

derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction.

(4) Disclosure is not required with respect to any prohibited tax shelter transaction entered into by a tax-exempt entity on or before May 17, 2006.

(f) *Penalty for failure to provide disclosure statement.* See section 6652(c)(3) for penalties applicable to failure to disclose a prohibited tax shelter transaction in accordance with this section.

(g) *Effective date*—(1) *Applicability date.* This section applies with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

(2) *Expiration date.* This section will expire on July 6, 2010.

## PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 3.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 4.** Section 301.6033-5T is added to read as follows:

### § 301.6033-5T Disclosure by tax-exempt entities that are parties to certain reportable transactions (temporary).

(a) *In general.* For provisions relating to the requirement of the disclosure by a tax-exempt entity that it is a party to certain reportable transactions, see § 1.6033-5T of this chapter (Income Tax Regulations).

(b) *Effective date*—(1) *Applicability date.* This section applies with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

(2) *Expiration date.* This section will expire on July 5, 2010.

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

Approved: June 21, 2007.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 53 and 54

[TD 9334]

RIN 1545-BG20

#### Requirement of Return and Time for Filing

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations providing guidance relating to the requirement of a return to accompany payment of excise taxes under section 4965 of the Internal Revenue Code (Code) and the time for filing that return. These regulations affect a broad array of tax-exempt entities, including charities, state and local government entities, Indian tribal governments and employee benefit plans, as well as entity managers of these entities. This action is necessary to implement section 516 of the Tax Increase Prevention and Reconciliation Act of 2005. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective date.* These regulations are effective on July 6, 2007.

*Applicability date.* For dates of applicability, see §§ 53.6071-1T(g) and 54.6011-1T(c) of these regulations.

**FOR FURTHER INFORMATION CONTACT:** Galina Kolomietz, (202) 622-6070, Michael Blumenfeld, (202) 622-1124, or Dana Barry, (202) 622-6060 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109-222 (120 Stat. 345) (TIPRA), enacted on May 17, 2006, added section 4965 to the Code. Section 4965 affects a broad array of tax-exempt entities as defined in section 4965(c). Tax-exempt entities described in section 4965(c)(1), (2), or (3) (referred to herein as “non-plan entities”) include entities described in section 501(c), religious or apostolic associations or corporations described in section 501(d), entities described in section 170(c), including states, possessions of the United States, the District of Columbia, political subdivisions of states and political subdivisions of possessions of the United States (but not including the

United States), and Indian tribal governments within the meaning of section 7701(a)(40). Tax-exempt entities described in section 4965(c)(4), (c)(5), (c)(6), or (c)(7) (referred to herein as “plan entities”) include tax-favored retirement plans, individual retirement arrangements, and savings arrangements described in section 401(a), 403(a), 403(b), 529, 457(b), 408(a), 220(d), 408(b), 530 or 223(d).

Section 4965 imposes two new excise taxes, one on the tax-exempt entity (the entity-level tax) and the other on certain of the tax-exempt entity’s managers (the manager-level tax). The entity-level tax is imposed on non-plan entities that are parties to prohibited tax shelter transactions. The entity-level tax does not apply to plan entities. Prohibited tax shelter transactions are transactions that are identified by the IRS as “listed transactions” (within the meaning of section 6707A(c)(2)) and reportable transactions that are confidential transactions or transactions with contractual protection (as defined in section 6707A(c)(1) and § 1.6011-4(b) of this chapter).

The entity-level tax applies to each taxable year during which the non-plan entity is a party to a prohibited tax shelter transaction and has net income or proceeds attributable to the transaction which are properly allocable to that taxable year. The amount of the entity-level tax depends on whether the non-plan entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction. If the non-plan entity did not know (and did not have reason to know) that the transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction, the tax is the highest rate of tax under section 11 (currently 35 percent) multiplied by the greater of: (i) The entity’s net income with respect to the prohibited tax shelter transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year or (ii) 75 percent of the proceeds received by the entity for the taxable year that are attributable to such transaction. If the non-plan entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction, the tax is the greater of (i) 100 percent of the entity’s net income with respect to the transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year or (ii) 75 percent of the

proceeds received by the entity for the taxable year that are attributable to such transaction. In the case of a transaction that becomes a prohibited tax shelter transaction by reason of becoming a listed transaction after the non-plan entity has become a party to such transaction (subsequently listed transactions), the amount of tax is based on the net income or proceeds attributable to such transaction that are properly allocable to the period beginning on the date the transaction became listed or the first day of the entity's taxable year, whichever is later. No entity-level tax applies to any income or proceeds that are properly allocable to a period ending on or before August 15, 2006.

