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From:

Sent: Tuesday, February 10, 2009 2:30 PM

To:

Cc:

Subject: RE: Protest Comments

First, pursuant to 301.6404-4T(b)(5)(i), whether a transaction is a listed transaction for purposes of section 6404(g) is determined on the date the Service provides the 6404 notice to the taxpayer. In this case, the transaction was listed after the 4/20/07 letter. So the only possible adjustments it could have applied to were the ones in the 30-day letter issued 5/2008. However, in this case the transaction was not a listed transaction for these taxpayers. For purposes of section 6404(g)(2)(E), listed transaction is defined in section 6707A(c). Section 6707A(c)(2) provides: The term "listed transaction" means a *reportable transaction* that is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011. Under section 6707A(c)(1), a reportable transaction is "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." The tax years involved are and . The taxpayers entered into the transaction in . Although the transaction was listed in pursuant to Notice 2007-57, neither the taxpayers nor the S Corp were required to disclose the transaction under the applicable disclosure regulations. Therefore, the transaction does not qualify as a listed transaction under section 6707A(c) and the exception under section 6404(g)(2)(E) does not apply.

Does that help?