Reg. Section 301.6501(c)-1(f)(2)(iv)

Exceptions to general period of limitations on assessment and collection

(a)False return. In the case of a false or fraudulent return with intent to evade any tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after such false or fraudulent return is filed.

(b)Willful attempt to evade tax. In the case of a willful attempt in any manner to defeat or evade any tax imposed by the Code (other than a tax imposed by subtitle A or B, relating to income, estate, or gift taxes), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c)No return. In the case of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after the date prescribed for filing the return. For special rules relating to filing a return for chapter 42 and similar taxes, see §§301.6501(n)-1, 301.6501(n)-2, and 301.6501(n)-3.

(d)Extension by agreement. The time prescribed by section 6501 for the assessment of any tax (other than the estate tax imposed by chapter 11 of the Code) may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the taxpayer and the district director or an assistant regional commissioner. The extension shall become effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(e)Gifts subject to chapter 14 of the Internal Revenue Code not adequately disclosed on the return.

(1)In general. If any transfer of property subject to the special valuation rules of section 2701 or section 2702, or if the occurrence of any taxable event described in section §25.2701-4 of this chapter, is not adequately shown on a return of tax imposed by chapter 12 of subtitle B of the Internal Revenue Code (without regard to section 2503(b)), any tax imposed by chapter 12 of subtitle B of the Code on the transfer or resulting from the taxable event may be assessed, or a proceeding in court for the collection of the appropriate tax may be begun without assessment, at any time.

(2)Adequately shown. A transfer of property valued under the rules of section 2701 or section 2702 or any taxable event described in §25.2701-4 of this chapter will be considered adequately shown on a return of tax imposed by chapter 12 of subtitle B of the Internal Revenue Code only if, with respect to the entire transaction of series of transactions (including any transaction that affected the transferred interest) of which the transfer (or taxable event) was a part, the return provides:

(i) A description of the transactions, including a description of transferred and retained interests and the method (or methods) used to value each;

(ii) The identity of, and relationship between, the transferor, transferee, all other persons participating in the transactions, and all parties related to the transferor holding an equity interest in any entity involved in the transactions; and

(iii) A detailed description (including all actuarial factors and discount rates used) of the method used to determine the amount of the gift arising from the transfer (or taxable event), including, in the case of an equity interest that is not actively traded, the financial and other data used in determining value. Financial data should generally include balance sheets and statements of net earnings, operating results, and dividends paid for each of the 5 years immediately before the valuation date.

(3)Effective date. The provisions of this paragraph (e) are effective as of January 28, 1992. In determining whether a transfer or taxable event is adequately shown on a gift tax return filed prior to that date, taxpayers may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of the proposed regulations and the final regulations are considered a reasonable interpretation of the statutory provisions.

(f)Gifts made after December 31, 1996, not adequately disclosed on the return.

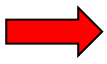
(1)In general. If a transfer of property, other than a transfer described in paragraph (e) of this section, is not adequately disclosed on a gift tax return (Form 709, "United States Gift (and Generation-Skipping Transfer) Tax Return"), or in a statement attached to the return, filed for the calendar period in which the transfer occurs, then any gift tax imposed by chapter 12 of subtitle B of the Internal Revenue Code on the transfer may be assessed, or a proceeding in court for the collection of the appropriate tax may be begun without assessment, at any time.

(2)Adequate disclosure of transfers of property reported as gifts. A transfer will be adequately disclosed on the return only if it is reported in a manner adequate to apprise the Internal Revenue Service of the nature of the gift and the basis for the value so reported. Transfers reported on the gift tax return as transfers of property by gift will be considered adequately disclosed under this paragraph (f)(2) if the return (or a statement attached to the return) provides the following information-

(i) A description of the transferred property and any consideration received by the transferor;

(ii) The identity of, and relationship between, the transferor and each transferee;

(iii) If the property is transferred in trust, the trust's tax identification number and a brief description of the terms of the trust, or in lieu of a brief description of the trust terms, a copy of the trust instrument;



(iv) Except as provided in §301.6501-1(f)(3), a detailed description of the method used to determine the fair market value of property transferred, including any financial data (for example, balance sheets, etc. with explanations of any adjustments) that were utilized in determining the value of the interest, any

