and Florida) and CFP® professional, combined with an LL.M. in Tax Law and MBA, uniquely positions him to navigate the intersection of tax strategy, succession planning, and wealth preservation.

In between stints as a private practice attorney, Ed had served as a Regional or National Wealth Strategist for Huntington, U.S. Bank and KeyBank's private banking units, where he concentrated on thought leadership and planning ideas for high-net-worth clientele in tax, asset protection and financial and estate planning areas.

Other related experience includes research and writing of legal memoranda and opinion drafts for the U.S. District Court of Portland, Oregon as a law clerk.

Renowned nationally, Ed is among the most sought-after experts in the field, known for his depth of knowledge and expertise. He co-authored the acclaimed publication, "The Tools & Techniques of Estate Planning," a foundational resource utilized for the Certified Trust Financial Advisor designation.
He received his J.D. from Northwestern School of Law at Lewis & Clark College, his LL.M. in tax law from Capital University Law School, and his MBA from Xavier University.

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PLR 202206008: Judicial Settlement Modification & Formula Testamentary General Powers of Appointment, LISI Estate Planning Newsletter #2946 (March 17, 2022)

How Donees Can Hit the Undo Button on Taxable Gifts, LISI Estate Planning Newsletter #2831 (October 19, 2020)

Potential Income Tax Disasters for Early Trust Terminations, LISI Estate Planning Newsletter #2753 (October 9, 2019)

Using Spousal Lifetime Access Non-Grantor Trusts (SLANTs) After the 2017 Tax Reform, LISI Income Tax Planning Newsletter #139 (April 23, 2018)

The Upstream Optimal Basis Increase Trust, LISI Estate Planning Newsletter #2635 (April 17, 2018)

Asset Protection Dangers When a Beneficiary Is Sole Trustee and Piercing the Third Party, Beneficiary-Controlled, Irrevocable Trust, LISI Asset Protection Planning Newsletter #339 (March 9, 2017)

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The One Big, Beautiful Bill Act,[1] passed into law on July 4, 2025, established as permanent (until they are changed) estate, gift, and generation-skipping transfer tax ("GSTT") (together, "transfer taxes") exclusion and exemption amounts. With the law's enactment, the estate planning community has greater certainty as it engages with wealthy clients regarding the potential transfer of assets out of taxable estates.

Today, only about 0.2% of Americans have taxable estates, while most wealthy taxpayers pay income taxes. This paper will address both transfer taxes and income taxes.

1. The installment sale to the irrevocable grantor trust is a cornerstone of estate tax planning

The installment sale of assets by a grantor to an irrevocable grantor trust is seen broadly in the planning community as a wealth transfer tool that helps preserve family wealth across generations. To succeed, the technique relies on assets appreciating at a rate greater than the interest rate due on the note issued by the trust to the grantor. Highly impactful for transfer tax mitigation is the retention of the ongoing income tax responsibility by the grantor, which creates an income tax "burn" that reduces the grantor's estate and therefore estate taxes that ultimately would be due. In a higher interest rate environment, this common strategy would generally be less valuable than it would be in a lower interest rate environment, due to the increased amount of interest that must be paid to the grantor by the trust, a phenomenon that depletes the trust while adding to the grantor's estate to a greater extent than would occur in a lower interest rate environment. Thus, when promissory notes are used and interest rates are higher now but could be lower later,[2] a provision in the note allowing for renegotiation of its terms might be worth including.

Having an irrevocable grantor trust issue a note to the grantor in exchange for assets expected to appreciate significantly would shift value into the trust, to which the GSTT exemption presumably has been already allocated.

A potentially valuable idea where a note with a large notional amount might have been created is to have the trust to create not one note, but several notes. Any of the smaller notes could later be gifted by the grantor to trust beneficiaries. Those beneficiaries could then gift or sell the notes, which should attract a valuation discount from the apparent fair market value, to other GSTT-exempt trusts.[3]
Of course, once a promissory note is no longer in the possession of the income tax owner of the obligor trust, any future interest payments to the note holder would be taxable as ordinary income to the holder.

These ideas, and others, presuppose that the transactions between the obligee and obligor would be treated as an installment sale under Internal Revenue Code (the "Code") § 453.[4] One overriding principle

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[1] An Act to Provide for Reconciliation Pursuant to Title II of H. Con. Res. 14, Pub. L. No. 119-21, 119th Cong. (2025).

[2] The applicable mid-term federal rate for September of 2025 was 4.04%. It was 0.41% in August 2020.

[3] *See* Christopher P. Siegle, "Moving time: Overcoming too much in GST-vulnerable Trusts", 50th Annual Notre Dame Tax and Estate Planning Institute, Ch 18, (2024); *see also*, Christopher P. Siegle, *Moving assets out of GST Tax-Vulnerable Trusts*, Trust and Estates, Nov 6, 2024, at 25-26 discussing using promissory notes for further transfer tax planning.

[4] The installment method of accounting is a method of determining when the selling taxpayer realizes and recognizes the sale. *Realization* occurs when a taxpayer experiences an economic event—such as a sale or exchange—that allows gain or loss to be measured; *recognition* is when that gain or loss becomes includible

of any such exchange is that the transaction between grantor and trust should be treated as a sale, rather than a gift. If it is, no gift or GST tax exclusion would be used, nor transfer tax paid; and appreciation realized by the trust would not be subject to capital gains tax. Characterizing the transaction as a sale and not a gift is easier if the seller of the assets takes a security interest in the sold property until payment in full is received.

This additional step may not be practical, however, in many circumstances. Often, the asset sold is a minority, non-marketable business interest. If that interest were to be sold by the trust shortly after its acquisition, the security interest would no longer be in place. Perhaps the grantor should take a security interest in, instead, other perhaps even marketable ones if available.

2. Using the promissory note opportunity with a grantor or partial grantor trust

Here's an example of how a grantor can integrate these powers as part of an effective estate plan:

Assume a grantor settles an irrevocable grantor trust with a $13MM gift of cash. He allocates GSTT exemption to that transfer. He thereafter sells to the trust $117,000,000 worth of non-voting LLC membership units in a construction company that focuses on data center construction for AI suppliers. Assuming a 40% discount taken to arrive at the $117,000,000 face value on the 20-year, 4.82% promissory note (the long-term applicable federal rate for September 2025) given to the grantor by the trust, the pre-discount value of the asset sold to the trust was $195,000,000. So, $78,000,000 is the potential growth in the trust on the day of the sale if the company were liquidated the next day; in other words. even assuming no future growth.

now, however assume the trust grows 15% per year. At the end of five years, the pre-discount value of the LLC units is $338,430,300. The interest paid by the trust to the grantor has been $28,197,000. The grantor decides that he likes the wealth he has created in the trust and seeks to substitute a promissory note into the trust. A valuation professional – presumably, though not necessarily, the same one who determined a 40% discount for the value of the LLC units originally transferred – values the note at a 30% discount, in part because of the 15-year remaining term, and in part because of the note's prohibition on prepayments (not to mention the note's illiquidity)[5]. So the grantor's promissory note is worth $81,900,000 (70% of $117 million). With this valuation, the exchange is undertaken, and the trust distributes assets worth $81.9 million to the grantor. The trust now has $256,530,000, with no requirement to make any more interest payments, let alone principal payments, to the grantor. As the cash position in the trust grows, the grantor couldengage in further exchanges of assets and get more discounted LLC units into the trust. The grantor could also engage in further sales to the grantor trust to get more LLC units into the trust. In the past several years, attention has focused on the monetized installment sale transaction. This has been proposed to be a listed transaction and should not be used in wealth transfer planning.

3. A potentially better alternative: creating a grantor-like trust under Code § 678

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in gross income for tax purposes. Most realized gains are recognized unless a specific nonrecognition rule applies. *See* Code § 1001(a), (c); Treas. Reg. § 1.1001-1(a).

[5] *See* Treas. Reg. § 301.6501(c)-1(f)(3) provides the requirement for a qualified appraiser when submitting the value of other than marketable securities when the taxpayer wishes to start the statute of limitations.

