WEST VIRGINIA CODE: §11-10E-2

§11-10E-2. Tax shelter voluntary compliance program.

(a) In general. -- The Tax Commissioner shall establish and administer a tax shelter voluntary compliance program for eligible taxpayers subject to tax under article twenty-one and article twenty-four of this chapter. The program shall be conducted from August 1, 2006, through November 1, 2006, and shall apply to personal income tax and corporation net income tax liabilities attributable to the use of tax avoidance transactions for taxable years beginning before January 1, 2006.

(b) The department is authorized to adopt rules (including interpretive and emergency rules), issue forms and instructions, issue administrative notices, and take such other actions as it deems necessary to implement the provisions of this article.

(c) Election. -- An eligible taxpayer that meets the requirements of subsection (d) of this section with respect to any taxable year to which this article applies may elect to participate in the program under either method below for any particular tax avoidance transaction period. Such election shall be made separately for each taxable year in the form and manner prescribed by the Tax Commissioner, and once made shall be irrevocable.

(1) Voluntary compliance without appeal. -- If an eligible taxpayer elects to participate under this paragraph: (i) The Tax Commissioner shall abate and not seek to collect any penalty that may be applicable to the underreporting or underpayment of West Virginia income tax attributable to the use of tax avoidance transactions for such taxable year; (ii) except as otherwise provided in this article, the Tax Commissioner shall not seek civil or criminal prosecution against the taxpayer for such taxable year with respect to tax avoidance transactions; and (iii) the taxpayer may not file a claim for credit or refund with respect to the tax avoidance transaction for such taxable year. Nothing in this subsection shall preclude a taxpayer from filing a claim for credit or refund for the same taxable year in which a tax avoidance transaction was reported if such credit or refund is not attributable to the tax avoidance transaction. No penalty may be waived or abated under this article if the penalty imposed relates to an amount of West Virginia income tax assessed prior to August 1, 2006.

(2) Voluntary compliance with appeal. -- If an eligible taxpayer elects to participate under this paragraph, then: (i) The Tax Commissioner shall abate and not seek to collect the penalties for failure to report listed transactions, with respect to such taxable year; (ii) except as otherwise provided in this article, the Tax Commissioner shall not seek civil or criminal prosecution against the taxpayer for such taxable year with respect to tax avoidance transactions; and (iii) the taxpayer may file a claim for credit or refund as provided in article ten of this chapter with respect to such taxable year. Notwithstanding any other provision of the code to the contrary, the taxpayer may not file an appeal until after either of the following: (i) The Tax Commissioner issues a notice of denial; or (ii) the earlier

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of: (1) The date which is one hundred eighty days after the date of a final determination by the Internal Revenue Service with respect to the transactions at issue; or (2) the date that is three years after the date the claim for refund was filed or one year after full payment of all tax, including penalty and interest. No penalty may be waived or abated under this article if the penalty imposed relates to an amount of West Virginia income tax assessed prior to August 1, 2006.

(d) Eligible taxpayer. -- The tax shelter voluntary compliance program applies to any eligible taxpayer who, during the period from August 1, 2006, to November 1, 2006, does both of the following: (1) Files an amended return for the taxable year for which the taxpayer used a tax avoidance transaction to underreport the taxpayer's West Virginia income tax liability, reporting the total West Virginia taxable income and income tax for such taxable year computed without regard to any tax avoidance transactions; and (2) makes full payment of the additional income tax and interest due for such taxable year that is attributable to the use of the tax avoidance transaction. For purposes of this subsection (d), if the Tax Commissioner subsequently determines that the correct amount of West Virginia income tax was not paid for the taxable year, then the penalty relief under this section shall not apply to any portion of the underpayment not paid to the state that is attributable to a tax avoidance transaction.

An "eligible taxpayer" is an individual, partnership, estate, trust, corporation, limited liability company, joint stock company, or any other company, trustee, receiver, assignee, referee, society, association, business or any other person as described in the tax law, who or which has a tax liability relating to income tax imposed under article twenty-one or article twenty-four of this chapter. However, an otherwise eligible taxpayer would be prohibited from participating in the voluntary compliance initiative if:

(a) The taxpayer is a party to any federal or state criminal investigation for underreporting or underpayment of tax;

(b) As of the taxpayer's application date under the voluntary compliance initiative, the taxpayer is a party to any pending administrative proceeding or civil or criminal litigation relating to the designated taxes under the voluntary compliance initiative. An administrative proceeding or civil litigation shall be deemed not to be pending on the application date if the taxpayer withdraws from that proceeding or litigation before the Tax Commissioner's penalty waiver under the voluntary compliance initiative;

(c) The taxpayer has a criminal conviction concerning the tax on which penalty relief is sought; or

(d) The taxpayer was eligible to participate in the amnesty program under article ten-d of this chapter but did not do so, and the taxpayer participated in the voluntary compliance programs of any other state.

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