

Internal Revenue Service

June 7, 2006

CC:PA:LPD:PR (RP 2005-26)
Room 5203,
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Sent via email to notice.comments@irs.counsel.treas.gov

Re: Rev. Proc. 2005-26

From: Committee of Banking Institutions on Taxation

Rev. Proc. 2005-26 provides guidance to taxpayers who are subject to the Code Sec. 6501(c)(10) extended limitations period for assessment with regard to listed transactions the taxpayers failed to disclose. The last paragraph of that Rev. Proc. states that the IRS is seeking comments regarding the new procedures, including the application of these procedures to partners and partnerships.

The Committee of Banking Institutions on Taxation (CBIT) was established in 1918 for national and state banks, trust companies, private banking institutions and institutional banks to cooperate in the administration of tax laws and to act as a clearing house for communications to Federal tax authorities. At present, there are 144 members representing 60 firms. I am writing on behalf of our members.

Treasury Regulations Section 1.6011-4 requires taxpayers to disclose their participation in certain reportable transactions. Some of these are the listed transactions referenced in Rev. Proc. 2005-26 as well as transactions offered under conditions of confidentiality, contractual protection or involving loss deductions in excess of certain thresholds. The 2004 Tax Act enacted substantial penalties for non-compliance and forbade the IRS from waiving penalties.

This comment only addresses reportable transactions which occur within partnerships or pass-through entities which are owned by trusts. As we read the regulations, if there is a reportable transaction in one of the funds organized as a partnership, not only must the partnership report this to the IRS, but the trust and trust beneficiary must also report the transaction to the IRS. In many cases these partnership investments are funds of funds so that there can be multiple transactions to be reported flowing from one investment.

We feel that this creates a needless burden on taxpayers. Whenever there are reportable transactions that originate within a pass-through entity, there will be duplicative reporting of all of these transactions with respect to transactions which have already been reported at the pass-through entity level. The non-waivable penalties are \$100,000 for individuals and \$200,000 for trusts. This risk seems unreasonable since the IRS has already been notified of the transaction by the partnership. Moreover, in most cases, the trusts holding

these investments have relatively small amounts of income and deductions flowing through from the partnerships.

The following is our analysis of the filing requirements of just two partnership investments we have found. The result is a tax return over an inch thick.

X LLC:

Besides picking up the normal partnership K-1 income and expenses, each owner of the X partnership is required to attach to their Federal tax returns completed copies of 10 separate Forms 8886, 5 or 6 separate Forms 8621 and a Form 8271. Also, each owner is required to send additional copies of the 10 separate Forms 8886 to the Internal Revenue Service in Washington, DC.

Y Hedge Fund:

Again, besides picking up the normal partnership K-1 income and expenses, each owner of the Y Hedge Fund is required to attach to their Federal tax returns completed copies of 9 separate Forms 8886 and a Form 8621. Each owner is also required to send additional copies of the 9 separate Forms 8886 to the Internal Revenue Service in Washington,

Note: for each trust that owns the X and/or Y partnerships, the trust's Form 1041 tax return will require the addition of the forms shown above, and each beneficiary receiving a trust K-1 will also be required to attach completed copies of the Forms 8886 to their personal tax returns. Also, the beneficiaries will have the additional filing of the 8886 forms with the IRS in Washington, DC.

In some cases, there are several hundred trusts holding these investments in our individual institutions. Because of these additional filing requirements, all these returns are ineligible for electronic filing. In addition, compliance with these regulations can add days to the preparation of a return.

We fully support the war on tax shelters and understand the need to have full disclosure by taxpayers. Our trusts are typically passive investors who have no involvement or authority to determine what the partnership invests in or how it is reported for tax purposes. Moreover, we believe that the IRS already has the reportable transactions disclosure information from the partnerships.

Therefore we seek clarification that additional reporting of these transactions by trusts and their beneficiaries is not required when the partnership or other pass-through entity has reported the transaction.

Sincerely,

Charles Peterson
Senior Vice President - US Trust – telephone number 212-852-3863
On behalf of the Committee of Banking Institutions on Taxation