Another planning opportunity involves first changing, where possible, the income tax owner of a portion or all of a GST-exempt, non-grantor trust's assets. Using a power held by, for example, a GST-exempt non-grantor trust to create a GST-exempt grantor trust to shift assets to benefit the family is an alternative.[6] With careful planning, this can be done, thanks to Code § 678(a)(1).[7]

A. The particularities of creating a grantor-like taxpayer in a trust

Before discussing the potential benefits of a Code § 678(a)(1) trust, a more comprehensive understanding of the word "income" as it relates to non-grantor trusts is required. This is particularly the case under the so-called "portion" rule, which could otherwise limit the ability of the beneficiary to be deemed to have a Code § 678(a)(1) withdrawal power and therefore the owner of the trust's assets for income tax purposes. Of course, the portion that is not included in the taxpayer owner's estate for income tax purposes will continue to be included in the taxable amount reported by the non-grantor trust.[8]

At the root of this opportunity is the fact that the word "income" means different things in different contexts. For example, "income" under the state law means "distributable net income," or DNI (as it does in all other trust income tax contexts). DNI – a federal tax law concept – is itself a subset of Fiduciary Accounting Income ("FAI") – a state law concept. FAI is in turn is a subset of" taxable income" – another federal tax law concept.

Treasury Regulations provide that DNI means, for any taxable year, the taxable income of the trust or estate computed with modifications.[9] The modifications generally *exclude* from "income," for DNI purposes only, gains from the sale or exchange of capital assets.[10] A fiduciary *can* override that general

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[6] *See* Treas. Reg. 1.671-2(e)(6), ex 8; *see also* I.R.S. Priv. Ltr. Rul. 201633021 (Aug. 12, 2016). Both illustrate one trust creating another trust and, in that creation, retaining a power that causes trust #1 to own trust #2.

[7] *See* Code § 678(a)(1) – a person other than the grantor shall be treated as the owner of any portion of a trust with respect to which (1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself. *See Mallinckrodt v. Comm'r*, 2 T.C. (1943); *aff'd* 146 F.2d 1(8th Cir. 1946). The case is foundational in holding that power to withdraw income, even if not withdrawn, is sufficient to cause all the income to be reported on the powerholder's income tax return. *See also* Edwin Morrow, III, *Using Powers Over Income and Beneficiary Deemed Owner Trust (BDOT) Provisions to Reduce Trust Income Tax Burdens*, BNA Estates Gifts & Trusts J., Jan 15, 2022.

[8] *See* Treas. Reg. § 1.671-2(d).

[9] *See* Treas. Reg. § 1.643(a)-0. DNI is also the amount that is paid, credited, or required to be distributed to the beneficiary and deductable from the trust's income.

[10] Those gains "are not ordinarily considered as paid, credited, or required to be distributed to any beneficiary." Treas. Reg. § 1.643(a)-3. There is an exception to th
e ordinary exclusion of capital gains and that is gains from the sale or exchange of capital assets are included in distributable net income to the extent they are, under the terms of the governing instrument and applicable local law, or pursuant to a reasonable and impartial exercise of discretion by the fiduciary (in accordance with a power granted to the fiduciary by applicable local law or by the governing instrument if not prohibited by applicable local law) and are further either-
(1) Allocated to income (but if income under the state statute is defined as, or consists of, a unitrust amount, a discretionary power to allocate gains to income must also be exercised consistently and the amount so allocated may not be greater than the excess of the unitrust amount over the amount of distributable net income determined without regard to this subparagraph 1.643(a)-3(b)); or
(2) Allocated to corpus but treated consistently by the fiduciary on the trust's books, records, and tax returns as part of a distribution to a beneficiary; or

rule, either as directed by the trust instrument or by election. In doing so, the fiduciary, by including some or all capital gain in the definition of income for this purpose, will engage in a weighty and non-traditional determination, requiring consideration of numerous tax and fiduciary consequences over a long period of time. The expectation under U.S. tax law is that once a decision is made as to how gains are to be treated for DNI purposes, that decision will hold for the rest of the trust's terms, absent some compelling reason for a change. Fiduciaries, for understandable risk mitigation reasons, rarely take the step of classifying gains (or some portion of gains) as DNI. Perhaps advisors should discuss with fiduciaries whether they can and should, in the right circumstances.

Meanwhile, FAI, as defined in Code § 643, is the income of the estate or trust determined under the terms of the governing instrument and applicable local law.[11] A state's principal and income act or other applicable state law determines whether a receipt is income or principal for trust accounting purposes.

B. Individuals or trusts as grantor-like owners

Then there's Code § 61 and its immediately following sections, which provide the general definition of gross and taxable income for federal tax purposes. As is the case with any other taxpayer, a trust's taxable income is its gross income, including all ordinary income, capital gain, tax-exempt receipts, business income, and other items that would be considered income under Code § 61(a), less allowable deductions under Code § 63.[12]

It is necessary to establish that Code § 678(a)(1) vests grantor-like power in a non-grantor trust beneficiary for that trust's income to be taxable to the beneficiary, rather than the trust – and to do so in such a way so that, where appropriate, the trust's assets would not themselves be included in the beneficiary's estate for estate tax purposes when he or she dies. Clearly, a right of withdrawal over all or a portion of the trust's income could result in estate tax inclusion of those assets, thereby defeating the purpose of using this technique.[13]

4. Trusts as grantor-like owners of other trusts

An income tax relationship between trusts can be enabled through purposeful planning and/or trust modifications or decanting as allowed by the laws governing the administration of the trust(s). The

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(3) Allocated to corpus but *actually distributed* to the beneficiary or utilized by the fiduciary in determining the amount that is distributed or required to be distributed to a beneficiary.

[11] *See* Code § 643(b). In Arizona, for example, A.R.S. § 14-7410 provides that except as otherwise provided in this section, a trustee shall allocate to income money received from an entity. B. A trustee shall allocate the following receipts from an entity to principal: **1.** Property other than money. 2. Money received in one distribution or a series of related distributions in exchange for part or all a trust's interest in the entity. 3. Money received in total or partial liquidation of the entity. 4. Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes. Nevada's provisions are in the Nevada Principal and Income Act of 1997.

[12] *See* Code § 61(a); including in the definition of gross income: compensation for services, including fees, commissions, fringe benefits, and similar items; gross income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; income from discharge of indebtedness; and, among other items, distributive share of partnership gross income.

[13] *See* Code § 2033, including in gross income of the decedent all property in which the decedent had an interest at the time of death.

model provided in an example in the Treasury regulations provides a path deeming one trust as the income tax owner of assets in another trust. See Treas. Reg. § 1.671-2(e)(6), example 8:

> G creates and funds a trust, T1, for the benefit of G's children and grandchildren. After G's death, under authority granted to the trustees in the trust instrument, the trustees of T1 transfer a portion of the assets of T1 to another trust, T2, and retain a power to revoke T2 and revest the assets of T2 in T1. Under paragraphs (e)(1) and (5) of this section, G is the grantor of T1 and T2. In addition, because the trustees of T1 have retained the power to revest the assets of T2 in T1, T1 is treated as the owner of T2 under section 678(a).

Once an income tax ownership relationship between two trusts can be established, moving appreciating assets between trusts without tax friction to maximize both income and estate tax benefits going forward should become a planner's priority.

5. Transactions between trusts (which are income tax-owned by another trust)

A. Exchanging assets of equivalent value

Perhaps assets in a grantor-like, GSTT-exempt trust and a grantor-like GSTT-non-exempt trust could be exchanged for assets of equivalent value.[14] With the necessary coordination between the trustees of the GSTT-exempt and GSTT-non-exempt trusts, a shifting of the maximum growth assets into the GSTT-exempt trust could be affected. Because of the requirement of non-fiduciary status of any party initiating that substitution under Code § 675(4)(C) on behalf of the GSTT-nonexempt trust, non-fiduciary trust protectors or substitution appointers should be contemplated in the trust documents so that they can execute on such a contemplated substitution.

B. Using promissory notes to add overall value

Suppose the Code § 678(a)(1) power is added to an existing GSTT-exempt trust. The GSTT-non-exempt trust then sells an appreciating asset to the GSTT-exempt trust for a long-term promissory note. Sometime later, but during the term of the promissory note, and after substantial growth in the assets sold to the GSTT-exempt trust has been realized, perhaps the GSTT-non-exempt trust, the holder of the promissory note, could exchange the promissory note with other assets (perhaps poor-performing, or no growth assets) of the GSTT-exempt trust with a value equivalent to the promissory note (perhaps with discounts applied to that value). When the note is in the hands of the GSTT-exempt trust trustee, it is canceled, and the assets remaining in the GSTT-exempt trust can continue to grow income tax-free. Because these are grantor trusts as to the other trust, there are no Code § 453B implications as discussed above.

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[14] See Code § 675(4)(C). To be an exchange for equivalent value, the power to make the exchange must be undertaken in a nonfiduciary capacity by any person without the consent or approval of any person in a fiduciary capacity. This suggests that the GSTT-vulnerable trust trustee cannot participate in the exchange other than to ensure that the properties being exchanged are of equivalent value. This is a fiduciary responsibility, as much as a tax requirement.