restrictions on the transferred property that were considered in determining the fair market value of the property, and a description of any discounts, such as discounts for blockage, minority or fractional interests, and lack of marketability, claimed in valuing the property. In the case of a transfer of an interest that is actively traded on an established exchange, such as the New York Stock Exchange, the American Stock Exchange, the NASDAQ National Market, or a regional exchange in which quotations are published on a daily basis, including recognized foreign exchanges, recitation of the exchange where the interest is listed, the CUSIP number of the security, and the mean between the highest and lowest quoted selling prices on the applicable valuation date will satisfy all of the requirements of this paragraph (f)(2)(iv). In the case of the transfer of an interest in an entity (for example, a corporation or partnership) that is not actively traded, a description must be provided of any discount claimed in valuing the interests in the entity or any assets owned by such entity. In addition, if the value of the entity or of the interests in the entity is properly determined based on the net value of the assets held by the entity, a statement must be provided regarding the fair market value of 100 percent of the entity (determined without regard to any discounts in valuing the entity or any assets owned by the entity), the pro rata portion of the entity subject to the transfer, and the fair market value of the transferred interest as reported on the return. If 100 percent of the value of the entity is not disclosed, the taxpayer bears the burden of demonstrating that the fair market value of the entity is properly determined by a method other than a method based on the net value of the assets held by the entity. If the entity that is the subject of the transfer owns an interest in another non-actively traded entity (either directly or through ownership of an entity), the information required in this paragraph (f)(2)(iv) must be provided for each entity if the information is relevant and material in determining the value of the interest; and

(v) A statement describing any position taken that is contrary to any proposed, temporary or final Treasury regulations or revenue rulings published at the time of the transfer (see §601.601(d)(2) of this chapter).

(3)Submission of appraisals in lieu of the information required under paragraph (f)(2)(iv) of this section. The requirements of paragraph (f)(2)(iv) of this section will be satisfied if the donor submits an appraisal of the transferred property that meets the following requirements-

(i) The appraisal is prepared by an appraiser who satisfies all of the following requirements:

(A) The appraiser is an individual who holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis.

(B) Because of the appraiser's qualifications, as described in the appraisal that details the appraiser's background, experience, education, and membership, if any, in professional appraisal associations, the appraiser is qualified to make appraisals of the type of property being valued.

(C) The appraiser is not the donor or the donee of the property or a member of the family of the donor or donee, as defined in section

2032A(e)(2), or any person employed by the donor, the donee, or a member of the family of either; and

(ii) The appraisal contains all of the following:

(A) The date of the transfer, the date on which the transferred property was appraised, and the purpose of the appraisal.

(B) A description of the property.

(C) A description of the appraisal process employed.

(D) A description of the assumptions, hypothetical conditions, and any limiting conditions and restrictions on the transferred property that affect the analyses, opinions, and conclusions.

(E) The information considered in determining the appraised value, including in the case of an ownership interest in a business, all financial data that was used in determining the value of the interest that is sufficiently detailed so that another person can replicate the process and arrive at the appraised value.

(F) The appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

(G) The valuation method utilized, the rationale for the valuation method, and the procedure used in determining the fair market value of the asset transferred.

(H) The specific basis for the valuation, such as specific comparable sales or transactions, sales of similar interests, asset-based approaches, merger-acquisition transactions, etc.

(4)Adequate disclosure of non-gift completed transfers or transactions. Completed transfers to members of the transferor's family, as defined in section 2032A(e)(2), that are made in the ordinary course of operating a business are deemed to be adequately disclosed under paragraph (f)(2) of this section, even if the transfer is not reported on a gift tax return, provided the transfer is properly reported by all parties for income tax purposes. For example, in the case of salary paid to a family member employed in a family owned business, the transfer will be treated as adequately disclosed for gift tax purposes if the item is properly reported by the business and the family member on their income tax returns. For purposes of this paragraph (f)(4), any other completed transfer that is reported, in its entirety, as not constituting a transfer by gift will be considered adequately disclosed under paragraph (f)(2) of this section only if the following information is provided on, or attached to, the return-

(i) The information required for adequate disclosure under paragraphs (f)(2)(i), (ii), (iii) and (v) of this section; and

(ii) An explanation as to why the transfer is not a transfer by gift under chapter 12 of the Internal Revenue Code.

(5)Adequate disclosure of incomplete transfers. Adequate disclosure of a transfer that is reported as a completed gift on the gift tax return will commence the running of the period of limitations for assessment of gift tax on the transfer, even if the transfer is ultimately determined to be an incomplete gift for purposes of §25.2511-2 of this chapter. For example, if an incomplete gift is reported as a completed gift on the gift tax return and is adequately disclosed, the period for assessment of the gift tax will begin to run when the return is filed, as determined under section 6501(b). Further, once the period of assessment for gift tax expires, the transfer will be subject to inclusion in the donor's gross estate for estate tax purposes only to the extent that a completed gift would be so included. On the other hand, if the transfer is reported as an incomplete gift whether or not adequately disclosed, the period for assessing a gift tax with respect to the transfer will not commence to run even if the transfer is ultimately determined to be a completed gift. In that situation, the gift tax with respect to the transfer may be assessed at any time, up until three years after the donor files a return reporting the transfer as a completed gift with adequate disclosure.

(6)Treatment of split gifts. If a husband and wife elect under section 2513 to treat a gift made to a third party as made one-half by each spouse, the requirements of this paragraph (f) will be satisfied with respect to the gift deemed made by the consenting spouse if the return filed by the donor spouse (the spouse that transferred the property) satisfies the requirements of this paragraph (f) with respect to that gift.

