



STATE OF CALIFORNIA
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FTB NOTICE 2005-7

December 23, 2005

**SUBJECT: Information Reporting Requirements for Material Advisors
Pursuant to Revenue and Taxation Code Section 18628,
as Amended by AB 115; Conformity to IRC Section 6111**

The purpose of this Notice is to provide guidance regarding the obligations of material advisors to file reportable transactions information returns as required under Revenue and Taxation Code section 18628. This Notice explains that the Franchise Tax Board will generally follow corresponding federal interpretations and procedures relating to material advisors filing information returns required under Internal Revenue Code section 6111, including Internal Revenue Service (IRS) Notices 2004-80 (2004-50 I.R.B. 963) and 2005-22 (2005-12 I.R.B. 756), to the extent they do not conflict with any California rules or procedures. These IRS Notices also address rules and procedures relating to Internal Revenue Code sections 6112 and 6708; those sections are not addressed in this Notice.

Applicable Law

The American Jobs Creation Act ("AJCA") of 2004 (Pub.L. No. 108-357, 118 Stat. 1418) amended Internal Revenue Code section 6111 to require material advisors to file a reportable transactions information return. This reportable transactions information return must set forth information identifying and describing the transaction and any potential tax benefits expected to result from the transaction. In IRS Notice 2004-80, as clarified and modified by IRS Notice 2005-22, the IRS designated Form 8264 for this purpose. Until the Treasury Department issues regulations under Internal Revenue Code section 6111, as amended, these IRS Notices provide interim guidance rules implementing that section.

IRS Notice 2004-80 provides that until Form 8264 is revised or a successor form is issued, a material advisor required to file a return with respect to a reportable transaction must complete only Parts I (except item 1(b)), IV and V of Form 8264. The IRS Notice also revises the instructions to Form 8264 and provides further guidance in filing Form 8264 to comply with the new reporting requirements of Internal Revenue Code section 6111. According to IRS Notice 2004-80, a material advisor may file a single Form 8264 for substantially similar transactions, but if the information provided is no longer accurate or additional required information not previously disclosed in Form 8264 becomes available, the material advisor must supplement the Form 8264. Finally, the IRS Notice provides that if a person registered a reportable transaction under the provisions of former Internal Revenue Code section 6111 prior to October 22, 2004, that registration satisfies the disclosure requirements under that section as amended,

providing the material advisor amends the previous registration to reflect any information required under IRS Notice 2004-80.

IRS Notice 2005-22 specifies that a material advisor may not further modify Form 8264 beyond the instructions outlined in IRS Notice 2004-80. IRS Notice 2005-22 also provides that a person becomes a material advisor under Internal Revenue Code section 6111 when all of the following events have occurred: (1) the material advisor makes a tax statement, (2) the material advisor receives (or expects to receive) fees in excess of the threshold amount, and (3) the transaction is entered into by the taxpayer. Finally, the IRS Notice addresses tolling of the due dates for filing a reportable transactions information return by a potential material advisor if the advisor requests a letter ruling.

Revenue and Taxation Code section 18628, as amended by AB 115 (Stats. 2005, Ch. 691, § 42.5), conforms to Internal Revenue Code section 6111, except as otherwise provided. Revenue and Taxation Code section 18628, as amended, now requires a material advisor to send a duplicate of the federal return, if applicable, or the same information required on the federal reportable transactions return for California reportable transactions, to the Franchise Tax Board by specified dates. This requirement applies to any material advisor, with respect to any reportable transaction defined in Internal Revenue Code section 6707A(c), who satisfies any one of the following requirements:

1. Is organized in this state;
2. Is doing business in this state;
3. Derives income from sources in this state; or
4. Provides any material aid, assistance or advice with respect to organizing, managing, promoting, selling, implementing, insuring or carrying out any reportable transaction, with respect to any taxpayer who is either organized in this state, does business in this state, or derives income from sources in this state.