6. Seeing the non-grantor trust as an opportunity

A significant challenge in estate planning for a wealthy client is the limitation on lifetime gifts to a GST-exempt non-grantor trust. For the largest clients (with the most complex balance sheets), the model of selling to an irrevocable trust can work, with added features and opportunities with an installment sale to a non-grantor trust.

The non-grantor trust is perhaps more common in that virtually every grantor trust will eventually become a non-grantor, taxpaying, trust upon the grantor's death.[15] A non-grantor trust has a grantor but does not "trip" any of the grantor trust rules, at least not in whole.

The planner should appreciate the opportunity to selectively have certain portions of a trust as a grantor or non-grantor trust using the portion rule. The portion rule under Code § 671 (where the grantor trust rules reside), identifies the extent of the grantor's ownership of the trust for income tax purposes. The Portion Rule provides that a trust can be a grantor trust over just a part of the trust (leaving the remaining portion as a non-grantor trust). Those portions can include 1) the entire trust; 2) ordinary income only; 3) income allocable to corpus; 4) an undivided fraction of the property; 5) a specific dollar amount of income; or 6) specific property.[16] The ordinary income portion owned by a taxpayer is measured by Fiduciary Accounting Income ("FAI").[17]

To the extent a trust is taxed as separate taxpayer (non-grantor trust), in whole or in part, the trust's income will be subject to the harshest tax brackets of any taxpayer.[18] Subchapter J describes the "What, Whom, and When" of tax liability allocation between the trust and beneficiary.[19] Through a labyrinth of provisions dealing with nebulous concepts alluded to earlier, such income, distributable net income, deductions, and allocations, the non-grantor trust has its own definitions of either fiduciary income or taxable income, with or without capital gain.

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[15] Unless Code § 678 applies to make the trust taxed to another owner under subpart E of Subchapter J, a grantor trust will become a separate taxpayer under subparts A-D of Subchapter J upon the grantor's death. It is possible to be a part-grantor, part-non-grantor trust, for example, if two grantors contribute to a grantor trust and only one grantor dies, or if Code § 678 only applies to a portion of income, but this paper will assume most situations involve a single grantor and that Code § 678 will not apply unless specifically indicated.

[16] *See* Treas. Reg. § 1.671-3.

[17] "Ordinary income" in the context of Treas. Reg. § 1.671-3 is a defined term that references accounting income as under Code § 643(b). A taxpayer who owns of only the ordinary income portion is attributed only those items constituting fiduciary accounting income as defined by local law/Governing instrument, not capital gain or other portions of the trust.

[18] In 2025, the non-grantor trust's income is subject to highly compressed tax brackets such that the 37% top bracket and the 3.8% NIIT, start after just $15,650 of income in 2025 (compared to $751,600 for married taxpayers filing jointly). Long term capital gain will be subject to the 20% top bracket after just $15,900 of adjusted long term capital gain. These brackets will continue to be adjusted annually. See Rev. Rul. 2024-40 for inflation adjustments impacting tax year 2025.

[19] More precisely, Subparts A-D of Part 1 of Subchapter J of Chapter 1, of Subtitle A of Title 26 of the U.S. Code, alternatively, Sections 641-679.

But using a non-grantor trust can sometimes achieve superior results. Several of the more common benefits of using intentional non-grantor trusts are (1) saving state income taxes on a sale of appreciated property that would not generate "source income"; (2) saving capital gains tax by stacking multiple qualified small business stock (QSBS) capital gains tax exclusions under IRC Section 1202 (which has no related party rule); (3) obtaining higher or more efficient charitable deductions under IRC § 642(c) than if the donations were made by an individual under IRC Section 170, (4) achieving deductions for trustee fees, accounting and attorney fees under IRC 67(e) that would be denied an individual; (5) potentially obtaining better state and local tax (SALT) tax deductions for both the trust and the grantor if the grantor's income is otherwise reduced; and (6) potentially obtaining more qualified business income (QBI) deductions by splitting income.

Of course, a non-grantor trust, just like a grantor trust, can be GSTT exempt. To confer GST-exempt status, the donor can affirmatively allocate GST exemption on a Form 709 Gift Tax Return under Code § 2632 (or it may be automatically allocated).[20]

Once a non-grantor trust is established and GST exemption is allocated, the use of that GST-exempt trust as a purchaser (rather than the transferor) in an installment sale enables future appreciation above the interest due to accrue outside of the transferor's estate and be sheltered from GST taxation. If the investment returns are below the cost of the interest payable on the note, there would of course be no such benefit; quite the opposite. This is why the applicable federal rate is sometimes referred to as a "hurdle rate" that the investment must exceed to yield any estate or GST tax benefit to the grantor and beneficiaries.

7. Selling to a GST-Exempt, Non-Grantor Trust: Mechanics and Requirements

The typical sale involves a transferor selling appreciating, typically discounted private equity, real estate, or other closely held business interests to the trust in exchange for a secured promissory note. The typical interest-only note with a balloon payment is often characterized by an interest rate based on the applicable federal rate (AFR)[21] under Code § 1274(d). Depending on the interest rate environment, use of mid-term or long-term AFR notes could significantly affect the arbitrage. Anticipating a renegotiation of the note can lead to interesting planning opportunities based on the need to add consideration to the trust for a potentially lower interest rate moving forward.

Depending on the asset being sold to the trust, valuation discounts for lack of control and lack of marketability can play a significant role in the success of the transaction. For example, a 30% discount on a $10 million LLC interest may enable an actual transfer of underlying assets worth $14 million at a note value of less than $10 million. Because the valuation of any closely-held business interests, such as LLC units, S Corporation stock, and C Corporation stock, can be disputed by the IRS in examination of the IRS Form 709 later, planners often use techniques such as defined value transfer clauses[22], defined value allocation clauses[23] or price adjustment clauses[24] to assure that there will be no gift tax paid in

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[20] Automatic allocation may sometimes occur under Code § 2632(b), proactive GST exemption allocation under Code § 2632(c) or even a late allocation under Code § 2642(g). Automatic allocation is often advisable.
[21] *See* Code § 1274; Treas. Reg. § 1.1274-4.
[22] *See Wandry v. Comm'r*, T.C. Memo 2012-88.
[23] *See Estate of Petter v. Comm'r*, T.C. Memo *2009-280.*
[24] *See King v. United States*, 545 F.2d 700 (10th Cir. 1976).

connection with the transaction if the assets are ultimately revalued at a higher fair market value than initially reported.

8. Using the installment sale method of accounting with a non-grantor trust

Substantially different than a sale to an irrevocable grantor trust, the sale to the GST-exempt non-grantor trust should seek to qualify under the installment method.[25] Transactions undertaken with a GST-exempt non-grantor trust can lead to both transfer tax and income tax benefits. To navigate the installment method requires a respect for the complexity associated with it. Professionals must first be aware of what types or portions of assets are eligible for installment sale treatment, then examine the status of the trust as a potential related party under the rules, and finally examine the effect of the statutory $5 million cap and rules on disposition.

A. Property that is ineligible for the installment method

Several types of assets are specifically ineligible for reporting under the installment method. One relates to marketable securities, such as stocks and bonds that are traded on established securities markets.[26] If a taxpayer sells marketable securities with deferred payments, all gain must be reported in the year of the sale, regardless of when payments are received. For instance, if an individual sells shares of Apple stock to a non-grantor trust in exchange for a promissory note, the entire gain must still be recognized in the year the sale occurs—installment method deferral is not permitted when these types of assets are sold.

Another category of ineligible assets is inventory, or property held primarily for sale to customers in the ordinary course of business.[27] This means that sales of products or goods that a business normally holds for sale, such as a car dealership's vehicles or a retailer's merchandise, cannot be reported using the installment method. For example, if a manufacturer sells $100,000 worth of inventory with payments spread over five years, all income from the sale must be recognized immediately. This rule ensures that businesses recognize revenue on their regular sales in the correct accounting period and prevents income deferral on day-to-day business operations.

Depreciable property sold to a related party (addressed in the next section) is a key category that is generally ineligible for installment method reporting.[28] Specifically, if you sell property (such as a building, machinery, or equipment)that is depreciable in the hands of the buyer to a related person, you cannot defer the recognition of gain, and the entire gain must be reported in the year of sale, not as payments are received over time. This rule is primarily designed to block tax avoidance strategies where related parties could shift the tax burden or step-up depreciation deductions through the use of installment sales.