(7)Examples. The following examples illustrate the rules of this paragraph (f):
Example (1).

(i) Facts. In 2001, A transfers 100 shares of common stock of XYZ Corporation to A's child. The common stock of XYZ Corporation is actively traded on a major stock exchange. For gift tax purposes, the fair market value of one share of XYZ common stock on the date of the transfer, determined in accordance with §25.2512-2(b) of this chapter (based on the mean between the highest and lowest quoted selling prices), is $150.00. On A's Federal gift tax return, Form 709, for the 2001 calendar year, A reports the gift to A's child of 100 shares of common stock of XYZ Corporation with a value for gift tax purposes of $15,000. A specifies the date of the transfer, recites that the stock is publicly traded, identifies the stock exchange on which the stock is traded, lists the stock's CUSIP number, and lists the mean between the highest and lowest quoted selling prices for the date of transfer.

(ii) Application of the adequate disclosure standard. A has adequately disclosed the transfer. Therefore, the period of assessment for the transfer under section 6501 will run from the time the return is filed (as determined under section 6501(b)).

Example (2).

(i) Facts. On December 30, 2001, A transfers closely-held stock to B, A's child. A determined that the value of the transferred stock, on December 30, 2001, was $9,000. A made no other transfers to B, or any other donee, during 2001. On A's Federal gift tax return, Form 709, for the 2001 calendar year, A provides the information required under paragraph (f)(2) of this section such that the transfer is adequately disclosed. A claims an annual exclusion under section 2503(b) for the transfer.

(ii) Application of the adequate disclosure standard. Because the transfer is adequately disclosed under paragraph (f)(2) of this section, the period of assessment for the transfer will expire as prescribed by section 6501(b), notwithstanding that if A's valuation of the closely-held stock was correct, A was not required to file a gift tax return reporting the transfer under section 6019. After the period of assessment has expired on the transfer, the Internal Revenue Service is precluded from redetermining the amount of the gift for purposes of assessing gift tax or for purposes of determining the estate tax liability. Therefore, the amount of the gift as reported on A's 2001 Federal gift tax return may not be redetermined for purposes of determining A's prior taxable gifts (for gift tax purposes) or A's adjusted taxable gifts (for estate tax purposes).

Example (3).

(i) Facts. A owns 100 percent of the common stock of X, a closely-held corporation. X does not hold an interest in any other entity that is not actively traded. In 2001, A transfers 20 percent of the X stock to B and C, A's children, in a transfer that is not subject to the special valuation rules of section 2701. The transfer is made outright with no restrictions on ownership rights, including voting rights and the right to transfer the stock. Based on generally applicable valuation principles, the value of X would be determined based on the net value of the assets owned by X. The reported value of the transferred stock incorporates the use of minority discounts and lack of marketability discounts. No other discounts were used in arriving at the fair market value of the transferred stock or any assets owned by X. On A's Federal gift tax return, Form 709, for the 2001 calendar year, A provides the information required under paragraph (f)(2) of this section including a statement reporting the fair market value of 100 percent of X (before taking into account any discounts), the pro rata portion of X subject to the transfer, and the reported value of the transfer. A also attaches a statement regarding the determination of value that includes a discussion of the discounts claimed and how the discounts were determined.

(ii) Application of the adequate disclosure standard. A has provided sufficient information such that the transfer will be considered adequately disclosed and the period of assessment for the transfer under section 6501 will run from the time the return is filed (as determined under section 6501(b)).

Example (4).

(i) Facts. A owns a 70 percent limited partnership interest in PS. PS owns 40 percent of the stock in X, a closely-held corporation. The assets of X include a 50 percent general partnership interest in PB. PB owns an interest in commercial real property. None of the entities (PS, X, or PB) is actively traded and, based on generally applicable valuation principles, the value of each entity would be determined based on the net value of the assets owned by each entity. In 2001, A transfers a 25 percent limited partnership interest in PS to B, A's child. On the Federal gift tax return, Form 709, for the 2001 calendar year, A reports the transfer of the 25 percent limited partnership interest in PS and that the fair market value of 100 percent of PS is $y and that the value of 25 percent of PS is $z, reflecting marketability and minority discounts with respect to the 25 percent interest. However, A does not disclose that PS owns 40 percent of X, and that X owns 50 percent of PB and that, in arriving at the $y fair market value of 100 percent of PS, discounts were claimed in valuing PS's interest in X, X's interest in PB, and PB's interest in the commercial real property.

(ii) Application of the adequate disclosure standard. The information on the lower tiered entities is relevant and material in determining the value of the transferred interest in PS. Accordingly, because A has failed to comply with requirements of paragraph (f)(2)(iv) of this section regarding PS's interest in X, X's interest in PB, and PB's interest in the commercial real property, the transfer will not be considered adequately disclosed and the period of assessment for the transfer under section 6501 will remain open indefinitely.

