DEFINITIONS

Abusive tax shelter: According to the IRC, an abusive tax shelter is an entity, plan, or arrangement with a significant purpose of avoiding or evading federal income tax.

Material advisor: A material advisor is a person who 1) provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction; and 2) directly or indirectly derives gross income in excess of $50,000, in the case of a reportable transaction if substantially all of the tax benefits are provided by natural persons, or $250,000 in other cases.

Listed transaction: A listed transaction is a reportable transaction that is the same as, or substantially similar to, a transaction identified by the Treasury Department as a tax-avoidance transaction. In other words, a listed transaction is a tax shelter determined by the IRS to be abusive and therefore unlawful.

Reportable transaction: A reportable transaction is any transaction for which information must be included with a return or statement because the Treasury Department has determined such type of transaction has the potential for tax avoidance or evasion. The Treasury regulations have identified the following six different types of reportable transactions:

- Listed transactions, as defined above, or transactions expected to derive the same or similar tax consequences.
- Confidential transactions, in which a paid advisor limits the taxpayer's disclosure of the tax treatment or structure of the transaction.
- Transactions with contractual protection, in which fees are contingent on achieving the intended tax consequences, or the taxpayer has the right to a full or partial refund if the expected tax consequences are not sustained.
- Excessive-loss transactions that are not acceptable transactions under Revenue Procedure 2003-24 and that result in a deductible loss exceeding: (a) $10 million in a year if the taxpayer is a corporation or a partnership having only corporations as partners; (b) $2 million in a year if the taxpayer is an individual, partnership, S corporation, or trust; or (c) $50,000 in a year if the loss arises from certain foreign currency transactions and the taxpayer is an individual or a trust.
- Transactions of a regular C corporation with a book-tax difference in income exceeding $10 million.
- Transactions involving assets held for less than 45 days and producing a tax credit exceeding $250,000.

Abusive tax shelter promoter: An abusive tax shelter promoter is any person who engages in the organization of, or sale of any interest in, a partnership, investment plan, or other arrangement, if the person makes or furnishes, or causes another to make or furnish, a false or fraudulent statement as to a material matter, or a gross valuation overstatement as to a material matter.

Material matter: A material matter is one that has a substantial impact on the decision-making process of a reasonably prudent investor.

Gross valuation overstatement: A gross valuation overstatement is a statement or presentation of the value of property or services that exceeds 200% of the correct value and is directly related to the income tax deduction or credit allowable to a tax-shelter plan.

Covered opinion: A covered opinion is a written advice by a practitioner concerning federal tax issues arising from: 1) a transaction that the IRS has specifically identified as a listed transaction; 2) any partnership, investment plan, or other arrangement in which the principal purpose is the avoidance or evasion of tax; or 3) any plan or arrangement having significant purposes of tax avoidance or evasion. A covered opinion that taxpayers rely upon could be marketed to taxpayers, or subject to contractual protection.