

**Internal Revenue Service
Large and Mid-Size Business
Division**

SEATA Conference

New Orleans, LA

July 12, 2005

Conference Topic

**American Jobs Creation Act
Penalty Provisions on
Abusive Tax Avoidance
Transactions**

AJCA

Provided penalty provisions for:

- Failure to disclose**
- Higher penalties for tax understatements**
- Higher promoter penalties**

American Jobs Creation Act of 2004

- Created a penalty for failure to disclose information on “reportable transactions”**
- Notice 2005-11 provides interim guidance**
- Up to this point there was no monetary penalty for failing to disclose**

Penalties Continued

- **Created a higher penalty if a tax liability is understated as a result of a reportable transaction that is not adequately disclosed**
- **Notice 2005-12 provides interim guidance**
- **Good faith provision is included**

Promoter Penalties

- **Promoter penalty currently is \$1,000 per activity/promotion**
- **AJCA changed the penalty to 50% of the gross income derived from the shelter activities**

Privilege Communications

- **Prior to AJCA, individuals had a statutory confidentiality privilege covering communication with non-lawyer tax practitioners**
- **This confidentiality was repealed with respect to tax shelters**

LMSB's Strategic Approach

- **Provide pre-filing guidance to taxpayers**
- **Improved the organizational structure**
- **Promoter program**
- **Enhance enforcement tools**

Published Guidance

- 31 listed transactions to date
- Provides for consistent tax treatment
- Alerts investment community to abusive transactions being marketed
- Puts participants in listed transactions on notice that claimed tax benefits will be challenged

Improved Organization

- LMSB Tax Shelter Committee
- Section 6700 Committee
- Lead Executives (Issue Champions)
- Counsel and Appeals
- Tech Advisors and Field Specialists
- Office of Tax Shelter Analysis

Office of Tax Shelter Analysis (OTSA)

- .Coordinates Strategic Actions
- .Tracks existing and emerging issues
- .Centralized data collection and analysis
- .Program training and guidance
- .Nationwide Public Hotline

Promoter Program

- Determine promoter compliance with regulations
- Obtain information, including identities of investors, from promoters of abusive tax avoidance transactions
- Summons documents and testimony as necessary
- Strategy aimed at deterring future promotion of abusive tax avoidance transactions

Enforcement Tools

- **Treasury Department now has the authority to issue injunctions against promoters for :**
 - **Promoting abusive tax shelters**
 - **Failing to furnish information regarding reportable transactions**
 - **Failing to maintain lists of inventors**

Enforcement Tools (continued)

- Request tax accrual workpapers for listed transactions
- Mandatory Information Document Requests
- Penalty Policy

What's Next?

- Continue to identify abusive tax avoidance transactions and issue guidance
- Aggressively investigate promoters
- Re-allocate resources to focus on growing inventory of abusive tax avoidance cases.

Pending Legislation

HR 2625

- **Amends the Tax Code to curb tax abuses**
- **Disallows tax benefits claimed from transactions that lack economic substance**
- **Defines “economic substance”**

More Pending Legislation

HR 1234

- Provides for a greater transparency of corporate financial statements to better reconcile book and tax differences to discourage abusive sheltering activities**

Information available on [irs.gov](https://www.irs.gov)

- Current information on Abusive Tax Avoidance Transactions.
- To access, click on [businesses](#), then [corporations](#), and then [Abusive Tax Shelters and Transactions](#)

Office of Tax Shelter Analysis (OTSA)

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Questions and Answers