B. The related party timing issue

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[25] The installment method applies when at least 1 payment from the sale is to be received after the close of the year of the sale. *See* Code § 453(b).
[26] *See* Code § 453(e)(2)(A).
[27] *See* Code § 453(b)(2).
[28] *See* Code § 453(g).

A related party under the Code § 453 installment rules means:

A) a grantor and fiduciary of a trust
B) a fiduciary of one trust and fiduciary of another trust if the grantor of each trust is the same
C) a fiduciary of a trust and a beneficiary of the trust
D) a fiduciary of a trust and the beneficiary of a different trust if the grantor of each trust is the same[29]
E) Stock owned directly or indirectly by or for a beneficiary of the trust shall be considered as owned by the trust.[30]

The related party rule certainly complicates the planning with a GST-exempt non-grantor trust. Another aspect is illustrated in the following example:

> Taxpayer owns a 40% interest in an operating business. The 40% interest has a fair market value (considering discounts) of $20,000,000, and with a $4,000,000 basis in the taxpayer's hand. Taxpayer sells the 40% interest to the GST-exempt, non-grantor trust in exchange for an interest-only, 20-year note at 4.82%, $20,000,000 face value, and interest only with a balloon payment. The trust pays the Taxpayer an annual interest payment of $964,000. Under the gross profit ratio test, 80% is taxable as long-term capital gain to the Taxpayer, and 20% is a return of basis.[31]

Because the GST-exempt non-grantor trust purchased the interest, it has a cost basis of $20,000,000, and its holding period begins on the date of purchase. Thus, if the trust sells the interest years later for $24,000,000, it will have a long-term capital gain of just $4,000,000.

With the facts of the example established, the complexity of the installment sale can be examined.

What if the trust, which is a related party to the Taxpayer, sells the interest for cash? If the sale occurs within 2 years, then the related party rule will cause an immediate recognition of the $16,000,000 gain *by the Taxpayer*. The related party rule says-

> If (A) Any person disposes of property to a related party (the trust) (referred to as the "first disposition") and (B) before the person making the first disposition (the Taxpayer) receives all payments concerting such disposition, the related party (the trust) disposes of the property (the second disposition) then the amount realized for the second disposition will be treated received at the time of the second disposition by the person making the first disposition (the Taxpayer) (emphasis added). [32]

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[29] *See* Code § 267(b).
[30] *See* Code § 318(a).
[31] *See* Treas. Reg. § 15.453-1 for the definition of gross profit ratio or gross profit percentage that determines the amount of each payment that is taxable to the seller. The ration = selling price-adjusted basis over contract sale price.
[32] *See* Code § 453(e). The statute further provides that the rule applies, other than for marketable securities, that the related party rule only applies if the second disposition occurs within 24 months of the first disposition.

Thus, if the trust sells or disposes of the property it purchased from the Taxpayer in violation of Code § 453(e), the Taxpayer will recognize the gain at that time. This rule applies only if the sale of the assets by the trust occurs within 2 years of the Taxpayer's sale to the trust. This presents an opportunity for planning.

Additionally, what if a significant portion of the business' assets (*e.g.*, 10%, or $2 million of the $20 million interest) is attributable to inventory, depreciable property, and/or marketable securities? Congress has instructed Treasury to issue regulations regarding this:

> The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations—
> (1) disallowing the use of the installment method in whole or in part for transactions in which the rules of this section otherwise would be avoided through the use of related persons, pass-thru entities, or intermediaries, and
> (2) providing that the sale of an interest in a partnership or other pass-thru entity will be treated as a sale of the proportionate share of the assets of the partnership or other entity.[33]

The Secretary of Treasury has not issued regulations on these points. However, the Service has issued a revenue ruling that touches on the issue. In Rev. Rul. 89-108, the Service ruled that when a partner sells an interest in a partnership with unrealized receivables and substantially appreciated inventory, the partner is treated as constructively and directly selling his share of unrealized receivables and substantially appreciated inventory and is therefore prohibited from using installment method to report that portion of the gain, as it was ineligible for installment sale treatment if sold directly. But the balance of the income realized from the sale of the partnership interest was reportable under the installment method.[34]

C. The Deficiency Interest issue

If the installment sale to the GST-exempt, non-grantor trust exceeds *$150,000*, and the total value of the seller's use of installment sales that year exceeds $5,000,000, then a deficiency interest is charged to the seller.[35] The seller will pay the deficiency interest only on the portion of his total annual installments exceeding $5,000,000.[36] If a pass-through entity is the seller, then the annual limit is assessed against the owners in their proportion of ownership.

> For example, assume a family limited partnership has partners who holds 50%, 25% and 25% and sells assets to the GST-exempt, non-grantor trust for $15,000,000. The 50% partner will pay deficiency interest on $2,500,000 ($7.5 million allocable share minus $5 million threshold). The other interest holders will not pay any deficiency interest, because they are each allocated only $3,750,000 – less than $5 million – of the installment sale proceeds.

The interest assessed would be the short-term AFR for the month of the installment sale, plus 3.0%.[37] This percentage will be multiplied by the deferred taxes on the excess amount. In the preceding

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[33] Code Section 453A(e).
[34] Rev. Rul. 89-108, 1989-2 C.B. 100 (1989)
[35] *See* Code § 453A(b).
[36] *See* Code § 453A(c)(2).
[37] *See* Code § 6621(a)(2).

example, the majority partner will defer $2,500,000 x 20% (LTCG) = $500,000. Assume the sale occurred in August 2025 when the short-term AFR was 4.03%. The 50% partner's annual, non-deductible annual deficiency interest payment will be $35,150.

This appears to be a difficult reality of selling to a GST-exempt, non-grantor trust. An additional structural opportunity is that the $5,000,000 limit applies on a calendar-year basis. So the client could sell up to $5,000,000 in year 1, then an additional $5,000,000 in year 2, etc. The valuation reports would have to be updated or redone,[38] but the discount valuation would continue to be applicable. This can be beneficial because valuation is separately considered, regardless of the amount of interest held by the trust when the subsequent sale is undertaken.[39] Further, the basis of the property when separate tranches of the property have been gifted and sold to the trust is combined.[40]

Family transfers can multiply the effect and therefore provide an interesting planning opportunity. A husband and wife can be separate federal taxpayers (unless they file a joint return[?]), regardless of community property or marital holding systems.[41] As separate federal taxpayers, each has a $5,000,000 exemption against deficiency interest liability. So each could sell a separate interest in the appreciating asset with each receiving a $5,000,000 installment note in year 1, and then another $5,000,000 interest, each, in year 2. This incremental increase in the GST-exempt, non-grantor trust can result in a $100,000,000 trust in just 10 years, with no deficiency interest.[42] Of course, there would be many promissory notes, so let's look at those next. The promissory note issue presents an interesting opportunity for estate planning and wealth transfer.

D. The disposition of the installment obligations issue, and opportunities

When the grantor of the GST-exempt, non-grantor trust holds the promissory note because of an installment sale, the planning opportunities for that note are bleak. Under the installment sale rules, any disposition of the promissory note (the "installment obligation") will result in immediate recognition of gain.[43] The gain is measured from the fair market value of the note and the basis the grantor had in the sold property. This would include gifting or selling the promissory note.

There is an exception for the distribution of the promissory note at death.[44] This may inform a strategy of transferring the promissory note to individual beneficiaries through a last will, exercise of a power of appointment, or the terms of a revocable trust. A greater opportunity is for the grantor to designate a limited power of attorney appointee, an irrevocable, GST-exempt trust, other than the buyer of the assets. Although there will be income tax recognition of the interest paid to the other irrevocable, GST-exempt trust, or other appointee, the eventual payment of the promissory notes' face value will remain in a GST-exempt environment. The promissory note in the hands of the beneficiaries or trustee will have

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[38] Using a qualified appraiser under Treas. Reg. § 301.6501(c)-1(f)(3)(i) and retaining the updated or new valuation reports can be helpful.
[39] *See* Treas. Reg. § 25.2511-1(f).
[40] *See* Treas. Reg. § 1.1015-2.
[41] *See Poe v. Seaborn*, 282 U.S. 101 (1930).
[42] *See* Bittker & McMahon, Federal Taxation of Individuals, ¶ 41.03[3]. This treatise states the $5,000,000 standard applies on an annual basis.
[43] *See* Code § 453B(a).
[44] *See* Code § 453B(c).

the grantor's continuing gross profit ratio, and the ongoing character of the income taxable elements (long-term capital gain).

