manufactured or unmanufactured, incorporated directly into a manufactured product or, where applicable, an iron or steel product.

(ii) *Excluded materials* means *section 70917(c) materials* as defined in 2 CFR 184.3.

(iii) *Iron or steel products* means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

(iv) *Manufactured products* means articles, materials, or supplies that have been processed into a specific form and shape, or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. If an item is classified as an iron or steel product, an excluded material, or other product category as specified by law or in 2 CFR part 184, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product may include components that are iron or steel products, excluded materials, or other product categories as specified by law or in 2 CFR part 184. Mixtures of excluded materials delivered to a work site without final form for incorporation into a project are not a manufactured product.

(v) *Manufacturer,* in the case of manufactured products, means the entity that performs the final manufacturing process that produces a manufactured product.

(vi) *Predominantly of iron or steel or a combination of both* means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

(vii) *Produced in the United States,* in the case of manufactured products, means:

(A) For projects obligated on or after October 1, 2025, the product was manufactured in the United States; and

(B) For projects obligated on or after October 1, 2026, the product was manufactured in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product.

(2) An article, material, or supply shall only be classified as an iron or steel product, a manufactured product, or other products as specified by law or in 2 CFR part 184. An iron or steel product must meet the requirements of paragraph (b) of this section. Except as otherwise provided in this paragraph (c), an article, material, or supply shall not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the above-listed categories. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph (c) must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron or steel product or manufactured product will be incorporated.

(i) With respect to precast concrete products that are classified as manufactured products, components of precast concrete products that consist wholly or predominantly of iron or steel or a combination of both shall meet the requirements of paragraph (b) of this section. The cost of such components shall be included in the applicable calculation for purposes of determining whether the precast concrete product is produced in the United States.

(ii) With respect to intelligent transportation systems and other electronic hardware systems that are installed in the highway right of way or other real property and classified as manufactured products, the cabinets or other enclosures of such systems that consist wholly or predominantly of iron or steel or a combination of both shall meet the requirements of paragraph (b) of this section. The cost of cabinets or other enclosures shall be included in the applicable calculation for purposes of determining whether systems referred to in the preceding sentence are produced in the United States.

(3) In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, recipients shall determine the cost as follows:

(i) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (c)(3)(i) of this section, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

(4) The provisions of this paragraph (c) are separate and severable from one another and from the other provisions of this section. If any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.

* * * * *

[FR Doc. 2024–31350 Filed 1–13–25; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 10028]

RIN 1545–BR07

Certain Partnership Related-Party Basis Adjustment Transactions as Transactions of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations that identify certain partnership related-party basis adjustment transactions and substantially similar transactions as transactions of interest, a type of reportable transaction. Material advisors and certain participants in these transactions are required to file disclosures with the IRS and are subject to penalties for failure to disclose. The final regulations affect participants in these transactions as well as material advisors.

DATES:

Effective date: These regulations are effective on January 14, 2025.

Applicability date: For the date of applicability, *see* § 1.6011–18(h) and (i).

FOR FURTHER INFORMATION CONTACT: Concerning these final regulations, contact Elizabeth Zanet of the Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 317–6007 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document amends the Income Tax Regulations (26 CFR part 1) by adding final regulations under section 6011 of the Internal Revenue Code (Code). The document adds § 1.6011–18 to identify certain partnership related-party basis adjustment transactions and substantially similar transactions as transactions of interest, a type of

reportable transaction (final regulations). These regulations are issued pursuant to the authority conferred on the Secretary of the Treasury or her delegate (Secretary) under the following provisions of the Code.

Section 6001 of the Code provides an express delegation of authority to the Secretary of the Treasury or her delegate (Secretary), requiring every taxpayer to keep the records, render the statements, make the returns, and comply with the rules and regulations that the Secretary deems necessary to demonstrate tax liability, as prescribed, either by notice served or by regulations.

Section 6011(a) provides an express grant of regulatory authority for the Secretary to prescribe regulations requiring any person who is liable for any tax imposed by the Code, or with respect to the collection thereof, to make a return or statement according to the forms and regulations prescribed by the Secretary. Section 6011(a) adds that every person who is required to make a return or statement must include the information required by forms or regulations.

In addition, section 6707A(c)(1) of the Code defines the term ''reportable transaction'' for purposes of imposing penalties under section 6707A(a) relating to persons who fail to include on any return or statement any information with respect to a reportable transaction that is required under section 6011 to be included with such return or statement. In doing so, it provides an express delegation of authority to the Secretary, stating that, ''[t]he term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.''

Section 6111(a) provides an express grant of regulatory authority for the Secretary to require that each material advisor with respect to any reportable transaction make a return setting forth any information as the Secretary may prescribe. Such return must be filed not later than the date specified by the Secretary.

Finally, section 7805(a) of the Code authorizes the Secretary to ''prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.''

Background

I. Basis Adjustments Under Subchapter K

A. In General

Under subchapter K of chapter 1 of the Code (subchapter K), a distribution by a partnership of the partnership's property (partnership property) or a transfer of an interest in a partnership (partnership interest) may result in an adjustment to the basis of the distributed property, partnership property, or both. A key factor is whether an election made by the partnership in accordance with regulations prescribed by the Secretary under section 754 of the Code (section 754 election) is in effect.

Section 754 provides that if a section 754 election is in effect for a partnership, the basis of its partnership property will be adjusted, in the case of a distribution of property, in the manner provided by section 734 of the Code, and in the case of a transfer of a partnership interest, in the manner provided in section 743 of the Code. Unless a section 754 election is revoked in accordance with the regulations under section 754, the section 754 election applies to all distributions of property by the partnership and to all transfers of interests in the partnership in the taxable year for which the section 754 election was properly made and all subsequent taxable years.

In the case of a distribution of partnership property to a partner by a partnership for which a section 754 election is in effect, or with respect to which there is a substantial basis reduction as described in section 734(d), the distribution may result in an adjustment to the basis of the partnership's remaining property (remaining partnership property) under section 734(b). A distribution of partnership property may also result in an adjustment to the basis of the distributed property under section 732(a), (b), or (d) of the Code.

If a partnership interest is transferred by sale or exchange or on the death of a partner, and the partnership either has a section 754 election in effect or has a substantial built-in loss with respect to the transfer of the partnership interest as described in section 743(d), the transfer may result in an adjustment to the basis of partnership property under section 743(b) with respect to the transferee partner.

B. Basis Adjustments Under Section 732

Section 732 applies to determine a distributee partner's basis in distributed property other than money. In the case of a distribution of partnership property other than in liquidation of the distributee partner's partnership interest (current distribution), and except as provided under section 732(a)(2), section 732(a)(1) provides that the distributee partner's basis in distributed property (other than money) is equal to the partnership's adjusted basis in the distributed property immediately before the distribution. Under section 732(a)(2), however, a distributee partner's basis in distributed property is limited to the adjusted basis of the distributee partner's partnership interest reduced by any money distributed to such partner in the same transaction.

In the case of a distribution of partnership property in liquidation of the distributee partner's partnership interest (liquidating distribution), section 732(b) provides that the distributee partner's basis in distributed property (other than money) is equal to the adjusted basis of the distributee partner's partnership interest reduced by any money distributed to such partner in the same transaction.

In the case of a distribution of more than one property from a partnership, the basis of the distributed properties to which section 732(a)(2) and (b) apply must be allocated among the distributed properties under the rules of section 732(c). Section 732(d) through (f) provide additional rules applicable to certain distributed property. *See also* §§ 1.732–1 through 1.732–3.

C. Basis Adjustments Under Section 734

In the case of a distribution of property by a partnership for which a section 754 election is in effect, and for which either the distributee partner recognizes gain or loss on the distribution, or for which the basis of the distributed property in the distributee partner's hands, as determined under section 732, differs from the partnership's adjusted basis in the distributed property immediately before the distribution, section 734(b) requires the partnership to increase or decrease (as applicable) the basis of its remaining partnership property. Also, in the case of a distribution of property by a partnership that results in a substantial basis reduction under section 734(d), the basis of remaining partnership property must be adjusted under section 734(b), even if no section 754 election is in effect for the partnership.

Section 734(b)(1) requires a partnership to increase the basis of its remaining partnership property if a distribution of partnership property by the partnership results in the distributee partner recognizing gain under section

731(a)(1) of the Code, or if property (other than money) to which section 732(a)(2) or (b) applies is distributed to the distributee partner and the property's adjusted basis to the partnership immediately before the distribution is greater than the distributee partner's basis in the distributed property as determined under section 732. Section 731(a)(1) requires a distributee partner to recognize gain in a current or liquidating distribution to the extent that any money distributed to that partner in the distribution exceeds the adjusted basis of that partner's partnership interest immediately before the distribution. The amount of the basis increase to the partnership's remaining property under section 734(b)(1) following a distribution of partnership property to a partner is equal to the amount of gain recognized by the distributee partner in the distribution under section 731(a)(1), and the excess of the partnership's adjusted basis in the distributed property immediately before the distribution, over the distributee partner's basis in the distributed property as determined under section 732.

Section 734(b)(2) requires a partnership to decrease the basis of its remaining property if a distribution of property by the partnership results in the distributee partner recognizing loss under section 731(a)(2), or if property (other than money) is distributed to the distributee partner in a distribution to which section 732(b) applies and the property's adjusted basis to the partnership immediately before the distribution is less than the distributee partner's basis in the distributed property as determined under section 732. Under section 731(a)(2), a distributee partner may recognize a loss in a liquidating distribution of that partner's interest in the partnership to the extent that such partner received in the distribution only money, unrealized receivables described in section 751(c) of the Code, or inventory items described in section 751(d). In such a case, the distributee partner is required to recognize a loss to the extent that such partner's adjusted basis in the partnership interest exceeds the sum of any money distributed to that partner in the distribution and the basis to the distributee partner (determined under section 732) of any unrealized receivables or inventory items received by that partner in the distribution. The amount of the basis decrease to the partnership's remaining property under section 734(b)(2) following a distribution of partnership property to a partner is equal to the amount of loss recognized by the distributee partner in the distribution under section 731(a)(2), and the excess of the distributee partner's basis in the distributed property as determined under section 732, over the partnership's adjusted basis in the distributed property immediately before the distribution.

A partnership for which no section 754 election is in effect is subject to a mandatory basis adjustment under section 734(b)(2) if there is a substantial basis reduction with respect to a distribution of partnership property. Under section 734(d), a substantial basis reduction with respect to a distribution of partnership property occurs if the sum of the amount of loss recognized to the distributee partner on the distribution, plus any increase in basis in the distributed property to the distributee partner under section 732(b), exceeds $250,000.

D. Basis Adjustments Under Section 743(B)

Generally, if a partnership interest is transferred in a sale or exchange or on the death of a partner, the transferee partner's basis in the transferred partnership interest is determined under section 742 of the Code and the basis of partnership property is determined under section 743(a). Section 742 provides that the transferee partner's basis in a partnership interest acquired other than by contribution is determined under part II of subchapter O of chapter 1 of the Code, beginning at section 1011 of the Code and following. Thus, for example, a transferee partner's basis in a partnership interest acquired by purchase generally is the transferee partner's cost basis under section 1012 of the Code. Section 743(a) provides that, in the case of a transfer of a partnership interest by sale or exchange or on the death of a partner, the basis of partnership property is not adjusted unless either a section 754 election is in effect for the partnership, or the partnership has a substantial built-in loss with respect to the transfer of the partnership interest.

Under section 743(b), in the case of a transfer of a partnership interest by sale or exchange or on the death of a partner, a partnership for which a section 754 election is in effect or that has a substantial built-in loss with respect to the transfer of the partnership interest must increase or decrease (as applicable) the adjusted basis of partnership property with respect to the transferee partner.

Section 743(b)(1) provides that the adjusted basis of partnership property is increased by the excess of the transferee partner's basis in the transferred partnership interest, over the transferee partner's proportionate share of the adjusted basis of partnership property.

Section 743(b)(2) provides that the adjusted basis of partnership property is decreased by the excess of the transferee partner's proportionate share of the adjusted basis of partnership property, over the transferee partner's basis in the transferred partnership interest.

A partnership for which no section 754 election is in effect is subject to a mandatory basis adjustment under section 743(b) with respect to a transfer of a partnership interest if the partnership has a substantial built-in loss with respect to the transfer of the partnership interest. Under section 743(d)(1), a partnership has a substantial built-in loss with respect to a transfer of an interest in the partnership if either the partnership's adjusted basis in its property exceeds the fair market value of such property by more than $250,000, or the transferee partner would be allocated a loss of more than $250,000 if the partnership assets were sold for cash equal to their fair market value immediately after the transfer.

The flush language at the end of section 743(b) provides that, under regulations prescribed by the Secretary, a basis adjustment under section 743(b) is an adjustment to the basis of partnership property with respect to the transferee partner only. *See generally* § 1.743–1. The transferee partner's proportionate share of the partnership's adjusted basis in its property generally is determined in accordance with the transferee partner's interest in the partnership's previously taxed capital (including the transferee partner's share of partnership liabilities) under § 1.743–1(d).