Example (5). The facts are the same as in Example 4 except that A submits, with the Federal tax return, an appraisal of the 25 percent limited partnership interest in PS that satisfies the requirements of paragraph (f)(3) of this section in lieu of the information required in paragraph (f)(2)(iv) of this section. Assuming the other requirements of paragraph (f)(2) of this section are satisfied, the transfer is considered adequately disclosed and the period for assessment for the transfer under section 6501 will run from the time the return is filed (as determined under section 6501(b) of this chapter).

Example (6). A owns 100 percent of the stock of X Corporation, a company actively engaged in a manufacturing business. B, A's child, is an employee of X and receives an annual salary paid in the ordinary course of operating X Corporation. B reports the annual salary as income on B's income tax returns. In 2001, A transfers property to family members and files a Federal gift tax return reporting the transfers. However, A does not disclose the 2001 salary payments made to B. Because the salary payments were reported as income on B's income tax return, the salary payments are deemed to be adequately disclosed. The transfer of property to family members, other than the salary payments to B, reported on the gift tax return must satisfy the adequate disclosure requirements under paragraph (f)(2) of this section in order for the period of assessment under section 6501 to commence to run with respect to those transfers.

(8)Effective date. This paragraph (f) is applicable to gifts made after December 31, 1996, for which the gift tax return for such calendar year is filed after December 3, 1999.

(g)Listed transactions.

(1)In general. If a taxpayer is required to disclose a listed transaction under section 6011 and the regulations thereunder and does not do so in the time and manner required, then the time to assess any tax attributable to that listed transaction for the taxable year(s) to which the failure to disclose relates (as defined in paragraph (g)(3)(iii) of this section) will not expire before the earlier of one year after the date on which the taxpayer makes the disclosure described in paragraph (g)(5) of this section or one year after the date on which a material advisor makes a disclosure described in paragraph (g)(6) of this section. In no case will the operation of this paragraph (g) cause the period of limitations on assessment to expire any earlier than the period that would have otherwise applied under this section determined without regard to this paragraph (g)(1).

(2)Limitations period if paragraph (g)(5) or (g)(6) is satisfied. If one of the disclosure provisions described in paragraphs (g)(5) or (6) of this section is satisfied, then the tax attributable to the listed transaction may be assessed at any time before the expiration of the limitations period that would have otherwise applied under this section (determined without regard to paragraph (g)(1) of this section) or the period ending one year after the date that one of the disclosure provisions described in paragraphs (g)(5) or (6) of this section was satisfied, whichever is later. If both disclosure provisions are satisfied, the one-year period will begin on the earlier of the dates on which the provisions were

satisfied. Paragraph (g)(1) of this section does not apply to any period of limitations on assessment that expired before the date on which the failure to disclose the listed transaction under section 6011 occurred.

(3)Definitions.

(i) Listed transaction. The term listed transaction means a transaction described in section 6707A(c)(2) of the Code and §1.6011-4(b)(2) of this chapter.

(ii) Material advisor. The term material advisor means a person described in section 6111(b)(1) of the Code and §301.6111-3(b) of this chapter.

(iii) Taxable year(s) to which the failure to disclose relates. The taxable year(s) to which the failure to disclose relates are each taxable year that the taxpayer participated (as defined under section 6011 and the regulations thereunder) in a transaction that was identified as a listed transaction and the taxpayer failed to disclose the listed transaction as required under section 6011. If the taxable year in which the taxpayer participated in the listed transaction is different from the taxable year in which the taxpayer is required to disclose the listed transaction under section 6011, the taxable year(s) to which the failure to disclose relates are each taxable year that the taxpayer participated in the transaction.

(4)Application of paragraph with respect to pass-through entities. In the case of taxpayers who are partners in partnerships, shareholders in S corporations, or beneficiaries of trusts and are required to disclose a listed transaction under section 6011 and the regulations thereunder, paragraph (g)(1) of this section will apply to a particular partner, shareholder, or beneficiary if that particular partner, shareholder, or beneficiary does not disclose within the time and in the form and manner provided by section 6011 and §1.6011-4(d) and (e), regardless of whether the partnership, S corporation, or trust or another partner, shareholder, or beneficiary discloses in accordance with section 6011 and the regulations thereunder. Similarly, because paragraph (g)(1) of this section applies on a taxpayer-by-taxpayer basis, the failure of a partnership, S corporation, or trust that has a disclosure obligation under section 6011 and that does not disclose within the time or in the form and manner provided by §1.6011-4(d) and (e) will not cause paragraph (g)(1) of this section to apply to a partner, shareholder or beneficiary of the entity. Instead, the application of paragraph (g)(1) of this section to a partner, shareholder, or beneficiary will be determined based on whether the particular partner, shareholder, or beneficiary satisfied their disclosure obligation under section 6011 and the regulations thereunder.

(5)Taxpayer's disclosure of a listed transaction that the taxpayer did not properly disclose under section 6011.

(i) In general.