Some commentators suggest that the grantor can cause the promissory note to be transferred to the buyer trust. That would cause imposition of the "merger doctrine."[45]

E. The Merger Doctrine and its effects should be avoided

The merger doctrine occurs when anyone, or any entity, who or that issued a promissory note ultimately becomes both obligor and obligee. This normally upon the death of the noteholder. There is a contract law effect (the note merges and is extinguished) as well as income tax consequences.

First, under Code § 691 (Income in Respect of a Decedent, or "IRD"), the unpaid principal and interest on a promissory note held at death is considered IRD. Even though the note merges and is extinguished when it returns to the trust, the amount still unpaid at death is taxable as IRD to the decedent's estate or whoever receives the payments in the future. Although merging of the note cancels the obligation under property law, the estate or beneficiary must still report as taxable income on the portion of the installment gain (and any interest) that would have been recognized by the decedent had they lived to receive it.[46]

Second, under the installment sale rules, when the right to future payments passes to the estate or heirs, the installment reporting continues. However, if the note merges back into the obligor (in this case, the trust), the merger doctrine and related cancellation-of-debt tax rules apply. so the remaining unreported gain from the transaction may be accelerated and must be reported at the time of the merger. This is because extinguishing the note is treated as a disposition of the installment obligation, which we know results in immediate recognition of all remaining deferred gain at the fair market value of the obligation at the time of merger.

For example, suppose a trust buys property from the grantor for a $500,000 promissory note payable over 10 years. The seller dies in year 5, owning the note. Under the estate plan, or an exercise of a power of appointment, the note is returned to the issuing trust (now both payor and payee), so the note is merged and disappears as a matter of property law. But for tax purposes, the estate (or recipient) must recognize as IRD under Code § 691 on the remaining gain that would have been taxed had the seller received future payments. Additionally, under Code § 453B, the extinguishment of the note by merger is treated as a disposition, so any remaining deferred gain that hasn't already been taxed under the installment method is recognized immediately. Further, if the face amount of the note exceeds its tax basis in the estate (usually the decedent's basis in the original property, minus previously reported gain), the estate/beneficiary recognizes the remaining gain as income.

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[45] See Paul S. Lee and Cassady V. Brewer, *Shedding More Light on Planning with Installment Obligations*, 57th Annual Heckerling Institute on Estate Planning, p III-B-35, (Jan 12, 2023). "The transfer of an installment obligation to trust constitutes a taxable disposition if the seller (grantor) is not considered the owner of trust under the grantor rules." *See also* Christopher P. Siegle, *Moving Assets Out of GST Tax-Vulnerable Trusts*, Trust and Estates, Nov 6, 2024, at 25-26 discussing cancellation of notes when the holder and maker are the same.

[46] See Code § 691(a); *see also*, Brent W. Nelson, *Unleashed Non-Grantor Trust Potential*, ACTEC Law Journal, Spring, 2025, at p. 182.

9. Risk and current Tax Court and IRS challenges applicable to wealth transfer

A. Assignment of income

Despite the potentially valuable additions to today's estate and tax planning environment, certain obstacles must be avoided. These are the often-presented common law concepts of step transaction and form over substance.[47] The planning community was reminded of this doctrine with the *Smaldino* case in 2021.[48]In that case, the taxpayer created an LLC and funded the LLC with 10 rental properties. He created an irrevocable dynasty trust into which he gifted 8% of class B units of the LLC. At the same time, the taxpayer gifted his wife an additional 41% of the class B units, and she retransferred those to the dynasty trust as her gift. After analysis of the valuation, a purported guaranteed payment, a valuation adjustment clause, and late adjustments to the operating agreement to reflect the gifted class B units, the Tax Court determined that the taxpayer had made a transfer of 49% of the class B units (8% + 41%). The case presents an unhelpful fact pattern. The immediate nature of the gift to the spouse and regift to the dynasty trust highlighted the step transaction concerns that such a transaction might give rise to.

Another common law doctrine is the assignment of income doctrine, which provides that a taxpayer who has completed all tasks may not transfer the right to income and the income tax liability to another taxpayer. Shifting the taxpayer from the one who earned the income is not permissible. Using this doctrine, the IRS can redetermine the proper taxpayer and allocate the income accordingly.[49]

When planning shifts an income tax owner from the trust to another trust or from the trust to the beneficiary under Code § 678, a transfer of the income tax ownership changes. At least initially, when one taxpayer has earned income (the GST-exempt trust) and the income tax liability is shifted to the new grantor-like party of the trust (individual or GST-nonexempt trust). But this transfer is common whenever the income tax ownership is toggled from one taxpayer to another under a release of a grantor power. Or perhaps when the grantor dies, the revocable trust becomes an irrevocable, non-grantor trust. In those cases, the income is allocated based on an apportionment of income for the period before the change and after the change. It can be a challenging analysis but one that is commonly accomplished.

B. Scale is important

It may be that the size of the trusts (in trust asset value) should be considered when using the IRC § 678 power .For example, some authorities describe the situation as: one trust (T1) creates another trust (T2) and reserves the right to withdraw all the income of T2. In the PLR, the court ratified the separation of T1 into separate trusts for the three individual beneficiaries. In neither case were individual taxpayers involved. The assignment of income was not asserted or discussed.[50]

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[47] The accepted common law doctrines available to the IRS are step transaction, sham, form over substance, assignment of income, and business purpose.

[48] *See Smaldino v. Comm'r*, T.C. Memo 2021-127 (Nov 10, 2021).

[49] *See* Code § 482.

[50] See PLR 201633021 and Treas. Reg. § 1.671-2(e)(6), example 8.

10. Conclusion

The non-grantor trust presents an interesting and binary tool. It had effects for income tax and transfer tax. It can engage it transactions, albeit while realizing income as perhaps the worst taxpayer in the system. However, it is virtually inevitable that each trust will become a non-grantor trust at some time. Planning opportunities can be seen in both new plans and existing plans. Using income tax ownership rules can assist the trusts and the clients to transact for further accretion in GSTT-exempt trusts. Added to the non-grantor, and GSTT-nonexempt trusts are QTIP trusts, GRAT remainders, and large revocable trusts. Using tools provided in the terms of the trust is helpful, and there is a significant risk of gift tax inclusion of trust assets that rely on beneficiary consent under recent guidance from the IRS. The road can be paved for greater planning later if the planners incorporate enabling terms in the trusts.

Appendix 1

Proposed Regulations on Identification of Monetized Installment Sale Transactions as Listed Transactions

not meet the requirements in this section. We will notify you and the proposed representative if we do not recognize the person as your representative.

■ 12. Revise § 416.1507 to read as follows:

§ 416.1507 Appointing a representative.

We will recognize a person as your representative if:

(a) You and your representative complete and sign our prescribed appointment form, and

(b) You or your representative file our prescribed appointment form in the manner we designate.

■ 13. In § 416.1520, add new paragraph (f) to read as follows:

§ 416.1520 Fee for a representative's services.

* * * * *

(f) *Assignment of fees.* A representative who is eligible for direct payment of an authorized fee may assign the authorized fee to an entity that is eligible for direct payment of fees (see 416.1530(e) and 416.1535).

■ 14. In § 416.1530, revise the heading of paragraph (b), revise paragraph (b)(1), and add a new paragraph (e) to read as follows:

§ 416.1530 Payment of Fees.

* * * * *

(b) *Fees we may pay.* (1) *Attorneys and eligible non-attorneys.* Except as provided in paragraph (c) of this section, if we make a determination or decision in your favor and you were represented by an attorney or an eligible non-attorney (see 416.1517), and as a result of the determination or decision you have past-due benefits,

(i) We will pay your representative out of the past-due benefits the lesser of the amounts in paragraph (b)(1)(iii) or (iv) of this section, less the amount of the assessment described in paragraph (d) of this section, unless the representative submits to us in writing a waiver of the fee or direct payment of the fee, and

(ii) If there is a valid assignment (see paragraph (e) of this section), we will pay the representative's fee (see paragraph (b)(1)(i) of this section) to an entity.

* * * * *

(e) *Assignment of a fee to designated entity* (1) A representative may assign the fee we authorize to an eligible entity if the representative:

(i) Is eligible for direct payment,

(ii) Has not waived the fee or direct payment,

(iii) Assigns the entire fee we authorize to one entity,

(iv) Makes the assignment before the date on which we notify you of our first favorable determination or decision, and

(v) Affiliates with the entity through registration.

(2) A representative may rescind an assignment before the date on which we notify you of our first favorable determination or decision.

(3) A representative may not assign a fee to an entity that is ineligible to receive direct payment.

