

1 **REPORTABLE TRANSACTIONS ACT**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Howard A. Stephenson**

5 House Sponsor: Wayne A. Harper

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

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

26 **Monies Appropriated in this Bill:**

27 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 (6) "Reportable transaction" means a transaction or arrangement that:

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

66 (i) are organized in this state;

67 (ii) do business in this state;

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

69 (iv) are subject to income tax; or

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

71 (b) is:

72 (i) a transaction or arrangement described in 26 C.F.R. Sec. 1.6011-4(b)(2) through (7);

73 or

74 (ii) a reportable transaction as described by the commission by rule made in accordance
75 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

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

77 (8) "Unitary group" is as defined in Section 59-7-101.

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

79 **59-1-1303. Taxpayer disclosure of reportable transactions.**

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

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

82 (b) the taxpayer:

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

84 Internal Revenue Code; and

85 (ii) participates in a reportable transaction; or

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

87 (i) is a unitary group; and

88 (ii) participates in a reportable transaction.

89 (2) (a) A taxpayer described in Subsection (1) shall disclose a reportable transaction to
90 the commission in a manner required by the commission by rule made in accordance with Title
91 63, Chapter 46a, Utah Administrative Rulemaking Act.

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

96 (3) (a) For a listed transaction entered into on or after January 1, 2004, but on or before
97 December 31, 2006, a disclosure statement required by this section shall be attached to:

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

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

102 (ii) subject to Subsection (3)(b):

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

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

109 (b) For purposes of Subsection (3)(a)(ii), a reduction in income tax as a result of a
110 listed transaction includes a loss, credit, or deduction if the loss, credit, or deduction results
111 from a listed transaction that is carried forward or carried back.

112 (4) For a reportable transaction entered into on or after January 1, 2004, a disclosure
113 statement required by this section shall be attached to an amended income tax return filed on or

114 after January 1, 2007, if the filing of the amended income tax return reflects a determination by
115 the Internal Revenue Service of the federal income tax treatment of the reportable transaction.

116 (5) (a) For a reportable transaction entered into on or after January 1, 2007, a disclosure
117 statement required by this section shall be attached to:

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

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

122 (ii) subject to Subsection (5)(b):

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

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

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

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

133 **59-1-1304. Penalty for taxpayer failure to disclose a reportable transaction.**

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

136 (b) A taxpayer that fails to disclose a listed transaction as required by Section
137 59-1-1303 is subject to a penalty of \$30,000.

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

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

141 **59-1-1305. Penalty for taxpayer underpayment of tax attributable to a reportable**

142 **transaction.**

143 (1) If the underpayment of a tax by a taxpayer is attributable to a reportable transaction,
144 the taxpayer is subject to a penalty that is equal to the product of:

145 (a) 10%; and

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

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

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

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

155 **59-1-1306. Material advisor disclosure of reportable transactions.**

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

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

159 (i) shall include information:

160 (A) identifying and describing the transaction; and

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

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

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

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

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

169 (a) the date a:

- 170 (i) disclosure required by Subsection (1) shall be filed with the commission; and
171 (ii) copy of a return required by Subsection (2) shall be filed with the commission;
172 (b) that only one person may be required to meet the requirements of Subsection (1) or
173 (2) if two or more persons would otherwise be required to meet the requirements of Subsection
174 (1) or (2); and
175 (c) exemptions from Subsection (1) or (2).

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

177 **59-1-1307. Material advisor maintenance of list.**

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

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

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

184 (i) a taxpayer;

185 (ii) (A) a taxpayer; and

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

187 (iii) (A) a taxpayer; and

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

190 (b) the same information required to be contained in the list described in 26 C.F.R.
191 Sec. 301.6112-1; and

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

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

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

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

198 and

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

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

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

205 **59-1-1308. Material advisor penalties.**

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

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

211 (3) If a material advisor that is required to maintain a list under Section 59-1-1307 fails
212 to make that list available to the commission within a 20-day period after the day on which the
213 commission mails a written request for that list, the material advisor is subject to a penalty of
214 \$10,000 for each day that the material advisor fails to make that list available to the
215 commission after the expiration of the 20-day period.

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

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

219 **59-1-1309. Penalty may be waived, reduced, or compromised for reasonable**
220 **cause.**

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

223 Section 10. **Effective date.**

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