The manager-level tax is imposed on entity managers (as defined in section 4965(d)) of all tax-exempt entities described in section 4965(c) who approve the entity as a party (or otherwise cause the entity to be a party) to a prohibited tax shelter transaction and know or have reason to know that the transaction is a prohibited tax shelter transaction. In the case of non-plan entities, the term *entity manager* means the person with authority or responsibility similar to that exercised by an officer, director or trustee, and, with respect to any act, the person having authority or responsibility with respect to such act. In the case of plan entities, the term *entity manager* means the person who approves or otherwise causes the entity to be a party to the prohibited tax shelter transaction. An individual beneficiary (including a plan participant) or owner of the tax-favored retirement plans, individual retirement arrangements, and savings arrangements described in section 401(a), 403(a), 403(b), 529, 457(b), 408(a), 220(d), 408(b), 530 or 223(d), may be liable as an entity manager if the individual beneficiary or owner has broad investment authority under the arrangement. The amount of the manager-level tax is \$20,000 for each approval or other act causing the entity to be a party to a prohibited tax shelter transaction. The manager-level tax applies separately to each entity manager.

These final and temporary regulations are being issued concurrently with proposed regulations under sections 4965, 6033(a)(2) and 6011(g) published elsewhere in the **Federal Register**.

#### Explanation of Provisions

The regulations provide that non-plan entities (including exempt organizations and governments) that are liable for section 4965 excise taxes and entity managers of non-plan entities who are

liable for section 4965 excise taxes as entity managers are required to file a return on Form 4720, "Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code." The entity return is due on or before the date the non-plan entity's annual return under section 6033(a)(1) (for example, Form 990, "Return of Organization Exempt From Income Tax") is due, if the non-plan entity is required to file such a return. In all other cases, the entity return is due on or before the 15th day of the fifth month after the end of the non-plan entity's accounting period for which the liability under section 4965 was incurred. In the case of a non-plan entity manager, the entity manager return is due on or before the 15th day of the fifth month following the close of the manager's taxable year during which the entity entered into a prohibited tax shelter transaction.

The regulations also provide that entity managers of plan entities who are liable for section 4965 taxes as entity managers are required to file a return on Form 5330, "Return of Excise Taxes Related to Employee Benefit Plans." For section 4965 taxes, the Form 5330 is due on or before the 15th day of the fifth month following the close of the manager's taxable year during which the entity entered into a prohibited tax shelter transaction.

The regulations provide a transition rule that returns of section 4965 taxes that are or were due on or before October 4, 2007 will be deemed timely if the return is filed and the tax is paid before that date.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on business.

#### Drafting Information

The principal authors of these regulations are Galina Kolomietz and Dana Barry, Office of Division Counsel/

Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

#### List of Subjects

##### 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

##### 26 CFR Part 54

Excise Taxes, Pensions, Reporting and recordkeeping requirements.

#### Amendments to the Regulations

■ Accordingly, 26 CFR parts 53 and 54 are amended as follows:

#### PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 53 continues to read in part as follows:

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

##### § 53.6011–1 [Amended]

■ **Par. 2.** In § 53.6011–1, paragraph (b) is amended by:

■ 1. Removing from the first sentence, the language "or 4958(a)," and adding "4958(a), or 4965(a)," in its place.

■ 2. Removing from the last sentence, the language "or 4958(a)," and adding "4958(a), or 4965(a)," in its place.

■ **Par. 3.** Section 53.6071–1 is amended by adding and reserving paragraph (g) and adding paragraph (h) to read as follows:

##### § 53.6071–1 Time for filing returns.

\* \* \* \* \*

(g) [Reserved]. For further guidance, see § 53.6071–1T(g).

(h) *Effective/applicability date.* For the applicability date of paragraph (g) of this section, see § 53.6071–1T(h).

■ **Par. 4.** Section 53.6071–1T is added to read as follows:

##### § 53.6071–1T Time for filing returns (temporary).

(a) through (f) [Reserved]. For further guidance, see § 53.6071–1(a) through (f).

(g) *Taxes imposed with respect to prohibited tax shelter transactions to which tax-exempt entities are parties—*

(1) *Returns by certain tax-exempt entities.* A Form 4720, "Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code," required by § 53.6011–1(b) for a tax-exempt entity described in section 4965(c)(1), (c)(2) or (c)(3) that is a party to a prohibited tax shelter transaction and is liable for tax imposed by section 4965(a)(1) shall be filed on or before the

due date (not including extensions) for filing the tax-exempt entity's annual information return under section 6033(a)(1). If the tax-exempt entity is not required to file an annual information return under section 6033(a)(1), the Form 4720 shall be filed on or before the 15th day of the fifth month after the end of the tax-exempt entity's taxable year or, if the entity has not established a taxable year for Federal income tax purposes, the entity's annual accounting period.

(2) *Returns by entity managers of tax-exempt entities described in section 4965(c)(1), (c)(2) or (c)(3).* A Form 4720, required by § 53.6011-1(b) for an entity manager of a tax-exempt entity described in section 4965(c)(1), (c)(2) or (c)(3) who is liable for tax imposed by section 4965(a)(2) shall be filed on or before the 15th day of the fifth month following the close of the entity manager's taxable year during which the entity entered into the prohibited tax shelter transaction.