In the case of a transferee partner who acquired all or part of the partner's partnership interest by a transfer with respect to which no section 754 election was in effect for the partnership, and to whom a distribution of property (other than money) is made with respect to the transferred interest within two years, section 732(d) and the regulations thereunder allow the partner to make an election to treat as the adjusted basis of the distributed property the adjusted basis such property would have if the adjustment under section 743(b) were in effect with respect to the partnership property.

Under § 1.732–1(d)(4), the special basis adjustment under section 732(d) is required to apply to a distribution of property to a partner who acquired all or part of the partner's partnership interest by a transfer from a partnership

for which no section 754 election is in effect for the taxable year of such transfer, whether or not the distribution is made within two years of such transfer, if at the time the partnership interest was transferred, (i) the fair market value of all partnership property (other than money) exceeded 110 percent of its adjusted basis to the partnership, (ii) an allocation of basis under section 732(c) upon a liquidation of the transferee partner's interest in the partnership immediately after the transfer of such interest would have resulted in a shift of basis from property not subject to an allowance for depreciation, depletion, or amortization to property subject to such an allowance, and (iii) a basis adjustment under section 743(b) would change the basis to the transferee partner of the property actually distributed.

E. Allocation of Basis Adjustments Under Sections 734 and 743

Section 734(c) states that a basis adjustment under section 734(b) is allocated among partnership properties under the rules of section 755 of the Code. Section 743(c) states that a basis adjustment under section 743(b) is allocated among partnership properties under the rules of section 755.

Section 755(a) generally requires basis adjustments under section 734(b) or section 743(b) to be allocated in a manner that has the effect of reducing the difference between the fair market value and the adjusted basis of partnership properties or in any other manner permitted by regulations prescribed by the Secretary. In addition, section 755(b) requires these basis adjustments to be allocated to partnership property of a like character or to subsequently acquired partnership property of a like character if such property is not available or has insufficient basis at the time of the basis adjustment (because a decrease in the adjusted basis of the property would reduce the basis of such property below zero). Section 755(c) provides a special rule that prohibits allocating a basis decrease under section 734(b) to the stock of a corporation that is a partner of the partnership (or that is related to a partner in the partnership within the meaning of section 267(b) of the Code or section 707(b)(1) of the Code).

F. Common Terminology for Bases With Respect to a Partnership Interest

A partner's adjusted basis in its partnership interest commonly is referred to as the partner's ''outside basis'' in its partnership interest. A partnership's adjusted basis in its property commonly is referred to as the ''inside basis'' of the partnership's property. Each partner has a share of inside basis.

II. Proposed Regulations

On June 18, 2024, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–124593–23) in the **Federal Register** (89 FR 51476) containing proposed regulations under section 6011 (proposed regulations).[1] The proposed regulations would have added § 1.6011–18 identifying certain partnership related-party basis adjustment transactions as ''transactions of interest'' for purposes of sections 6011, 6111, and 6112 and § 1.6011–4(b)(6). The provisions of the proposed regulations are explained in greater detail in the preamble to the proposed regulations.

The Treasury Department and the IRS received written comments in response to the proposed regulations. The comments are available for public inspection at *www.regulations.gov* or upon request. A public hearing on the proposed regulations was conducted in person and telephonically on September 17, 2024, during which two presenters provided comments. After full consideration of the comments received, these final regulations adopt the proposed regulations with modifications in response to the comments as described in the Summary of Comments and Explanation of Revisions.

Summary of Comments and Explanation of Revisions

This Summary of Comments and Explanation of Revisions summarizes the comments received in response to the proposed regulations, and describes and responds to comments concerning: (1) transactions of interest generally, (2) the usefulness and burden of reporting the transactions of interest identified by the proposed regulations, (3) the specific transactions of interest identified by the proposed regulations, (4) the proposed $5 million threshold amount for reporting (proposed $5 million threshold amount), (5) the relatedness standard, (6) substantially similar transactions, and (7) participation in a transaction of interest identified by the proposed regulations. In general, as described herein, the final regulations adopt several commenters' suggestions, which limit the scope of the transactions identified by the proposed regulations in an effort to exclude from additional reporting certain common business transactions that do not meet large economic thresholds.

Comments merely summarizing the statute or proposed regulations, recommending revisions to the Code, addressing unrelated issues, or recommending changes to IRS forms or procedures are generally not addressed in this Summary of Comments and Explanation of Revisions or adopted in these final regulations. Additionally, this Treasury decision does not address comments addressing the issues and rules specific to Notice 2024–54, 2024–28 IRB 24, which the Treasury Department and the IRS continue to consider. Unless otherwise indicated in this Summary of Comments and Explanation of Revisions, provisions of the proposed regulations with respect to which no comments were received are adopted without substantive change.

I. Transactions of Interest Generally

A. General Reporting Rules Under § 1.6011–4

Section 1.6011–4(e)(2)(i) requires a taxpayer to report a transaction entered into prior to the publication of guidance identifying the transaction as a transaction of interest after the filing of the taxpayer's tax return (including an amended return) reflecting the taxpayer's participation in the transaction of interest (later identified transaction) if the statute of limitations for assessment of tax is still open when the transaction becomes a transaction of interest. Under § 1.6011–4(e)(2)(i), taxpayers are generally required to report a later identified transaction by filing a disclosure statement with the Office of Tax Shelter Analysis (OTSA) within 90 calendar days after the date on which a transaction becomes a transaction of interest.

Some commenters asserted that taxpayers should not be required to report later identified transactions because taxpayers were not on notice that certain partnership related-party basis adjustment transactions would be identified as transactions of interest. These commenters asserted that certain of the transactions identified in the proposed regulations are typical business transactions for which taxpayers would not have known to keep records. Two commenters requested that the required time for filing a disclosure statement with the OTSA should be expanded to one year. Another commenter recommended that the final regulations apply prospectively to transactions of interest that occur in taxable years beginning on or after the date of the final regulations.

[1] On July 24, 2024, a notice of correction was published in the **Federal Register** (89 FR 59864) to correct minor typographical errors in the preamble of REG–124593–23.

Although the reporting required by § 1.6011–4(e)(2)(i) may apply to transactions undertaken before the identification of the transactions as transactions of interest, the disclosure obligation is prospective rather than retroactive, since it arises only when the transaction becomes a transaction of interest after the final regulations are published in the **Federal Register**. Additionally, taxpayers have been on notice since the issuance of the proposed regulations that reporting of partnership related-party basis adjustment transactions may soon be required. Nevertheless, given the additional time that taxpayers may need to identify and prepare disclosures for already-completed transactions, § 1.6011–18(h)(1) provides an extension of time of 90 additional calendar days after the date specified in § 1.6011–4(e)(2)(i) for taxpayers to meet their obligations to disclose to the OTSA their participation in such later identified transactions.

B. Material Advisor Rules

The proposed regulations provided no special rules for material advisors. One commenter requested that the final regulations add an ''actual knowledge'' qualifier for material advisors such that advisors would be required to disclose and list only those transactions described by the proposed regulations that would be reportable based on their actual knowledge. The rules for material advisors under sections 6111 and 6112, and the corresponding regulations under §§ 301.6111–3 and 301.6112–1 of the Procedure and Administration Regulations (26 CFR part 301), which apply to all transactions of interest, do not have a knowledge qualifier. After consideration of this comment, the Treasury Department and the IRS have determined that adding a knowledge qualifier for this transaction of interest is not warranted. Accordingly, this comment is not adopted in the final regulations.

One commenter requested that the final regulations apply reporting requirements for material advisors only prospectively for transactions of interest that occur in taxable years beginning on or after the date of the final regulations, or, alternatively, that material advisors be permitted to report transactions of interest to the OTSA within one year as opposed to by the last day of the month following the end of the calendar quarter in which the final regulations are published. Section 301.6111–3 sets forth the requirements for disclosures from material advisors. In particular, § 301.6111–3(e) provides that a material advisor's disclosure statement must be filed with the OTSA 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 the transaction. Section 301.6111–3(b)(4)(iii) provides that for a transaction that was not a reportable transaction but is identified as a transaction of interest in published guidance after the occurrence of the events described in § 301.6111–3(b)(4)(i), the person will be treated as becoming a material advisor on the date the transaction is identified as a transaction of interest. Additionally, material advisors have been on notice since the issuance of the proposed regulations that reporting of partnership related-party basis shifting transactions may soon be required. However, given the additional time that may be needed for material advisors to identify and prepare disclosures for already-completed transactions, § 1.6011–18(h)(2) provides an extension of 90 additional calendar days after the date specified in § 301.6111–3(e) for material advisors to meet their disclosure obligations.

II. Usefulness and Burden of Reporting the Transactions of Interest Identified by the Proposed Regulations

A. Comments Suggesting the IRS Already Has the Information It Needs

One commenter stated that the Treasury Department and the IRS already have sufficient information to determine that the transactions identified by the proposed regulations are abusive and thus the proposed regulations are unnecessary.[2] This commenter stated that the Treasury Department and the IRS have already concluded that the transactions identified in the proposed regulations are abusive through IRS positions taken in litigation and the issuance of Rev. Rul. 2024–14, 2024–28 IRB 18 (advising taxpayers that the IRS would challenge certain partnership related-party basis adjustment transactions under the codified economic substance doctrine in section 7701(o) of the Code). The commenter also asserted that transactions of interest are reserved for transactions that have the potential for tax avoidance, but that the Treasury Department and the IRS failed to articulate a rational connection between ''the facts found and the choice made.'' Another commenter suggested that the proposed regulations relied on the application of Rev. Rul. 2024–14, implying that the proposed regulations cannot have effect if the IRS does not prevail in pending litigation.

The Treasury Department and the IRS do not agree with these comments. The final regulations identify certain partnership related-party basis adjustment transactions as transactions of interest under § 1.6011–4(b)(6), rather than as listed transactions under § 1.6011–4(b)(2). This is because the Treasury Department and the IRS have determined that these transactions have the potential for tax avoidance through the IRS's examination of certain transactions that are abusive but are not aware of the entire universe of partnership related-party basis adjustment transactions and whether every transaction is per se abusive. As explained in the preamble to the proposed regulations, the Treasury Department and the IRS have become aware of related persons using partnerships to engage in transactions that inappropriately exploit the basis adjustment provisions of subchapter K applicable to distributions of partnership property or transfers of partnership interests and wish to gather additional information. This awareness results from the IRS's examination of various partnership transactions involving related parties in which basis in distributed property or partnership property is shifted in a manner that results in significant tax benefits attributable to the basis shift for the related parties but with little or no tax or economic cost (abusive partnership related-party basis adjustment transactions), thus artificially generating (or regenerating) Federal income tax benefits that results in significant tax savings without a corresponding economic outlay. The transactions identified as transactions of interest in these final regulations have the potential for tax avoidance because they share certain indicia with these abusive partnership related-party transactions. Rev. Rul. 2024–14 contains several examples of abusive transactions discovered by the IRS, and the legal analysis it contains is independent of the requirement to disclose the transactions described in these regulations as transactions of interest. In other words, the issuance of a revenue ruling does not preclude further scrutiny of partnership related-party basis adjustment transactions by identifying those transactions as transactions of interest. Similarly, pending litigation is irrelevant to the

[2] The commenter also argued that it would be inappropriate to identify the transactions identified in the proposed regulations as listed transactions under § 1.6011–4(b)(2). This comment is not relevant to these final regulations, which solely identify certain transactions as transactions of interest and not as listed transactions.

identification of these transactions as transactions of interest. Accordingly, the final regulations do not adopt these comments.

A few commenters questioned why the Treasury Department and the IRS need to identify certain partnership related-party basis adjustment transactions as transactions of interest if these transactions are already disclosed as part of the Form 1120, *U.S. Corporation Income Tax Return,* or Form 1065, *U.S. Return of Partnership Income.* These commenters generally contended that existing reporting requirements already accomplish the objectives of the proposed regulations and that adding these transactions as transactions of interest is therefore unnecessary. One commenter recommended that instead of identifying the transactions described in the proposed regulations as transactions of interest, the Form 1065 should be modified to ask questions to determine whether partnership related-party basis adjustment transactions occurred during the taxable year.

The Forms 1120 and 1065, including statements or schedules required to be attached thereto, are filed as a part of a taxpayer's tax return and do not include all the information contained on Form 8886, *Reportable Transaction Disclosure Statement.* The Forms 1120 and 1065 also do not alert the OTSA to the taxpayer's participation in a transaction of interest, nor does the filing of a tax return result in disclosure and other obligations of material advisors to the transaction. Moreover, the purpose of the reporting requirements for a transaction of interest is to allow the OTSA and the IRS to learn detailed information about the identified transaction using limited resources, and without having to distill information obtained through annual filing requirements or to open taxpayer examinations. Accordingly, these comments are not adopted in the final regulations.

B. Comments Addressing Compliance Burdens and Costs

Several commenters asserted that complying with the reporting requirements for the transactions identified by the proposed regulations would be unduly burdensome and result in excessive costs for small businesses. One commenter asserted that the proposed regulations stray from Congressional intent of simplicity by subjecting family business owners and their advisors to substantial reporting obligations and penalties. Another commenter asserted that the proposed regulations would result in many protective disclosures that the Treasury Department and the IRS could not handle.

