

REPORTABLE TRANSACTIONS ACT

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill amends the Revenue and Taxation title to create the Reportable Transactions Act.

Highlighted Provisions:

This bill:

- ▶ creates a part known as the "Reportable Transactions Act";
- ▶ provides definitions;
- ▶ requires a taxpayer to disclose a reportable transaction and provides procedures and requirements for making such a disclosure;
- ▶ requires a material advisor to disclose a reportable transaction and provides procedures and requirements for making such a disclosure;
- ▶ requires a material advisor to maintain a list containing certain information relating to a reportable transaction and provides procedures and requirements for maintaining the list;
- ▶ provides penalties;
- ▶ provides that the State Tax Commission may waive, reduce, or compromise a penalty for reasonable cause; and
- ▶ grants rulemaking authority to the State Tax Commission.

Monies Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 This bill takes effect for taxable years beginning on or after January 1, 2007.

30 **Utah Code Sections Affected:**

31 ENACTS:

- 32 **59-1-1301**, Utah Code Annotated 1953
- 33 **59-1-1302**, Utah Code Annotated 1953
- 34 **59-1-1303**, Utah Code Annotated 1953
- 35 **59-1-1304**, Utah Code Annotated 1953
- 36 **59-1-1305**, Utah Code Annotated 1953
- 37 **59-1-1306**, Utah Code Annotated 1953
- 38 **59-1-1307**, Utah Code Annotated 1953
- 39 **59-1-1308**, Utah Code Annotated 1953
- 40 **59-1-1309**, Utah Code Annotated 1953



42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **59-1-1301** is enacted to read:

44 **Part 13. Reportable Transactions Act**

45 **59-1-1301. Title.**

46 This part is known as the "Reportable Transactions Act."

47 Section 2. Section **59-1-1302** is enacted to read:

48 **59-1-1302. Definitions.**

- 49 (1) "Gross income" is as defined in Section 61, Internal Revenue Code.
- 50 (2) "Income tax" means a tax imposed under:
 - 51 (a) Chapter 7, Corporate Franchise and Income Taxes; or
 - 52 (b) Chapter 10, Individual Income Tax Act.
- 53 (3) "Income tax return" means a return filed under:
 - 54 (a) Chapter 7, Corporate Franchise and Income Taxes; or
 - 55 (b) Chapter 10, Individual Income Tax Act.
- 56 (4) "Listed transaction" means a reportable transaction that is the same as, or
- 57 substantially similar to, a transaction or arrangement specifically identified as a listed
- 58 transaction by the:

59 (a) United States Secretary of the Treasury in written materials interpreting the
60 requirements of Section 6011, Internal Revenue Code; or

61 (b) commission by rule made in accordance with Title 63, Chapter 46a, Utah
62 Administrative Rulemaking Act.

63 (5) "Material advisor" is as defined in Section 6111, Internal Revenue Code.

64 ~~Ĥ→ [(6) "Noneconomic substance transaction" means a transaction or arrangement:~~

65 ~~— (a) that lacks economic substance, as defined by state or federal law; or~~

66 ~~— (b) in which an entity is disregarded because the entity lacks a valid nontax state~~
67 ~~**business purpose.**~~

68 ~~— (7) [(6) ←Ĥ "Reportable transaction" means a transaction or arrangement that:~~

69 (a) is carried out through or invested in by one or more entities that:

70 (i) are organized in this state;

71 (ii) do business in this state;

72 (iii) derive gross income from sources within this state;

73 (iv) are subject to income tax; or

74 (v) are otherwise subject to the jurisdiction of this state; and

75 (b) is:

76 ~~Ĥ→ [(i) a noneconomic substance transaction;~~

77 ~~— [(ii) (A) ←Ĥ a transaction or arrangement described in 26 C.F.R. Sec. 1.6011-4(b)(2)~~

77a through

78 (7); or

79 ~~Ĥ→ [(iii) (B) ←Ĥ a reportable transaction as described by the commission by rule made in~~
80 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

81 (8) "Taxpayer" means a person that is required to file an income tax return.

82 (9) "Unitary group" is as defined in Section 59-7-101.

83 Section 3. Section **59-1-1303** is enacted to read:

84 **59-1-1303. Taxpayer disclosure of reportable transactions.**

85 (1) A taxpayer is subject to this section for each taxable year in which:

86 (a) the taxpayer participates in a reportable transaction;

87 (b) the taxpayer:

88 (i) is included in a federal consolidated return under Sections 1501 and 1504(b),

89 Internal Revenue Code; and

90 (ii) participates in a reportable transaction; or

91 (c) the taxpayer is a member of a group that:

92 (i) is a unitary group; and

93 (ii) participates in a reportable transaction.