(A) Method of disclosure. The taxpayer must complete the most current version of Form 8886, "Reportable Transaction Disclosure Statement" (or successor form), available on the date the taxpayer attempts to satisfy this paragraph (g)(5) in accordance with §1.6011-4(d) and the instructions to the Form in effect on that date. The taxpayer must indicate on the Form 8886 that the form is being submitted for purposes of section 6501(c)(10) and the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. Disclosure under this paragraph (g)(5)

will only be effective for the tax return(s) and taxable year(s) that the taxpayer specifies on the Form 8886 that he or she is attempting to disclose for purposes of section 6501(c)(10). If the Form 8886 contains a line for this purpose, then the taxpayer must complete the line in accordance with the instructions to that form. Otherwise, the taxpayer must include on the top of Page 1 of the Form 8886, and each copy of the form, the following statement: "Section 6501(c)(10) Disclosure" followed by the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. For example, if the taxpayer did not properly disclose its participation in a listed transaction the tax consequences of which were reflected on the taxpayer's Form 1040 for the 2005 taxable year, the taxpayer must include the following statement: "Section 6501(c)(10) Disclosure; 2005 Form 1040" on the form. The taxpayer must submit the properly completed Form 8886 and a cover letter, which must be completed in accordance with the requirements set forth in paragraph (g)(5)(i)(B) of this section, to the Office of Tax Shelter Analysis (OTSA). The taxpayer is permitted, but not required, to file an amended return with the Form 8886 and cover letter. Separate Forms 8886 and separate cover letters must be submitted for each listed transaction the taxpayer did not properly disclose under section 6011. If the taxpayer participated in one listed transaction over multiple years, the taxpayer may submit one Form 8886 (or successor form) and cover letter and indicate on that form all of the tax returns and taxable years for which the taxpayer is making a section 6501(c)(10) disclosure. If a taxpayer participated in more than one listed transaction, then the taxpayer must submit separate Forms 8886 (or successor form) for each listed transaction, unless the listed transactions are the same or substantially similar, in which case all the listed transactions may be reported on one Form 8886.

(B) Cover letter.

(1) A cover letter to which a Form 8886 is to be attached must identify the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure and include the following statement signed under penalties of perjury by the taxpayer:

Under penalties of perjury, I declare that I have examined this reportable transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement is true, correct, and complete.

(2) If the Form 8886 is prepared by a paid preparer, in addition to the statement under penalties of perjury signed by the taxpayer, the Form 8886 must also include the following statement signed under penalties of perjury by the paid preparer.

Under penalties of perjury, I declare that I have examined this reportable transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement is true, correct, and complete. This declaration is based

on all information of which I, as paid preparer, have any knowledge.

(C) Taxpayer under examination or Appeals consideration. A taxpayer making a disclosure under paragraph (g)(5) of this section with respect to a taxable year under examination or Appeals consideration by the IRS must satisfy the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and also submit a copy of the submission to the IRS examiner or Appeals officer examining or considering the taxable year(s) to which the disclosure under this paragraph (g) relates.

(D) Date the one-year period will begin to run if paragraph (g)(5) satisfied. Unless an earlier expiration is provided for in paragraph (g)(6) of this section, the time to assess tax under this paragraph (g) will not expire before one year after the date on which the Secretary is furnished the information from the taxpayer that satisfies all of the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and, if applicable, paragraph (g)(5)(i)(C) of this section. If the taxpayer does not satisfy all of the requirements on the same date, the one-year period will begin on the date that the IRS is furnished the information that, together with prior disclosures of information, satisfies the requirements of this paragraph (g)(5). For purposes of this paragraph (g)(5), the information is deemed furnished on the date the IRS receives the information.

(ii) Exception for returns other than annual returns. The IRS may prescribe alternative procedures to satisfy the requirements of this paragraph (g)(5) in a revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin for circumstances involving returns other than annual returns.

(6)Material advisor's disclosure of a listed transaction not properly disclosed by a taxpayer under section 6011.

(i) In general. In response to a written request of the IRS under section 6112, a material advisor with respect to a listed transaction must furnish to the IRS the information described in section 6112 and §301.6112-1(b) in the form and manner prescribed by section 6112 and §301.6112-1(e). If the information the material advisor furnishes identifies the taxpayer as a person who entered into the listed transaction, regardless of whether the material advisor provides the information before or after the taxpayer's failure to disclose the listed transaction under section 6011, then the requirements of this paragraph (g)(6) will be satisfied for that taxpayer. The requirements of this paragraph (g)(6) will be considered satisfied even if the material advisor furnishes the information required under section 6112 to the IRS after the date prescribed in section 6708 or published guidance relating to section 6708.

(ii) Paragraph (g)(6) not satisfied.

(A) Information not furnished by a material advisor or a person permitted to act on behalf of the material advisor. The requirements of this paragraph (g)(6) are not satisfied for a taxpayer unless the information is furnished by--

(1) A person who is a material advisor (as defined in paragraph (g)(3)(ii) of this section) with respect to the taxpayer,

(2) A person who is providing the information pursuant to § 301.6112-1(d) on behalf of a dissolved or liquidated material advisor with respect to the taxpayer, or

(3) a person who is providing the information on behalf of a material advisor with respect to the taxpayer under a designation agreement in accordance with §301.6112-1(f).