(4) A representative may not waive a fee or direct payment of a fee if the representative previously assigned a fee in accordance with paragraph (e)(1) of this section and did not timely rescind that assignment in accordance with paragraph (e)(2) of this section.

■ 15. Add § 416.1535 to read as follows:

§ 416.1535 Entity eligible for direct payment of fees.

An entity is eligible for direct payment of an authorized fee if the entity:

(a) Has an Employer Identification Number

(b) Has registered with us in the manner we prescribe,

(c) Has not been found ineligible for direct payment,

(d) Designates and maintains an employee who is a registered representative as a point of contact to speak and act on the entity's behalf,

(e) Accepts payment via electronic funds transfer, and

Conforms to our rules.

■ 16. In § 416.1540, add a new paragraph (c)(15) to read as follows:

§ 416.1540 Rules of conduct and standards of responsibility for representatives.

* * * * *

(c) * * *

(15) While serving as a point of contact for an entity, violate applicable affirmative duties, engage in prohibited actions, or conduct dealings with us in a manner that is untruthful or does not further the efficient and prompt correction of a fee error.

PART 422—ORGANIZATION AND PROCEDURES

Subpart F—Applications and Related Forms

■ 17. The authority citation for subpart F of part 422 is revised to read as follows:

Authority: 42 U.S.C. 1320b–10(a)(2)(A).

■ 18. In § 422.515, revise the designation of form SSA–1696 to read as follows:

§ 422.515 Forms used for withdrawal, reconsideration and other appeals, and appointment of representative.

* * * * *

SSA–1696—Claimant's Appointment of Representative. (For use by claimants or representatives as a notice of their appointment of a representative in a claim, issue, or other matter that is pending a determination or a decision before the agency).

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[FR Doc. 2023–16405 Filed 8–3–23; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109348–22]

RIN 1545–BQ69

Identification of Monetized Installment Sale 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 would identify monetized installment sale transactions and substantially similar transactions as listed transactions, a type of reportable transaction. Material advisors and participants in these listed transactions would be required to file disclosures with the IRS and would be subject to penalties for failure to disclose. The proposed regulations would affect participants in those transactions as well as material advisors. This document also provides a notice of a public hearing on the proposed regulations.

DATES:

Comments: Electronic or written comments must be received by October 3, 2023.

Public Hearing: The public hearing is scheduled to be held on October 12, 2023, at 10:00 a.m. ET. Pursuant to Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), the public hearing is scheduled to be conducted in person, but the IRS will provide a telephonic option for individuals who wish to attend or testify at the hearing by telephone. Requests to speak and outlines of topics to be discussed at the

public hearing must be received by October 3, 2023. If no outlines are received by October 3, 2023, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5:00 p.m. ET on October 10, 2023. The hearing will be made accessible to people with disabilities. Requests for special assistance during the hearing must be received by 5:00 p.m. ET on October 6, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–109348–22) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section. 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 for public availability any comments to the IRS's public docket. Send paper submissions to: CC:PA:LPD:PR (REG–109348–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jonathan A. Dunlap of the Office of Associate Chief Counsel (Income Tax and Accounting), (202) 317–4718 (not a toll-free number); concerning submissions of comments and requests for hearing, Vivian Hayes at (202) 317–5306 (not a toll-free number) or *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

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 as "listed transactions" for purposes of section 6011.

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

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."

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).

Reportable transactions are identified in § 1.6011–4 and include listed transactions, confidential transactions, transactions with contractual protection, loss transactions, and transactions of interest. *See* § 1.6011–4(b)(2) through (6). Section 1.6011–4(b)(2) defines 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(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.

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).

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

Section 6111(a) provides that each material advisor with respect to any reportable transaction shall 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 shall be filed not later than the date specified by the Secretary.

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.

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 (1) $200,000, or (2) 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.

Additionally, section 6112(a) provides that each material advisor with respect to any reportable transaction shall (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 with respect to such transaction and (2) containing such other information as the Secretary may by regulations require. Material advisors must furnish such lists to the IRS in accordance with § 301.6112–1(c).

A material advisor may 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.

III. Installment Sales

Section 61(a)(3) provides that a taxpayer's gross income includes gains from dealings in property. Under section 1001(a), a taxpayer's gain on a sale of property is equal to the excess of the amount realized on the sale over the taxpayer's adjusted basis in the property and, generally, a taxpayer must recognize the gain in the taxable year of the sale. The taxpayer's amount realized generally includes cash actually or constructively received, plus the fair market value of any property received or, in the case of a debt instrument issued in exchange for property, the issue price of the debt instrument. *See* § 1.1001–1 of the Income Tax Regulations.

Section 453 provides an exception to the general rule that gain from the sale of property must be recognized in the year of sale. Section 453(a) provides, in general, that income from an installment sale is accounted for under the installment method. Under section 453(b), an installment sale is one in which a taxpayer disposes of property and at least one payment is to be received after the close of the taxable year of the disposition. The installment method, as described in section 453(c), requires a taxpayer to recognize income from a disposition as payments are actually or constructively received, in an amount equal to the proportion of the payment received that the gross profit (realized or to be realized when payment is completed) bears to the total contract price.

Under section 453(f)(3) and 26 CFR 15a.453–1(b)(3) (Temporary Income Tax Regulations Under the Installment Sales Revision Act), a taxpayer generally does not receive a "payment," as such term is used in section 453(b), to the extent the taxpayer receives evidence of indebtedness "of the person acquiring the property" (installment obligation). As a result, notwithstanding that a taxpayer has received an installment obligation from the buyer evidencing the buyer's obligation to pay an amount equal to the purchase price, the taxpayer is not treated as having received full payment in the year in which the taxpayer received the installment obligation. Instead, the taxpayer is treated as receiving payments when the taxpayer receives (or constructively receives) payments under the installment obligation.

However, to the extent that the taxpayer receives a note or other evidence of indebtedness in the year of sale from a person other than "the

person acquiring the property," section 453(f)(3) is inapplicable. A note or other evidence of indebtedness received in the year of sale issued by a person other than the person acquiring the property is, under § 15a.453–1(b)(3), the receipt of a payment for purposes of section 453. Likewise, under § 15a.453–1(b)(3), the taxpayer's receipt of a note or other evidence of indebtedness that is secured directly or indirectly by cash or a cash equivalent is treated as the receipt of payment for purposes of section 453.

Section 453A(d) provides rules relating to certain installment obligations arising from a disposition of property, the sales price of which is more than $150,000. Under section 453A(d), if any indebtedness is secured by an installment obligation to which section 453A applies, the net proceeds of the secured indebtedness are treated as a payment received on the installment obligation as of the later of the time the indebtedness becomes secured by the installment obligation or the time the taxpayer receives the proceeds of the indebtedness (the pledging rule). To the extent installment payments are received after the date payment is treated as received under section 453A(d), the tax on such payments is treated as having already been paid.

IV. Tax Avoidance Using Monetized Installment Sales

The Treasury Department and the IRS are aware that promoters are marketing transactions that purport to convert a cash sale of appreciated property by a taxpayer (seller) to an identified buyer (buyer) into an installment sale to an intermediary (who may be the promoter) followed by a sale from the intermediary to the buyer. In a typical transaction, the intermediary issues a note or other evidence of indebtedness to the seller requiring annual interest payments and a balloon payment of principal at the maturity of the note, and then immediately or shortly thereafter, the intermediary transfers the seller's property to the buyer in a purported sale of the property for cash, completing the prearranged sale of the property by seller to buyer. In connection with the transaction, the promoter refers the seller to a third party that enters into a purported loan agreement with the seller. The intermediary generally transfers the amount it has received from the buyer, less certain fees, to an account held by or for the benefit of this third party (the account). The third party provides a purported non-recourse loan to the seller in an amount equal to the amount the seller would have received from the buyer for the sale of the property, less certain fees. The "loan" is either funded or collateralized by the amount deposited into the account. The seller's obligation to make payments on the purported loan is typically limited to the amount to be received by the seller from the intermediary pursuant to the purported installment obligation. Upon maturity of the purported installment obligation, the purported loan, and the funding note, the offsetting instruments each terminate, giving rise to a deemed payment on the purported installment obligation and triggering taxable gain to the seller purportedly deferred until that time.

The promotional materials for these transactions assert that engaging in the transaction will allow the seller to defer the gain on the sale of the property under section 453 until the taxpayer receives the balloon principal payment in the year the note matures, even though the seller receives cash from the purported lender in an amount that approximates the amount paid by the buyer to the intermediary. The IRS intends to use multiple arguments to challenge the reported treatment of these transactions as installment sales to which section 453 purportedly applies, including the arguments described below.