Revenue and Taxation Code section 18628 further provides that for any transaction entered into on or after February 28, 2000, which becomes a listed transaction (as defined under Internal Revenue Code section 6707A(c)(2)) at any time, the material advisor must file the required return by the later of: (1) 60 days after entering into the transaction; (2) 60 days after the transaction becomes a listed transaction; or (3) 60 days after the effective date of the act amending Revenue and Taxation Code section 18628. The effective date of AB 115 was October 7, 2005. Thus, the deadline for filing Forms 8264 for a listed transaction was December 6, 2005. Moreover, the same filing deadlines apply to any transaction entered into on or after September 2, 2003, that is specifically identified at any time by the Franchise Tax Board for California income or franchise tax purposes as a listed transaction.

Procedures

For purposes of meeting California's reportable transactions disclosure requirements under Revenue and Taxation Code section 18628, as amended, material advisors must file IRS Form 8264 with the Franchise Tax Board as follows:

- For Forms 8264 filed, or required to be filed, with the IRS during 2005, where the material advisor became a material advisor with respect to a reportable transaction between January 1, 2005, and September 30, 2005, or where the material advisor became a material advisor during the fourth quarter of 2005, with respect to a reportable transaction, provide a copy of Form 8264, or a Form 8264 completed on a California-only basis if there is a filing requirement under California law but not under federal law, on or before January 31, 2006. The Form 8264 must be completed as instructed in IRS Notice 2004-80, as clarified and modified by IRS Notice 2005-22.
- For filings due on or after January 1, 2006, provide a copy of Form 8264, or a Form 8264 completed on a California-only basis if there is a filing requirement under California law but not under federal law, on the same date Form 8264 is required to be filed with the IRS for reportable transactions. Currently, IRS Notice 2005-22 provides that until further guidance is issued, a material advisor must file Form 8264 by the last day of the month that follows the end of the calendar quarter in which the advisor became a material advisor with respect to a reportable transaction. For listed transactions, the Form 8264 is due by the later of 60 days after entering into the transaction or 60 days after the transaction becomes listed.

- **Where to Send**

Mail IRS Form 8264 to:

Tax Shelter Filing
Franchise Tax Board
PO Box 1673
Sacramento, CA 95812-1673

Private Courier Services

Tax Shelter Filing
Franchise Tax Board
Sacramento, CA 95827

Where a material advisor is required to file a Form 8264 with the Franchise Tax Board under the provisions of Revenue and Taxation Code section 18628 as amended by AB 115, and that person registered the transaction under Revenue and Taxation Code section 18628 as it existed prior to the amendments made by AB 115, the material advisor is not required to file an amended or duplicate Form 8264 for the same transaction. However, the material advisor must supplement information provided on a previously filed Form 8264 if the information is no longer accurate or if additional required information that was not disclosed on Form 8264 becomes available.

If more than one material advisor is required to file a Form 8264 for the same transaction, the material advisors may designate by written agreement a single material advisor to file Form 8264. The designated material advisor should attach the designation agreement to the Form 8264. The designation of one material advisor to file Form 8264 with the Franchise Tax Board does not relieve the other material advisors from their obligation to file Form 8264 (including amendments thereto) if the designated material advisor fails to file Form 8264 (including amendments thereto) with the Franchise Tax Board as instructed above.

If a material advisor sends to the Franchise Tax Board a copy of a request for a letter ruling filed with the IRS on or before the date the information return is due with respect to a particular transaction, the Franchise Tax Board will suspend the due date for disclosing that transaction as required under Revenue and Taxation Code section 18628, until 60 days from the date of the IRS ruling that the transaction is a reportable transaction subject to the reporting requirements under Internal Revenue section 6111, or if the request is withdrawn, 60 days from the date of the request to withdraw.

The principal author of this notice is Craig L. Scott of the Franchise Tax Board, Legal Branch. For further information regarding this notice, contact Mr. Scott at P.O. Box 1720, Rancho Cordova, CA 95741-1720.