



# Instructions for Form DTF-686

## Tax Shelter Reportable Transactions

### General information

The Tax Law has been amended to provide new reporting requirements with respect to the disclosure of information relating to transactions that present the potential for tax avoidance (a tax shelter). These requirements are similar to the tax shelter disclosure requirements for federal income tax purposes. The amendments also impose penalties for nondisclosure and the underpayment of taxes due to participation in these transactions, and extend the statute of limitations for assessments relating to these transactions.

For more information, see TSB-M-05(2)C or TSB-M-05(4)I, *Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*, TSB-M-05(2.1)C or TSB-M-05(4.1)I, *Supplement to the Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*, and TSB-M-07(01)C, *Additional Supplement to the Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*.

Also, see New York Codes, Rules, and Regulations (NYCRR) Title 20, Part 2500, *New York Reportable Transactions*, for more information concerning the reporting requirements for New York reportable transactions. The full text of the regulations may be obtained at [www.nystax.gov](http://www.nystax.gov).

### Who must file

**Federal disclosure requirements** — Every taxpayer or person required to file a return or report under Tax Law Articles 9, 9-A, 22, 32, or 33 on or after June 13, 2005, who is or was also required to file a disclosure statement related to a reportable transaction or a listed transaction with the Internal Revenue Service (IRS) (pursuant to Internal Revenue Code (IRC) section 6011) must disclose that information with their New York State return or report. Disclosure is required if the taxpayer or person participated in tax shelter activities prior to July 1, 2009, and if a disclosure statement related to a reportable transaction or a listed transaction was required to be filed with the IRS.

The term *return or report* includes original returns or reports, amended returns or reports, and applications for credit or refund of tax.

Each taxpayer or person must make its own disclosure even though one member of an affiliated group, as defined by IRC section 1504, may file the disclosure statement with the IRS on behalf of its affiliates including the taxpayer or person. For Article 22 taxpayers, a group agent who is authorized to file a group return on behalf of a group of nonresident members must make this disclosure with the group return; the individual group members are not required to make this disclosure. A nonresident individual who participates in a group return is not required to disclose listed or reportable transactions that do not affect New York source income.

A taxpayer or person who files a return or report under Tax Law Articles 9, 9-A, 22, 32, or 33 includes:

- corporations subject to tax under Tax Law Article 9, sections 183, 184, 185, or 186 and persons subject to tax under Tax Law Article 9, sections 186-a or 186-e,
- general business corporations (Article 9-A),
- individuals including sole proprietors, partnerships including a limited liability company (LLC) that is treated as a partnership for federal income tax purposes, estates and trusts, partners in a partnership including members of a LLC that is treated as a partnership for federal income tax purposes, shareholders

of an S corporation, and beneficiaries of an estate or trust (Article 22),

- banking corporations (Article 32), **and**
- insurance corporations and captive insurance companies (Article 33).

### Exceptions:

- 1) For tax years beginning prior to January 1, 2004, see TSB-M-05(2.1)C or TSB-M-05(4.1)I concerning collective disclosure election for large partnerships, and abbreviated disclosure statements for a taxpayer that is a partner of a large partnership.
- 2) For tax years beginning prior to January 1, 2004, see TSB-M-05(2.2)C or TSB-M-05(4.2)I, *Additional Supplement to the Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*, concerning collective disclosure election for large trusts, and abbreviated disclosure statements for a taxpayer that is a beneficiary of a large trust.
- 3) Members of a federal consolidated return see TSB-M-07(01)C concerning consolidated disclosure.
- 4) For information concerning the reporting requirements for reportable transactions that have been delisted by the IRS, see TSB-M-05(2.1)C or TSB-M-05(4.1)I.

### New York reportable transaction disclosure requirements —

For tax years beginning on or after January 1, 2006, taxpayers who participate in New York reportable transactions are required to disclose their participation with their tax return for that tax year. A *New York reportable transaction* is a transaction that has the potential to be a tax avoidance transaction under Tax Law Articles 9, 9-A, 22, 32, or 33. There are three categories of New York reportable transactions: New York listed transactions, New York confidential transactions, and New York transactions with contractual protection. For information on the three categories, see NYCRR, Title 20, Part 2500. See Form DTF-686-ATT-I for more information on the reporting requirements.

### When to file

Disclosure is not required for tax shelter activities in which the taxpayer or person participated on or after July 1, 2009.

**Federal disclosure requirements** — Attach to this Form DTF-686 a duplicate of the IRS disclosure statement (currently IRS Form 8886 and Schedule M-3) and any related information submitted to the IRS. Attach Form DTF-686 to the return or report filed by the taxpayer or person for the current tax year.

In addition, the taxpayer or person must also disclose with their **first** return or report filed on or after June 13, 2005:

- all disclosure statements that were required to be filed with the IRS at any time with respect to listed transactions for which the taxpayer or person was also required to file a New York State return or report for the tax year in which the transaction occurred under Tax Law Articles 9, 9-A, 22, 32, or 33, and
- all disclosure statements that were required to be filed with the IRS with respect to reportable transactions, other than listed transactions, in which the taxpayer participated during any tax year for which the statute of limitations for assessment has not expired as of April 12, 2005. For this purpose, the statute of limitations for assessment under Tax Law sections 683 and 1083 in effect prior to April 12, 2005, is used.

**New York reportable disclosure requirements** — Complete one Form DTF-686-ATT, *New York Reportable Transaction Disclosure Statement and Request for a Determination*, for each New York reportable transaction. Attach each DTF-686-ATT to the Form DTF-686. Attach, Form DTF-686 to the return or report filed by the taxpayer or person for the current tax year.

### Line instructions

**Line 1** — Mark an **X** in each box that you have identified and checked on the attached IRS Form(s) 8886. If you filed Schedule M-3 instead of Form 8886 for federal tax purposes, mark an **X** in box E.

**Line 3** — Mark an **X** in each box that applies to a transaction for which a Form DTF-686-ATT is attached.

**Waiver of the secrecy provisions of the Tax Law for purposes of a consolidated disclosure** — The corporation designated as being responsible for filing the copy of the federal disclosure statement on behalf of all New York State filers that are members of the federal consolidated group must sign the waiver when completing its Form DTF-686. **In addition**, each corporation on whose behalf the consolidated disclosure is being made must also sign the waiver when completing its abbreviated Form DTF-686.

### Additional tax shelter recordkeeping requirements

Every person required by Tax Law section 25 to disclose any transaction, file any duplicate return, or maintain any list, must retain all relevant correspondence, memoranda, notes, valuation studies, meeting minutes, spreadsheets, models, opinions, records required to be retained pursuant to IRC section 6011, and all other records or documents related to the disclosure, filing, and list maintenance requirements of Tax Law section 25 for six years. The information must be made available for inspection in connection with any examination.

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