First, the intermediary is not a bona fide purchaser of the gain property that is the subject of the purported installment sale. In these transactions, the intermediary is interposed between the seller and the buyer for no purpose other than Federal income tax avoidance, and the intermediary neither enjoys the benefits nor bears the burdens of ownership of the gain property. The interposition of the intermediary typically takes place after the seller has decided to sell the gain property to a specific buyer at a specific negotiated purchase price, and the purported resale by the intermediary to such buyer generally takes place almost simultaneously with the purported sale to the intermediary for approximately the same negotiated purchase price, less certain fees. The seller's only purpose for entering into an agreement with the intermediary is to defer recognition of the gain on the sale of the gain property to the buyer. Other than the Federal income tax deferral benefits provided by the installment method provisions of section 453, the sole economic effect of entering the monetized installment sale transaction from the perspective of the seller is to pay direct and indirect fees to the intermediary and the purported lender in an amount that is substantially less than the Federal tax savings purportedly achieved from using section 453 to defer the realized gain on the sale.

When an intermediate transaction with a third party is interposed and lacks independent substantive (non-tax) purpose, such transaction is not respected for Federal income tax purposes and the transaction is appropriately treated as a sale of the property by the seller directly to the buyer in the taxable year in which the gain property is transferred by the seller. *See Commissioner* v. *Court Holding Co.*, 324 U.S. 331, 334 (1945) ("A sale by one person cannot be transformed for tax purposes into a sale by another by using the latter as a conduit through which to pass title. To permit the true nature of a transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress" (footnote omitted)); *Wrenn* v. *Commissioner*, 67 T.C. 576 (1976), (holding that a taxpayer did not engage in a bona fide installment sale when the taxpayer transferred stock to his spouse under a purported installment sale contract, followed by the spouse immediately selling the stock to a third party for a negligible gain); *Blueberry Land Co.* v. *Commissioner*, 361 F.2d 93, 100 (5th Cir. 1966), (holding that a corporation's transaction with an unrelated intermediary entered into solely to avoid Federal income taxes on the sale should be disregarded for Federal income tax purposes and the corporation should be taxed as if it sold the property directly to the ultimate buyer); *Enbridge Energy Co. Inc.* v. *United States*, 354 F. App'x 15 (5th Cir. 2009) (holding that an intermediate sale was a sham, the intermediary lacked a "bona fide role in the transaction," as its only purpose for being a party in the transaction, and indeed for existing, was to mitigate the Federal tax bill arising from the transaction, and that the transaction should be treated, for Federal tax purposes, as a sale directly from the seller to the taxpayer).

In addition, it is inappropriate to treat the intermediary in the monetized installment sale transaction described in this NPRM as the acquirer of the gain property that is the subject of the purported installment sale because the intermediary neither enjoys the benefits nor bears the burdens of ownership of the gain property that a person must possess to be considered the owner of property for Federal income tax purposes. *See Grodt & McKay Realty Inc.* v. *Commissioner*, 77 T.C. 1221 (1981). *See also Derr* v. *Commissioner*, 77 T.C. 708 (1981) and *Baird* v. *Commissioner*, 68 T.C. 115 (1977).

Second, in these transactions the seller is appropriately treated as having already received the full payment at the time of the sale to the buyer because (1) the purported installment obligation received by the seller is treated as the receipt of a payment by the seller under § 15a.453–1(b)(3) since it is indirectly secured by the sales proceeds, or (2) the proceeds of the purported loan are appropriately treated as a payment to the seller because the purported loan is not a bona fide loan for Federal income tax purposes, or (3) the pledging rule of section 453A(d) deems the seller to receive full payment on the purported installment obligation in the year the seller receives the loan proceeds.

Third, the transaction may be disregarded or recharacterized under the economic substance rules codified under section 7701(o) or the substance over form doctrine. The step transaction doctrine and conduit theory may also apply to recharacterize monetized installment sale transactions described in this NPRM.

V. 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 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).

Relying on the Sixth Circuit's analysis in *Mann Construction*, three district courts and the Tax Court have concluded that IRS notices identifying listed transactions were improperly issued because they were issued without following the APA's notice and comment procedures. See *Green Rock, LLC* v. *IRS*, 2023 WL 1478444 (N.D. AL., February 2, 2023) (Notice 2017–10); *GBX Associates, LLC*, v. *United States*, 1:22cv401 (N.D. Ohio, Nov. 14, 2022) (same); *Green Valley Investors, LLC, et al.* v. *Commissioner*, 159 T.C. No. 5 (Nov. 9, 2022) (same); see also *CIC Services, LLC* v. *IRS*, 2022 WL 985619 (E.D. Tenn. March 21, 2022), as modified by 2022 WL 2078036 (E.D. Tenn. June 2, 2022) (Notice 2016–66, identifying a transaction of interest).

The Treasury Department and the IRS disagree with the Sixth Circuit's decision in *Mann Construction* and the subsequent decisions that have applied that reasoning to find other IRS notices invalid and are continuing to defend the validity of notices identifying transactions as listed transactions in circuits other than the Sixth Circuit. At the same time, however, to avoid 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 monetized installment sale transactions as listed transactions for purposes of all relevant provisions of the Code and Treasury Regulations.

Explanation of Provisions

These proposed regulations would require taxpayers that participate in monetized installment sale transactions and substantially similar transactions, and persons who act as material advisors with respect to these transactions, to disclose the transactions in accordance with the regulations issued under sections 6011 and 6111. Material advisors would also be required to maintain lists as required by section 6112.

I. Definition of Monetized Installment Sale Transaction

Proposed § 1.6011–13(a) would provide that a transaction that is the same as, or substantially similar to, a monetized installment sale transaction described in proposed § 1.6011–13(b) is a listed transaction for purposes of § 1.6011–4(b)(2) and sections 6111 and 6112. "Substantially similar" 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.

The transaction described in proposed § 1.6011–13(b) includes the following elements:

(1) A taxpayer (seller), or a person acting on the seller's behalf, identifies a potential buyer for appreciated property (gain property), who is willing to purchase the gain property for cash or other property (buyer cash).

(2) The seller enters into an agreement to sell the gain property to a person other than the buyer (intermediary) in exchange for an installment obligation.

(3) The seller purportedly transfers the gain property to the intermediary, although the intermediary either never takes title to the gain property or takes title only briefly before transferring it to the buyer.

(4) The intermediary purportedly transfers the gain property to the buyer in a sale of the gain property in exchange for the buyer cash.

(5) The seller obtains a loan, the terms of which are such that the amount of the intermediary's purported interest payments on the installment obligation correspond to the amount of the seller's purported interest payments on the loan during the period. On each of the installment obligation and loan, only interest is due over identical periods, with balloon payments of all or a substantial portion of principal due at or near the end of the instruments' terms.

(6) The sales proceeds from the buyer received by the intermediary, reduced by certain fees (including an amount set aside to fund purported interest payments on the purported installment obligation), are provided to the purported lender to fund the purported loan to the seller or transferred to an escrow or investment account of which the purported lender is a beneficiary. The lender agrees to repay these amounts to the intermediary over the course of the term of the installment obligation.

(7) On the seller's Federal income tax return for the taxable year of the purported installment sale, the seller treats the purported installment sale as an installment sale under section 453.

A transaction may be "substantially similar" to the transaction described above even if such transaction does not include all of the elements described above. For example, a transaction would be substantially similar to a monetized installment sale if a seller transfers property to an intermediary for an installment obligation, the intermediary simultaneously or after a brief period transfers the property to a previously identified buyer for cash or other property, and in connection with the transaction, the seller receives a loan for which the cash or property from the buyer serves indirectly as collateral.

II. Participation

Whether a taxpayer has participated in the listed transaction described in proposed § 1.6011–13(b) would be determined under § 1.6011–4(c)(3)(i)(A). Participants would include the seller, the intermediary, the purported lender, and any other person whose Federal income tax return reflects tax consequences or the tax strategy described in proposed § 1.6011–13(b), or a substantially similar transaction.

Under the proposed regulations, the buyer of the gain property that provides the buyer cash or other consideration

would not be treated as a participant in the listed transaction described in proposed § 1.6011–13(b) under § 1.6011–4(c)(3)(i)(A). The Treasury Department and the IRS request comments on whether the buyer of the gain property should be treated as a participant given the buyer's key role in the transaction. If the final regulations include the buyer as a participant, that change would apply only with respect to transactions entered into after the date on which the final regulations are published in the **Federal Register**.