(B) No written request by IRS. The requirements of this paragraph (g)(6) are not satisfied unless the information is furnished in response to a written request made by the IRS to the material advisor under section 6112 (except as provided in §301.6112-1(d) with respect to a list furnished to OTSA within 60 days after dissolution or liquidation of a material advisor).

(C) Information furnished does not identify the taxpayer. The requirements of this paragraph (g)(6) are not satisfied for a taxpayer unless the information furnished identifies the taxpayer as a person who entered into the listed transaction.

(iii) Date the one-year period will begin if paragraph (g)(6) is satisfied. Unless an earlier expiration is provided for in paragraph (g)(5) of this section, the time to assess tax under this paragraph (g) will expire one year after the date on which the material advisor satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer. For purposes of this paragraph (g)(6), information is deemed to be furnished on the date that, in response to a request under section 6112, the IRS receives the information from a material advisor that satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer.

(7)Tax assessable under this section. If the period of limitations on assessment for a taxable year remains open under this section, the Secretary has authority to assess any tax with respect to the listed transaction in that year. This includes, but is not limited to, adjustments made to the tax consequences claimed on the return plus interest, additions to tax, additional amounts, and penalties that are related to the listed transaction or adjustments made to the tax consequences. This also includes any item to the extent the item is affected by the listed transaction even if it is unrelated to the listed transaction. An example of an item affected by, but unrelated to, a listed transaction is the threshold for the medical expense deduction under section 213 that varies if there is a change in an individual's adjusted gross income. An example of a penalty related to the listed transaction is the penalty under section 6707A for failure to file the disclosure statement reporting the taxpayer's participation in the listed transaction. Examples of penalties related to the adjustments made to the tax consequences are the accuracy-related penalties under sections 6662 and 6662A.

(8)Examples. The rules of this paragraph (g) are illustrated by the following examples:

Example (1). No requirement to disclose under section 6011. P, an individual, is a partner in a partnership that entered into a transaction in 2001 that was the same as or substantially similar to the transaction identified as a listed transaction in Notice 2000-44 (2000-2 CB 255). P claimed a loss from the transaction on his Form 1040 for the tax year 2001. P filed the Form 1040 prior to June 14, 2002. P did not disclose his participation in the listed transaction because P was not required to disclose the transaction under the applicable section 6011 regulations (TD 8961), which were effective for any transaction entered into before January 1, 2001 and any transaction entered into on or after January 1, 2001 that was reported on a return of the taxpayer filed on or before June 14, 2002. Although the transaction was a listed transaction and P did not disclose the transaction, P had no obligation to include on any return or statement any information with respect to a listed transaction within the meaning of section 6501(c)(10) because TD 8961 only applied to corporations, not individuals. Accordingly, section 6501(c)(10) does not apply.

Example (2). Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after first year of participation and the transaction must be disclosed with the return next filed.

(i) On December 30, 2003, Y, a corporation, enters into a transaction that at the time is not a reportable transaction. On March 15, 2004, Y timely files its 2003 Form 1120, reporting the tax consequences from the transaction. On April 1, 2004, the IRS issues Notice 2004-31 that identifies the transaction as a listed transaction. Y also reports tax consequences from the transaction on its 2004 Form 1120, which it timely filed on March 15, 2005. Y did not attach a completed Form 8886 to its 2004 Form 1120 and did not send a copy of the form to OTSA. The general three-year period of limitations on assessment for Y's 2003 and 2004 taxable years would expire on March 15, 2007, and March 17, 2008, respectively.

(ii) The period of limitations on assessment for Y's 2003 taxable year was open on the date the transaction was identified as a listed transaction. Under the applicable section 6011 regulations (TD 9108), which were effective for transactions entered into before August 3, 2007, Y should have disclosed its participation in the transaction with its next filed return, which was its 2004 Form 1120, but Y did not disclose its participation. Y's failure to disclose with the 2004 Form 1120 relates to taxable years 2003 and 2004. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2003 and 2004 taxable years with respect to the listed transaction until at least one year after the date Y satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to Y.

Example (3). Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after the first year of participation and the transaction must be disclosed 90 days after the transaction became a listed transaction.

(i) In January 2015, A, a calendar year taxpayer, enters into a transaction that at the time is not a listed transaction. A reports the tax consequences from the transaction on its individual income tax return for 2015 timely filed on April 15, 2016. The time for the IRS to assess tax against A under the general three-year period of limitations for A's 2015 taxable year would expire on April 15, 2019. A only participated in the transaction in 2015. On March 7, 2017, the IRS identifies the transaction as a listed transaction. A does not file the Form 8886 with OTSA by June 5, 2017.

