

## Part 13 Reportable Transactions Act

### 59-1-1301 Title.

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

Enacted by Chapter 237, 2006 General Session

### 59-1-1302 Definitions.

- (1) "Gross income" is as defined in Section 61, Internal Revenue Code.
- (2) "Income tax" means a tax imposed under:
  - (a) Chapter 7, Corporate Franchise and Income Taxes; or
  - (b) Chapter 10, Individual Income Tax Act.
- (3) "Income tax return" means a return filed under:
  - (a) Chapter 7, Corporate Franchise and Income Taxes; or
  - (b) Chapter 10, Individual Income Tax Act.
- (4) "Listed transaction" means a reportable transaction that is the same as, or substantially similar to, a transaction or arrangement specifically identified as a listed transaction by the:
  - (a) United States Secretary of the Treasury in written materials interpreting the requirements of Section 6011, Internal Revenue Code; or
  - (b) commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (5) "Material advisor" is as defined in Section 6111, Internal Revenue Code.
- (6) "Reportable transaction" means a transaction or arrangement that:
  - (a) is carried out through or invested in by one or more entities that:
    - (i) are organized in this state;
    - (ii) do business in this state;
    - (iii) derive gross income from sources within this state;
    - (iv) are subject to income tax; or
    - (v) are otherwise subject to the jurisdiction of this state; and
  - (b) is:
    - (i) a transaction or arrangement described in 26 C.F.R. Sec. 1.6011-4(b)(2) through (7); or
    - (ii) a reportable transaction as described by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (7) "Taxpayer" means a person that is required to file an income tax return.
- (8) "Unitary group" is as defined in Section 59-7-101.

Amended by Chapter 382, 2008 General Session

### 59-1-1303 Taxpayer disclosure of reportable transactions.

- (1) A taxpayer is subject to this section for each taxable year in which:
  - (a) the taxpayer participates in a reportable transaction;
  - (b) the taxpayer:
    - (i) is included in a federal consolidated return under Sections 1501 and 1504(b), Internal Revenue Code; and
    - (ii) participates in a reportable transaction; or
  - (c) the taxpayer is a member of a group that:

- (i) is a unitary group; and
  - (ii) participates in a reportable transaction.
- (2)
  - (a) A taxpayer described in Subsection (1) shall disclose a reportable transaction to the commission in a manner required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (b) If a taxpayer described in Subsection (1) is required to file a disclosure statement under 26 C.F.R. Sec. 1.6011-4, the taxpayer shall provide the commission a copy of that disclosure statement in a manner required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3)
  - (a) For a listed transaction entered into on or after January 1, 2004, but on or before December 31, 2006, a disclosure statement required by this section shall be attached to:
    - (i)
      - (A) the taxpayer's income tax return for the taxable year beginning on or after January 1, 2007, but beginning on or before December 31, 2007; and
      - (B) any amended income tax return that the taxpayer files for the taxable year beginning on or after January 1, 2007, but beginning on or before December 31, 2007; and
    - (ii) subject to Subsection (3)(b):
      - (A) the taxpayer's income tax return for any taxable year after the taxable year beginning on or after January 1, 2007, but beginning on or before December 31, 2007, for which there is a reduction in income tax as a result of the listed transaction; and
      - (B) any amended income tax return for any taxable year after the taxable year beginning on or after January 1, 2007, but beginning on or before December 31, 2007, for which there is a reduction in income tax as a result of the listed transaction.
  - (b) For purposes of Subsection (3)(a)(ii), a reduction in income tax as a result of a listed transaction includes a loss, credit, or deduction if the loss, credit, or deduction results from a listed transaction that is carried forward or carried back.
- (4) For a reportable transaction entered into on or after January 1, 2004, a disclosure statement required by this section shall be attached to an amended income tax return filed on or after January 1, 2007, if the filing of the amended income tax return reflects a determination by the Internal Revenue Service of the federal income tax treatment of the reportable transaction.
- (5)
  - (a) For a reportable transaction entered into on or after January 1, 2007, a disclosure statement required by this section shall be attached to:
    - (i)
      - (A) the taxpayer's income tax return for the taxable year during which the transaction was entered into; and
      - (B) any amended income tax return that the taxpayer files for the taxable year during which the transaction was entered into; and
    - (ii) subject to Subsection (5)(b):
      - (A) the taxpayer's income tax return for any taxable year after the taxable year during which the transaction was entered into, for which there is a reduction in income tax as a result of the reportable transaction; and
      - (B) any amended income tax return for any taxable year after the taxable year during which the transaction was entered into, for which there is a reduction in income tax as a result of the reportable transaction.