The impact on taxpayers who engage in legitimate business transactions with related parties resulting in positive partnership basis adjustments that meet the increased threshold amounts in these final regulations (applicable threshold amounts) discussed in Part IV of this Summary of Comments and Explanation of Revisions, or who may decide they need to file a protective disclosure, is far outweighed by the benefit of requiring disclosure for the identified transactions, which have the potential for tax avoidance. Combatting abusive tax avoidance is a priority for the Federal Government and partnership transactions that shift basis among related parties without a corresponding economic or tax impact have the potential for tax avoidance. Moreover, the identification of the transactions described in these final regulations should not impact small business owners. If a taxpayer is engaging in one or more of the complex transactions identified by these final regulations with a related party that results in positive basis adjustments in a single taxable year that exceed the applicable threshold amounts of $10 million or more (or $25 million for later identified transactions), the taxpayer is not likely a small business owner and the reporting obligations outlined in these final regulations should not be unduly burdensome. Accordingly, these comments are not adopted in the final regulations.

C. Comments Requesting That the Proposed Regulations Be Withdrawn or Reissued

A few commenters suggested that the proposed regulations be withdrawn, stating that they are overbroad. One commenter suggested that due to the number of their recommendations, the proposed regulations should be reproposed. Another commenter suggested that the proposed regulations be withdrawn and reproposed after the forthcoming proposed regulations described in Notice 2024–54 are finalized. The final regulations are narrowly tailored to identify transactions in which taxpayers may be exploiting the mechanical basis adjustment provisions in subchapter K to produce significant tax benefits with little to no economic cost to the partners. Taxpayers are able to engage in these transactions because the parties are related. In most cases, these transactions would not likely occur between partners negotiating on an arm's length basis. The purpose of the final regulations is to determine the ways in which related taxpayers are inappropriately shifting basis using the provisions of subchapter K, how they are creating opportunities to engage in transactions that generate inappropriate basis shifts (for example, how inside-outside basis disparities are being created), and the economic impact of the Federal income tax consequences created by the basis shifting transactions (for example, the extent to which gain is reduced or cost recovery is increased). It is in the interest of sound tax administration to gather this information now. As disclosures pursuant to this regulation will inform the Treasury Department and the IRS on transactions for which further examination or further guidance may be warranted, it does not make sense to withdraw the proposed regulations and wait to repropose them until the forthcoming regulations described in Notice 2024–54 are both proposed and finalized. Moreover, these final regulations are separate from, and do not rely on, the forthcoming proposed regulations described in Notice 2024–54. The comments to these proposed regulations have been helpful and have allowed the Treasury Department and the IRS to make several modifications in response to comments that limit the scope of the rules, as described in this Summary of Comments and Explanation of Revisions.

III. Transactions of Interest Identified in the Proposed Regulations

The proposed regulations would have identified four kinds of partnership related-party basis adjustment transactions as transactions of interest. A basis adjustment transaction under proposed § 1.6011–18(c)(1)(i) would occur if a partnership distributes property to a person who is a related partner in a current or liquidating distribution, the partnership increases the basis of one or more of its remaining properties under section 734(b) and (c), and a proposed $5 million threshold amount is met (section 734(b) TOI). A basis adjustment transaction under proposed § 1.6011–18(c)(1)(ii) would occur if a partnership distributes property to a partner who is related to one or more partners in liquidation of a partnership interest (or in complete liquidation of the partnership), the basis of one or more distributed properties is increased under section 732(b) and (c), and a proposed $5 million threshold amount is met (section 732(b) TOI). A basis adjustment transaction under proposed § 1.6011–18(c)(1)(iii) would occur if a partnership distributes property to a partner who is related to

one or more partners, the basis of one or more distributed properties is increased under section 732(d), the related partner acquired all or a part of its interest in the partnership in a transaction that would have been a transaction described in proposed § 1.6011–18(c)(2) if the partnership had a section 754 election in effect for the year of transfer, and a proposed $5 million threshold amount is met (section 732(d) TOI). A basis adjustment transaction under proposed § 1.6011–18(c)(2) would occur if a partner transfers an interest in the partnership to a related transferee or to a person who is related to one or more existing partners in a nonrecognition transaction (as defined in proposed § 1.6011–18(b)(6)), the basis of one or more partnership properties is increased under section 743(b)(1) and (c), and a proposed $5 million threshold amount is met (section 743(b) TOI).

A. General Reporting Exclusions

1. Tax-Avoidance Indicators

One commenter recommended requiring reporting only for transactions with defined indicators of potential tax avoidance or evasion, rather than the involvement of a related or tax-indifferent party, but did not suggest other indicators or explain how the current indicators are insufficient. The Treasury Department and the IRS have made modifications to the proposed regulations as described herein to better target the identification of transactions for which reporting is required.

2. Basis Shifts Between Assets of Like Character

One commenter recommended excluding transactions identified as a basis adjustment transaction of interest in cases in which (1) basis is shifted between assets of like character (that is, capital asset to capital asset or ordinary income asset to ordinary income asset), (2) basis is shifted from non-recoverable property to non-recoverable property or the basis adjustment does not provide a shorter recovery period, and (3) the property receiving the basis increase is not sold within two years of the basis increase. The Treasury Department and the IRS agree that a basis shift to a like-kind asset that has the same or a longer recovery period than the asset to which the basis was shifted from presents less risk of tax avoidance. However, the Treasury Department and the IRS do not agree that it would be appropriate in such circumstances to require reporting only if the property is disposed of within two years after the basis increase as there is still a potential for abuse if the property is disposed of after two years. A two-year rule would allow related taxpayers to increase the basis in property in anticipation of a future sale and would exclude transactions that present significant risks of tax avoidance. Accordingly, it is in the interest of sound tax administration to identify certain partnership related-party basis adjustment transactions as transactions of interest in the year of the basis shift and the commenter's recommendation is not adopted in the final regulations.

3. Requiring Knowledge or Intent

A few commenters recommended including an intent requirement for the transactions identified by the proposed regulations as transactions of interest. One commenter recommended that taxpayers that are unaware of or have no reason to know that a transaction identified by the proposed regulations is reportable be excused from disclosure. Another commenter recommended including a subjective test for intent and providing safe harbors and exceptions for business separations and succession-planning transactions.

Including an intent requirement for the transactions identified by the proposed regulations would introduce a subjective element, which is inconsistent with the IRS's need to gather additional information on the identified transactions to ascertain their potential for tax avoidance. Including an intent requirement in these regulations would also frustrate the IRS's ability to determine which of the basis adjustment transactions are impermissible tax avoidance transactions and to effectively and efficiently address the tax avoidance. Moreover, the general transaction of interest reporting requirements under section 6011 do not include a knowledge component; taxpayers are required to report the tax consequences of their transactions identified as transactions of interest regardless of whether they are aware of the reporting requirements. As further described in Parts III.A.4 and III.E of this Summary of Comments and Explanation of Revisions, it is not appropriate to incorporate an exception or safe harbor for business separations or succession-planning transactions into the final regulations as these transactions are no less likely to be structured to avoid tax, and thus may also have the potential for tax avoidance. Accordingly, these comments are not adopted in the final regulations.

4. Excluding Certain Basis-Adjustment Transactions

One commenter recommended excluding certain basis-adjustment transactions that cure inside-outside basis disparities created by section 734(b) adjustments, section 704(c) methods, contributions, distributions, and revaluations. Another commenter recommended that the final regulations consider common reasons why an inside-outside basis disparity might arise, such as transaction costs required to be capitalized to outside basis, certain income exclusions related to foreign corporations owned through a partnership, or the use of various section 704(c) methods. This commenter recommended that certain acquisitions of partnership businesses that may involve or create related-partner relationships, including distributions of lower-tier partnership interests to an upper-tier partnership and liquidations of blocker subsidiaries, be excluded as transactions of interest. Another commenter requested that the final regulations exclude partnership-incorporation transactions, including transactions described in Rev. Rul. 84–111, 1984–2 C.B. 88, Situation 2 (assets-up incorporation) and Situation 3 (interests-over incorporation). A few commenters requested that the final regulations exclude from the transactions identified as section 732(b) TOIs and section 734(b) TOIs any basis adjustments resulting from an actual or deemed distribution in the case of a partnership merger or division done for commercial reasons, such as to allow a partial sale and continuation of certain investments held by a private equity or other investment fund.

In response to comments received on the proposed regulations, these final regulations adopt several suggestions to limit the scope of the transactions identified by the proposed regulations to exclude from reporting common business transactions that do not meet large, economic thresholds. However, providing a blanket exclusion for certain transactions that may be common business transactions under specific circumstances, but may also have the potential for tax avoidance, would defeat the purpose of identifying the transactions as transactions of interest. For example, a partnership merger or division involving related parties may be undertaken with the intent to increase the basis of an asset that is subsequently disposed of in a recognition transaction or to increase cost recovery deductions. Moreover, one of the purposes of the final regulations is to gather additional information on

how taxpayers are creating opportunities to shift basis between related parties using the provisions of subchapter K (for example, information related to how inside-outside basis disparities are being created). Providing an exclusion from reporting for transactions that cure inside-outside disparities created through certain section 704(c) methods, contributions, adjustments, distributions or revaluations would nullify most of the disclosures required by the final regulations as these are the techniques used to create opportunities for partnership related-party basis shifting. For these reasons, the commenters' suggestions for exclusions of certain transactions are not adopted in the final regulations.

5. Publicly Traded Partnerships

One commenter expressed concern that publicly traded partnerships within the meaning of section 7704 of the Code (PTPs) are unable to identify the buyers and sellers of interests therein, making it impossible to determine whether a transfer is made between related parties. This commenter stated that PTPs frequently engage in transactions that result in section 743(b) adjustments as part of normal public trading and capital-markets transactions and that the final regulations should add carveouts for transactions of PTPs. At a minimum, the commenter recommended that the final regulations implement an ownership threshold for related partners of five percent or more of the PTP to allow such persons to be identified by disclosures required to be made to the U.S. Securities and Exchange Commission. Another commenter recommended that basis adjustments resulting from an acquisition of a unit in a PTP, including as part of any redemption of publicly traded units by the PTP, should be excluded from the transactions identified as transactions of interest.

The Treasury Department and the IRS agree that due to PTPs having a large number of PTP unitholders that are not related partners within the meaning of the final regulations, and the unlikelihood that unrelated PTP unitholders would engage in the transactions identified as transactions of interest in the final regulations, it is appropriate to exclude basis adjustments involving a transfer of or a distribution with respect to partnership interests in a PTP, except basis adjustments resulting from certain material transactions involving partnership interests held by related partners in a PTP. Accordingly, the final regulations provide that in the case of a PTP, a participating partner means a partner of the PTP but only to the extent that the partner engages in a private transfer (as described in § 1.7704–1(e)), redemption and repurchase agreement (as described in § 1.7704–1(f)), or private placement (as described in § 1.7704–1(h)) of a partnership interest with a related partner and the transaction is not otherwise excluded as a transaction of interest described in the final regulations.

B. Cash as Property for Purposes of Section 734(b) TOIs

One commenter requested that the final regulations clarify that cash is not included as ''property'' for purposes of a section 734(b) TOI and thus positive basis adjustments resulting from a distribution of cash be excluded from transactions identified as transactions of interest. Another commenter asked for clarification that cash distributions in excess of basis that result in positive basis adjustments under section 734(b) are identified as transactions of interest only to the extent that the distributions are made to a tax-indifferent party.

As a general matter, the text of section 734 makes no distinction between cash and other partnership property. A cash distribution to a related partner could be treated as a section 734(b) TOI to the extent that any basis increases generated under section 734(b)(1) exceed the gain recognized under section 731(a)(1) (or otherwise) with respect to which any tax imposed under subtitle A of the Code (subtitle A) is required to be paid by the related partners. However, the Treasury Department and the IRS note that if gain is recognized on a distribution of cash that results in a basis adjustment under section 734(b)(1)(A) and tax imposed under subtitle A is required to be paid on such gain by any of the related partners, that portion of the basis adjustment would not be counted towards the overall applicable threshold amount in determining whether disclosure of a transaction of interest is required.

C. Acquisition and Integration Transactions for Purposes of Section 743(b) TOIs

A few commenters recommended excluding from a section 743(b) TOI transactions in which a party purchases a partnership interest in an arm's-length transaction, receives a basis adjustment under section 743(b), then transfers the partnership interest to a related person in a nonrecognition transaction (for example, a transfer to a corporation under section 351(a) or to a partnership under section 721(a)) that causes a re-computation and re-allocation of the section 743(b) adjustment for the benefit of the related-party transferee. Under the proposed regulations, assuming the proposed $5 million threshold amount was met, such a transaction would be reportable if the nonrecognition transfer to the related transferee results in a positive basis increase.