(ii) The period of limitations on assessment for A's 2015 taxable year was open on the date the transaction was identified as a listed transaction. Under the current section 6011 regulations (TD 9350) which are effective for transactions entered into on or after August 3, 2007, A must disclose its participation in the transaction by filing a completed Form 8886 with OTSA on or before June 5, 2017, which is 90 days after the date the transaction became a listed transaction. A did not disclose the transaction as required. A's failure to disclose relates to taxable year 2015 even though the obligation to disclose did not arise until 2017. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2015 taxable year with respect to the listed transaction until at least one year after the date A satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to A.

Example (4). Requirements of paragraph (g)(6) satisfied. Same facts as Example 3, except that on April 5, 2019, the IRS hand delivers to Advisor J, who is a material advisor, a section 6112 request related to the listed transaction. Advisor J furnishes the required list with all the information required by section 6112 and §301.6112-1, including all the information required with respect to A, to the IRS on May 8, 2019. The submission satisfies the requirements of paragraph (g)(6) even though Advisor J furnishes the information outside of the 20-business-day period provided in section 6708. Accordingly, under section 6501(c)(10), the period of limitations with respect to A's taxable year 2015 will end on May 8, 2020, one year after the IRS received the required information, unless the period of limitations remains open under another exception. Any tax for the 2015 taxable year not attributable to the listed transaction must be assessed by April 15, 2019.

Example (5). Requirements of paragraph (g)(5) also satisfied. Same facts as Examples 3 and 4, except that on May 23, 2019, A files a properly completed Form 8886 and signed cover letter with OTSA both identifying that the section 6501(c)(10) disclosure relates to A's Form 1040 for 2015. A satisfied the requirements of paragraph (g)(5) of this section as of May 23, 2019. Because the requirements of paragraph (g)(6) were satisfied first as described in Example 4, under section 6501(c)(10) the period of limitations will end on May 8, 2020 (one year after the requirements of paragraph (g)(6) were satisfied) instead of May 23, 2020 (one year after the requirements of paragraph (g)(5) were satisfied). Any tax for the 2015 taxable year not attributable to the listed transaction must be assessed by April 15, 2019.

Example (6). Period to assess tax remains open under another exception. Same facts as Examples 3, 4, and 5, except that on April 1, 2019, A signed Form 872, consenting to extend, without restriction, its period of limitations on assessment for taxable year 2015 under section 6501(c)(4) until July 15, 2020. In that case, although under section 6501(c)(10) the period of limitations would otherwise expire on May 8, 2020, the IRS may assess tax with respect to the listed transaction (as well as any other item on the return covered by the Form 872 extension) at any time up to and including July 15, 2020, pursuant to section 6501(c)(4). Section 6501(c)(10) operates to extend the assessment period but not to shorten any other applicable assessment period.

Example (7). Requirements of (g)(5) not satisfied. In 2015, X, a corporation, enters into a listed transaction. On March 15, 2016, X timely files its 2015 Form 1120, reporting the tax consequences from the transaction. X does not disclose the transaction as required under section 6011 when it files its 2015 return. The failure to disclose relates to taxable

year 2015. On February 13, 2017, X completes and files a Form 8886 with respect to the listed transaction with OTSA but does not submit a cover letter, as required. The requirements of paragraph (g)(5) of this section have not been satisfied. Therefore, the time to assess tax against X with respect to the transaction for taxable year 2015 remains open under section 6501(c)(10).

Example (8). Section 6501(c)(10) applies to keep one partner's period of limitations on assessment open. T and S are partners in a partnership, TS, that enters into a listed transaction in 2015. T and S each receive a Schedule K-1 from TS on April 11, 2016. On April 15, 2016, TS, T and S each file their 2015 returns. Under the applicable section 6011 regulations, TS, T, and S each are required to disclose the transaction. TS attaches a completed Form 8886 to its 2015 Form 1065 and sends a copy of Form 8886 to OTSA. Neither T nor S files a disclosure statement with their respective returns nor sends a copy to OTSA on April 15, 2016. On May 17, 2016, T timely files a completed Form 8886 with OTSA pursuant to §1.6011-4(e)(1). T's disclosure is timely because T received the Schedule K-1 within 10 calendar days before the due date of the return and, thus, T had 60 calendar days to file Form 8886 with OTSA. TS and T properly disclosed the transaction in accordance with the applicable regulations under section 6011, but S did not. S's failure to disclose relates to taxable year 2015. The time to assess tax with respect to the transaction against S for 2015 remains open under section 6501(c)(10) even though TS and T disclosed the transaction.

Example (9). Section 6501(c)(10) satisfied before expiration of three-year period of limitations under section 6501(a). Same facts as Example 8, except that on August 26, 2016, S satisfies the requirements of paragraph (g)(5) of this section. No material advisor satisfied the requirements of paragraph (g)(6) of this section with respect to S on a date earlier than August 26, 2016. Under section 6501(c)(10), the period of time in which the IRS may assess tax against S with respect to the listed transaction would expire no earlier than August 26, 2017, one year after the date S satisfied the requirements of paragraph (g)(5). As the general three-year period of limitations on assessment under section 6501(a) does not expire until April 15, 2019, the IRS will have until that date to assess any tax with respect to the listed transaction.