- (b) For purposes of Subsection (5)(a)(ii), a reduction in income tax as a result of a reportable transaction includes a loss, credit, or deduction if the loss, credit, or deduction results from a reportable transaction that is carried forward or carried back.

Amended by Chapter 382, 2008 General Session

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

- (1)
  - (a) Except as provided in Subsection (1)(b), a taxpayer that fails to disclose a reportable transaction as required by Section 59-1-1303 is subject to a penalty of \$15,000.
  - (b) A taxpayer that fails to disclose a listed transaction as required by Section 59-1-1303 is subject to a penalty of \$30,000.
- (2) A penalty imposed by this section is in addition to any other penalty imposed by this title.

Enacted by Chapter 237, 2006 General Session

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

- (1) If the underpayment of a tax by a taxpayer is attributable to a reportable transaction, the taxpayer is subject to a penalty that is equal to the product of:
  - (a) 10%; and
  - (b) the amount of the tax underpayment attributable to the reportable transaction.
- (2) If a taxpayer amends an income tax return to change the tax treatment of a reportable transaction after the day on which the commission contacts the taxpayer regarding the examination of the income tax return, that change in the tax treatment of the reportable transaction contained in the amended income tax return may not be considered in determining a tax underpayment under this section.
- (3) A penalty imposed by this section is in addition to any other penalty imposed by this title.

Enacted by Chapter 237, 2006 General Session

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

- (1)
  - (a) A material advisor shall disclose a reportable transaction to the commission on a form provided by the commission.
  - (b) The disclosure described in Subsection (1)(a):
    - (i) shall include information:
      - (A) identifying and describing the transaction; and
      - (B) describing any potential tax benefits expected to result from the transaction; and
    - (ii) may include information other than the information described in Subsection (1)(b)(i) as required by the commission.
- (2) If a material advisor described in Subsection (1) is required to file a return disclosing a reportable transaction under Section 6111, Internal Revenue Code, the material advisor shall provide the commission a copy of that return.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules prescribing:
  - (a) the date a:
    - (i) disclosure required by Subsection (1) shall be filed with the commission; and
    - (ii) copy of a return required by Subsection (2) shall be filed with the commission;

- (b) that only one person may be required to meet the requirements of Subsection (1) or (2) if two or more persons would otherwise be required to meet the requirements of Subsection (1) or (2); and
- (c) exemptions from Subsection (1) or (2).

Amended by Chapter 382, 2008 General Session

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

- (1) For each reportable transaction, a material advisor shall maintain a list of the persons to which the material advisor provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out a reportable transaction.
- (2) The list described in Subsection (1) shall include:
  - (a) the name of each person described in Subsection (1) that is:
    - (i) a taxpayer;
    - (ii)
      - (A) a taxpayer; and
      - (B) a member of a unitary group; or
    - (iii)
      - (A) a taxpayer; and
      - (B) included in a federal consolidated return under Sections 1501 and 1504(b), Internal Revenue Code;
  - (b) the same information required to be contained in the list described in 26 C.F.R. Sec. 301.6112-1; and
  - (c) any additional information required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) The list described in Subsection (1) shall be maintained in the same form and manner as the list described in 26 C.F.R. Sec. 301.6112-1.
- (4) A material advisor required to maintain a list under Subsection (1) shall:
  - (a) make the list available to the commission upon written request by the commission; and
  - (b) retain the information that is required to be included on the list for seven years.
- (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules prescribing that only one person may be required to meet the requirements of this section if two or more persons would otherwise be required to meet the requirements of this section.

Amended by Chapter 382, 2008 General Session

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

- (1) The penalty for failure of a material advisor to disclose a reportable transaction as required by Section 59-1-1306 is \$20,000.
- (2) If a material advisor that is required to disclose a reportable transaction in accordance with Section 59-1-1306 provides false or incomplete information to the commission, the penalty is \$20,000.
- (3) If a material advisor that is required to maintain a list under Section 59-1-1307 fails to make that list available to the commission within a 20-day period after the day on which the commission mails a written request for that list, the material advisor is subject to a penalty of \$10,000 for each day that the material advisor fails to make that list available to the commission after the expiration of the 20-day period.

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

Enacted by Chapter 237, 2006 General Session

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

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

Enacted by Chapter 237, 2006 General Session