

## **Additional Supplement to the Disclosure of Certain Transactions and Related Information Regarding Tax Shelters**

This TSB-M provides for paperwork filing relief in regard to the disclosure requirements of certain transactions regarding tax shelters and provides additional information for fulfilling the disclosure requirements with respect to members of a combined return that are not New York State taxpayers. The information provided below is intended to supplement that given in TSB-M-05(2)C, TSB-M-05(4)I, TSB-M-05(2.1)C, TSB-M-05(4.1)I, TSB-M-05(2.2)C, and TSB-M-05(4.2)I.

### **Consolidated Disclosures**

Specifically, this TSB-M provides for an alternative method by which members of a federal consolidated return that are required to file New York State tax returns with federal tax shelter disclosure statements required by Tax Law section 25(a)(1) attached may fulfill such requirement.

In order to use this method, one of the New York State filers that is a member of the federal consolidated group must be designated by the group members as the corporation responsible for filing a copy of the federal disclosure statement on behalf of all the New York State filers that are members of the federal consolidated group (a “consolidated disclosure”) and must file such statement. The designated corporation must also have engaged in activities requiring a federal disclosure statement that would result in this corporation having to file a New York State Form DTF-686, *Tax Shelter Reportable Transactions*, on its own behalf. Additionally, the designated corporation must also agree to waive the secrecy requirements of the Tax Law to allow the Tax Department to reveal any information in regard to the consolidated disclosure to the other members of the consolidated group that are parties to the consolidated disclosure. The members on whose behalf the consolidated disclosure was made must also sign waivers of secrecy to allow the Tax Department to reveal any information in regard to the consolidated disclosure to the other members of the consolidated group that are parties to the consolidated disclosure. These waivers are not required with respect to those members of a consolidated group, for whom the disclosure requirement is being met through a consolidated disclosure, that are filing as members of a New York State combined group.

The New York State filers, other than the designated filer, that are members of the federal consolidated return and that have a federal disclosure requirement may then file an abbreviated disclosure statement with New York State.

In any event, the Department may require, upon written request, that any member of a federal consolidated group be required to file a New York State tax return and provide all disclosure statements and any related information regardless of the fact that the member’s New York State disclosure requirement was to have been satisfied through a consolidated disclosure. In addition, the filing of a consolidated disclosure in no way precludes penalties for failure to meet New York State disclosure requirements from being assessed against any taxpayer on whose behalf a consolidated disclosure was made by a designated corporation.

When a New York State combined return includes one or more members that are not members of the federal consolidated return and for which consolidated disclosure is used, such members must file their federal disclosures required by New York State with the combined return.

### **How to Make a Consolidated Disclosure**

To file a consolidated disclosure, the New York State filer that is the member of the federal consolidated group and that has been designated by the group members as the corporation responsible for filing the consolidated disclosure must:

- file with its New York State return **one** copy of all disclosure information required by New York State that applies to activities of the New York State filers of the federal consolidated group,
- write ***Consolidated Disclosure*** on the top of its completed Form DTF-686,
- sign the waiver of Tax Law secrecy requirements on Form DTF-686,
- attach a list of the names and tax identification numbers of the other New York State filers on whose behalf the consolidated disclosure is being made (corporations whose separate New York State disclosure requirement is being met by the consolidated disclosure), and
- notify the filers on whose behalf the consolidated disclosure is made that such disclosure has been filed.

To file abbreviated disclosure statements, the other New York State filing members of the federal consolidated group whose separate New York State disclosure requirements are being met by the consolidated disclosure must:

- write ***Consolidated Disclosure*** on the top of their Form DTF-686,
- complete the information preceding lines 1 and 2 of Form DTF-686,
- in lieu of completing lines 1 and 2 of Form DTF-686, enter below line 2 the name and tax identification number of the New York State filer that has filed the required federal disclosure with New York State, and
- sign the waiver of Tax Law secrecy requirements on Form DTF-686.

### **Disclosures for Non-Taxpayers Included in a Combined Return**

If a corporation that is not a New York State taxpayer is included in a combined return, it is the responsibility of the members in the combined return that are New York State taxpayers to provide the required New York State disclosure information for the non-taxpayer members. Therefore, when a New York State combined return includes members that are not New York State taxpayers, the same procedures for meeting the disclosure requirements of the taxpayer members of the combined return must be followed in regard to the members that are not taxpayers.