WEST VIRGINIA CODE: §11-10E-5

§11-10E-5. Reportable transactions.

(a) For each taxable year in which a taxpayer is required to make a disclosure statement under Treasury Regulations Section 1.6011-4 (26 CFR 1.6011-4) (including any taxpayer that is a member of a consolidated group required to make such disclosure) with respect to a reportable transaction (including a listed transaction) in which the taxpayer participated in a taxable year for which a return is required, such taxpayer shall file a copy of such disclosure with the Tax Commissioner. Disclosure under this subsection is required to be made by any taxpayer that is a member of a unitary business group that includes any person required to make a disclosure statement under Treasury Regulations Section 1.6011-4. Disclosure under this subsection is required with respect to any transaction entered into after February 28, 2000, that becomes a listed transaction at any time, and shall be made in the manner prescribed by the Tax Commissioner. With respect to transactions in which the taxpayer participated for taxable years ending before December 31, 2004, disclosure shall be made by the due date (including extensions) of the first annual return due after the effective date of this article. With respect to transactions in which the taxpayer participated for taxable years ending on and after December 31, 2004, disclosure shall be made in the time and manner prescribed in Treasury Regulations Section 1.6011-4(e). Notwithstanding the above, no disclosure is required for transactions entered into after February 28, 2000, and before January 1, 2005: (i) If the taxpayer has filed an amended West Virginia income tax return which reverses the tax benefits of the potential tax avoidance transaction; or (ii) as a result of a federal audit the Internal Revenue Service has determined the tax treatment of the transaction and a West Virginia amended return has been filed to reflect the federal treatment.

(b) Reportable transaction understatement penalty. -- If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to twenty percent of the amount of that understatement. This penalty shall be deemed assessed upon the assessment of the tax to which such penalty relates and shall be collected and paid on notice and demand in the same manner as the tax.

(1) Reportable transaction understatement. -- For purposes of this section, the term "reportable transaction understatement" means the product of: (i) The amount of the increase (if any) in taxable income, as determined by reference to the amount of post-apportioned income that results from a difference between the proper tax treatment of an item to which this subsection applies and the taxpayer's treatment of that item as shown on the taxpayer's return, including an amended return filed prior to the date the taxpayer is first contacted by the Tax Commissioner regarding the examination of the return; and (ii) the applicable tax rates.

(2) Items to which subsection (b) applies. -– This subsection shall apply to any item which is attributable to either of the following: (i) any listed transaction as defined in Treasury

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Regulations Section 1.6011-4; and (ii) any reportable transaction as defined in Treasury Regulations Section 1.6011-4 (other than a listed transaction) if a significant purpose of the transaction is the avoidance or evasion of federal income tax.

(3) Subsection (b) shall be applied by substituting thirty percent for twenty percent with respect to the portion of any reportable transaction understatement with respect to which the requirements of this subsection are not met.

(4) Reasonable cause exception. --

(A) In general. -- No penalty shall be imposed under this subsection with respect to any portion of a reportable transaction understatement if it is shown by clear and convincing evidence that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

(B) Special rules. -- Subparagraph (A) does not apply to any reportable transaction (including a listed transaction) unless all of the following requirements are met:

(C)The relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with this article. A taxpayer failing to adequately disclose shall be treated as meeting the requirements of this subparagraph: (i) If the penalty for that failure was rescinded; (ii) there is or was substantial authority for such treatment; and (iii) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

(c) One hundred percent interest penalty for failure to participate. -- If an eligible taxpayer who fails to participate in the program is contacted by the Internal Revenue Service or the Tax Commissioner regarding the potential use of a tax avoidance transaction with respect to a taxable year and has a deficiency with respect to such taxable year or years, there shall be added to the tax attributable to the potential tax avoidance transaction an amount equal to one hundred percent of the interest due under article ten of this chapter for the period beginning with the statutory due date of the return (determined without regard to extensions) on which the income should have been reported to the date of the notice of assessment. Such penalty shall be deemed assessed upon the assessment of the interest to which such penalty relates and shall be collected and paid in the same manner as such interest. The penalty imposed by this subsection is in addition to any other penalty imposed by this article or article ten. This subsection shall apply to taxable years ending on and after December 31, 2005.

(d) Coordination with other penalties. -- Unless provided otherwise by rules, the penalties imposed by this section are in addition to any other penalty imposed by this article or article ten of this chapter.

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