Example (10). No section 6112 request. B, a calendar year taxpayer, entered into a listed transaction in 2015. B did not comply with the applicable disclosure requirements under section 6011 for taxable year 2015; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after B satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to B. In June 2016, the IRS conducts a section 6700 investigation of Advisor K, who is a material advisor to B with respect to the listed transaction. During the course of the investigation, the IRS obtains the name, address, and TIN of all of Advisor K's clients who engaged in the transaction, including B. The information provided does not satisfy the requirements of paragraph (g)(6) with respect to B because the information was not provided pursuant to a section 6112 request. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2015 remains open under section 6501(c)(10).

Example (11). Section 6112 request but the requirements of paragraph (g)(6) are not satisfied with respect to B. Same facts as Example 10, except that on January 9, 2017, the IRS sends by certified mail a section 6112 request to Advisor L, who is another material

advisor to B with respect to the listed transaction. Advisor L furnishes some of the information required under section 6112 and §301.6112-1 to the IRS for inspection on January 17, 2017. The list includes information with respect to many clients of Advisor L, but it does not include any information with respect to B. The submission does not satisfy the requirements of paragraph (g)(6) of this section with respect to B. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2015 remains open under section 6501(c)(10).

Example (12). Section 6112 submission made before taxpayer failed to disclose a listed transaction. Advisor M, who is a material advisor, advises C, an individual, in 2015 with respect to a transaction that is not a reportable transaction at that time. C files its return claiming the tax consequences of the transaction on April 15, 2016. The time for the IRS to assess tax against C under the general three-year period of limitations for C's 2015 taxable year would expire on April 15, 2019. The IRS identifies the transaction as a listed transaction on November 3, 2017. On December 7, 2017, the IRS hand delivers to Advisor M a section 6112 request related to the transaction. Advisor M furnishes the information to the IRS on December 29, 2017. The information contains all the required information with respect to Advisor M's clients, including C. C does not disclose the transaction on or before February 1, 2018, as required under section 6011 and the regulations under section 6011. Advisor M's submission under section 6112 satisfies the requirements of paragraph (g)(6) of this section even though it occurred prior to C's failure to disclose the listed transaction. Thus, under section 6501(c)(10), the period of limitations to assess tax against C with respect to the listed transaction will end on December 29, 2018 (one year after the requirements of paragraph (g)(6) of this section were satisfied), unless the period of limitations remains open under another exception.

Example (13). Transaction removed from the category of listed transactions after taxpayer failed to disclose. D, a calendar year taxpayer, entered into a listed transaction in 2015. D did not comply with the applicable disclosure requirements under section 6011 for taxable year 2015; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after D satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to D. In 2017, the IRS removes the transaction from the category of listed transactions because of a change in law. Section 6501(c)(10) continues to apply to keep the period of limitations on assessment open for D's taxable year 2015.

Example (14). Taxes assessed with respect to the listed transaction.

(i) F, an individual, enters into a listed transaction in 2015. F files its 2015 Form 1040 on April 15, 2016, but does not disclose his participation in the listed transaction in accordance with section 6011 and the regulations under section 6011. F's failure to disclose relates to taxable year 2015. Thus, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the listed transaction for taxable year 2015 until at least one year after the date F satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to F.

(ii) On July 2, 2020, the IRS completes an examination of F's 2015 taxable year and disallows the tax consequences claimed as a result of the listed transaction. The disallowance of a loss increased F's adjusted gross income. Due to the increase of F's

adjusted gross income, certain credits, such as the child tax credit, and exemption deductions were disallowed or reduced because of limitations based on adjusted gross income. In addition, F now is liable for the alternative minimum tax. The examination also uncovered that F claimed two deductions on Schedule C to which F was not entitled. Under section 6501(c)(10), the IRS can timely issue a statutory notice of deficiency (and assess in due course) against F for the deficiency resulting from (1) disallowing the loss, (2) disallowing the credits and exemptions to which F was not entitled based on F's increased adjusted gross income, and (3) being liable for the alternative minimum tax. In addition, the IRS can assess any interest and applicable penalties related to those adjustments, such as the accuracy-related penalty under sections 6662 and 6662A and the penalty under section 6707A for F's failure to disclose the transaction as required under section 6011 and the regulations under section 6011. The IRS cannot, however, pursuant to section 6501(c)(10), assess the increase in tax that would result from disallowing the two deductions on F's Schedule C because those deductions are not related to, or affected by, the adjustments concerning the listed transaction.

(9)Effective/applicability date. The rules of this paragraph (g) apply to taxable years with respect to which the period of limitations on assessment under section 6501 (including subsection (c)(10)) did not expire before March 31, 2015.