

Multistate Tax Commission

Model Statute for Tax Avoidance Transaction Voluntary Compliance Program

As Adopted by the Full Commission on August 17, 2006

Section 1. Definitions.

A. Eligible taxpayer.

i. The Tax Avoidance Transaction Voluntary Compliance Program applies to any taxpayer who, during the period from [Program start date] to [Program start date plus X months], does both of the following:

(a) files an amended [State] tax return for each tax year for which the taxpayer has previously filed a [State] tax return using a tax avoidance transaction to underreport the taxpayer's [State] income tax liability, reporting the total [State] net income and tax for such tax year computed without regard to any tax avoidance transactions and without regard to any other adjustments that are unrelated to tax avoidance transactions; and

(b) makes full payment of the entire amount of [State] income tax and interest due for such tax year that is attributable to the use of the tax avoidance transaction.

ii. Nothing in this section prohibits a taxpayer from filing a separate amended return with respect to adjustments unrelated to any tax avoidance transaction.

B. Tax avoidance transaction. A transaction, plan or arrangement devised for the principal purpose of avoiding federal or [state] income tax. Tax avoidance transactions include but are not limited to "reportable transactions," as defined in Section I.1. of the [RT and IFP Act], including "listed transactions," as defined in Section I.2. of the [RT and IFP Disclosure Act].

Section 2. Tax Avoidance Transaction Voluntary Compliance Program.

A. In general. There is hereby established a Tax Avoidance Transaction Voluntary Compliance Program (Program) for eligible taxpayers subject to tax under the [State Income Tax Act], as provided in this Act. The Program shall be developed and administered by the Department of Revenue (Department). The Program shall be conducted from [Program start date] to [Program start date plus X months] and shall apply to tax liabilities attributable to the use of tax avoidance transactions for tax years beginning before January 1, [more than 6 months before program start date]. The Department shall adopt rules, issue forms and instructions, and take such other action as it deems necessary to implement the provisions of this Act.

B. Election. An eligible taxpayer may elect to participate in the Program with respect to any tax year to which this Act applies under either Section 2.B.i. or Section 2.B.ii. The

election shall be made for all tax years for which the taxpayer will participate and a separate election for different tax years, or for different transactions in different tax years, is not allowed. Such election shall be made in the form and manner prescribed by the Department, and, once made, shall be irrevocable.

i. Voluntary compliance without appeal. If an eligible taxpayer elects to participate under this Section 2.B.i., then:

(a) The Department shall waive or abate all penalty applicable to the underreporting or underpayment of [State] income tax attributable to the use of tax avoidance transactions for such tax years for which the taxpayer voluntarily complies, including penalty imposed under [the RT and IFP Act];

(b) except as otherwise provided in this Act, the Department shall not seek criminal prosecution against the taxpayer for such tax year, underreporting and underpayment with respect to tax avoidance transactions for which the taxpayer voluntarily complies;

(c) no penalty may be waived or abated under this Act if the penalty imposed relates to an amount of [State] income tax assessed or paid prior to [Program start date]; and

(d) the taxpayer may not file a claim for credit or refund with respect to the tax avoidance transactions for such tax year or for any amounts paid under this Act.

ii. Voluntary compliance with appeal. If an eligible taxpayer elects to participate under this Section 2.B.ii., then:

(a) the Department shall waive or abate any penalty imposed under [the RT and IFP Act] with respect to disclosure of tax avoidance transactions and underpayment of [State] income tax resulting from the use of tax avoidance transactions for any tax years for which the taxpayer voluntarily complies, but shall not waive accuracy related penalties as imposed prior to [date of enactment of RT and IFP Act];

(b) except as otherwise provided in this Act, the Department shall not seek criminal prosecution against the taxpayer for such tax year underreporting and underpayment with respect to tax avoidance transactions for which the taxpayer voluntarily complies;

(c) no penalty may be waived or abated under this Act if the penalty imposed relates to an amount of [State] income tax assessed or paid prior to [Program start date];

(d) The fact a taxpayer participated in the Program shall not be considered evidence the taxpayer engaged in a tax avoidance transaction;

(e) Any penalties which are not waived or abated shall be deemed assessed upon the due date of the return (determined without regard to extensions) upon which such amount should have been paid; and

(f) The taxpayer may file a claim for credit or refund as provided in the [State] Income Tax Act with respect to such tax year. Notwithstanding [Section on deemed denials], the taxpayer may not file [an appeal] until after either of the following:

(1) the department issues a [final determination] with respect to the transactions at issue, or

(2) the earlier of (A) the date which is 180 days after the date of a final determination by the Internal Revenue Service with respect to the transactions at issue, or (B) the date that is [X years, where X = the number of years in the State's standard SOL] after the date the claim for refund was filed or one year after full payment of all [State] income tax, including penalty and interest. Section [section on administrative deemed denials] shall not apply to claims filed under this section.

C. Installment payment agreement. The Department may enter into an installment payment agreement in lieu of the full payment required under Section 1.A. Any installment payment agreement authorized by this subsection shall include interest on the unpaid amount at the rate prescribed by [regular interest provisions]. Failure by the taxpayer to fully comply with the terms of the installment payment agreement shall render the waiver of penalties null and void, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

D. Amended returns; unpaid amounts. After [Program end date], the Department may issue a deficiency assessment upon an amended return filed pursuant to Section 1.A., impose penalties, or initiate criminal action under this part with respect to the difference between the amount shown on that return and the correct amount of tax, and the penalty relief under this Act shall not apply to any portion of the underpayment attributable to a tax avoidance transaction not paid to the State.

E. Correspondence from the Department. Any correspondence mailed by the Department to a taxpayer at the taxpayer's last known address outlining the Program established under this Act constitutes a "contact" for purposes of Sections II.3. of the [RT and IFP Act].

F. Taxpayer Cooperation. In addition to any other authority to examine returns, for the purpose of improving state tax administration, the Department may inquire into the facts and circumstances related to the use of tax avoidance transactions to underreport the tax liabilities for which a taxpayer has participated in the voluntary compliance initiative under this Act. Taxpayers shall cooperate fully with inquires described in this Section 2.F. Failure by a taxpayer to fully cooperate in an inquiry described in this Section 2.F. shall render the waiver of penalties under this Act null and void and the taxpayer may be assessed any penalties that may apply.