III. Material Advisors

Material advisors who make a tax statement with respect to monetized installment sale transactions described in proposed § 1.6011–13(b) would have disclosure and list maintenance obligations under sections 6111 and 6112. *See* §§ 301.6111–3 and 301.6112–1.

IV. Effect of Transaction Becoming a Listed Transaction

Participants required to disclose listed transactions under § 1.6011–4 who fail to do so are subject to penalties under section 6707A. Participants required to disclose listed 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 listed 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. In addition, the IRS may impose other penalties on persons involved in listed 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 6700 penalty for promoting abusive tax shelters, and the section 6701 penalty for aiding and abetting understatement of tax liability.

The Treasury Department and IRS recognize that some taxpayers may have filed Federal income tax returns taking the position that they were entitled to the purported tax benefits of the type of transactions described in these proposed regulations. Because the IRS will take the position in litigation that taxpayers are not entitled to the purported tax benefits of transactions described in these proposed regulations, taxpayers who have participated in those transactions should consider the best way to make corrections, whether by filing an amended return, an administrative adjustment request under section 6227, or a Form 3115, *Application for Change in Accounting Method* (whichever is applicable), or if the taxpayer has been contacted by the IRS for examination for a taxable year in which the taxpayer participated in the transaction, by working with an IRS employee to reverse the purported tax benefits.

In addition, the proposed regulations would subject material advisors to disclosure requirements with regard to transactions occurring in prior years. However, notwithstanding § 301.6111–3(b)(4)(i) and (iii), material advisors would be required to disclose only if they have made a tax statement on or after [the date that is 6 years before the date that Final Regulations are published in the **Federal Register**].

V. Applicability Date

Proposed § 1.6011–13(a) would identify monetized installment sale transactions, and transactions that are the same as, or substantially similar to, the monetized installment sale transactions described in proposed § 1.6011–13(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.

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 (OMB) 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). This certification is based on the fact that these proposed regulations implement sections 6111 and 6112 and § 1.6011–4 by specifying the manner in which and time at which an identified Monetized Installment Sale Transaction must be reported.

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. According to the American Institute of CPAs 2016 National MAP Survey, the median billing cost for a CPA is approximately $100 per hour. *See* 2016 AICPA PCPS/CPA.com National MAP Survey 8–9 (2016), *https://www.riscpa.org/writable/news-items/documents/2016_pcps_national_map_survey_commentary.pdf* (last accessed July 3, 2023). For 2018, the median billing cost for a CPA is approximately $210.50 per hour. *See* National MAP Survey 2018 Executive Summary, 13 (2018), *https://us.aicpa.org/content/dam/aicpa/interestareas/privatecompaniespracticesection/financialadminoperations/nationalmapsurvey/downloadabledocuments/2018-national-map-survey-executive-summary.pdf* (last accessed July 3, 2023). Thus, for the initial reporting period, it is estimated that taxpayers may incur costs ranging from $2,150 to $4,700 per respondent, although this amount is anticipated to be significantly less for all subsequent reporting periods.

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

Pursuant to the Memorandum of Agreement, *Review of Treasury Regulations under Executive Order 12866* (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6(b) of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

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 *https://www.regulations.gov* or upon request. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing is being held on October 12, 2023, beginning at 10:00 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed as well as the time to be devoted to each topic by October 3, 2023. 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 free of charge at the hearing. If no outlines of the topics to be discussed at the hearing are received by October 3, 2023, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list The subject line of the email must contain the regulation number REG–109348–22 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–109348–22.

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–109348–22 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–109348–22.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number (REG–109348–22) and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG–109348–22. Requests to attend the public hearing must be received by 5:00 p.m. ET on October 10, 2023.

Individuals who want to attend the public hearing telephonically without testifying 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–109348–22) and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–109348–22. Requests to attend the public hearing must be received by 5:00 p.m. ET on October 10, 2023.

Hearings will be made accessible to people with disabilities. To request special assistance during the 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) 317–6901 (not a toll-free number) at least October 6, 2023.

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 Jonathan A. Dunlap, 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, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.6011–13 in numerical order to read in part as follows:

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

* * * * *

Section 1.6011–13 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011.

* * * * *

■ **Par. 2.** Section 1.6011–13 is added to read as follows:

§ 1.6011–13 Monetized installment sale listed transaction.

(a) *Identification as a 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) *Monetized installment sale transaction.* A transaction is a

monetized installment sale transaction if, in connection with the transaction, and regardless of the order of the steps, or the presence of additional steps or parties—

(1) A taxpayer (seller), or a person acting on the seller's behalf, identifies a potential buyer for appreciated property (gain property), who is willing to purchase the gain property for cash or other property (buyer cash);

(2) The seller enters into an agreement to sell the gain property to a person other than the buyer (intermediary), in exchange for an installment obligation;

(3) The seller purportedly transfers the gain property to the intermediary, although the intermediary either never takes title to the gain property or takes title only briefly before transferring it to the buyer;

(4) The intermediary purportedly transfers the gain property to the buyer in a sale of the gain property in exchange for the buyer cash;

(5) The seller obtains a loan, the terms of which are such that the amount of the intermediary's purported interest payments on the installment obligation correspond to the amount of the seller's purported interest payments on the loan during the period. On each of the installment obligation and loan, only interest is due over identical periods, with balloon payments of all or a substantial portion of principal due at or near the end of the instruments' terms;

(6) The sales proceeds from the buyer received by the intermediary, reduced by certain fees (including an amount set aside to fund purported interest payments on the purported installment obligation), are provided to the purported lender to fund the purported loan to the seller or transferred to an escrow or investment account of which the purported lender is a beneficiary. The lender agrees to repay these amounts to the intermediary over the course of the term of the installment obligation; and

(7) On the seller's Federal income tax return for the taxable year of the purported installment sale, the seller treats the purported installment sale as an installment sale under section 453.

(c) *Substantially similar transactions.* A transaction may be substantially similar to a transaction described in paragraph (b) of this section if the transaction does not include all of the elements described in that paragraph. For example, a transaction would be substantially similar to a monetized installment sale described in paragraph (b) of this section if a seller transfers property to an intermediary for an installment obligation, the intermediary simultaneously or after a brief period transfers the property to a previously identified buyer for cash or other property, and in connection with the transaction, the seller receives a loan for which the cash or property from the buyer serves indirectly as collateral.

(d) *Participation in a monetized installment sale transaction.* Participants in a monetized installment sale transaction described in paragraph (b) of this section include sellers, intermediaries and purported lenders described in paragraph (b) of this section and any other taxpayer whose Federal income tax return reflects tax consequences or the tax strategy described in paragraph (b) of this section or a substantially similar transaction. Buyers of gain property described in paragraph (b) of this section are not treated as participants.

(e) *Applicability date.* This section's identification of transactions that are the same as, or substantially similar to, the transaction 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 the date that these regulations are published as final regulations in the **Federal Register**. Notwithstanding section 301.6111–3(b)(4)(i) and (iii) of this chapter, material advisors are required to disclose only if they have made a tax statement on or after the date that is 6 years before the date that these regulations are published as final regulations in the **Federal Register**.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2023–0597]

RIN 1625–AA08

Special Local Regulations; Recurring Marine Events, Sector St. Petersburg

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise existing regulations by updating the duration of an existing event in the Seventh Coast Guard District Captain of the Port (COTP) St. Petersburg Zone. This action is necessary to provide for the safety of life on these navigable waters in Clearwater, FL, during the Clearwater Offshore Nationals/Race World Offshore event. The Coast Guard invites your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before September 5, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0597 using the Federal eRulemaking Portal at *https://www.regulations.gov*. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Marine Science Technician First Class Mara J. Brown, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191 (ext. 8151), email *Mara.J.Brown@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard proposes to revise the Recurring Marine Events in the geographic boundaries of the Seventh Coast Guard District Captain of the Port (COTP) St. Petersburg Zone that are listed in 33 CFR 100.703, Table 1 to § 100.703. The proposed change is to Line No. 6 located under Date/time, existing as "One Sunday in September; Time (Approximate): 11:30 a.m. to 4 p.m." The event sponsor has changed the duration of the event to a two-day event; revising the Date/time as "One weekend (Saturday and Sunday) in September; Time (Approximate): 8 a.m. to 4 p.m."

The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70041.

III. Discussion of Proposed Rule

This rule proposes to make the following changes in 33 CFR 100.703:

1. Revise Table 1 to § 100.703, Line No. 6, to reflect a date and time change.

Marine events listed in Table 1 to § 100.703 are listed as recurring over a particular time, during each month and each year. Exact dates are intentionally omitted since calendar dates for specific