(3) *Transition rule.* A Form 4720, for a section 4965 tax that is or was due on or before October 4, 2007 will be deemed to have been filed on the due date if it is filed by October 4, 2007 and if all section 4965 taxes required to be reported on that Form 4720 are paid by October 4, 2007.

(h) *Effective/applicability date—(1) In general.* Paragraph (g) of this section is applicable on July 6, 2007.

(2) *Expiration date.* Paragraph (g) of this section will cease to apply on July 6, 2010.

## PART 54—PENSION EXCISE TAXES

■ **Par. 5.** The authority citation for part 54 continues to read in part as follows:

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

■ **Par. 6.** Section 54.6011-1 is amended by adding and reserving paragraph (c) and adding paragraph (d) to read as follows:

### § 54.6011-1 General requirement of return, statement, or list.

\* \* \* \* \*

(c) [Reserved]. For further guidance, see § 54.6011-1T(c).

(d) *Effective/applicability date.* For the applicability date of paragraph (c) of this section, see § 54.6011-1T(d).

■ **Par. 7.** Section 54.6011-1T is amended as follows:

■ 1. The undesignated text is designated as paragraph (a) and a paragraph heading is added.

■ 2. Paragraph (b) is added and reserved.

■ 3. Paragraphs (c) and (d) are added.

### § 54.6011-1T General requirement of return, statement or list (temporary).

(a) *Tax on reversions of qualified plan assets to employer.* \* \* \*

(b) [Reserved].

(c) *Entity manager tax on prohibited tax shelter transactions—(1) In general.* Any entity manager of a tax-exempt entity described in section 4965(c)(4), (c)(5), (c)(6), or (c)(7) who is liable for tax under section 4965(a)(2) shall file a return on Form 5330, "Return of Excise Taxes Related to Employee Benefit Plans," on or before the 15th day of the fifth month following the close of such entity manager's taxable year during which the entity entered into the prohibited tax shelter transaction, and shall include therein the information required by such form and the instructions issued with respect thereto.

(2) *Transition rule.* A Form 5330, "Return of Excise Taxes Related to Employee Benefit Plans," for an excise tax under section 4965 that is or was due on or before October 4, 2007 will be deemed to have been filed on the due date if it is filed by October 4, 2007 and if the section 4965 tax that was required to be reported on that Form 5330 is paid by October 4, 2007.

(d) *Effective/applicability date—(1) In general.* Paragraph (c) of this section is applicable on July 6, 2007.

(2) *Expiration date.* Paragraph (c) of this section will expire on July 5, 2010.

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

Approved: June 21, 2007.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1625

**RIN 3046-AA78**

### Coverage Under the Age Discrimination in Employment Act

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission ("EEOC" or "Commission") is publishing this final rule to amend its Age Discrimination in Employment Act (the "Act" or "ADEA") regulations to conform them to the Supreme Court's holding in *General Dynamics Land System, Inc. v. Cline*,

540 U.S. 581 (2004), that the ADEA only prohibits discrimination based on relatively older age, not discrimination based on age generally. Thus, the final rule deletes language in EEOC's ADEA regulations that prohibited discrimination against relatively younger individuals. The new rule explains that the ADEA only prohibits employment discrimination based on old age and, therefore, does not prohibit employers from favoring relatively older individuals.

**DATES:** Effective date July 6, 2007.

### FOR FURTHER INFORMATION CONTACT:

Raymond Peeler, Senior Attorney Advisor, Office of Legal Counsel, at (202) 663-4537 (voice) or (202) 663-7026 (TTY) (These are not toll free numbers). This final rule also is available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this final rule in an alternative format should be made to the Publications Information Center at 1-800-669-3362.

**SUPPLEMENTARY INFORMATION:** On August 11, 2006, the EEOC published a Notice of Proposed Rulemaking ("NPRM") in the **Federal Register** to amend regulations that prohibited any age-based discrimination against individuals forty years old or older, regardless of whether the age-bias favored older or younger individuals.<sup>1</sup> Relying on the Supreme Court's decision in *General Dynamics Land System, Inc. v. Cline*, 540 U.S. 581 (2004),<sup>2</sup> the NPRM explained that the ADEA protects only relatively older individuals.

### Overview of Public Comments

The Commission received nine public comments during the public comment period, which ended on October 10, 2006. Six commenters strongly supported the proposed rule: AARP, National Employment Lawyers Association (NELA), Equal Employment Advisory Counsel (EEAC), U.S. Chamber of Commerce, TOC Management Services, and the National Federation of Independent Business (NFIB). Two federal employee unions opposed the rule. The Conference

<sup>1</sup> EEOC Notice of Proposed Rulemaking, 71 FR 46177, Aug. 11, 2006.

<sup>2</sup> In *Cline*, a group of employees between the ages of forty and forty-nine sued their employer for age discrimination when it eliminated its future obligation to pay retiree health benefits for any employee then under fifty years old. The Supreme Court rejected their claim, finding that the ADEA's prohibition against discrimination "because of age" only prevents discrimination that favors younger workers, not actions that place older workers in a more favorable position. The Court's rationale is described in detail in the NPRM. See 71 FR at 46178.