94 (2) (a) A taxpayer described in Subsection (1) shall disclose a reportable transaction to
 95 the commission in a manner required by the commission by rule made in accordance with Title
 96 63, Chapter 46a, Utah Administrative Rulemaking Act.

97 (b) If a taxpayer described in Subsection (1) is required to file a disclosure statement
 98 under 26 C.F.R. Sec. 1.6011-4, the taxpayer shall provide the commission a copy of that
 99 disclosure statement in a manner required by the commission by rule made in accordance with
 100 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

101 **§→ [(3) Except as provided in Subsection (4), a taxpayer shall disclose a reportable**
 102 **transaction to the commission in the manner required by the commission by rule in accordance**
 103 **with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.**

104 ~~—— [(4)] (3) ←§~~ (a) For a listed transaction entered into on or after January 1, 2004, but on or
 104a before
 105 December 31, 2006, a disclosure statement required by this section shall be attached to:

106 (i) (A) the taxpayer's income tax return for the taxable year beginning on or after
 107 January 1, 2007 but beginning on or before December 31, 2007; and

108 (B) any amended income tax return that the taxpayer files for the taxable year
 109 beginning on or after January 1, 2007 but beginning on or before December 31, 2007; and

110 (ii) subject to Subsection ~~§→ [(4)] (3) ←§~~ (b):

111 (A) the taxpayer's income tax return for any taxable year after the taxable year
 112 beginning on or after January 1, 2007 but beginning on or before December 31, 2007, for
 113 which there is a reduction in income tax as a result of the listed transaction; and

114 (B) any amended income tax return for any taxable year after the taxable year
 115 beginning on or after January 1, 2007 but beginning on or before December 31, 2007, for
 116 which there is a reduction in income tax as a result of the listed transaction.

117 (b) For purposes of Subsection ~~§→ [(4)] (3) ←§~~ (a)(ii), a reduction in income tax as a result
 117a of a
 118 listed transaction includes a loss, credit, or deduction if the loss, credit, or deduction results
 119 from a listed transaction that is carried forward or carried back.

120 **§→ [(5)] (4) ←§** For a reportable transaction entered into on or after January 1, 2004, a
 120a disclosure

121 statement required by this section shall be attached to an amended income tax return filed on or
 122 after January 1, 2007, if the filing of the amended income tax return reflects a determination by
 123 the Internal Revenue Service of the federal income tax treatment of the reportable transaction.

124 ~~§~~ → [(6)] (5) ← ~~§~~ (a) For a reportable transaction entered into on or after January 1, 2007, a
 124a disclosure

125 statement required by this section shall be attached to:

126 (i) (A) the taxpayer's income tax return for the taxable year during which the
 127 transaction was entered into; and

128 (B) any amended income tax return that the taxpayer files for the taxable year during
 129 which the transaction was entered into; and

130 (ii) subject to Subsection ~~§~~ → [(6)] (5) ← ~~§~~ (b):

131 (A) the taxpayer's income tax return for any taxable year after the taxable year during
 132 which the transaction was entered into, for which there is a reduction in income tax as a result
 133 of the reportable transaction; and

134 (B) any amended income tax return for any taxable year after the taxable year during
 135 which the transaction was entered into, for which there is a reduction in income tax as a result
 136 of the reportable transaction.

137 (b) For purposes of Subsection ~~§~~ → [(6)] (5) ← ~~§~~ (a)(ii), a reduction in income tax as a result
 137a of a

138 reportable transaction includes a loss, credit, or deduction if the loss, credit, or deduction
 139 results from a reportable transaction that is carried forward or carried back.

140 Section 4. Section **59-1-1304** is enacted to read:

141 **59-1-1304. Penalty for taxpayer failure to disclose a reportable transaction.**

142 (1) (a) Except as provided in Subsection (1)(b), a taxpayer that fails to disclose a
 143 reportable transaction as required by Section 59-1-1303 is subject to a penalty of \$15,000.

144 (b) A taxpayer that fails to disclose a listed transaction as required by Section
 145 59-1-1303 is subject to a penalty of \$30,000.

146 (2) A penalty imposed by this section is in addition to any other penalty imposed by
 147 this title.

148 Section 5. Section **59-1-1305** is enacted to read:

149 **59-1-1305. Penalty for taxpayer underpayment of tax attributable to a reportable**
 150 **transaction.**

151 (1) If the underpayment of a tax by a taxpayer is attributable to a reportable transaction,

152 the taxpayer is subject to a penalty that is equal to the product of:

153 (a) 10%; and

154 (b) the amount of the tax underpayment attributable to the reportable transaction.