The Treasury Department and the IRS agree that a positive section 743(b) basis adjustment acquired through an arm's-length transaction (for example, a transaction that would not be a reportable transaction under these final regulations, without regard to the six-year lookback period) to which a related transferee succeeds should not be a reportable transaction, except to the extent of any additional positive basis adjustment resulting from the nonrecognition transfer. This is because if the original section 743(b) adjustment was acquired through an arm's length transaction that would not be reportable under the final regulations, a corresponding amount of gain should have been recognized and tax imposed under subtitle A should have been paid by the original transferor. Thus, a subsequent nonrecognition transfer by the original transferee that results in the same section 743(b) adjustment has little potential for tax abuse. Accordingly, the final regulations provide that if a partner receives an interest in a partnership from a person in a recognition transaction (first transfer) and the basis of one or more partnership properties is increased under section 743(b)(1) and (c), and subsequently the partner (transferor) transfers the partnership interest to a person related to the transferor (transferee) in a nonrecognition transaction (subsequent transfer), the subsequent transfer is a transaction of interest only if the transferee's basis adjustment under section 743(b)(1) and (c) resulting from the subsequent transfer exceeds the amount of the transferor's remaining basis adjustment that is attributable to the transferred partnership interest (excess amount), and the applicable threshold amount is met. The final regulations further provide that only the excess amount is counted towards the applicable threshold amount and that a transferor's remaining basis adjustment is equal to the amount of the transferor's basis adjustment under section 743(b)(1) and (c) resulting from the first transfer as adjusted under section 1016(a)(2) to reflect any recovery of the basis adjustment or as otherwise adjusted prior to the subsequent transfer.

D. Transfers Between Unrelated Partners for Purposes of Section 743(b) TOIs

Many commenters recommended excluding transfers between unrelated parties from a section 743(b) TOI if the transferee is related to one or more existing partners. Several of these commenters recommended that the transaction identified by proposed § 1.6011–18(c)(2) should be limited to transfers between related transferors and transferees. The Treasury Department and the IRS agree with this suggestion as transfers between related parties have a clear potential for tax avoidance whereas transfers between unrelated parties if the transferee is related to one or more existing partners may be much harder to structure to achieve the desired tax avoidance. Additionally, an unrelated transferor may not have reason to know that a transferee is related to one or more existing partners. Accordingly, the definition of ''related partner'' in § 1.6011–18(b)(9) in the final regulations provides that in the case of a section 743(b) TOI, a related partner means a transferor and transferee of a partnership interest that are related to each other immediately before or immediately after a section 743(b) TOI. The definition in the final regulations does not include a transferee that is unrelated to a transferor but is related to one or more of the partners in the partnership.

E. Transfers Upon Death

For purposes of a section 743(b) TOI, proposed § 1.6011–18(b)(2) would have defined a nonrecognition transaction as defined in section 7701(a)(45)—that is, any disposition of property in a transaction in which gain or loss is not recognized in whole or in part for purposes of subtitle A—other than a transfer on the death of a partner.

One commenter requested clarification that a step up in basis that results from the transfer of an interest on the death of a partner is not a transaction of interest. Another commenter requested clarification that the following transactions are ''transfers on the death of a partner'' excluded from the definition of a nonrecognition transaction under the final regulations: (1) any deemed transfer to what had been a grantor trust, including an intentionally defective grantor trust; and (2) a transfer on the death of a beneficiary of a trust that is a partner. This same commenter requested clarification that a ''transfer on the death of a partner'' is neither a ''nonrecognition transaction,'' nor a ''recognition transaction'' as defined in the proposed regulations. Section 1.6011–18(c)(4) of the final regulations clarifies that transfers on the death of a partner are not identified as transactions of interest or as substantially similar transactions. Section 1.6011–18(b)(13) of the final regulations also provides that the term ''transfer on the death of a partner'' means a transfer of a partnership interest from a partner to the partner's estate or a deemed transfer from a grantor trust owned by the partner to a trust that becomes a separate entity for Federal income tax purposes by reason of the partner's death.

One commenter recommended excluding distributions of partnership property to transferees of an interest in a partnership owned (or deemed owned) by a decedent at the time of death that occur during the administration of the decedent's estate, or a trust created by the decedent. This commenter also recommended excluding transfers of partnership interests owned (or deemed owned) by a decedent that occur during the administration of the decedent's estate or by a trust that was created by the decedent. Although not specifically stated in the commenter's letter, presumably, both of the commenter's recommendations would not be relevant in cases in which a section 754 election was made at the time of the decedent's death because there would be no disparity between the outside basis in the decedent's partnership interest and its share of inside basis in the partnership's properties. The Treasury Department and the IRS agree that transfers of partnership interests resulting from the death of a partner should be excluded from the transactions identified as transactions of interest and thus these transfers are not identified as such by the final regulations. However, if a section 754 election is not made for the taxable year that includes the death of the partner, subsequent transactions that generate positive basis adjustments, such as distributions of partnership property to the estate or transfers of partnership interests to beneficiaries that may resolve an inside-outside basis disparity created by a step-up to the basis of the decedent's partnership interest upon death, will be included as transactions of interest, provided that the applicable threshold amount is met. The Treasury Department and the IRS appreciate that a section 754 election, once made, is irrevocable without seeking permission from the IRS, and that a section 754 election at the time of a partner's death may require the partnership to maintain a separate set of calculations of the transferee beneficiaries' distributive shares of partnership items that reflect the section 743(b) adjustment. But making a section 754 election at the time of death would be the mechanism by which to avoid the reporting requirements imposed by the regulations (assuming the applicable threshold amount is met). Providing an exception to reporting for transactions that result in basis adjustments because a section 754 election was not made on the death of a partner due to potential administrative burdens would result in additional requests for reporting exceptions in other fact patterns in which a section 754 election was not made on an original transaction due to potential administrative burdens, and a subsequent nonrecognition transaction results in a basis adjustment that would otherwise be reportable. Including such exceptions in the final regulations would defeat the purpose of identifying the transactions of interest, as there may be circumstances in which the lack of a section 754 election was part of a strategy to generate more beneficial results using a transaction identified as a transaction of interest by the regulations. Thus, these final regulations do not exclude transactions in which a basis increase arises because a section 754 election was not made for a transaction that would have provided a basis adjustment to offset an inside-outside basis disparity. The Treasury Department and the IRS note that relief under §§ 301.9100–1 through 301.9100–3 may be available for section 754 elections should a partnership fail to make the election in the time prescribed by the Code and regulations.

IV. Threshold Amount for Reporting

A. Amount Generally

Under proposed § 1.6011–18(c)(3), a partnership related-party basis adjustment transaction would have included those transactions in which the total basis increases from all transactions described in proposed § 1.6011–18(c)(1) or (2), (d)(1) or (2) engaged in by the same partner or partnership during the taxable year (without netting for any basis adjustment that results in a basis decrease in the same transaction or another transaction), reduced by the gain recognized, if any, on which tax imposed under subtitle A is required to be paid by any of the related parties to the transaction, equal or exceed $5 million. Accordingly, a transaction of a partner or partnership described in proposed § 1.6011–18(c)(1) or (2) that resulted in a basis increase of less than $5 million during the taxable year would have been a transaction of

interest under proposed § 1.6011–18(a) if, in the same taxable year, the partner or partnership participated in another transaction or transactions described in proposed § 1.6011–18(c)(1) or (2) and, in the aggregate, the transactions resulted in a basis increase that equals or exceeds $5 million, without regard to any basis decrease resulting from the transactions and after reducing the resulting aggregate amount by the gain recognized, if any, on which tax imposed under subtitle A is required to be paid by any of the related parties to the transactions.

Many commenters recommended increasing the proposed $5 million threshold amount, asserting that the $5 million threshold was too low, particularly considering the aggregation requirement, and would catch common business transactions. Several commenters recommended increasing the proposed $5 million threshold amount to an amount between $10 million and $100 million. One commenter recommended making the threshold amount $10 million for transactions of interest occurring after the applicability date of these final regulations and $50 million for transactions of interest occurring before that date.

The Treasury Department and the IRS have determined that increasing the proposed $5 million threshold amount is appropriate to reduce the administrative burden imposed on taxpayers. The purpose of these final regulations is to learn more about partnership related-party basis adjustment transactions and the Treasury Department and the IRS are conscious of overburdening taxpayers in that pursuit. Accordingly, the final regulations provide that, in the case of related-party basis adjustment transactions occurring within the six-year lookback period described in § 1.6011–18(c)(3)(ii), the applicable threshold amount is $25 million. For related-party basis adjustment transactions occurring after the six-year lookback period, the final regulations provide an applicable threshold amount of $10 million. In each case, the applicable threshold amount is met for a taxable year if the sum of all related-party basis increases (as determined under Part IV.B. of this Summary of Comments and Explanation of Revisions) resulting from all transactions described in the final regulations of a participant during the taxable year (without netting for any downward basis adjustment in the same transaction or another transaction) exceeds by at least the applicable threshold amount the gain recognized from such transactions, if any, on which tax imposed under subtitle A is required to be paid by any of the related partners (or tax-indifferent party) who are a party to such transactions. If the applicable threshold amount is met for a taxable year, all transactions of the participant described in the final regulations for the taxable year are reportable as transactions of interest regardless of whether an individual transaction meets the applicable threshold amount.

B. Calculation of Threshold Amount

Commenters also recommended changing how the threshold amount is calculated. A few commenters recommended allowing basis increases to be offset by basis decreases for purposes of determining whether the threshold amount has been reached. Another commenter recommended taking basis increases into account only to the extent that corresponding basis decreases are borne by related parties. The same commenter recommended exempting transactions from the proposed regulations for which only a small portion (for example, 10 percent) of an overall basis decrease impacts parties related to those with corresponding basis increases, or vice versa. One commenter recommended that if its recommendation to limit reporting to the year of the transaction of interest is not adopted, that the threshold amount look to net taxable income—that is, reporting should be required only if the tax benefit reduced taxable income by the threshold amount. This commenter also suggested eliminating aggregation of basis increases. Another commenter recommended using a threshold amount that is not related to basis (for example, the book value of distributed property).

The Treasury Department and the IRS agree that the calculation of the applicable threshold amount for purposes of section 734(b) TOIs should include only related partners' shares of basis increases and not the shares of unrelated parties, who can negotiate transactions at arm's length to protect their interests. The Treasury Department and the IRS also agree that the calculation of the applicable threshold amount for purposes of section 732(b) TOIs should exclude basis increases that correspond to basis decreases borne by unrelated partners (other than tax-indifferent parties) as basis decreases borne by unrelated partners should be negotiated at arm's length unless the unrelated partner is a tax-indifferent party. Accordingly, § 1.6011–18(c)(3)(iii) of the final regulations provide that in the case of a section 734(b) TOI, other than a substantially similar transaction described in § 1.6011–18(d)(1), for determining whether the applicable threshold amount is met for a taxable year, a basis increase is an increase to the adjusted basis of the partnership's property under section 734(b)(1) and (c) only to the extent of each related partner's share of the basis increase. Section 1.6011–18(c)(3)(iv) of the final regulations provides that in the case of a section 732(b) TOI, other than a substantially similar transaction described in § 1.6011–18(d)(1), for determining whether the applicable threshold amount is met for a taxable year, a basis increase is an increase to the basis of property distributed to one of the related partners under section 732(b) or (c), but excluding the amount of any basis increase that corresponds to a decrease to the basis of property distributed to unrelated partners (other than tax-indifferent parties) under section 732(b) and (c) or to unrelated partners' (other than tax-indifferent parties') shares of a corresponding decrease to the basis of the partnership's remaining property under section 734(b)(2) and (c). In the case of a substantially similar transaction described in § 1.6011–18 (d)(1), for purposes of determining whether the applicable threshold amount is met for a taxable year, a basis increase is an increase to the basis of property distributed to one of the partners under section 732(b) or (c) only to the extent of a corresponding decrease to the basis of property distributed to a tax-indifferent party under section 732(b) and (c) or to one or more tax-indifferent party's shares of a corresponding decrease to the basis of the partnership's remaining property under section 734(b)(2) and (c). For purposes of all of these rules, a partner's share of a basis decrease is determined immediately after the distribution under rules similar to the rules of § 1.197–2(h)(12)(iv)(D).

The Treasury Department and the IRS do not agree, however, that additional changes to the calculation of the applicable threshold amount, such as eliminating aggregation, calculating the applicable threshold amount based on increases to taxable income, or using an economic threshold that is based on book amounts, are appropriate in light of the modifications made. If aggregation were eliminated from the calculation of the applicable threshold amount, taxpayers would be incentivized to separate transactions described in the final regulations into multiple transactions that result in positive basis adjustments in an amount below the applicable threshold amount to avoid reporting obligations.

Incentivizing such behavior would defeat the purpose of the final regulations, which is to gather information on partnership related-party basis adjustment transactions. Additionally, calculating the applicable threshold amount based on taxable income or book amounts would introduce unnecessary complexity for both taxpayers and the IRS in identifying the transactions described in the final regulations. The calculation of the applicable threshold amount in the final regulations represents an appropriate methodology for quantifying the magnitude of partnership related-party basis adjustment transactions a taxpayer engages in for a taxable year. As described in Part IV.A of this Summary of Comments and Explanation of Revisions, the increases to the threshold amount made by these final regulations should also address concerns that the applicable threshold amount is overly inclusive.

Finally, one commenter requested clarification that substantially similar transactions are subject to the threshold amount. The Treasury Department and the IRS clarify that a transaction cannot be a substantially similar transaction if the applicable threshold amount is not met. As described in part VI of this Summary of Comments and Explanation of Revisions, transactions would be ''substantially similar'' transactions if they are (1) expected to obtain the same or similar types of tax consequences as the transactions described in the final regulations, (2) factually similar or based on the same or similar tax strategy, and (3) the applicable threshold amount is met.

V. Relatedness Standard

Proposed § 1.6011–18(b)(8) would have defined ''related'' as having a relationship described in section 267(b) (without regard to section 267(c)(3)) or section 707(b)(1). Proposed § 1.6011–18(b)(9) would have defined ''related partners'' as partners of a partnership that are related in the following manner—(i) in a transaction described in proposed § 1.6011–18(c)(1), the partnership has two or more direct or indirect partners that are related to each other within the meaning of proposed § 1.6011–18(b)(8), or (ii) in a transaction described in proposed § 1.6011–18(c)(2), the transferor of a partnership interest is related to the transferee, or the transferee is related to one or more of the partners in the partnership, within the meaning of proposed § 1.6011–18(b)(8). Under the proposed regulations, this relatedness requirement would have been met if the requisite relatedness exists either immediately before or immediately after a partnership related-party basis adjustment transaction described in proposed § 1.6011–18(c)(1) or (2).

Several commenters recommended changes to the relatedness requirement, stating that it was overbroad and difficult to comply with as partnerships and partners may not be able to identify their related parties. One commenter recommended importing concepts found in section 1563(a)(2) of the Code (related to brother-sister controlled groups of corporations) that would limit the definition of related partnerships by taking into account common ownership of capital or profits interests in the partnerships only to the extent that such ownership is identical with respect to each partnership.

In the case of transactions of interest involving section 734(b) or section 732(b) or (d), one commenter recommended requiring related partners to own 80 percent or more of the capital or profits interests of the partnership. Similarly, another commenter recommended that for all purposes of the final regulations, reporting should be required only if related parties own 80 percent or more of the capital or profits of a participating partnership. This commenter also recommended that the standard for relatedness be modified by substituting ''80 percent'' for ''50 percent'' in the relevant relationships defined within sections 267(b) or section 707(b)(1).

The Treasury Department and the IRS appreciate that the standard of relatedness used in the proposed regulations, combined with the scope of the transactions identified as transactions of interest, the proposed $5 million threshold amount, and the proposed definition of participation could result in administrative burdens on partnerships and their partners. The final regulations address these burdens by limiting the scope of the transactions identified, increasing the applicable threshold amounts, and limiting the application of the subsequent realization of tax benefit rule as described in Part VII.A. of this Summary of Comments and Explanation of Revisions. For example, in response to comments requesting that the standard of relatedness be narrowed, in the case of a section 734(b), 732(b) or 732(d) TOI, the final regulations provide that only directly related partners (and not also indirectly related partners) are considered in determining whether partners are related within the meaning of § 1.6011–18(b)(8) of the final regulation.

The final regulations do not adopt the additional changes to the standard of relatedness recommended by commenters because the Treasury Department and the IRS are concerned that counting only identical ownership as between related partnerships, or requiring related partners to own 80 percent or more of the capital or profits interests in a partnership, would more easily permit partnership structures with only marginally different ownership, including through the use of accommodation parties, to avoid such higher ownership thresholds without substantially affecting the partners' economics. Likewise, the Treasury Department and the IRS are concerned that increasing the relatedness standard from 50 percent to 80 percent could allow taxpayers to structure their affairs to stay below an 80-percent-relatedness standard, while simultaneously engaging in abusive partnership related-party basis adjustment transactions. Adding an ownership threshold or increasing the relatedness standard would frustrate the purpose of identifying the transactions described in the proposed regulations as transactions of interest. Accordingly, the commenters' recommendations are not adopted in the final regulations.

A commenter recommended excluding transactions between family members from those defined as transactions of interest and focusing instead on transactions involving controlled corporations described in section 267(f). The commenter noted that if relatedness is determined immediately before or after a transaction, parties undergoing divorce may be subject to these rules even though they have competing interests and will not be related after the divorce. Another commenter recommended excluding brothers and sisters from a person's family for purposes of determining relatedness, stating that, in the commenter's experience, siblings often have a contentious business relationship and are less likely to engage in transactions that confer large, gratuitous economic or tax benefits to one another. The Treasury Department and the IRS do not agree that familial relationships, including sibling relationships, should be excluded from the definition of relatedness. Family members, including siblings, often work in concert in ways that arm's-length parties do not. For those reasons, Congress included these familial relationships as part of the limitation rules in sections 267 and 707(b). Additionally, section 1041 of the Code is intended to address transfers of

property between spouses incident to divorce. For these reasons, the final regulations retain familial relationships, including sibling relationships, in the definition of relatedness.

VI. Substantially Similar Transactions

Section 1.6011–4(b)(6) defines a ''transaction of interest'' as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a transaction of interest. For purposes of proposed § 1.6011–18, transactions would be ''substantially similar'' transactions if the transactions are substantially similar within the meaning of § 1.6011–4(c)(4)—that is, if they are expected to obtain the same or similar types of tax consequences and are either factually similar or based on the same or similar tax strategy. Proposed § 1.6011–18(a) would have provided that substantially similar transactions include, but are not limited to, the transactions described in proposed § 1.6011–18(d).

Some commenters recommended clarifying or narrowing the definition of ''substantially similar'' transactions generally. Several commenters noted that the broad definition of ''substantially similar transactions'' in § 1.6011–4 increases uncertainty and compliance costs. Suggestions to amend § 1.6011–4, including that provision's definition of a ''substantially similar'' transaction, are outside the scope of these final regulations. As a result, the commenters' suggestions are not adopted in the final regulations.

A. Tax-Indifferent Parties

Under proposed § 1.6011–18(d)(1), a transaction would have been substantially similar to a transaction described in proposed § 1.6011–18(c) if the transaction is a basis adjustment transaction described in proposed § 1.6011–18(c)(1) or (2), except that it does not involve related partners and one or more partners of the partnership is a tax-indifferent party. Under proposed § 1.6011–18(b)(11), a tax-indifferent party would have meant a person that is either not liable for Federal income tax because of its tax-exempt or, in certain cases, foreign status, or to which gain from a transaction described in proposed § 1.6011–18(c) would not result in Federal income tax liability for the person's taxable year within which such gain is recognized (for example, because the taxpayer has a net operating loss carryforward or capital loss carryforward).

Two commenters recommended eliminating transactions involving tax-indifferent parties from those identified as transactions of interest. Many commenters noted that partners and partnerships may be unaware that a person engaging in a transaction identified by the proposed regulations is a tax-indifferent party. Some commenters requested clarification to the definition of tax-indifferent party, such as whether it includes direct or indirect partners that are exempt from Federal income tax under section 115 of the Code (relating to the income of State, territorial, or local governments), entities treated as partnerships or S corporations for Federal tax purposes, or a person that, due to tax attributes or for other reasons, is subject to tax on only part of its income. One commenter requested confirmation that the definition of a tax-indifferent party does not include a party with a capital loss carryover. The commenter raised that a capital loss carryover may be unrelated to a partner's partnership interest and unknown by other partners, particularly if the partner is unrelated.

One commenter recommended limiting the rule to situations in which the tax-indifferent party knows or has reason to know of the tax benefits arising in connection with its participation in a basis-adjustment transaction and that the other partners that are party to the transaction know of the partner's tax-indifferent status. One commenter recommended an exception for taxpayers who do not have knowledge or reason to know that its transaction is reportable because a person that is a party to the transaction is tax-indifferent. Another commenter recommended modifying the tax-indifferent party rule to apply only to situations in which the taxpayer knowingly participates in the transaction to which the tax-indifferent party facilitates a basis step-up.

Eliminating the tax-indifferent party rule would frustrate the purpose of identifying substantially similar transactions to the identified transactions of interest that use tax-indifferent parties instead of related parties to achieve the same economic or tax results. Accordingly, the Treasury Department and the IRS decline to eliminate the tax-indifferent party rule entirely in the final regulations. However, in response to these comments, the Treasury Department and the IRS have determined that certain changes to the scope of transactions of interest involving tax-indifferent parties are appropriate.

Accordingly, the final regulations include a knowledge element in the definition of a tax-indifferent party. Section 1.6011–18(b)(12) of the final regulations provides that a tax-indifferent party means a person that is either not liable for Federal income tax by reason of its tax-exempt or, in certain cases, foreign status, or to which any gain, or portion of any gain, that would have resulted from a section 732(b) TOI or a section 734(b) TOI if the property subject to a basis decrease in such transaction were sold immediately after such transaction, would not result in Federal income tax liability for the person's taxable year within which such gain would have been recognized, and whose status as a tax-indifferent party is known or should be known to any other person that participates in the transaction or to a partner in a partnership that participates in such a transaction. Thus, a tax-indifferent party would include a person that is partially taxable, for example, due to tax attributes, to the extent that the person's status as a tax-indifferent party is known or should be known by any other person participating in the transaction or to a partner in a partnership that participates in such a transaction. Because partnerships or S corporations are generally not liable for tax, and because the tax status of their partners or shareholders could be diverse, the final regulations also provide that partnerships or S corporations are not tax-indifferent parties except in cases in which a principal purpose of the use of the partnership or S corporation is to avoid tax-indifferent party status.

Additionally, the final regulations limit the scope of a substantially similar transaction with a tax-indifferent party under § 1.6011–18(d)(1) by limiting the calculation of the applicable threshold amount to basis increases that correspond to a basis decrease to the tax-indifferent party for sections 732 and 734 TOIs. *See* Part IV.B. of this Summary of Comments and Explanation of Revisions. These modifications are intended to address concerns that the tax-indifferent party rules in the proposed regulations were overbroad.

The final regulations also clarify that a transaction with a tax-indifferent party includes a transaction in which the tax-indifferent party facilities the increase in the basis of partnership property in a section 732 TOI by having a share of a corresponding decrease to the basis of partnership property.

B. Recognition Transactions

Proposed § 1.6011–18(d)(2) would have defined as a substantially similar transaction a transaction in which a partner transfers the partner's partnership interest in a recognition

transaction to a related transferee or to a person related to one or more existing partners, and the proposed $5 million threshold amount was met. Proposed § 1.6011–18(b)(6) would have defined a ''recognition transaction'' as a transaction other than a nonrecognition transaction.

One commenter requested clarification that proposed § 1.6011–18(d)(2) applies only to transfers between related parties, meaning the transferor and transferee must be related. The Treasury Department and the IRS agree with this comment and have made clarifying changes to confirm that the rule in § 1.6011–18(d)(2) does not apply to transfers of partnership interests between persons that are not related.

VII. Participation in a Transaction of Interest Identified by the Proposed Regulations

A. Subsequent Realization of Tax Benefit Rule

Under proposed § 1.6011–18(e)(2)–(4), a participating partnership, participating partner, or related subsequent transferee would have participated in a transaction of interest in any taxable year in which it participates in a transaction described in proposed § 1.6011–18(c). Additionally, under proposed § 1.6011–18(e)(5), a participating partnership, participating partner, or related subsequent transferee would have participated in a transaction of interest in any taxable year in which its tax return reflected the tax consequences of a basis increase resulting from a transaction described in proposed § 1.6011–18(c) (subsequent realization of tax benefit rule). Therefore, under the proposed regulations, as a result of the subsequent realization of tax benefit rule, a transaction described in proposed § 1.6011–18(c) that occurred many years ago could require reporting if a taxpayer's tax return in an open tax year reflected the tax consequences (such as cost-recovery deductions) arising from the transaction of interest.

Several commenters recommended eliminating the retroactive effect of the subsequent realization of tax benefit rule. These commenters stated that complying with the rule would be burdensome given that it could require taxpayers and their advisors to reconstruct transactions and their resulting tax consequences from many years ago. Commenters asserted that, in many cases, taxpayers and their advisors will not have sufficient information to comply with the rule.

Several commenters recommended that the proposed regulations apply prospectively to transactions that occur in taxable years beginning on or after the date the final regulations are adopted, whereas one commenter recommended applying the proposed regulations solely to transactions effected on or after January 1, 2023. One commenter recommended applying the subsequent realization of tax benefit rule only to partnership related-party basis adjustment transactions that occur within partnership tax years that remain open under the period of limitations set forth in section 6235 of the Code. Section 6235 provides rules on the period of limitations for making adjustments with respect to partnerships subject to the Centralized Partnership Audit Regime under the Bipartisan Budget Act of 2015 (BBA partnerships). Under section 6235(a)(1), the time for the IRS to make an adjustment for a taxable year of a BBA partnership generally is the later of the date which is three years after the latest of (1) the date on which the partnership return for the taxable year was filed, (2) the return due date for the taxable year, or (3) the date on which the partnership filed an administrative adjustment request under section 6227 of the Code with respect to the taxable year. In the case of a BBA partnership that makes a substantial omission of gross income within the meaning of section 6501(e)(1), section 6235(c)(2) provides that the period of limitations on making adjustments is six years instead of three years.

The Treasury Department and the IRS do not agree with eliminating all reporting that would occur under the subsequent realization of tax benefit rule as this would defeat the purpose of providing the IRS with information regarding transactions with tax consequences occurring over more than one taxable year. However, the Treasury Department and the IRS agree that it is appropriate to limit the retroactive information effect of the subsequent realization of tax benefit rule because of administrative concerns with compliance for transactions that would meet the elements of § 1.6011–18(c) and (d) except that they occurred many years ago.

In determining the appropriate limitation for the subsequent realization of tax benefit rule, limiting the look back period to the prior six years as recommended by one commenter allows the IRS to preserve its ability to assess tax in cases in which the statute of limitations for assessment of tax is six years pursuant to section 6501(e) or section 6235(c)(2). In addition, a six-year lookback period aligns with the requirement under § 301.6112–1(b)(2) that material advisors of transactions of interests maintain lists of advisees, but not if the person entered into the transaction more than six years from the date the transaction was identified as a transaction of interest under published guidance. Accordingly, the final regulations adopt a six-year lookback period for required disclosures. Under the final regulations at § 1.6011–18(f)(2), for a taxable year described in § 1.6011–4(e)(2)(i), a participant must provide the information described in the final regulations only if the transaction of interest occurred within the six-year lookback period. Section 1.6011–18(b)(11) of the final regulations provides that the six-year lookback period means the seventy-two months immediately preceding the first month of the taxpayer's most recent taxable year that began before January 14, 2025. The final regulations include examples demonstrating the six-year lookback period rule.

B. Limiting the Definition of Participation

Several commenters recommended requiring reporting only in the taxable year the transaction of interest occurs and eliminating the subsequent realization of tax benefit rule. These commenters asserted that reporting only in the year in which the transaction of interest first arises would reduce compliance burdens and costs for taxpayers and limit the potential for missed reporting. One commenter suggested adopting a one-time disclosure mechanism like that adopted in Form 1065, Schedule B, questions 11 and 12 for the ''drop and swap'' or ''swap and drop'' transactions to which section 1031 of the Code applies. Another commenter recommended requiring reporting only at the partnership level to avoid duplicative reporting. Reporting by all participants in any taxable year in which the participant's tax return reflects the tax consequences of a basis increase resulting from a transaction of interest is the most appropriate for tax compliance and administration. Accordingly, the commenters' recommendations are not adopted in the final regulations.

Special Analyses

I. Paperwork Reduction Act

The collection of information contained in these final regulations is reflected in the collection of information for Form 8886 and Form 8918, *Material Advisor Disclosure Statement,* that have been reviewed and approved by the

Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545–1800 and 1545–0865.

To the extent there is a change in burden as a result of these final regulations, the change in burden will be reflected in the updated burden estimates for the Forms 8886 and 8918. The requirement to maintain records to substantiate information on Forms 8886 and 8918 is already contained in the burden associated with the control number for the forms and remains unchanged.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires agencies to ''prepare and make available for public comment an initial regulatory flexibility analysis,'' which will ''describe the impact of the rule on small entities.'' Section 605(b) of the RFA allows an agency to certify a rule if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Secretary of the Treasury hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities pursuant to the RFA. This certification is based on IRS data that estimates the percentage of partnerships that would have been required to file a disclosure statement under the proposed regulations and those that may be required to file a disclosure statement under the final regulations.

The IRS's Research, Applied Analytics, and Statistics division (RAAS) provided data that indicated the percentage of partnerships with gross receipts or sales of $25 million or less that might have been subject to the disclosure obligations under the proposed regulations because of a basis adjustment under section 743(b) of more than $5 million during the taxable year. In addition, RAAS provided data that indicated the percentage of partnerships with gross receipts or sales of $25 million or more that might have been subject to the disclosure obligations under the proposed regulations because of a basis adjustment under section 743(b) of more than $5 million during the taxable year. The data suggested that of all partnerships with related parties and a basis adjustment under section 743(b) of more than $5 million during the taxable year, approximately two-thirds of the partnerships would have gross receipts or sales of $25 million or less and approximately one-third would have gross receipts or sales of $25 million or more. The Treasury Department and the IRS determined that the data did not indicate that the proposed regulations would have a significant economic impact on a substantial number of small entities because not all partnerships with gross receipts or sales of $25 million or less are considered small businesses,[3] and the data did not provide information on whether the partnerships with gross receipts or sale of $25 million or less were part of larger enterprises.

As discussed in Part II of the Summary of Comments and Explanation of Revisions, several commenters stated that the scope of the proposed regulations would be overbroad and the number of entities that would be subject to disclosure was underestimated. In addition, commenters asserted that taxpayers would be subject to substantial costs for complying with the proposed regulations because compliance required reviewing transactions from prior taxable years to determine whether a continuing tax benefit was attributable to a transaction identified as a transaction of interest under the proposed regulations. These comments are addressed in Parts II and VII of the Summary of Comments and Explanation of Revisions.

One commenter asserted that the Treasury Department and the IRS underestimated the likely cost of complying with the proposed regulations. Specifically, the commenter asserted that the likely wage of tax preparers and costs of due diligence, as well as the number of parties affected by each transaction of interest were underestimated.

As indicated in the Summary of Comments and Explanation of Revisions, the final regulations include changes that should significantly limit the total number of entities and more specifically, small businesses, subject to the disclosure obligations. Most significantly, the applicable threshold amount is increased from $5 million to $10 million; the period for reporting under § 1.6011–4(e)(2)(i) is limited to a six-year lookback period and the applicable threshold amount for the six-year lookback period is $25 million; in the case of a section 734(b) TOI, the applicable threshold amount is determined by generally only taking into account only the amount of the basis increase shared by related partners; in the case of a section 732(b) TOI, the applicable threshold amount is determined by generally only taking into account only the amount of the basis increase that corresponds to a basis decrease shared by the related partners.

In addition, more recent data from the IRS indicates that, in the case of partnerships with gross assets of less than $25 million that reported basis adjustments under section 734(b) or section 743(b) for the taxable year, the average basis adjustment was less than the applicable threshold amount of $10 million or more in the final regulations. Thus, the Treasury Department and the IRS anticipate that many partnerships with gross assets of less than $25 million should not be subject to the disclosure obligations under the final regulations. Further, the data indicates that partnerships with gross assets of more than $25 million that reported basis adjustments under section 734(b) or section 743(b) for the taxable year that met the applicable threshold amount of $10 million or more in the final regulations represent less than one percent of all partnerships that filed tax returns for the taxable year. Accordingly, as a result of the changes made to the final regulations in response to comments received on the proposed regulations, the disclosure obligations in the final regulations should affect a low percentage of partnerships and most of those partnerships will be partnerships with less than $25 million of gross assets.

The final regulations should not have a significant economic impact on small entities subject to the reporting requirements of the final regulations because the final regulations merely implement sections 6011, 6111 and 6112 and § 1.6011–4 by specifying the manner in which and the time at which a transaction identified as a transaction of interest in the final regulations must be reported. Accordingly, because the final regulations will be limited in scope to time and manner of information reporting, their economic impact is expected to be minimal. The Treasury Department and the IRS expect that the reporting burden is low because the information sought is necessary for regular annual return preparation and ordinary recordkeeping. The estimated burden for any taxpayer required to file Form 8886 is approximately 10 hours, 16 minutes for recordkeeping, 4 hours, 50 minutes for learning about the law or the form, and 6 hours, 25 minutes for preparing, copying, assembling, and sending the form to the IRS.

RAAS estimated that the appropriate wage rate for complying with the proposed regulations is $102.00 (2022

[3] *See,* 13 CFR 121.201.

dollars) per hour. Thus, it was estimated that persons required to comply with the proposed regulations would have incurred costs totaling approximately $2,194.70 per filing. One commenter indicated that this per hour dollar amount is too small and that a better estimate is approximately $177.29 per hour or approximately $3,814.69 per filing (subject to the taxpayer potentially seeking specialists with a higher hourly fee to comply with the proposed regulations). Either of these amounts is small in comparison to an aggregate basis increase of $10 million or more as the result of a transaction identified as a transaction of interest under the final regulations. Thus, the relatively small cost to comply with the final regulations will not pose any significant economic impact to any small entities that would be subject to the final regulations.

For the reasons stated, a regulatory flexibility analysis under the RFA is not required. Pursuant to section 7805(f) of the Code, the proposed rule preceding this rulemaking was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt state law within the meaning of the Executive order.

V. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

VI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The authors of these regulations are Elizabeth Zanet and Cameron Williamson, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.6011–18 in numerical order to read in part as follows:

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

* * * * *

Section 1.6011–18 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011.

* * * * *

■ **Par. 2.** Section 1.6011–18 is added to read as follows:

§ 1.6011–18 Certain partnership related-party basis adjustment transactions as transactions of interest.

(a) *Identification as transaction of interest.* Transactions that are the same as or substantially similar (within the meaning of § 1.6011–4(c)(4)) to the transactions described in paragraph (c) of this section are identified as transactions of interest for purposes of § 1.6011–4(b)(6). Transactions that are substantially similar (within the meaning of § 1.6011–4(c)(4)) to the transactions described in paragraph (c) of this section include, but are not limited to, transactions described in paragraph (d) of this section.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Code* means the Internal Revenue Code.

(2) *Nonrecognition transaction* means a nonrecognition transaction within the meaning of section 7701(a)(45) of the Code.

(3) *Participating partner* means—

(i) Except as provided in paragraph (b)(3)(ii), (iii), or (iv) of this section, any partner that directly receives a distribution of property from, or an interest in, a participating partnership, or directly transfers an interest in a participating partnership, in a transaction described in paragraph (c) or (d) of this section, including a person that becomes or ceases to be a partner as a result of such transaction.

(ii) In the case of a participating partnership interest held by an entity that is disregarded as separate from its owner within the meaning of § 301.7701–2(c)(2)(i) of this chapter, *participating partner* means the owner of the disregarded entity for Federal income tax purposes.

(iii) In the case of a participating partnership interest held by a trust for which the grantor or another person is treated as the owner of the trust that holds the participating partnership interest as provided in section 671 of the Code, *participating partner* means the grantor or other person designated under sections 671 through 679 of the Code as the owner of the trust that holds the participating partnership interest.

(iv) In the case of a publicly traded partnership within the meaning of section 7704 of the Code, *participating partner* means a partner of the publicly traded partnership but only to the extent that the partner engages in a private transfer (as described in § 1.7704–1(e)), redemption or repurchase agreement (as described in § 1.7704–1(f)), or private placement (as described in § 1.7704–1(h)) of a partnership interest with a related partner and the transaction is not otherwise excluded as a transaction described in paragraph (c) or (d) of this section.

(4) *Participating partnership* means any partnership—

(i) That makes a distribution of property to a participating partner in a

transaction described in paragraph (c)(1) or (d)(1) of this section, or

(ii) A partnership interest in which is transferred by a participating partner in a transaction described in paragraph (c)(2) or (d)(2) of this section.

(5) *Participating partnership interest* means any partnership interest in a participating partnership.

(6) *Recognition transaction* means a transaction other than a nonrecognition transaction within the meaning of paragraph (b)(2) of this section.

(7) *Recoverable property* means property of a character subject to an allowance for depreciation, amortization, or depletion under subtitle A of the Code (subtitle A).

(8) *Related* means having a relationship described in section 267(b) of the Code (without regard to section 267(c)(3)) or section 707(b)(1) of the Code.

(9) *Related partners* means:

(i) In the case of a transaction described in paragraph (c)(1) of this section, two or more direct partners of a partnership that are related immediately before or immediately after a transaction described in paragraph (c)(1) of this section.

(ii) In the case of a transaction described in paragraph (c)(2) or (d)(2) of this section, a transferor and transferee of a partnership interest that are related to each other immediately before or immediately after a transaction described in paragraph (c)(2) of this section.

(10) *Related subsequent transferee* means any person that is related to a participating partner and directly received in a nonrecognition transaction a transfer (including a distribution) of property that was subject to an increase in basis from a transaction described in paragraph (c) or (d) of this section.

(11) *Six-year lookback period* means the seventy-two months immediately preceding the first month of the taxpayer's most recent taxable year that began before January 14, 2025.

(12) *Tax-indifferent party* means a person that is either not liable for Federal income tax by reason of the person's tax-exempt or, in certain cases, foreign status, or to which any gain, or portion of any gain, that would have resulted from a transaction described in paragraph (d)(1) of this section if the property subject to a basis decrease in such transaction were sold immediately after such transaction would not result in Federal income tax liability for the person's taxable year within which such gain would have been recognized, and whose status as a tax-indifferent party is known or should be known to any other person that participates in a transaction described in paragraph (d)(1) of this section or to a partner in a partnership that participates in such a transaction. A tax-indifferent party does not include a partnership or S corporation except in a case in which a principal purpose of the use of the partnership or S corporation is to avoid tax-indifferent party status.

(13) *Transfer on the death of a partner* means a transfer of a partnership interest from a partner to the partner's estate or a deemed transfer from a grantor trust owned by the partner to a trust that becomes a separate entity for Federal income tax purposes by reason of the partner's death.

(c) *Transaction description.* A transaction is described in this paragraph (c) if the factual elements of the transaction described in paragraph (c)(1)(i) through (iii) or (c)(2) of this section are met.

(1) *Distributions by a partnership.* A partnership with two or more related partners engages in any of the transactions described in paragraphs (c)(1)(i) through (iii) of this section as follows:

(i) The partnership distributes property to one of the related partners in a current or liquidating distribution, the partnership increases the basis of one or more of its remaining properties under section 734(b) and (c) of the Code, and the applicable threshold described in paragraph (c)(3) of this section is met.

(ii) The partnership distributes property to one of the related partners in liquidation of that person's partnership interest (or in complete liquidation of the partnership), the basis of one or more of those distributed properties is increased under section 732(b) and (c) of the Code, and the applicable threshold described in paragraph (c)(3) of this section is met.

(iii) The partnership distributes property to one of the related partners, the basis of one or more of those distributed properties is increased under section 732(d) of the Code, the distributee acquired all or a part of its interest in the partnership in a transaction that would have been a transaction described in paragraph (c)(2) of this section if the partnership had a section 754 election in effect for the year of transfer, and the applicable threshold described in paragraph (c)(3) of this section is met.

(2) *Transfers of a partnership interest*—(i) *In general.* Except as otherwise provided in paragraph (c)(2)(ii) or (c)(4) of this section, a partner transfers all or a portion of a partnership interest to a related partner in a nonrecognition transaction, the basis of one or more partnership properties is increased under section 743(b)(1) and (c) of the Code, and the applicable threshold described in paragraph (c)(3) of this section is met.

(ii) *Subsequent nonrecognition transfers*—(A) *In general.* If a partner receives an interest in a partnership from a person in a recognition transaction (first transfer) and the basis of one or more partnership properties is increased under section 743(b)(1) and (c) of the Code, and subsequently the partner (transferor) transfers the partnership interest to a person related to the transferor (transferee) in a transaction described in paragraph (c)(2)(i) of this section (subsequent transfer), the subsequent transfer is a transaction described in paragraph (c)(2)(i) of this section only to the extent, if any, that the transferee's basis adjustment under section 743(b)(1) and (c) resulting from the subsequent transfer exceeds the amount of the transferor's remaining basis adjustment described in paragraph (c)(2)(ii)(B) of this section that is attributable to the transferred partnership interest (excess amount), and the applicable threshold described in paragraph (c)(3) of this section is met. Only the excess amount is counted towards the applicable threshold described in paragraph (c)(3) of this section.

(B) *Transferor's remaining basis adjustment.* A *transferor's remaining basis adjustment* is equal to the amount of the transferor's basis adjustment under section 743(b)(1) and (c) resulting from the first transfer as adjusted under section 1016(a)(2) of the Code to reflect the recovery of the basis adjustment or as otherwise adjusted prior to the subsequent transfer.

(3) *Applicable threshold*—(i) *In general.* Except as otherwise provided in paragraph (c)(3)(ii) of this section, for determining whether a transaction is described in paragraph (c)(1) or (2), (d)(1) or (2) of this section, the applicable threshold is met for a taxable year if the sum of all basis increases resulting from all such transactions of a partnership or partner during the taxable year (without netting for any basis adjustment that results in a basis decrease in the same transaction or another transaction) exceeds by at least $10 million the gain recognized from such transactions during the same taxable year, if any, on which tax imposed under subtitle A is required to be paid by any of the related partners (or tax-indifferent party, in the case of a transaction described in paragraph (d)(1) of this section) who are a party to such transactions.

(ii) *Six-year lookback period threshold.* In the case of a transaction described in (c) or (d) of this section that

occurred within the six-year lookback period, paragraph (c)(3)(i) applies by substituting ''$25 million'' for ''$10 million'' for determining whether the applicable threshold is met for a taxable year.

(iii) *Basis increase under section 734(b) and (c) only for shares of basis increase to related partners.* In the case of a transaction described in paragraph (c)(1)(i) of this section for determining whether the applicable threshold is met for a taxable year, a basis increase is an increase to the adjusted basis of the partnership's property under section 734(b)(1) and (c) only to the extent of a related partner's share of the basis increase. For purposes of this paragraph (c)(3)(iii), a partner's share of a basis increase is determined immediately after the distribution under rules similar to the rules of § 1.197–2(h)(12)(iv)(D).

(iv) *Basis increase under sections 732(b) or (c) only for shares of corresponding basis decreases under section 734(b) to related partners or tax-indifferent parties.* In the case of a transaction described in paragraph (c)(1)(ii) of this section for determining whether the applicable threshold is met for a taxable year, a basis increase is an increase to the basis of property distributed to one of the related partners under section 732(b) or (c), but excluding the amount of any basis increase that corresponds to a decrease to the basis of property distributed to unrelated partners (other than tax-indifferent parties) under section 732(b) and (c) or to unrelated partners' (other than tax-indifferent parties') shares of a corresponding decrease to the basis of the partnership's remaining property under section 734(b)(2) and (c). For purposes of this paragraph (c)(3)(iv), a partner's share of a basis decrease is determined immediately after the distribution under rules similar to the rules of § 1.197–2(h)(12)(iv)(D). In the case of a transaction described in paragraph (d)(1) of this section, for purposes of determining whether the applicable threshold is met for a taxable year, a basis increase is an increase to the basis of property distributed to one of the partners under section 732(b) or (c) only to the extent of a corresponding decrease to the basis of property distributed to a tax-indifferent party under section 732(b) and (c) or to one or more tax-indifferent party's shares of a corresponding decrease to the basis of the partnership's remaining property under section 734(b)(2) and (c).

(4) *Exclusion of a transfer on the death of a partner.* A transaction described in paragraph (c)(2) or (d)(2) of this section does not include a transfer of a partnership interest that is a transfer on the death of a partner within the meaning of paragraph (b)(13) of this section.

(d) *Substantially similar transaction.* A transaction that is substantially similar (within the meaning of § 1.6011–4(c)(4)) to a transaction described in paragraph (c) of this section includes, but is not limited to:

(1) A transaction that is described in paragraph (c)(1)(i) or (ii) of this section except that the partners of the partnership are not related and one or more partners of the partnership is a tax-indifferent party that facilitates an increase in the basis of partnership property or an increase in the basis of property held by another partner in the partnership by receiving a distribution of property from the partnership or having a share of a corresponding decrease to the basis of partnership property, and the applicable threshold described in paragraph (c)(3) of this section is met; and

(2) A transaction in which a transferor transfers an interest in a partnership to a transferee that is related to the transferor in a recognition transaction, and the applicable threshold described in paragraph (c)(3) of this section is met.

(e) *Participation*—(1) *In general.* Whether a taxpayer has participated in a transaction of interest described in paragraph (c) of this section or a substantially similar transaction described in paragraph (d) of this section during a taxable year is determined under this paragraph (e).

(2) *Participating partners.* A participating partner participates in a transaction of interest described in paragraph (c)(1) of this section or a substantially similar transaction described in paragraph (d)(1) of this section in any taxable year in which the partner directly receives a distribution of property, or directly transfers or receives an interest in a participating partnership, in a transaction described in paragraph (c)(2) of this section or a substantially similar transaction described in paragraph (d)(2) of this section.

(3) *Participating partnerships.* A participating partnership participates in a transaction of interest described in paragraph (c) or a substantially similar transaction described in paragraph (d) of this section in any taxable year in which the partnership makes a distribution of property to a participating partner in a transaction described in paragraph (c)(1) or (d)(1) of this section, or a participating partnership interest is transferred in a transaction described in paragraph (c)(2) or (d)(2) of this section.

(4) *Related subsequent transferees.* A related subsequent transferee participates in a transaction of interest described in paragraph (c) of this section or a substantially similar transaction described in paragraph (d) of this section in any taxable year in which the related subsequent transferee directly receives, in a nonrecognition transaction, a transfer (including a distribution) of property that was subject to an increase in basis as a result of a transaction described in paragraph (c) or (d) of this section that was required to be disclosed under paragraph (f) of this section.

(5) *Subsequent realization of tax benefit.* A participating partnership, participating partner, or related subsequent transferee also participates in a transaction of interest described in paragraph (c) or a substantially similar transaction described in paragraph (d) of this section in any taxable year in which its tax return reflects the tax consequences of a basis increase resulting from a transaction of interest described in paragraph (c) or (d) of this section, taking into account the limitations provided in paragraphs (c)(3)(iii) and (iv) of this section. For example, if a participating partner sells property the basis of which has been increased as a result of a transaction of interest described in paragraph (c) of this section during a taxable year after the taxable year in which the transaction of interest occurred, the participating partner participates in a transaction of interest described in paragraph (c) of this section in the taxable year of the basis increase and in the taxable year of the sale.

(f) *Disclosure requirements*—(1) *In general.* Except as otherwise provided in this paragraph (f)(1), participants must provide the information required under § 1.6011–4(d) and the Instructions to Form 8886, *Reportable Transaction Disclosure Statement* (or successor form), and in the manner described in § 1.6011–4(e), for each taxable year in which the participant participated in a transaction described in paragraph (c) or (d) of this section as determined under paragraph (e) of this section. For all participants, describing the transaction in sufficient detail includes describing the information described in paragraphs (f)(1)(i) through (iii) of this section, as applicable, on Form 8886 (or successor form) for the taxable year of a transaction described in paragraph (c) or (d) of this section. In the case of a participant that is a tax-indifferent party, the disclosure requirements of this paragraph (f) apply only if the tax-indifferent party is otherwise required to file a tax return (or an information return) for the taxable year of the

transaction described in paragraph (d)(1) of this section.

(i) The names and identifying numbers of all participants, including the participating partnership, participating partners and any related subsequent transferees.

(ii) All basis adjustments resulting from a transaction described in paragraph (c) or (d) of this section, including—

(A) Basis information, including the participating partnership's adjusted basis in the distributed property immediately before the distribution,

(B) Any adjustments to basis under section 732(a)(2), (b), (d) or section 734(b),

(C) Any adjustments to basis under section 743(b) with respect to a participating partner that is transferred an interest in a participating partnership, and

(D) With respect to a participating partner that transfers an interest in a participating partnership, that participating partner's adjusted basis in the participating partnership interest and share of the participating partnership's adjusted basis in its property immediately before the transfer.

(iii) Any Federal income tax consequences realized during the taxable year as a result of a transaction described in paragraph (c) or (d) of this section, including any cost recovery allowances attributable to any increase in basis as a result of a transaction described in paragraph (c) of this section, and any gain or loss attributable to the disposition of property that was subject to an increase in basis as a result of a transaction described in paragraph (c) or (d) of this section. The Federal income tax consequences attributable to an increase in basis resulting from a transaction described in paragraph (c) or (d) of this section are limited to those attributable to the increase in basis, taking into account the limitations of paragraph (c)(3)(iii) or (iv) of this section. For example, in the case of a distribution of depreciable property that was subject to an increase in basis because of a transaction described in paragraph (c) or (d) of this section, the Federal income tax consequences realized during the taxable year include the basis increase and cost recovery allowances attributable to the basis increase during the taxable year.

(2) *Six-year lookback period for taxable years described in special rule of § 1.6011–4(e)(2)(i).* For purposes of the special rule of § 1.6011–4(e)(2)(i) (describing the disclosure requirement with respect to a transaction that is identified as a transaction of interest after the filing of the taxpayer's tax return (including an amended return) reflecting the taxpayer's participation in the transaction of interest but before the end of the period of limitations for assessment of tax for such taxable year), a participant must provide the information described in paragraph (f)(1) of this section for such open years only if the transaction described in paragraph (c) or (d) of this section occurred within the six-year lookback period described in paragraph (b)(11) of this section.

(g) *Examples.* The following examples illustrate the provisions of this section.

(1) *Example 1: Reporting by a participating partner and participating partnership in the taxable year of the transaction, including cost recovery allowances*—(i) *Facts.* ABC Partnership is owned by partners A, B, and C. Partners A, B, and C are related within the meaning of paragraphs (b)(8) and (9) of this section. At the beginning of taxable year 2025, ABC Partnership distributes a depreciable asset, Property X, to Partner A in liquidation of Partner A's interest in ABC Partnership. The distribution is a transaction described in paragraph (c)(1)(ii) of this section. As a result of the distribution, the basis of Property X is increased by $10 million in Partner A's hands. On its tax return for taxable year 2025, Partner A reports deductions for depreciation expense attributable to the $10 million increase in the basis of Property X resulting from the transaction under paragraph (c)(1)(ii) of this section. In addition, ABC Partnership must reduce the basis of its remaining property under section 734(b)(2) as a result of the distribution of Property X to Partner A by $10 million. ABC Partnership and Partner A use the calendar year as their taxable year.

(ii) *Analysis.* Partner A is a participant during taxable year 2025 within the meaning of paragraph (e) of this section because it is a participating partner within the meaning of paragraph (b)(3) of this section since it directly received a distribution of property during taxable year 2025 in a transaction described in paragraph (c) of this section. ABC Partnership is a participant during taxable year 2025 within the meaning of paragraph (e) of this section because it is a participating partnership within the meaning of paragraph (b)(4) of this section since it made a distribution of property to a participating partner during taxable year 2025 in a transaction described in paragraph (c) of this section. As part of its disclosure requirements under paragraph (f) of this section and § 1.6011–4(d) and (e), Partner A must disclose the distribution as a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 2025. Partner A must include the information described in paragraph (f) of this section, including the amount of the deductions attributable to the $10 million increase in the basis of Property X resulting from the transaction described in paragraph (c)(1)(ii) of this section. As part of its disclosure requirements under paragraph (f) of this section and § 1.6011–4(d) and (e), ABC Partnership must disclose the distribution as a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 2025, including the information described in paragraph (f) of this section. In addition, Partner A and ABC Partnership must send a copy of their respective Form 8886 (or successor form) to the Office of Tax Shelter Analysis (OTSA).

(2) *Example 2: Reporting of the Federal income tax consequences (cost recovery allowances) of the transaction in all taxable years*—(i) *Facts.* Under the same facts as in paragraph (g)(1)(i) of this section (*Example 1),* on its tax returns for taxable years 2026 through 2030, Partner A reports deductions for depreciation expense attributable to the $10 million increase in the basis of Property X related to the transaction described in paragraph (c)(1)(ii) of this section, which occurred in taxable year 2025.

(ii) *Analysis.* As part of its disclosure requirements under paragraph (f) of this section and § 1.6011–4(d) and (e), Partner A must disclose the deductions on Form 8886 (or successor form) for taxable years 2026 through 2030 as the Federal income tax consequences of the transaction described in paragraph (c)(1)(ii) of this section. As a result, for each of taxable years 2026 through 2030, Partner A must file the form with its tax return for the taxable year with the information described in paragraph (f) of this section, including the amount of the deductions for the taxable year attributable to the $10 million increase in the basis of Property X resulting from the transaction described in paragraph (c)(1)(ii) of this section.

(3) *Example 3: Reporting by a participating partner, participating partnership, and related subsequent transferee in the taxable year of the transaction*—(i) *Facts.* The facts are the same as in paragraph (g)(1)(i) of this section (*Example 1),* except that at the beginning of taxable year 2025, instead of distributing a depreciable asset, ABC Partnership distributes a nondepreciable asset, Land with an adjusted basis of $5

million, to Partner A in liquidation of Partner A's interest in ABC Partnership. The distribution is a transaction described in paragraph (c)(1)(ii) of this section. As a result of the distribution, the basis of Land is increased to $15 million in Partner A's hands. Subsequently in the same taxable year 2025, Partner A contributes Land to another partnership, AX Partnership, in a transfer that is treated as a contribution of property under section 721(a). Partner A and AX Partnership are related within the meaning of paragraph (b)(8) of this section. ABC Partnership, Partner A and AX Partnership use the calendar year as their taxable year.

(ii) *Analysis.* Partner A is a participant during taxable year 2025 within the meaning of paragraph (e) of this section because it is a participating partner within the meaning of paragraph (b)(3) of this section since Partner A directly received a distribution of property during taxable year 2025 in a transaction described in paragraph (c) of this section. ABC Partnership is a participant during taxable year 2025 within the meaning of paragraph (e) of this section because it is a participating partnership within the meaning of paragraph (b)(4) of this section since it made a distribution of property to a participating partner during taxable year 2025 in a transaction described in paragraph (c) of this section. AX Partnership is a participant during taxable year 2025 within the meaning of paragraph (e) of this section because it is a related subsequent transferee within the meaning of paragraph (b)(10) of this section since it directly received in a nonrecognition transaction a transfer of property during taxable year 2025 that was subject to an increase in basis because of a transaction described in paragraph (c) of this section. As part of its disclosure requirements under paragraph (f) of this section and § 1.6011–4(d) and (e), Partner A must disclose the distribution as a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 2025. Partner A must include the information described in paragraph (f) of this section. As part of its disclosure requirements under paragraph (f) of this section and § 1.6011–4(d) and (e), ABC Partnership must disclose the distribution as a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 2025, including the information described in paragraph (f) of this section. Further, AX Partnership is subject to the disclosure requirements under paragraph (f) of this section and § 1.6011–4(d) and (e). AX Partnership must disclose that it is a related subsequent transferee within the meaning of paragraph (b)(10) of this section that received, in a nonrecognition transaction, a transfer of property that was distributed in a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 2025. In addition, Partner A, ABC Partnership and AX Partnership must send a copy of their respective Form 8886 (or successor form) to the OTSA.

(4) *Example 4: Reporting of the Federal income tax consequences (reduced taxable gain) of the transaction in the taxable year of disposition of the property*—(i) *Facts.* Under the same facts as in paragraph (g)(3)(i) of this section (*Example 3),* in taxable year 2026, AX Partnership disposes of Land in a taxable sale for its fair market value of $15 million and recognizes no gain or loss.

(ii) *Analysis.* As part of its disclosure requirements under paragraph (f) of this section and § 1.6011–4(d) and (e), AX Partnership must disclose the taxable gain (zero) on the disposition of Land on Form 8886 (or successor form) for taxable year 2026 as the Federal income tax consequences of the transaction described in paragraph (c)(1)(ii) of this section. AX Partnership must file the form with its tax return for taxable year 2026. Partner A does not have a disclosure requirement with respect to AX Partnership's disposition of Land because the disposition is a subsequent realization of a tax benefit within the meaning of paragraph (e)(5) of this section with respect to AX Partnership.

(5) *Example 5. Reporting of a transaction of interest that occurred within the six-year lookback period*—(i) *Facts.* The facts are the same as in paragraph (g)(1)(i) of this section (*Example 1),* except that instead of ABC Partnership distributing Property X in taxable year 2025, the distribution is made in May of taxable year 2022, which is within the six-year lookback period described in paragraph (b)(11) of this section. That is, the distribution occurred within the seventy-two months immediately preceding January 2025, the first month of the taxpayer's most recent taxable year that began before January 14, 2025. Further, taxable year 2022 is an open taxable year subject to the special rule of § 1.6011–4(e)(2)(i). Additionally, neither Partner A nor ABC Partnership engages in any other transaction described in paragraph (c) or (d) of this section for taxable year 2022.

(ii) *Analysis.* Because the transaction occurred within the six-year lookback period described in paragraph (b)(11) of this section, the applicable threshold described in paragraph (c)(3)(i) of this section is $25 million as provided in paragraph (c)(3)(ii) of this section. The distribution of Property X to Partner A is not a transaction described in paragraph (c)(1)(ii) of this section with respect to either Partner A or ABC Partnership because the applicable threshold is not met for taxable year 2022. Had the applicable threshold for taxable year 2022 been met, all the information required by paragraph (f)(1) of this section must be reported in its disclosure for taxable year 2022 and for any subsequent taxable year for which the taxpayer's return reflected the tax consequences of the transaction.

(6) *Example 6. No reporting of a transaction of interest for transaction that occurred prior to the six-year lookback period*—(i) *Facts.* The facts are the same as in paragraph (g)(1)(i) of this section (*Example 1),* except that as a result of the distribution of Property X to Partner A, the basis of Property X is increased by $30 million, and the distribution occurred in December of taxable year 2018, which is prior to the six-year lookback period described in paragraph (b)(11) of this section. That is, the transaction occurred prior to January 2019, which is the beginning of the seventy-two-month period that ends in December 2024. In addition, taxable year 2018 is an open taxable year subject to the special rule of § 1.6011–4(e)(2)(i). Further, Partner A realized Federal income tax consequences (depreciation expense) in taxable year 2019 attributable to the $30 million increase to the basis of Property X and taxable year 2019 is an open taxable year subject to the special rule of § 1.6011–4(e)(2)(i).

(ii) *Analysis.* Because taxable year 2018 is not within the six-year lookback period, under paragraph (f)(2) of this section, neither the distribution of Property X to Partner A, nor any of the Federal income tax consequences arising in that taxable year or later taxable years (such as depreciation expense in taxable year 2019 or any later taxable year) from such distribution, is required to be disclosed under paragraph (f) of this section and §§ 1.6011–4(d) and (e).

(7) *Example 7. Corresponding basis decrease under section 734(b)(2)(B) shared by an unrelated partner*—(i) *Facts.* The facts are the same as in paragraph (g)(1)(i) of this section (*Example 1),* except Partner C is unrelated to Partners A and B and is not a tax-indifferent party. As a result of the

distribution of Property X to Partner A, and the increase to the basis of Property X by $10 million in Partner A's hands, ABC Partnership is required to reduce the adjusted basis of its remaining properties under section 734(b)(2)(B) by $10 million. Partner B's and Partner C's share of ABC Partnership's basis decrease to its remaining properties is $5 million each. Neither Partner A nor ABC Partnership engages in any other transaction described in paragraph (c) of this section for taxable year 2025.

(ii) *Analysis.* For purposes of paragraphs (c)(1)(ii) and (c)(3)(i) of this section, under paragraph (c)(3)(iv) of this section, only $5 million of the $10 million basis increase to Property X counts toward the applicable threshold because $5 million of the basis increase corresponds to unrelated Partner C's share of the decrease to the basis of ABC Partnership's remaining properties under section 734(b)(2)(B) and thus, is excluded from the calculation of the applicable threshold. Thus, the distribution of Property X to Partner A is not a transaction described in paragraph (c)(1)(ii) of this section with respect to either Partner A or ABC Partnership because the applicable threshold is not met for taxable year 2025.

(h) *Extension of time—(1) Taxpayer disclosures.* Taxpayers will be treated as having met their requirements to disclose timely under § 1.6011–4(e)(2)(i) if they file their disclosure with the OTSA by July 14, 2025.

(2) *Material advisor disclosures.* Material advisors who have made a tax statement before January 14, 2025 will be treated as having met their requirements to disclose timely under § 301.6111–3(e) of this chapter if they file their disclosure with the OTSA by the date that is an additional 90 days beyond the last day for filing specified in § 301.6111–3(e) of this chapter.

(i) *Applicability date*—(1) *In general.* This section's identification of transactions that are the same as or substantially similar (within the meaning of § 1.6011–4(c)(4)) to the transactions described in paragraph (c) of this section as transactions of interest for purposes of § 1.6011–4(b)(6) and sections 6111 and 6112 of the Code is effective January 14, 2025.

(2) *Material advisors.* Notwithstanding § 301.6111–3(b)(4)(i) and (iii) of this chapter, material advisors are required to disclose only if they have made a tax statement on or after January 14, 2019.

Douglas W. O'Donnell,

Deputy Commissioner.

Approved: January 3, 2025.

Aviva R. Aron-Dine,

Deputy Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 10022]

RIN 1545–BM41

Classification of Digital Content Transactions and Cloud Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations modifying the rules for classifying transactions involving computer programs, including by applying the rules to transfers of digital content. These final regulations also provide rules for the classification of cloud transactions. These rules apply for purposes of the international provisions of the Internal Revenue Code and generally affect taxpayers engaging in transactions involving digital content or cloud transactions.

DATES:

Effective date: These regulations are effective on January 14, 2025.

Applicability date: For dates of applicability, see §§ 1.861–18(i) and 1.861–19(e).

FOR FURTHER INFORMATION CONTACT: Christopher E. Fulle, (202) 317–5367, or Michelle L. Ng, (202) 317–6989 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Authority

These final regulations are issued under the express delegation of authority under section 7805 of the Internal Revenue Code (Code). Section 7805(a) directs the Secretary of the Treasury or her delegate to prescribe all needful rules and regulations for the enforcement of that section and others in the Code, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

Background

On August 14, 2019, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published proposed regulations (REG–130700–14) under section 861 of the Code in the **Federal Register** (84 FR 40317) (the proposed regulations). The Treasury Department and the IRS received written comments on the proposed regulations, and a public hearing was held on February 11, 2020. All written comments received in response to the proposed regulations are available at *www.regulations.gov* or upon request. Terms used but not defined in this preamble have the meaning provided in these final regulations.

These regulations (the final regulations) extend the classification rules in existing § 1.861–18 to transfers of digital content other than computer programs and clarify the source of income for certain transfers of digital content. The final regulations also clarify the classification of transactions involving on-demand network access to computing and other similar resources.

The final regulations retain the overall approach of the proposed regulations, with certain revisions discussed in the preamble. The preamble also discusses comments received in response to the solicitation of comments in the notice of proposed rulemaking.

Summary of Comments and Explanation of Revisions

I. General Classification Issues

A. Replacement of De Minimis Rule With a Predominant Character Rule

Section 1.861–18(b)(1), as in effect before this Treasury decision, described four transactions involving computer programs: the transfer of a copyright right, the transfer of a copyrighted article, the provision of services for the development or modification of a computer program, and the provision of know-how relating to the development of a computer program. Section 1.861–18(b)(2) required any transaction that consisted of more than one of the transactions described in § 1.861–18(b)(1) to be treated as separate transactions, unless a transaction was de minimis, in which case it would be treated as part of another transaction. The proposed regulations generally retained the four types of transactions (with the expansions described in Part II.A of this Summary of Comments and Explanation of Revisions) and preserved the de minimis rule, but for clarification purposes, § 1.861–18(b)(2) was proposed to be modified by introducing the term