

TaxNewsFlash

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Final regulations: Micro-captive listed transactions and micro-captive transactions of interest

The U.S. Treasury Department and IRS today released [final regulations](#) (T.D. 10029) identifying transactions that are the same as, or substantially similar to, certain micro-captive transactions as listed transactions, a type of reportable transaction, and certain other micro-captive transactions as transactions of interest, another type of reportable transaction.

The final regulations provide that material advisors and certain participants in these listed transactions are required to file disclosures with the IRS and will be subject to penalties for failure to disclose. Taxpayers use Form 8886, *Reportable Transaction Disclosure Statement* to disclose information for each reportable transaction in they participate. Material advisors to any reportable transaction file Form 8918, *Material Advisor Disclosure Statement* to disclose certain information about the reportable transaction.

The final regulations adopt, with certain modifications, proposed regulations issued in April 2023 in response to the decision in *C/C Services, LLC v. IRS*, 2022 WL 985619 (E.D. Tenn. March 21, 2022), as modified by 2022 WL 2078036 (E.D. Tenn. June 2, 2022), in which the court, relying on the decision in *Mann Construction v. United States*, 27 F.4th 1138, 1147 (6th Cir. 2022), vacated Notice 2016-66 on a finding that the IRS failed to comply with the notice-and-comment procedures of the Administrative Procedure Act (APA).

The final regulations are effective on the date the regulations are published in the Federal Register, which is scheduled to be January 14, 2025.

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