155 (2) If a taxpayer amends an income tax return to change the tax treatment of a
156 reportable transaction after the day on which the commission contacts the taxpayer regarding
157 the examination of the income tax return, that change in the tax treatment of the reportable
158 transaction contained in the amended income tax return may not be considered in determining a
159 tax underpayment under this section.

160 (3) A penalty imposed by this section is in addition to any other penalty imposed by
161 this title.

162 Section 6. Section **59-1-1306** is enacted to read:

163 **59-1-1306. Material advisor disclosure of reportable transactions.**

164 (1) (a) A material advisor shall disclose a reportable transaction to the commission on a
165 form provided by the commission.

166 (b) The disclosure described in Subsection (1)(a):

167 (i) shall include information:

168 (A) identifying and describing the transaction; and

169 (B) describing any potential tax benefits expected to result from the transaction; and

170 (ii) may include information other than the information described in Subsection

171 (1)(b)(i) as required by the commission.

172 (2) If a material advisor described in Subsection (1) is required to file a return
173 disclosing a reportable transaction under Section 6111, Internal Revenue Code, the material
174 advisor shall provide the commission a copy of that return.

175 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
176 commission shall make rules prescribing:

177 (a) the date a:

178 (i) disclosure required by Subsection (1) shall be filed with the commission; and

179 (ii) copy of a return required by Subsection (2) shall be filed with the commission;

180 (b) that only one person may be required to meet the requirements of Subsection (1) or

181 (2) if two or more persons would otherwise be required to meet the requirements of Subsection

182 (1) or (2); and

183 (c) exemptions from Subsection (1) or (2).

184 Section 7. Section **59-1-1307** is enacted to read:

185 **59-1-1307. Material advisor maintenance of list.**

186 (1) For each reportable transaction, a material advisor shall maintain a list of the
187 persons to which the material advisor provides material aid, assistance, or advice with respect
188 to organizing, managing, promoting, selling, implementing, insuring, or carrying out a
189 reportable transaction.

190 (2) The list described in Subsection (1) shall include:

191 (a) the name of each person described in Subsection (1) that is:

192 (i) a taxpayer;

193 (ii) (A) a taxpayer; and

194 (B) a member of a unitary group; or

195 (iii) (A) a taxpayer; and

196 (B) included in a federal consolidated return under Sections 1501 and 1504(b), Internal
197 Revenue Code;

198 (b) the same information required to be contained in the list described in 26 C.F.R.,

199 Sec. 301.6112-1; and

200 (c) any additional information required by the commission by rule made in accordance
201 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

202 (3) The list described in Subsection (1) shall be maintained in the same form and
203 manner as the list described in 26 C.F.R. Sec. 301.6112-1.

204 (4) A material advisor required to maintain a list under Subsection (1) shall:

205 (a) make the list available to the commission upon written request by the commission;

206 and

207 (b) retain the information that is required to be included on the list for seven years.

208 (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
209 commission shall make rules prescribing that only one person may be required to meet the
210 requirements of this section if two or more persons would otherwise be required to meet the
211 requirements of this section.

212 Section 8. Section **59-1-1308** is enacted to read:

213 **59-1-1308. Material advisor penalties.**

214 (1) The penalty for failure of a material advisor to disclose a reportable transaction as
215 required by Section 59-1-1306 is \$20,000.

216 (2) If a material advisor that is required to disclose a reportable transaction in
217 accordance with Section 59-1-1306 provides false or incomplete information to the
218 commission, the penalty is \$20,000.

219 (3) If a material advisor that is required to maintain a list under Section 59-1-1307 fails
220 to make that list available to the commission within a 20-day period after the day on which the
221 commission mails a written request for that list, the material advisor is subject to a penalty of
222 \$10,000 for each day that the material advisor fails to make that list available to the
223 commission after the expiration of the 20-day period.

224 (4) A penalty imposed by this section is in addition to any other penalty imposed by
225 this title.

226 Section 9. Section **59-1-1309** is enacted to read:

227 **59-1-1309. Penalty may be waived, reduced, or compromised for reasonable**
228 **cause.**

229 Upon making a record of its actions, and upon reasonable cause shown, the commission
230 may waive, reduce, or compromise a penalty imposed by this part.

231 Section 10. **Effective date.**

232 This bill takes effect for taxable years beginning on or after January 1, 2007.

Legislative Review Note
as of 1-12-06 5:24 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 01-13-06 10:16 AM

The Revenue and Taxation Interim Committee recommended this bill.

Fiscal Note
Bill Number SB0139

Reportable Transactions Act

19-Jan-06

11:20 AM

State Impact

No fiscal impact on current revenues.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst